

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 267/2003

Monday the 25th day of September, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

**P. Mohanan S/o late Sankunny Nair
Postman, Trichur Head Post Office
residing at Parayil House
P.O. Thykkattusserry
Ollur, Trichur Pin 680 322**

Applicant

By Senior Advocate Mr .O.V. Radhakrishnan

Vs.

- 1 Director General of Posts
Dak Bhavan, New Delhi.**
- 2 Chief Postmaster General
Kerala Circle, Trivandrum**
- 3 Senior Superintendent of Post Offices
Thrissur Division, Thrissur.**
- 4 Union of India represented by tis Secretary
Ministry of Communications,
New Delhi.**

Respondents

By Advocate Mr. Varghese P. Thomas, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this O.A. is presently working as a Postman, Thrissur Head Post Office under Thrissur Postal Division. He was one of the candidates who appeared for the Departmental examination for Lower Grade Officials for promotion as Postal/Sorting Assistants(PA/SA) during the year 2002 conducted on 12.5.2002. He has submitted that promotion to

the post of Postal/Sorting Assistants is regulated by the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990 as amended by the Amendment Rules 1991. As per Column 11 of the Schedule to the above Rules, the method of recruitment to the post of PA/SA is 50% by direct recruitment and 50% by promotion through departmental promotion examination, failing which by direct recruitment. As per Column 12 of the Schedule to the above Rules, permanent officials belonging to different lower grades are eligible for promotion and the post of Postman is included at Sl. No. 19 in the list. The departmental examination for Lower Grade Officials for promotion as PA/SA during the year 2002 was notified to be held on 21.4.2002 as per circular dated 27.2.2002 of the 3rd respondent Annexure A-1. The last date for submission of application was fixed as 11.3.2002 and the last date for application to reach the Circle office was fixed as 18.3.2002. All Departmental Lower Grade Officials below the grade of PA/SA who were permanent or quasi-permanent in the lower grade as on 18.3.2002 and who have a satisfactory record of service are shown to be eligible to appear for the examination as per the above letter dated 27.2.2002 of the third respondent, in Annexure A1. It has been notified therein that the minimum qualifying marks are 40% in each paper for all candidates excluding SC/ST to whom the minimum qualifying marks will be 33%. Pursuant to Annexure A-1 the second respondent notified the vacancy position for the examination to be held on 21.4.2002 as nine unreserved vacancies of Postal Assistants under Thrissur Division. The applicant who satisfied all the eligibility conditions applied for the departmental examination scheduled to be held on 21.4.2002 and he appeared for the examination held on 12.5.2002. According to the applicant he faired well in the above examination and he was under the legitimate expectation that he would be

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included in the list of successful candidates. However, to his shock and surprise the third respondent issued Memo No. 31/34 dated 3.10.2002 directing two departmental candidates to join Postal Training Centre, Mysore for induction training from 7.10.2002 to 28.12.2002. Immediately thereafter the applicant sought for communication of his marks obtained in the examination and accordingly his marks were communicated as per memo dated 21.11.2002. (A-4). In Annexure A-4, the applicant is shown to have obtained 46 marks for Paper-I, 45 marks for Paper-II and 38.5 marks for Paper III. Therefore he is qualified only in Paper I and II and could not satisfy the minimum of 40% in Paper-III. The awarding of 38.5 mark for Paper III according to the applicant is clearly unreasonable and is totally unjustified. Paper III relates to Postal Manuals and Guides. The applicant had fared well and would have secured at least 80% marks if his answer papers were properly valued. As the Rules do not permit revaluation, the applicant sought re-totalling of his marks. The applicant has been served with a memo informing him that the marks secured by him in Paper-III were re-totalled, verified and found correct and that all answers have been evaluated by the examiner (Annexure A-5). According to the applicant, every person who appears in a test has a legal right to apply for revaluation of the answers if the marks awarded are unacceptable and any Rule contrary to this position is illegal.

2 The applicant filed M.A. 321/2006 seeking to amend the Application by incorporating a challenge to Annexure A-1 to the extent it fixes 40% marks in each paper as qualifying marks. The respondents filed objections to the M.A. After hearing both sides the M.A. was allowed and the applicant was directed to carry out the amendment.

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3 The applicant has sought the following reliefs in the amended O.A.:

(i) to call for the records leading to Annexure A-1 Notification dated 27.2.2002 and to set aside the same to the extent it prescribes minimum qualifying marks at 40% in each paper in the Departmental Examination for promotion of Lower Grade Officials to the cadre of Postal Assistant/Sorting Assistant held on 21.4.2002 for all candidates excluding SC/ST being inconsistent with and not authorised by the Department of Posts (Postal Assistant and Sorting Assistant) Recruitment Rules, 1990 and also to set aside Annexure A-5 Memo dated 28.2.2003

(ii) to declare rule 15 of Appendix 37 of P & T Manual Volume IV as unconstitutional ultra vires, unreasonable and void

(iii) to call for the answer sheet in Paper III Postal Manuals and Guides (with books) of the applicant of the Departmental Examination conducted on 12.5.2002 for appointment to the Post of Postal Assistant/Sorting Assistant;

(iv) to issue appropriate direction or order directing not to convert the Departmental vacancy as Direct Recruitment vacancy on the basis of the result in the departmental examination held on 12.5.2002 under Thrissur Division.

(v) To issue appropriate direction or order directing respondents to revalue the answer scripts of Paper III Postal Manuals and Guides (with books) of the applicant in respect of the departmental Examination conducted on 12.5.2002 and to revise the marks secured by him in paper III and declare him as passed in the examination.

(vi) to issue appropriate direction or order directing the respondents to appoint the applicant as Postal Assistant against the unreserved vacancy for departmental candidates against the vacancy earmarked for lower grade officials and to grant him all consequential benefits with effect from the date of his entitlement.

(vii) To grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case.

(viii) to award cost to the applicant.

4 The applicant has taken the following grounds in the O.A.:

(a) The Rules relating to departmental examination contained in Appendix 37 of the P & T Manual Vol. IV is an administrative instruction not issued under Article 309 or Article 73 read with Article 77 of the Constitution of India. Therefore the above rules have no force of law.

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(b) Rule 15 of Appendix 37 cannot oust the power of judicial review conferred on the Tribunal and there is no other remedy available to the applicant.

© The fixation of the cut off mark as 40 per cent in the notification was arbitrary and discriminatory and the cut off mark must necessarily be varied to meet the requirement depending upon the availability of the vacancies and the number of departmental candidates otherwise eligible and the; lower grade officials will be deprived of their right to be considered for promotion.

(d) Recruitment rules do not prescribe the minimum marks at 40 % and such prescription in the administrative instructions is arbitrary and discriminatory

5 The respondents have contested the averments in the O.A. In the reply statement, they have submitted that the applicant appeared for the examination for promotion of Lower Grade Officials to the cadre of Postal Assistant held on 12.5.2002 and the list of candidates declared to have passed the above examination was communicated by letter dated 16.9.2002. On 13.9.2002 the applicant made a written request to communicate the marks scored by him in the above examination and the mark list was supplied to him on 27.11.2002 by Annexure A-4. The applicant's request for re-totalling of the marks in Paper III was also replied to by stating that marks obtained by him in Paper III has been re-totalled, verified and found correct and that he has secured 38.5 marks in Paper III. Revaluation of answer scripts is not permissible in any case under any circumstances as per Rule 15 of Appendix 37 of the Postal Manual Vol. IV. The answer scripts are valued by responsible officers with utmost care and full application of mind and the applicant was awarded marks as per the performance in the examination. Mere assumptions and assertion of the applicant that he has performed well in Paper III have no basis and cannot be accepted. If all the failed candidates on the basis of self assertion ask for re-valuation of the answer scripts, it will result in

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opening of a Pandoras Box and will negate the validity of the whole examination process. The Tribunal in P. Sasi Vs. Chief Postmaster General, Tvm and Others (O.A. 1697/98) has held that such demands are not admissible. The Postal Manual Vol. IV and the Appendices have been published under the authority of the Director General, Department of Posts as per the powers vested in him to regulate conduct of departmental promotion examinations. Appendix 37 contains general rules and instructions governing the conduct of the departmental examinations. The cut off marks in the qualifying examination has been fixed, keeping in view the capacity and efficiency with which these categories of officials are expected to discharge their duties in the higher post to which they are promoted. The intention of the Department is only that competent and efficient officials in the lower grade get selected for being promoted to the higher post. If the Department is to adopt a policy of relaxing or lowering the cut off marks according to the availability of departmental candidates for filling up the vacancies reserved for them, the very purpose of conducting such an examination to find out suitable and efficient officials will be defeated. The allegation of the applicant that the vacancies meant for departmental candidates are being transferred to direct recruitment quota has been denied by the respondents and they have confirmed that in the examination held on 12.5.2002 only two candidates were selected against 9 vacancies earmarked for departmental quota and the remaining 7 vacancies are still kept vacant.

6 Rejoinder has been filed by the applicant taking a preliminary objection that the reply statement filed by the third respondent is on behalf of the first and second respondents without producing separate letters authorising him to file reply statement on their behalf and therefore cannot

be accepted and is liable to be ignored. To prove this point he has relied on the judgment of the CAT Allahabad Bench in Ram Rakha Vs. Union of India and Ors.(1988 (8)) SCC 16). The applicant has reiterated his contention that Appendix 37 of the P & T Manual Vol. IV is only administrative in nature having no statutory force and is not enforceable by such an administrative order, an authority cannot impose an absolute bar on revaluation. The possibility of improper valuation of the answer sheets cannot be ruled out. Such an absolute ban works against the interest of the individual employees. In a similar O.A. 708/2002 this Tribunal had directed the respondents to conduct a verification regarding the correctness of the answers and the award of marks by an expert and when re-valuation was done it was found that there were discrepancies. Therefore the respondents should have provided for a safety valve of revaluation by another person. It has also been reiterated that departmental examination is not a competitive examination conducted for eliminating the lesser meritorious persons from the select list and the lowering of minimum cut off marks will not defeat the right of the eligible and suitable persons .

7 In an additional reply statement filed, the respondents clarified that the third respondent the Senior Superintendent of Post Offices is a Group-A officer who is competent to file reply statement on his own behalf and that the order of the CAT Allahabad Bench cited by the applicant has no relevance at all and that he is also one of the respondents in this case and therefore he is fully competent to file a reply statement. It was also affirmed that the status of the Appendix 37 of the Postal Manual Vol. IV issued by the Department of Posts has already been determined by the order of this Tribunal in O.A. 708/2004 holding that Rule 15 of Appendix 37

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of the P & T Manual Volume. IV has the force of Article 309 of the Constitution of India. The applicant's prayer to be promoted to the higher grade by modifying the departmental rules and regulations is against the statutes and therefore not permissible.

8 We have heard the learned counsel appearing for the parties and have gone through the pleadings.

9 Shri O.V. Radhakrishnan the learned counsel for the applicant put forth the following arguments and relied on the following judgments.:

- 1 Smt. N. Kutty Vs. KSEB (2000(1) KLJ 1)
- 2 Roshan Lal Tandon and Ors Vs. UOI and Ors.(AIR 1967 SC 1889)
- 3 State of Punjab and Ors. Vs. Manjit Singh (2003)11 SCC 559
- 4 Radhey Shyam Singh and ors. Vs. UOI (1997) 1 SCC 60
- 5 Raj Kumar and Ors. Vs. Shakti Raj and Ors. (1997) 9 SCC 527)
- 6 1988 (8) ATC 17
- 7 P&T Manual Vol .IV
- 8 State of J&K Vs. Shiv Ram Sharma & Ors. (1999 (3) SCC 653)
- 9 Venugopalan Nair II and Ors. Vs. Chief General Manager, Telecom and Others (1995 (31) ATC 47)

10 Firstly it was contended by the Senior Counsel that the fixation of cut off mark of 40 without relation to the number of posts to be filled up, and depending upon the number of eligible candidates is arbitrary and that in the State of Punjab Vs. Manjit Singh (2003 (6) SCC 63) the Hon'ble Supreme Court has held that it was not necessary to fix the minimum marks so long as it is a departmental examination and not a qualifying examination. The applicant had secured high marks in Papers I and II. In Paper-III he was only 1½ marks short of the minimum. Annexure A-1 memorandum is an executive order and there is no such provision in the

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Recruitment Rules (which was produced as Annexure A-9). Similarly it was argued that Appendix 37 of Rule 15 is also inconsistent with the Recruitment Rules and has no statutory validity and that recruitment to the post of Postman was regulated solely by 1990 Recruitment Rules and no administrative instruction can supplement these rules.

11 Regarding the bar imposed in the Rule on re-valuation, it was argued that such provisions for revaluation are made in almost all University Statutes to check against arbitrary and casual valuation of answer sheets. It was submitted that no distinction can be made between university examination and departmental examinations in this regard and for this the judgment of the Hon'ble Supreme Court in AIR 1981 SC 487 was relied upon. According to the learned counsel, only departmental promotion examination the procedure adopted should have been only to arrange the number of eligible candidates according to the marks obtained by them without referring to the minimum marks and to make the selection based on the number of vacancies from such a merit list.

12 It was argued by the learned counsel for the respondents that the conduct of the departmental examination is the prerogative of the policy makers and it is for the Government to lay down the Scheme for the examination. The decisions of the Hon'ble Supreme Court in the following cases were relied on by the counsel.

- 1 State of Andhra Pradesh and Another Vs. V. Sadanandam and Others (AIR 1989 SC 2060),
- 2 Manjit Singh & Ors. Vs. T. ESI and Ors. And K. Prakasam and Ors. Vs. T. Subramanyam (AIR 1990 SC page 1104)
- 3 Anzar Ahmad Vs. State of Bihar and Others (AIR 1994 SC 141)

**4 Sant Ram Sharma Vs. State of Rajasthan and Others
(AIR 1967 SC 1910)**

13 It was further submitted that in the absence of statutory rules the Government are empowered to issue administrative instructions and this principle has been upheld by the Hon'ble Supreme Court in AIR 1996 SC 352 and Union of India and Ors. Vs. Shri Somasundaram Viswanath and Ors. (AIR 1988 SCC 2255) wherein it was held that procedural details can be prescribed by the Government through Office Memoranda provided they are not repugnant to the rules. In O.A. 708/2003, this Tribunal had also taken more or less similar views.

14 We have given due consideration to the arguments put forward by the learned counsel and the judgments referred to by either side.

15 The first question to be taken up is the vires of the Rule 15 of Appendix 37 of the P & T Manual Vol. IV and the validity of the Rules, as a whole. The learned Senior Counsel for the applicant has argued that these rules are only administrative instructions not issued under Article 309 of the Constitution and therefore have no force of law. Per contra, the respondents have argued that these rules have been issued under Article 309 of the Constitution and this position has been settled by the judgment of this Tribunal in O.A. 708/2002. We notice from Swamy's Compilation of P & T Manual produced before us that these have been published as Government regulations in volumes and each volume deals with a particular subject. For example Vol. II deals with General Regulations covering all branches of the P&T, Vol. III contains Schedules of Administrative Powers and Vol. IV deals with Establishment rules in which the Appendix 37 is a part. The general rules and special rules which are

applicable to all branches of the Department with regard to recruitment, appointment, promotion, transfer, leave and pension of all grades of the P&T Service are contained in the Chapters in this Vol. IV. Chapter VIII contains rules with regard to non-gazetted officers of Post Offices and the Railway Mail Services. The provisions for recruitment of Postal Assistants etc. are given in Rule 37 and the rules for recruitment are given in Appendix 9. The rules for recruitment of RMS Office Assistants/Sorting Assistants are given in Appendix No. 10. Similarly Appendix No. 37 deals with rules relating to departmental examinations. It is therefore obvious that Appendix 37 is not an administrative guideline as contended by the applicant, and that it is an integral part of the general rules relating to establishment matters of various categories as issued by the Department and it could have been issued by the competent authority only in accordance with the powers exercised under the provisions of Article 309 or Article 73 read with Article 77 of the Constitution of India. The respondents in the additional reply have submitted that these rules were notified in the Gazette of India and were having statutory status. This issue also came up before this tribunal in O.A. 708/2002 and it was held that Rule 15 of the Appendix 37 issued by the Department of Posts has the force of Article 309 of the Constitution.

16 The very format of Appendix 37 conforms to that of Rules and it is not in the form of a letter or memorandum which are the usual modes for issue of executive instructions. The respondents have also cited the decision of the Supreme court in Dr. Krushna Chandra Sahu and Ors Vs. State of Orissa and Others (AIR 1996 SC 352). Para 33 thereof is extracted below:

"33. Now power to make rules regulating the conditions of service of persons appointed on Government posts is

available to the Governor of the State under the Proviso to Art. 309 And it was in exercise of this power that the present Rules were made. If the statutory Rules, in a given case, have not been made either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government under Art. 73 And the State Government under Art. 162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions


17 The judgment of the Apex Court in Union of India and Ors. Vs. Shri Somasundaram Viswanath and Others (AIR 1988 SC 2255) reinforces this rule by holding:

“6 It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Art. 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Art. 309 Of the Constitution of India, the rules made under proviso to Art. 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Art. 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature the law made by the appropriate Legislature prevails....”.

Following this dictum, in the absence of statutory rules, administrative instructions can be issued. An executive instruction can fill up the gap provided by the rules. Therefore, the prescriptions in Appendix 37 of P&T Manual Vol. IV whether they are statutory rules or administrative instructions have to be held legally valid in the light of the

above judgments. Besides, there is already a finding of this Tribunal that they have statutory force. Therefore the contention of the applicant that the rules contained in the Appendix No. 37 are ultra vires, arbitrary and void is not sustainable.

18 The next question is regarding the specific provision contained in the above Rule, barring revaluation of the answer sheets. The applicant has contended that every person who has appeared in the test has a legal right to apply for revaluation of the answer scripts that the provision contained in this rule is absolutely oppressive and the candidates are left with no remedy if the re-valuation is not allowed. The Calicut University Ordinance Statute No. 23 was cited to show that provisions are made for revaluation of answer papers which is really a check against arbitrary and casual valuation of answer sheets by the examiners. The learned counsel for the respondents on the other hand submitted that if re-valuation is permitted it will result in opening of a Pandoras Box and the Department has enough safe guards to make the system fool proof and to ensure fairness in the system, which has stood the test of time. The learned counsel for the applicant has cited some judgments but they do not directly relate to the question on hand. In this case we are dealing with the departmental examinations which are conducted periodically for enabling various categories of employees to qualify themselves for promotion to higher posts. These examinations cannot be compared with the examinations and conduct of tests leading to award of educational qualifications. It is also seen from rules laid down that very detailed instructions have been given for the conduct of the examination like setting question papers, evaluation and awarding marks, etc. and to ensure confidentiality of the examination. Detailed instructions are also



contained in Chapter IV of the Appendix and they act as safeguards against misuse. There is rationale in the argument put forward by the respondents that if every candidate is allowed the benefit of revaluation in each of the examination there would not be any finality in respect of any candidate and the entire promotional system would be upset. As stated earlier, since the employees have also repeated opportunity to qualify themselves in the examinations held periodically, it cannot be said that any prejudice is caused to them by denial of revaluation. Nevertheless, in one or two occasions this Tribunal has directed revaluation of the papers of such examinations. These directions are to be considered in the context of the specific facts and circumstances of these cases. On the other hand in some cases also the Tribunal has also rejected the prayer for revaluation. In O.A. 841/1996 this Tribunal held that it is "not inclined to grant this prayer because there is no statutory or fundamental right to have one's answer paper revalued." Agreeing with this decision again in O.A. 87/2000, this Tribunal had rejected the prayer to declare Rule 15 as invalid. Therefore we are of the view that this contention of the applicant is also liable to be rejected.

19 The other legal ground taken by the applicant is regarding prescription of 40% marks as the minimum qualifying marks in that Annexure A-1 is inconsistent with the Recruitment Rules. It has been argued that in the case of departmental examination fixation of minimum marks cannot be made an inviolable rule and that so long as the Recruitment Rules do not prescribe the minimum marks of 40, the competent authority must necessarily bring down the minimum to ensure that posts are filled up by the lower grade officials in the RMS. The rationale for the argument is that if none of the candidates get qualified

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for the vacancies set apart by fixing up this arbitrary cut off marks these vacancies can be filled up by direct recruitment and others and thereby the employees will be deprived of the right for promotion under Article 361 of the Constitution of India. For this the judgment in State of Punjab Vs. Manjit Singh was relied on. No doubt in this judgment the Hon'ble Supreme Court observed that it was not necessary to fix any minimum qualifying mark and that exclusion of the candidates at the stage of short listing on the basis of minimum mark was not necessary but the facts of the case have to be seen before applying the ratio of the judgment to the instant case. The question before the Hon'ble Supreme Court was the recruitment to the Medical services under the Punjab Government for which the advertisement was issued by the Punjab Public Service Commission. Considering the large number of candidates it was decided to conduct screening test with a view to short list the number of candidates to bring it to the ratio of three to five candidates per vacancy. The proposal of the PSC was informed to all the candidates. The High Court of Punjab held that the action of the respondents in holding the screening test and prescribing a minimum qualifying mark was unreasonable arbitrary and discriminatory. The Hon'ble Supreme Court observed that so far as the powers and function of the Commission in short listing the candidate is concerned there can certainly be no doubt about it. But the manner of shortlisting by fixing a minimum qualifying mark and exclusion of candidate at the stage of short listing itself on the basis of minimum qualifying marks is not permissible. Based on the number of vacancies the Commission should have picked up the required number of candidates in the order of merit. Since the selection was by interview this procedure has resulted in those candidates otherwise called for interview being rejected in view of the new qualifying marks.

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20 In the case of departmental promotion examinations, there is no procedure of short listing and one has to be appointed according to how he has fared in the examination. Hence the departmental promotion examination conducted for the post of Postal Assistant in the Postal Department in this Application has to be taken as a qualifying examination and not just as a selection based on merit as envisaged in other examinations. The focus of the examination is to test the efficiency and competence of the employee belonging to the lower grade to discharge the the responsibilities of the higher post. The syllabus of the examination has been so designed to test their competence and only those who are marked successful in that examination can be held to be eligible for promotion to the higher post. A perusal of the Recruitment Rules would reveal that the feeder posts prescribed in col. 12 comprises 25 categories which are totally diverse in their function and responsibilities. The intention of the respondents is mainly to select the best out of these cadres, who fulfill certain minimum standard and such an action cannot be said to act against the interest of any particular group of employees. It is settled law that there is no absolute right vested in an employee for promotion but the right exists only to be considered for promotion. Just as a DPC would consider the ACRs for assessment and make recommendation based on a bench mark/merit, the promotions in this case would be based on a selection from those who obtain the minimum qualifying marks. We do not find any thing arbitrary in such an exercise. The dictum in the judgment mentioned supra has to be distinguished with regard to the facts of the case.

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21 The related contention raised is that so long as the Recruitment Rules do not prescribe any minimum marks, prescription of the same by executive instructions is ultra vires and unconstitutional and would defeat the rights of the eligible and suitable persons and would result in filling up the vacancies earmarked for Lower Grade officials under the Recruitment Rules thereby defeating the purpose of the Rule itself. The Recruitment Rules of Postal Assistants/Sorting Assistants notified vide notification dated 27.12.1990 at Annexure A-9. The Rules generally prescribe classification and scale of pay of the post and method of recruitment and other qualifications required for the post. Accordingly, the method of selection to the post has been fixed as 50% by direct recruitment and 50% by promotion through departmental promotion examination in column 11 of the Rules. The grades from which the promotions have to be made have also been prescribed in Column 12. The contention of the applicant is that since the Departmental Promotion Examination is prescribed under the Rules and the details regarding the conduct of the Examination should also have been prescribed in the said Rules. This contention has no merit as that is not the general procedure followed in any Recruitment Rules. The Rules will generally indicate the method of recruitment whether the posts will have to be filled up by direct recruitment/ promotion/ transfer/ deputation, etc. and the procedures to be followed by the Departmental Promotion Committees/Selection Committees in the case of promotion or by the selection are prescribed either in other statutes or by issue of instructions. In fact all the instructions regarding the procedures to be followed by the DPCs in the various departments of the Central Government are laid down by the executive instructions in the form of OMs issued from time to time which were consolidated and issued in 1976 and are being followed by all departments till date and the Court itself

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has taken note of this position in the judgment in Union of India and Ors. Vs. Shri Somasundaram Viswanath and Ors (AIR 1988 SC 2255) and the Court has repelled the same argument of the validity of such instructions in the following observations in para 6 of the judgment:

"6 It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Art. 309 of the Constitution of India or by means of executive instructions issued under Art. 73 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Art. 309 of the Constitution of India, the rules made under proviso to Art. 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Art. 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails...."

22 On the same analogy the scheme for departmental examinations where the posts have to be filled up by the examination process are also laid down by the Department either by the mode of issue of rules or by issue of office memoranda. In the case of P & T Department we find that the rules regarding departmental examinations have been issued in Appendix 37 and codified ^{and} replaced in Vol. IV of the P & T Manual dealing with General Establishment Rules. Therefore, the Department is fully competent to issue such Rules/instructions without making a corresponding provision in each case in the Recruitment Rules.

23 In Anzar Ahmad Vs. State of Bihar (AIR 1994 SC 141) wherein similar prescription of Bihar Government in a letter addressed to the PSC by allocation of 50% marks for academic performance and 50% for interview was challenged alleging the procedure to be adopted as arbitrary, the Court while holding that the "procedure adopted by the Commission

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suffered from the vice of arbitrariness" also observed that :

"there cannot be any hard and fast rules regarding the precise weight to be given to the viva voce test as against written examination. It must vary from services to services according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other facts. It is essentially a matter for determination by experts. The court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless exaggerated weight has been given with proven or obvious oblique motives.

24 Essentially therefore the said judgment recognises the right of Departments to lay down such detailed procedure for conducting the test or examination by experts under the administration and cautions against any interference by Courts in such matters. In the instant case as already observed above, the respondents were faced with a contingency of making selection from a wide spectrum of Lower Grade Officials in 25 different cadres through holding a departmental examination with a mandate to select only competent and efficient candidates, and to ensure this objective, the cut off marks was prescribed. The selection was made from the lower grade cadres which would ~~be~~ subsequently open up their promotion prospects to still higher posts. Therefore the anxiety of the Department not to adopt the policy of relaxation of lower cut off marks according to the availability of departmental candidates can be appreciated. In any case there is no provision in the Recruitment Rules to carry over unfilled posts, for direct recruitment and it is also the submission of the respondents that unfilled vacancies have been kept vacant. The Lower Grade Officials like the applicant can improve their performance to get qualified in the examination to be held periodically and such opportunities are not shut out. Therefore we do not find that this contention by the applicant has merit.

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25 As a result, the prayers of the applicant are held to be not sustainable as discussed above. The O.A. is dismissed. No costs.

Dated the 25th September, 2006.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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