

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. 262/2005

MONDAY, THIS THE 4TH DAY OF JUNE, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

S. Reghunadhan S/o Sri M. Sankaran
Postman, Head Post Office, Kollam
Kollam Postal Division
residing at Kockelathu House
Manappallhy NorthPO
Thazhava ,Karunagappilly
Kollam District- 690 574

Applicant

By Advocate Mr.O.V. Radhakrishnan

Vs.

1 Senior Supdt. Of Post Offices
Kollam Postal Division
Kollam.

2 Chief Postmaster General
Kerala Circle
Department of Posts,
Thiruvananthapuram.

3 Director General of Posts
Department of Posts,
Dak Bhavan, News Delhi.

4 Union of India represented by its Secretary
Ministry of Communications
New Delhi.

Respondents

By Advocate Mr. George Joseph, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

In this Application the applicant challenges the impugned orders at Annexure A-9 and A-10 denying him permission to sit for the Departmental Examination for promotion of lower grade officials to the cadre of Postal Assistants/Sorting Assistants which was to be held on 24.4.2004 on the ground that the number of chances for the Departmental candidates for appearing in the above examination was restricted to six only.

2 The facts are stated thus:- The applicant is presently working as Postman Kollam and had been appointed to the post w.e.f. 1.4.1995 and confirmed w.e.f. 7.4.1997. The Recruitment to the cadre of Postal Assistant is governed by Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990 as amended from time to time. According to the amended rules 1991 the post of Postal Assistants shall be filled (a) 50% by direct recruitment (b) 50% by promotion through departmental promotion examination failing which by direct recruitment. Under column 11 of the said rules, no maximum number of chances is prescribed for taking the Departmental Promotion Examination However, the third respondent by Annexure A-3 dated 20.4.1989 issued a letter limiting the number of chances for appearing in the Departmental Examination as five and by Annexure A-4 further clarified that it will

come in to effect from the date of issue of the order of such restriction namely 20.4.1989. Annexure A-3 and A-4 were set aside by this Tribunal by its order in O.A. 975/1997. This Tribunal held therein that the respondents are at liberty to amend the rules if they feel that a restriction has to be imposed on the departmental candidate from appearing at the departmental promotion examinations. The contention of the applicant is that this order of the Tribunal has not been set aside by any higher forum, it has become final and though the order was challenged by the respondents in OP NO. 26159/1999 the Hon'ble High Court dismissed the OP on 10.7.2002 and the respondents have not amended the Recruitment Rules incorporating any restrictions. Subsequently the third respondent had again issued Annexure A-6 dated 20.8.1999 increasing the number of chances from five to six which was also challenged before this Tribunal in O.A. No.1006/2001 and the Tribunal had struck down Annexure A-6 holding that it is only an amendment to Annexures A-3 and A-4 which were already found to be unsustainable.

3 The first respondent published the calendar for the examination for the year 2005 by memorandum dated 26.5.2005 (Annexure A-9). In Annexure A-9 it is stated that the number of chances for the Departmental candidates is six which is against the order of the Tribunal striking down such restrictions. The applicant's candidature has been rejected as not eligible on the basis of Annexure A-6 dated 20.8.99 notwithstanding the fact that it has already been set aside by

this Tribunal. Therefore it is contended that the restriction clause limiting the number of chances is patently illegal and the applicant has a legal right to appear for the departmental examination.

4. The following reliefs have been sought:

- (i) to call for the records leading to Annexure A-9 Memo dated 25.2.2005 and the circular No. Rectt/10-3/2004 dated 11.2.2005 attached to it and to quash the same to the extent it restricts the number of chances for Lower Grade Officials for taking the Departmental Examination for promotion to the cadre of PA/SA as six and Annexure A-10 letter dated 5.4.2005 of the 1st respondent rejecting the candidature of the applicant for appearing in the Departmental Examination for promotion to PA/SAs to be conducted on 24.4.2005.
- (ii) to issue appropriate direction or order commanding the 1st respondent to permit the applicant to appear for the Departmental Examination for promotion for Lower Grade Officials to the cadre of Postal Assistants scheduled to be held on 24.4.2005 or on any other deferred date and to promote him to the cadre of Postal Assistants on the basis of the result in the above examination
- (iii) to grant such other reliefs which this Hon'ble Tribunal may deem fit proper and just in the circumstances of the case; and
- (iv) to award costs to the applicant.

5. The respondents initially filed a reply statement stating that the Department of Posts, (Postal Assistants and Sorting Assistants) Recruitment Rules 2002 (Annexure R-1) have been issued in supersession of earlier Recruitment Rules of 1990 mentioned by the applicant (Annexure R-1) and that by the issue of Annexure R-1, Annexures A-1 and A-2 relied on by the applicant have become void. They further submitted that the objection regarding prescribing the number of chance that can be availed by a candidate for

appearing in the examination for promotion of Lower Grade Officials to the cadre of Postal Assistant/Sorting Assistant by issue of administrative instructions is no longer valid in view of the provision made under Col. 11 of the schedule attached to Annexure R-1 recruitment rules. They have also submitted that O.A. 975/97 was filed before this Tribunal before Annexure R-1 Recruitment Rules came into effect and O.A. 1006/2001 was defended as per the instructions at the time of filing that Application as the circular conveying the revised rules had not been received by the respondents to defend O.A. 1006/01 on the strength of Annexure R-1 Recruitment Rules. Besides, the examinations covered by the earlier orders of this Tribunal were not routine examinations, it was a special recruitment drive for the members of SC/ST and physically handicapped to fill up the backlog vacancies and therefore, the Tribunal was of the view that no restriction can be validly placed in the number of chances even if the number of chance for routine examinations are limited. Since the applicant has availed all available six chances prior to 2005 he was informed that he was not eligible by Annexure A-10 letter. There has been no discrimination as all the departmental officials similarly placed like the applicant were all informed accordingly.

6 Further additional reply was filed by the respondents referring to the dismissal of another O.A. 274/2004 praying for identical reliefs, after taking note of the amended Recruitment Rules and contending that this O.A. therefore deserves to be dismissed accordingly.

7 In the rejoinder filed to the reply and additional reply filed by the respondents, the applicant has sought to distinguish the chances taken for appearing in the Examinations in 1997 and 1999 on the ground that he had not appeared in the examination on medical grounds. Therefore he could not be said to have "availed" of the chances.

8 The respondents have filed the second additional reply statement denying the allegations in the rejoinder. It is stated that the third respondent is the rule making authority of the Department who is competent to issue such an order in respect of the cadre of Postal Assistants limiting the number of chances to six. They have drawn our attention to Rule 6(c) of P& T Manual Vo.I IV Appendix No. 37 (Part-I General) which clearly states that "no candidate should be allowed to withdraw its candidature after the examination except under very rare circumstances. Even when a candidate has been on medical leave during the days of the examination, the request for withdrawal must be submitted within 10 days from the date of his return to duty." No such request submitted later should ordinarily be entertained even when a candidate has been on medical leave during the conduct of the Examination. The applicant had not applied for withdrawal of his candidature for the two examinations held on 27.7.1997 and 25.4.1999. Therefore the Department has taken the decision that he has availed these two chances and such a decision is not arbitrary or illegal. Moreover, as per the Service Records, the applicant was on duty on both these days and he could not avail any

benefits stating that he could not avail the opportunity of writing the examination on medical grounds. Annexure A-6 stipulation regarding the number of chances having been issued by the competent authority is applicable to both the old and new Recruitment Rules. It is further contended that the pendency of the Writ Petition before the Hon'be High Court does not take away the validity of the judgment of the Tribunal as has been pointed out by the Apex Court in Alpana V. Mehta Vs. Maharashtra State Board of Secondary Education and Another (AIR 1964 SC 1827).

9 We have heard learned Senior Counsel Shri O. V. Radhakrishnan for the applicant and Shri George Joseph, ACGSC appearing for the respondents. The main contention taken by the Senior counsel for the applicant is that the eligibility conditions relating to the procedure for the departmental examination cannot be prescribed by administrative instructions and are to be incorporated under the Recruitment Rules. In Annexure A-5 order in O.A. 975/97 this Tribunal held as follows:

"..... Admittedly, the Recruitment Rules do not prescribe any restrictions for the departmental candidate to appear for the departmental examination. If the respondents felt that the impugned letters are still valid and to be enforced, then they

should have made attempts to get the rule amended. In the absence of the amendment to the Recruitment Rules, it cannot be said that the impugned letters can be operated or enforced."

10 In addition to the above it was also contended by the learned counsel that after the amendment carried out in the Recruitment Rules referred to by the respondents no fresh administrative instruction has been issued by the respondents and that they could not have continued to rely on Annexure A-6 letter which had been struck down by the Tribunal in their earlier judgment in Annexure A-7 whereby it has become non est in law. The learned counsel for the respondents relied on the latest judgment of this Tribunal in O.A. 274/04 in an identical case.

11 We have perused the pleadings and copies of the judgments produced by the parties.

12 It is seen that the applicant's side relies on Annexure A-5 and A-7 judgments of this Tribunal in which the earlier Recruitment Rules for the post of Postal Assistants/Sorting Assistants dated 27.12.1990 and 31.1.1992 and instructions issued in Annexure A-3 letter dated 20.4.1989 and Annexure A-6 letter dated 20.8.1999 fixing the number of chances for appearing in the departmental examination were challenged before this Tribunal. On the other hand the respondents have relied on the revised Department Postal Assistants and Sorting Assistants Recruitment Rules 2002 and the order dated 14.2.2006 of this Tribunal in O.A.274/04 taking note of the revised provisions in the Recruitment Rules.

13 The main legal question that has been raised is whether such conditions like the restrictions in the number of chances and appearances in the departmental examination should form part of the

administrative instructions or be incorporated in the Recruitment Rules which are statutory in nature.

14 First we take up the legal issue which has already been settled by us in the judgment in O.A. 274/04 in an identical case with the following finding:

"...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. OA is therefore without any merit and accordingly the same is dismissed. No order as to costs."

In view of the above clear finding we do not propose to go again into this issue.

15 The second question is whether the applicant can continue to place reliance on Annexures A-5 and A-7 judgments of this Tribunal which were rendered before the amendment of the Recruitment Rules. In fact it was in order to meet the observations of this Tribunal in the above judgments since the earlier rule did not provide for any restriction in the number of chances for appearing in the examination and that such a right vested in the Lower Grade Officials could not be restricted and divested by administrative instructions, that the respondents sought to amend the Recruitment Rules to take such a power to provide for such a contingency by issue of administrative instructions. This is evident from the provisions of the amended Recruitment Rules according to which in col. 11 the following note has been incorporated:

"Note: The procedure for recruitment shall be governed by the administrative instructions issued by the Department from time to time."

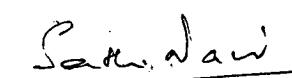
16 Therefore, the vires for striking down the restricting provisions on the basis that they do not derive any source of power from the Recruitment Rules cannot be extended to the new Recruitment Rules and the examinations held consequent to the amended Recruitment Rules according to the administrative instructions regarding restriction of the number of chances would after coming into effect of the new Recruitment Rules of 9.1.2002 be deemed to be in accordance with the provisions in the Recruitment Rules. Therefore we will have to reject this contention of the applicant that the respondents are bound by the orders in Annexures A-5 and A-7 judgment of this Tribunal which have become final as they were rendered in a different legal matrix.

17 Yet another point raised in the Application is that after the promulgation of the amended Recruitment Rules, Annexure A-6 dated 20.8.1999 prescribing six chances cannot have continued validity as it was already struck down by this Tribunal. The wording of the "Note" now incorporated in Column 11 of the amended Recruitment Rules would negate this contention. By this note, the procedures for recruitment which are governed by the administrative instructions "issued" by the Department from time to time have been validated as the past tense is used by the word "issued". It was not sad that fresh instructions will be issued in the matter. Therefore in our opinion this argument does not succeed.

18 It has been stated that the order of this Tribunal in O.A. 274/04 is under challenge before the Hon'ble High Court of Kerala and therefore it cannot be held to be valid till the disposal of the OP. To our knowledge and understanding no stay of the order has been granted and at this point of time our hands are not tied to follow the precedent set by us in O.A. 274/04. The applicant in this O.A. is also similarly placed as the applicant in O.A. 274/04 who had also availed the maximum six chances earlier and had been informed that he was not eligible to take part in the departmental examination. Therefore in the light of the finding already given by us in O.A. 274/04 as extracted above in para 13, we are of the considered view that this O.A. also deserves to be dismissed. The O.A. is dismissed accordingly. No costs.

Dated, the 4th June, 2007.


DR. K.B.S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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