

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.270/2002

Monday, this the 7th day of October, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.L.Shymala,
Postman,
Thathampilly.P.O.
Alappuzha-688 013. - Applicant

By Advocate Mr O.V.Radhakrishnan

vs

1. Superintendent of Post Offices,
Alappuzha Division,
Alappuzha-688 012.

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

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

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

By Advocate Mr P.Vijayakumar, ACGSC(not present)

The application having been heard on 7.10.2002 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant, who is a Postman under the 1st respondent, has filed this application under Section 19 of the

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Administrative Tribunals Act, challenging the validity of clause(7) of the circular dated 15.2.2002(A-12) whereby it is stipulated that the number of chances for departmental candidates for appearing in the examination is limited to 6, as also the order dated 4.4.2002(A-13) denying her permission to appear in the examination to be held on 24.1.2002 on the ground that she has already availed of the maximum number of chances admissible. It is alleged in the application that although the applicant had applied for permission to appear in the examination 6 times on account of illness and on being on leave, she could avail only 2 chances, that the allegation that the applicant had availed maximum number of chances is factually not correct and that the restriction of number of chances to 6 having been struck down by the Tribunal in O.A.975/97 and O.A.1006/2001, the restriction on the number of chances for such appearance is unsustainable. With the above allegations, the applicant has sought to set aside clause(7) in A-12 and the impugned order A-13 and issue direction to the 1st respondent to permit the applicant to appear for the Departmental Examination for promotion of Lower Grade Officials to the cadre of Postal Assistants scheduled to be held on 28.4.2002 or on any deferred date and to permit the applicant to the cadre of Postal Assistant on the basis of the result in the above examination.

2. The respondents contend that the restriction regarding number of chances have been issued to supplement the provisions of Recruitment Rules not being repugnant thereto is sustainable and that the order of the Tribunal in O.A.975/97

is under appeal before the Hon'ble High Court of Kerala where an order of stay has been granted. On the facts, they contend that it was true that the applicant had appeared in the examination only in 1990 while she had applied in 1990, 1992, 1995, 1997 and 1998 as she was on medical leave but as she did not on return of the medical leave, applied for withdrawal of her candidature within 10 days after return from leave it had to be deemed that she availed of the chances.

3. We have gone through the pleadings and other material placed on record and have heard the learned counsel for the applicant. This Tribunal has in O.A.975/97 considered the validity of the instructions contained in the letter of D.G., Posts, New Delhi dated 20.4.89 as also D.G.'s letter dated 17.5.90(A-3 and A-4) limiting the number of chances and held that these instructions having been issued prior to the statutory Recruitment Rules, they were no more valid after the Recruitment Rules were notified and as no such condition is incorporated in the extant rules, after the order in O.A.975/97, another instruction was issued by the Directorate in the form of a letter enhancing the number of chances from 5 to 6. The validity of this letter of the D.G., Posts was also considered by the Tribunal in O.A.1006/2001 wherein it was held that the letter of DG, Posts dated 26.8.99(which is mentioned in R-1(b) herein) enhancing the number of chances from 5 to 6 being only a corrigendum to the letters which had been set aside by the Tribunal in O.A.975/97 and being repugnant to the provision of the Recruitment Rule is unenforceable and unsustainable.

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4. We are informed that the Hon'ble High Court of Kerala has dismissed the O.P.No.26159/99 filed by the respondents challenging the order of the Tribunal in O.A.975/97 ~~has been~~ ~~dismissed~~ on 10.7.2002. The order of DG, Posts dated 20.8.99 being only in the nature of a corrigendum or enlarging the number of chances from 5 to 6, prescribed in the letters which have been set aside by this Tribunal in O.A.975/97 ~~has~~ ^{not} ~~any~~ ^{under} binding force. We are informed that the applicant has been allowed to take the examination pursuant to the ~~impugned~~ ^{under} order.

5. In the result the application is allowed, the impugned orders are set aside, the candidature of the applicant is declared valid and the respondents are directed to publish the results of the applicant and to take further action accordingly. The above direction shall be complied with within two months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 7th October, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1: True copy of the Department of Post (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990 Published as per Notification No.60-52/90-SPB-I dated 27.12.1990 of the 3rd respondent.
2. A-2: True copy of the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment (Amendment) Rules, 1991 as per Notification No.60-52/90-PB-I dated 31.1.1992 of the 3rd respondent.
3. A-3: True copy of the letter No.60-127/85-SPB.I dated 20.4.1989 of the 3rd respondent.
4. A-4: True copy of the letter No.60-127/85-SPB.I dated 17.5.1990 of the 3rd respondent circulated as per Letter No.Rectt/4-1/R1gs dated 23.5.90 of the 2nd respondent.
5. A-5: True copy of the order dated 23.7.1999 in OA No.975/97 of this Hon'ble Tribunal.
6. A-6: True copy of the letter No.37-63/98-SPB-I (Pt.) dated 20.8.1999 of the 3rd respondent.
7. A-7: True copy of the order dated 12.2.2001 in OA No.1006 of 2001 of this Hon'ble Tribunal.
8. A-8: True copy of the letter No.BB/25/Exam/4/99 dated 21.5.99 of the 1st respondent.
9. A-9: True copy of the representation dated 19.9.2001 of the applicant to the 3rd respondent.
10. A-10: True copy of the letter No.BB/25/Exam/4/99 dated 10.1.2002 of the 1st respondent.
11. A-11: True copy of the representation dated 8.4.2002 of the applicant to the 3rd respondent.
12. A-12: True copy of the letter No.Rectt/10-3/2002 dated 15.2.2002 of the 2nd respondent circulated as per memo No.BB/25/Exam/2002 dated 22.2.2002 of the 1st respondent.
13. A-13: True copy of the Memo No.BB/25/Exam dated 4.4.2002 of the 1st respondent.
14. A-14: True copy of the letter No.Rectt/10-3/2002 dated 12.4.2002 of the 2nd respondent circulated as per Memo No.BB/25/Exam dated 12.4.2002 of the 1st respondent.

Respondents' Annexures:

1. R-1(a): True copy of letter No.BB/25/Exam/4/99 dt.26.3.99 from Superintendent of Post Offices, Alappuzha Division, to Smt.C.Ambika Kumary DSV, Alappuzha HO and Smt.K.L.Syamala, Postman, Thathampally.
2. R-1(b): True copy of letter No.BB/25/Exam/99 dated 13.9.99 from Superintendent of Post Offices Alappuzha Division to Smt.K.L.Syamala, Postman, Thathampally.
