

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 260 OF 2010

Wednesday, this the 29th day of June, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Albith P, S/o. Balakrishnan Nambiar,
Muthuvana, Payyoli Angadi SO,
Vadakara Postal Division,
Residing at Parambath House,
Pallikkara Post, Payyoli (Via) – 673 522.

- Applicant

(By Advocate Mr. O.V. Radhakrishnan, Senior,
Mrs. K. Radhamani Amma)

Versus

1. Superintendent of Post Offices,
Vadakara Division, Vadakara – 673 101.
2. Postmaster General,
Northern Region, Kozhikode.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Union of India
Represented by its Secretary
Ministry of Communications,
New Delhi.
5. Sathis A, Postman
Nut Street (P.O), Vadakara Division.
6. Sudheer Kumar C, Postman
Payyoli SO, Vadakara Division.
7. Ashokan V., Postman
Edacherry (P.O), Vadakara Division - Respondents

(By Advocate Mr. Varghese P. Thomas, ACGSC for R1-4)
(By Advocate Mr. P.C. Sebastian for R5-7)

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The application having been heard on 29.06.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

During the relevant time, when the applicant filed this Original Application, he was working as Gramin Dak Sevak Branch Postmaster. Pursuant to the notification dated 11.08.2009 issued by the official respondents for the Departmental Examination for Recruitment to the cadre of Postman/Mail Guard for filling up the vacancies for the year 2006, the applicant also responded. The examination was held on 13.09.2009 and applicant wrote the examination. Results were published, but he was not selected. Based on the information furnished to him under the Right to Information Act, he came to know that the party respondents herein arrayed as respondent No. 5 to 7 have been selected against the vacancies for the year 2006, whereas according to the applicant, the non-selection of the applicant was due to the erroneous evaluation of his paper in comparison to that of the 7th respondent and others.

2. According to him, some of the questions answered by him in the same manner as answered by the party respondents, marks were awarded to the party respondents but marks were denied to the applicant. According to him, as per the scheme for revaluation, produced as Annexure -14 along with the additional rejoinder, a candidate is entitled for revaluation, if (a) particular answers were not evaluated, (b) excess attempted answers were not

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evaluated, (c) for the same answers, the examiner awarded marks to one candidate and to another candidate no marks were assigned or the answer struck off as wrong, (d) all the answers were evaluated but justified marks were not awarded by the examiner.

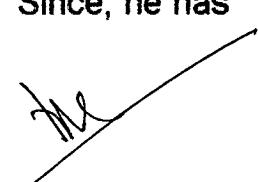
3. According to him, question No.2 and 4 were answered by the applicant in the same manner as that of the 7th respondent, though marks were awarded to 7th respondent no marks were awarded to the applicant. Based on the Interim Order dated 01.03.2011, answer papers were revalued and it was found that the applicant was entitled for marks as against the answer No. 2 and 4. Both these questions carry 4½ marks each as awarded to the 7th respondent. The answer paper of the applicant as also the 7th respondent were duly produced for verification and were found that these statements are correct. In such a situation based on the additional marks of the evaluation, 139.5 marks were awarded to him against 130.5 originally awarded, whereas 7th respondent obtained only 131.5. Therefore, the applicant is entitled to be appointed in preference to the 7th respondent. Respondents No. 5 and 6 have also obtained only 139 marks each. Therefore, in the place occupied by one of the respondents, it is contended that the applicant ought to have been appointed.

4. In the reply statement filed by the official respondents, it is contended that there is no allegation of malafides, bias, arbitrariness or violation of any provisions of law, Court cannot review the decision of an examiner in awarding marks in a Departmental Examination. Admittedly,



Annexure -14 was issued on 02.08.2010 and the reply was filed in July 2010. Therefore, obviously, the reply is with reference to the subsequent instruction regarding entitlement of the candidate for revaluation as a scheme for the purpose. Annexure -14 was issued during the pendency of the Original Application. The question is as to whether in awarding marks to the applicant, he has been discriminated. We find from the answer papers that the applicant was not awarded any mark for question No. 2 and 4 though his answers were exactly the same as answered by the 7th respondent to whom marks were awarded. It is a one word answer. This is a ground admissible to revaluation as per Annexure -14. Thus the revaluation affirms the fact that the applicant is entitled for nine more marks which was wrongly denied to him in the original valuation. The action on the part of the valuer is either an inadvertent omission, which is liable to be corrected or it could be malafide. When the department have come up with a scheme for revaluation, in such cases, we hold that the applicant should not be denied the right to have his answer paper revalued. As a matter of fact, this Tribunal had made an Interim Order and the question No. 2 and 4 have been revalued.

5. Admittedly, the applicant has now secured 139.5 marks, whereas the party respondents secured only less marks. Of the three parties, the candidate who obtained less marks than the others is liable to be replaced by the applicant. The result will be that the appointment of one of the respondents is liable to be declared as invalid. It is pointed out by the counsel for the applicant that as against the vacancy for the year 2009, the examination held immediately after the aforesaid examination. Since, he has

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already been appointed and the appointment of the party respondents could be saved by directing the respondents to regularise the appointment of the applicant with reference to a vacancy in the year 2006 notionally without any remuneration, but subject to other consequential benefits namely, seniority and the fixation of pay and other benefits. We order accordingly. It is open to the official respondents to regularize the appointment of one of the candidates, whose appointment is liable to be cancelled may be adjusted against 2009 vacancy now occupied by the applicant. Since all the respondents are continuing to work in the department based on the appointment given to them, the above direction will avert the respondents being removed from service. In the circumstances, we direct the Superintendent of Post Offices to pass appropriate orders in the light of the above within a period of two months.

6. O.A. is allowed as above.


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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