

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 259 OF 2007

Friday, this the ^{6th} day of November, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.Kunjumol
Mailman (TBOP)
Sub Record Office, Railway Mail Service
Kollam
Residing at " No.184-F"
Railway Quarters, Kollam ... **Applicant**

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India represented by
Director General
Department of Posts, Dak Bhavan
New Delhi
2. The Chief Postmaster General
Kerala Circle
Trivandrum – 695 033
3. The Senior Superintendent
Railway Mail Service
TV Division
Trivandrum – 695 033 ... **Respondents**

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 03.11.2009, the Tribunal
on 6.11.2009 delivered the following:

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The legal issue involved in this case is : Can the respondents, through an administrative instruction, put a ceiling on the number of chances for the departmental candidates for appearing in the examination for promotion of Lower Grade Officials , when such a condition has not been stipulated in the statutory rules.

2. Vide Order dated 20/26th August 1999, {Annexure A-6(a) }, it was stipulated, "For the LGO's examination for promotion of the officials from Group 'D'/Postman/Mail Guard to the cadre of Postal Assistants Sorting Assistants, the number of chances is limited to five at present. The matter has since been examined and I am directed to inform you that the number of chances for appearing in the LGO examination has been increased from five to six.". Again, in Annexure A-3, Recruitment Rules, 2002 it has been stipulated "Note: The procedure for recruitment shall be governed by the administrative instructions issued by the Department from time to time." On this basis, the respondents in their Annexure A-6 circular dated 02-01-2007 repeated the said condition that the number of chances for departmental candidates for appearing in the examination of Lower Grade Officials to the cadre of Pas/SAs in subordinate offices is six only. And when the applicant applied for appearing for the examination, she was informed, "As per the rules in the subject, you are not eligible for appearing in the examination after having availed 6 chances already as per the departmental provisions and the additional one chance granted to you in compliance with the interim order dated 18-04-20067 of the Hon'ble C.A.T., Ernakulam Bench in OA No. 246/2006 filed by you." It is this order coupled with that part of Annexure A-6 order by which the ceiling on the number of chances has been stipulated has been challenged in this O.A.

3. This question had earlier cropped in on a few occasion earlier and the decisions are as under:-

(a) OA No. 975/1997: The Tribunal in its order dated 23.07.1999 held that there cannot be any such restriction. This decision was

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challenged by the respondents before the High Court and the High Court in O.P. No. 26159/2002 held in its judgment dated 10th July, 2002 as under:

"Having heard the learned counsel for the petitioners and the first respondents and having considered the materials place on record, we are inclined to agree with the view taken by the Tribunal. As rightly pointed out by the Tribunal, the recruitment rules do not contain any restriction regarding the number of chances that can be availed of by a person for appearing in the competitive examination. In the absence of any such restriction in the recruitment rules, the Department should not have imposed restrictions by way of executive orders or instructions. It is significant that in the same recruitment rules in the case of candidates appointed by direct recruitment, the number of chances for appearing in the competitive examination has been prescribed. The conspicuous inclusion of the restrictions in the case of direct recruits and the conspicuous absence of any such restrictions in the case of promotion cannot be ignored. Nothing prevented the authorities concerned from suitably amending the rules to incorporate the restrictions which they imposed through executive orders or administrative instructions. It is also important that Annexures A3 and A4 were issued prior to the coming into force of the recruitment rules. That means before the introduction of the recruitment rules, the policy of granting only five chances to appear for the competitive examination was in force. But when the recruitment rules were framed, the rule making authority did not consider it necessary to incorporate the said policy in the rules. This conspicuous omission on the part of the rule making authority should be interpreted in favour of the first respondent. Therefore, the Tribunal was right in allowing the Original Application."

(b) OA Nos 1000/2001 and 1006/2001 Following the decision in the above OA No. 975/1997, it was held that there cannot be any such stipulation prescribing the ceiling for total number of attempts.

(c) OA No 354/2003:

"It is quite clear from the above that this Tribunal categorically found that in the absence of necessary

amendments in the Recruitment Rules the restriction imposed on the departmental candidate from appearing at the departmental promotion examination are contrary to the provisions contained in the Recruitment Rules. However, liberty was granted to the respondents to amend the rules, if they feel so. From the materials placed on record and on going through the arguments advanced by the learned counsel on either side, it is evident that the recruitment rules have not yet been amended incorporating the restrictions as directed by this Tribunal and the decision of this Tribunal has been confirmed by the Hon'ble High Court in O. P. No. 26159/1999.

6. Apart from that, this Tribunal by a common order in O.A.Nos.1000 and 1006 of 2001 dated 12.2.2002 set aside the letter issued by the Ministry of Communication restricting the number of chances to appear in the examination as six. In the circumstances, we are of the view that a letter which has been set aside by this Tribunal has become obsolete and therefore, it cannot be relied on.

7. In the conspectus of facts and circumstances mentioned above, we are of the considered view that the applicant is entitled for the benefits claimed in the OA. Therefore, we set aside A-1 dated 27.2.2003 to the extent it restricts the number of chances for LGO for taking the departmental examination for promotion to the cadre of PS/SA as six, as it is not in conformity with the legal position that has been observed above. We direct the respondents to declare the results of the above examination and pass appropriate orders granting the consequential due benefits to the applicant if he succeeds in the exam within a period of three months from the date of receipt of copy of this order.

The OA is allowed as aforesaid. There is no order as to costs."

This order was challenged before the High Court in WP(C) No. 6743/2006 and the High Court, by its judgment dated 10th February 2009 dismissed the same holding that the point raised by the petitioners in the writ petition is covered against them by the judgment of the Division Bench of the High Court in OP No. 36259/1999 dated 10-07-2002. Hence, the writ petition was dismissed.

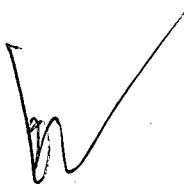
(d) OA No. 274/2004:

Hariraj, on behalf of the Applicant and Mr. T.P.M. Ibrahim Khan, learned SCGSC on behalf of the Respondents. In view of the Annexure.R.2 Recruitment Rules issued in supersession of the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990, the scenario as prevailing at the time of passing orders in OA 975/97 and OA 1000/01 & OA 1006/01 (supra) has changed. In the earlier Recruitment Rules, there was no provision for the Department to issue any administrative instructions regarding the procedure for recruitment from time to time which has since been provided in the new rules. Now the question is whether prescribing the number of chances to be availed of by a candidate should be part of the Recruitment Rules itself or it can form part of the administrative instructions issued by the Department from time to time. The Recruitment Rules are issued by the Government under the provisions of Article 309 of the Constitution which deals with recruitment and conditions of service of persons serving in the Union or State. Such Recruitment Rules are notified on the basis of the model Recruitment Rules prescribed by the Government to maintain uniformity. However, in order to maintain brevity there are seven major heads under which the various provisions of the Recruitment Rules are made. Further details thereof are stated in the Schedule with 14 columns appended to the main Recruitment Rules. The application of the rules has been mentioned in column No.1 of the Schedule. The number of posts, classification and scale of pay are mentioned in columns 2 to 4 and method of recruitment, age limit and other qualifications are mentioned in columns 5 to 14. The details regarding method of recruitment like procedure of holding the examination like the syllabus, number of papers, qualifying marks for each paper, number of chances that can be availed of by the departmental candidates etc. are matters of details which need not form part of the recruitment Rules. Since the amended Recruitment Rules contains the specific provision that the procedure for recruitment shall be governed by the administrative instructions issued by the department from time to time, all such details can be taken care of by such departmental instructions. We do not find any infirmity in doing so. O.A is therefore without any merit and accordingly the same is dismissed. No order as to costs.

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4. In fact, the above order in OA No. 274/2004 did refer to the earlier order in OA No. 1000 and 1006/2001, but distinguished the same from the aforesaid O.A. Stating that the earlier orders were passed at a juncture when there was no provision in the Recruitment Rules to pass any administrative instructions prescribing the procedure for examination, while in 2002, there has been an amendment to the Recruitment Rules, which provide for the same. Hence, the applicant in the said OA was not entitled to appear in the examination after crossing the maximum chance of Six.

5. After exchange of pleadings, when the case came up for consideration the counsel for the applicant submitted that earlier there have been the decisions to the effect that there shall be no ceiling on the number of attempts in the examination. Once, the age limit has been prescribed, and the examinations are periodically held, irrespective of the number of chances, one should be allowed to participate. Again, reference was invited to the decision in the High Court in OP No. 26159/1999 already extracted above, and it was argued that when the statute imposed on the direct recruitment quota of the number of chances to compete in the examination, conspicuous omission of the same condition in respect of promotion, would mean that the consciously, in respect of promotion, the ceiling as to the number of times to sit for examination has been omitted. In that event, there is no question of the said condition stipulated under the provisions of existence of procedures to be prescribed.



6. Counsel for the respondents submitted that the inclusion of the provisions in 2002 Recruitment Rules as explained above would suffice to reimpose the said condition, notwithstanding the fact that earlier such stipulation was set aside. Support has been taken from the decision of the Tribunal in OA No. 274/2004 as extracted above.

7. Counsel for the respondents submitted that the difference in the earlier stipulation, which was set aside and present stipulation passed in the wake of the amendment to Recruitment Rules, would take care of the situation and as such, the facts in the earlier decisions are not identical to that of the applicant here.

8. Arguments were heard and documents perused. True, compared to the decisions earlier pronounced and the one in OA No. 274/2004, there could be discerned one difference, in that the provision in the Recruitment Rules now do permit procedure for recruitment; but the contention of the applicant's counsel is that the condition could be one relating to the way of conducting the examination but cannot put any ceiling on the number of issues as it would amount to bringing in certain conditions not provided for in the Recruitment Rules and it is settled law that an administrative instruction is subordinate to the statutory provisions, as held in a plethora of decisions of the Apex Court. Counsel for the applicant also referred to the provisions contained in A-9 and A-10 which provides for relaxation in the qualifying standards and this is a fit case wherein the same shall be invoked.

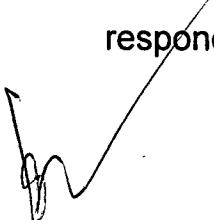


9. Counsel for the respondents submitted that the stipulation has been made on the strength of the provisions available in the recruitment rules.

10. Arguments were heard and documents perused. Respondents have placed their reliance upon the decision of this Tribunal in OA No. 274/04, whereby on the basis of the insertion of the provision in the recruitment rules that the procedure for recruitment shall be governed by the administrative instructions issued from time to time, the prescription of the number of chances cannot be held as illegal. However, this order dated 14th February 2006 of the Tribunal in the said OA No. 274/2004 was challenged in WP(C) No. 10600 of 2006 and the High Court has, in its judgment dated 5th March, 2009 held as under:-

“ We feel that the first contention of the petitioner itself has to be accepted. The Note under column II of the schedule to Ext.P6 Recruitment Rules enables only prescription of procedure for the conduct of the Competitive Examination. There is no bar in the Rules against an incumbent participating in the examination for more than six times. The bar introduced under the guise of prescribing the procedure, even assuming Exts.P4 and P7 are otherwise valid, cannot be sustained. For barring a candidate, who is otherwise eligible as per the Rules, from participating in the examination, there should be an express enabling provision in it. The power to issue instructions regarding the procedure, for the conduct of the examination cannot be abused for this purpose. Therefore, we are of the definite view that on the strength of Ext.P4 or Ext.P7, the petitioner cannot be prevented from participating in the competitive examination. In view of our finding on this point, it is unnecessary to consider the other points canvassed by the petitioner. ”

11. In view of the above, there is no merit in the contention of the respondents that on the basis of decision of this Tribunal in OA No.



274/2004 the applicant is not entitled to any more chance in appearing for the examination.

12. In view of the above, the OA is allowed. It is declared that the applicants and other similarly situated individuals are entitled to appear for the examination under the promotion quota, without any ceiling on the number of chances, subject, however, to the condition that they fulfill the prescribed age ceilings. Again, in so far as the applicant in this OA is concerned, as she has been permitted to appear for the examination under an interim order, if she stands qualified, the benefit of the same should be available and if not, she should be permitted to appear for the examination subject to the age limit prescribed. While considering the case of the applicant in respect of qualifying in the examination, due weight to the relaxation of standards admissible to the SC candidates under the extant regulations shall also be granted. Necessary orders on the above lines be passed within a period of two months from the date of communication of this order.

13. No cost.

Dated, the 6th November, 2009.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs