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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

O.A.No. 273/2013

Wednesday, this the 10th day of February, 2016

CORAM:

**HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MRs. P.GOPINATH, ADMINISTRATIVE MEMBER**

Smt. L.Sreevidya D/o K. Bhargavan,
aged 41 years, GDS BPM,
Mahadevi Kadu, Kathikappally,
Mavelikkara Postal Division,
residing at Kumaranchira, Prayar Sourth,
Alumpeedika, Prayar 690547.
(Applicant Mr. V. Sajith Kumar, Advocate)

Applicant

vs.

1. Union of India, represented by the Secreary to the Government of India, Department of the post, Government of India, New Delhi 110 001.
2. The Chief Postmaster General, Kerala Circle, Trivandrum 695101.
3. The Superintendent of Post Office, Mavelikkar Postal Division, Mavelikkara 690101.
4. The Post Master General, Central Region, Cochin 682021.
5. The Departmental Screening Committee represented by its Chairman, Senior Superintendent of Post Offices, Kottayam. **Respondents**
(Respondents by Mr. N. Anilkumar, Sr. PCGC)

This Application having been finally heard and reserved for orders on 11.01.2016, the Tribunal on 10.02.2016 delivered the following:

O R D E R

Per: U. SARATHCHANDRAN, JUDICIAL MEMBER:

The Applicant while working as Gramin Dak Sevak (GDS) under the



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respondents had applied for participating in the Limited Departmental Competitive Examination (LDCE) for recruitment to the cadre of Postmen/Mail Guard scheduled to be held on 6.1.2013. The method of recruitment for the post of Postmen was 25% on the basis of L.D.C.E. Amongst the Multi Tasking Staff of the recruiting division and 50% by direct recruitment on the basis of competitive examination limited to G.D.S. of the recruiting division. Under the direct recruitment quota, two candidates were selected from the unreserved category and one from the O.B.C. Applicant was the O.B.C. Candidate and this fact was intimated to her vide Annexure A/4 Memo. She was relieved from the cadre of G.D.S. and took charge as Postman trainee at Mavelikkara Post Office. Later she was issued with Annexure A/6 Memo informing that the selection to the post of Postman held on 10.1.2013 has been cancelled for facilitating a review Departmental Screening Committee and that the results of Postmen direct recruitment quota declared on 11.1.2013 was cancelled. Consequently the practical training of the candidates selected for appointment of Postmen also was cancelled vide Annexure A.7. A review meeting of the Departmental Screening Committee was held on 17.1.2013 and Annexure A/8 Memo was issued by respondents No.3, notifying the selection of two other candidates under the direct recruitment quota, one belonging to unreserved and another to OBC category thereby cancelling the selection of the applicant made vide Annexure A/4. Being aggrieved by the decision taken as per the Annexure A/1 minutes of the review meeting of the DSC held on 17.1.2013, the applicant has approached this Tribunal seeking relief as under:

"(i) To quash Annexure A.1.

(ii) To declare that Annexure A.1 proceedings dated 17/1/2013 excluding the applicant from OBC category without following the principles of natural justice is highly illegal and arbitrary.



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(iii) To direct the respondents to place the applicant into OBC Category in view of Annexure A.3 certificate and grant all consequential benefits.

(iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant and,

(v) Grant the cost of this Original Application.

2. Respondents resisted the O.A. contending that Applicant did not produce the latest and recent 'non-creamy layer certificate' at the time of applying for the L.D.C.E. She has produced along with her application a creamy layer certificate dated 24.6.2010. She was permitted to appear for the examination. There was one vacancy each for UR and OBC under the direct recruitment quota for Postmen and the following candidates stood qualified in the examination according to their merit in the examination:

1. C.R. Binu $20 + 11 + 16 + 18 = 65$ UR
2. Sutheesan $11+11+15+19 = 56$ OBC
3. Sreevidya $14+9+17+15 = 55$ OBC (applicant)
under relaxation standard of OBC
4. Nthyia Soman $15+11+14+16 = 56$ UR

According to the respondents the Departmental Selection Committee (DSC, for short) inadvertently selected two UR candidates and one OBC candidate against the declared vacancy of one UR and one OBC. This error was noticed by the Regional Office while reviewing the results and therefore, the minutes of the DSC dated 10.1.2013 was ordered to be cancelled and it was ordered to convene a review DSC to rectify the error. The review DSC meeting held on 17.1.2013 selected the following candidates with the marks obtained for each subject as indicated against their name:

1. C.R. Binu $20+11+16+18 = 65$ UR
2. Sutheesan $11+11+15+19 = 56$ OBC

3. The respondents contend that Applicant was permitted to appear in the



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examination under the OBC category and hence she secured 55 marks and was declared to be qualified under the relaxed standards for OBC category. Shri Sutheesan, although coming under OBC category, was considered on merit under the UR category. During the review meeting it was noticed that applicant had submitted an old creamy layer certificate issued on 24.6.2010. As per Annexure R/2 Government Orders the period of validity of non-Creamy Layer Certificate is one year from the date of issue. Since the Applicant submitted an invalid certificate, in the review DSC she was not considered as an OBC candidate. Hence she was to be treated as UR candidated with the standards prescribed for the UR candidates. Moreover, the applicant secured only 9 marks in paper B, whereas the prescribed minimum marks was to be obtained as UR candidate is 10. The candidates who have secured more marks than the applicant have been considered for the vacancies under Mavelikkara Division. Thereafter in 2013 Applicant had filed OA 100/13. In that case this Tribunal had passed an interim order not to fill up one vacancy in the cadre of Postmen. Subsequently she appeared in the LDCE to the cadre of Postmen held on 19.5.2013 and was selected and was issued with Annexure R/3 appointment order. In the above circumstances respondents pray for rejecting the O.A.

4. A rejoinder was filed by the Applicant stating that Annexure A.2 notification did not communicate that the latest creamy layer certificate should be submitted. It is also stated by the Applicant that as per Annexure A.9, Government of India guidelines on creamy layer certificate such certificate needs to be obtained only prior to the appointment.

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5. An additional reply statement was filed by the respondents reiterating their earlier contentions regarding the validity of the creamy layer certificate as per the R/2 Govt. Order.

6. We have heard Mr. Sajith Kumar, learned counsel for the Applicant and the Central Government Standing Counsel for the respondents. Perused the record.

7. The reason why the Applicant's selection to the post of Postman as per the L.D.C.E. conducted vide Annexure A/2 Notification was cancelled has been stated in Annexure A/1. The relevant portion of Annexure A/1 is extracted below:

".....Under Direct recruitment quota the committee erroneously approved selection of 2 UR candidates and one OBC against the approved vacancy of 1 UR and 1 OBC.

On a review of the minutes of the screening Committee, PMG, Central Region Kochi cancelled the minutes of Screening Committee issued on 10.01.2013 and directed to convene a review meeting for selection of candidates as per the approved vacancies under Direct recruitment quota.

The Committee again examined the tabulation sheet, seniority list of GDS and other relevant records and found that the following Candidates only are qualified in the examination.

Sl.No		Whether SC/ST/ OBC	Roll No.	Marks obtained in each part				Grand total
				A	B	C(i)	C(ii)	
1	D.Sutheesan Puthiyavila	GDSBPM, OBC	MVK/24	11	11	15	19	56
2	C.R.Binu, Varenickal	GDSMD, OC	MVK/37	20	11	16	18	65
3	Nithya Soman, Kallumala	GDSMD, OC	MVK/38	15	11	14	16	56

Smt. L. Srrevidya, under roll o. MVK/34 was included in the select list under OBC quota. A Examination of the application submitted by the candidate showed that the OBC certificate was dated 24.06.2010, which is not latest hence not valid. The candidate is to be treated as UR with standards prescribed for UR candidate for pass Smt.Sreevidya has scored only 9 marks under paer 'B' where as the minium to be obtained by a UR candidate is 10. For the above reasons the candidate cannot be treated as qualified under UR or OBC quota. The merit list is therefore recast as below:

The committee after examining he records, recommends the selection of the following candidates for promotion to Postman Candre based on the approved vacancies.

Sl. No.	Name and designation	Whether SC/ST/OBC	Roll No.	Category under which selected	Marks

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1	C.R.Binu GDSMD, Varenickal	OC	MVK/37	OC	65
2	D.Sutheesan, GDSBPM, Puthiyavilla	OBC	MVK/24	OBC	56

8. Applicant challenges Annexure A/1 mainly on the ground that before taking Annexure A/1 decision she was not given any notice. It appears to us that this contention is not fully correct. Annexure A/6 is the communication issued by Respondent No.3 informing that the minutes of the Departmental Screening Committee for selection of Postmen held on 10.1.2013 and the results of Postmen Direct Recruitment quota declared on 11.01.2013 are cancelled. It is seen that Annexure A/6 is marked to the candidate concerned also. We take note that Annexure A.6 communication was issued immediately on the next day after the applicant was relieved from G.D.S. and took charge as Postman trainee vide Annexure A/5.

9. The next allegation against Annexure A/1 decision is that the applicant had already produced an OBC certificate indicating her non-creamy status along with her application. According to her there is nothing mentioned in Annexure A/2 in her calling for applications for the L.D.C.E that the candidate should produce the latest creamy layer certificate. She states that as she was informed about the Annexure A/2 Notification on the last date of receipt of applications at the Division level i.e. On 30.11.2012, in a hurry she had to submit the application with creamy layer certificate which was available with her. She states that she submitted the aforesaid creamy layer certificate issued on 24.6.2010 without knowing that the latest creamy layer certificate should be attested.

10. Respondents on the other hand contend that as per the Annexure R/2 Government Order issued by the Govt.of Kerala the non creamy layer certificate



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is valid only for one year from the date of issue and hence the certificate dated 24.06.2010 produced by the Applicant cannot be accepted. Shri Sajith Kumar Advocate appearing for the Applicant referred to a decision of this Tribunal in O.A. 974/2013 wherein the non-creamy layer certificate produced by the applicant therein though an old one, was found to be in order. He produced the information obtained under the R.T.I. Act as to when a creamy layer certificate has to be produced by the candidates who was declared as selected under the OBC quota. The information supplied by the Public Information Officer of the Office of the Senior Superintendent of Post Offices, Kollam on 11.1.2012 vide communication No. RTI/71/11 states that the appointment order therein was issued only after providing a valid non-creamy layer certificate from the OBC candidates. Shri Sujith Kumar submitted that in the light of the earlier practices and as per the aforesaid decision of this Tribunal, it is not compulsory that a candidate should produce non-creamy layer certificate along with the application and that the same can be produced before the appointment order is issued. Shri Sujith Kumar then submitted that applicant has subsequently obtained Annexure A.3 non creamy layer certificate issued on 16.1.2013. He then relied on an O.M. issued by the[GOI, Dept. Of Per. & Trg. O.M. No. 36033/4/97-Est. (Res.) dated 25.7.200 regarding the period of validity of O.B.C. certificate and on non-creamy layer status of O.B.C. candidates. Para 3 of the aforesaid O.M. clearly stipulates the crucial date for verification of the creamy layer status of a candidate seeking appointment. It reads thus:

"3..... The Appointing Authority, before appointing a person seeking appointment on the basis of reservation to OBC's should verify the veracity of the community certificate submitted by the candidate and also the fact that he/she does not fall in creamy layer on the crucial date. **The crucial date for this purpose may be treated as the closing date for receipt of applications for the post** except in cases where crucial date is fixed otherwise."

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(emphasis supplied by us)

11. Thus, a reading together of Annexure A/9 by the Govt. of India and annexure R/2 order of Govt. of Kerala it becomes clear that a non-creamy layer certificate is valid only for one year from the date of issue and that the crucial date of verifying non creamy layer status of a candidate seeking appointment is the closing date of receipt of applications for the post except in cases where the crucial date is fixed otherwise. Thus, it is clear that non-creamy layer certificate is time sensitive because the creamy layer status of an applicant may change at any time. Therefore the safest way for ascertaining the non-creamy layer status of a candidate is the closing date for receipt of the application for examination. Therefore, we are of the view that the decision of the respondents in Annexure A/1 order to cancel the selection of the applicant is perfectly justified. In *Union of India and Anr vs. Narendra Singh* 2008 (2) SCC 750 the Hon'ble Apex Court held that a mistaken decision can always be corrected by following the process of law. It was held in that case as under:

"32.....But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In *ICAR v. T.K. Suryanarayan* (1997) 6 SCC 766 it was held that if erroneous promotion is given by wrongly interpreting the rules the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules."

A similar view was taken earlier by the Hon'ble Apex Court in an earlier decision in *Indian Council of Agricultural Research and Anr vs T.K. Suryanarayan and Ors.* (1997) 6 SCC 766 , the Hon'ble Apex Court held that:

" 8.....Even if in some cases, erroneous promotions had been given contrary to the said Service Rules, and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory service rules in law courts. Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to



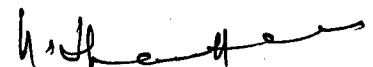
judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective on 1-10-1975 should not be adhered to because in some cases erroneous promotions had been given.

12. Yet another grievance of the applicant against Annexure A/1 decision is that she was not heard before cancellation of her selection. According to her there was no compliance of the principles of natural justice by the respondents as they did not hear her before the decision was taken. In *Ashok Kumar Sonkar vs Union of India and Ors. 2007 (4) SCC 54* it was observed by the Hon'ble Apex Court that though the principle of *audi alteram partem* is one of the basic pillars of natural justice, it cannot be treated as a straight-jacket formula because the compliance of aforesaid principle may not be applied in a given case unless a prejudice is shown. The court then ruled that compliance of the above principle is not necessary where it would be a futile exercise, especially where even if there is compliance of the principles of natural justice the result would remain the same in view of the fact situation prevailing or in terms of the legal consequences. In *Ahok Kumar Sonkar's case (supra)* the Hon'ble Apex Court held that appellant was not qualified on the cut -off date and hence being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard. In our view in the case on hand, the situation is not different either. The Applicant was ineligible as per the extant Government instructions on the production of non-creamy layer certificate. Having not produced the non-creamy layer certificate, her application was defective from the very beginning. That being the situation, there is nothing wrong when the DSC in its review meeting cancelled her appointment. Giving an opportunity to the applicant for being heard would have been a futile exercise because the review DSC would not have taken a different

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decision in view of the inherent defective nature of her application. In the light of the above discussion of law based on the Hon'ble Apex Court rulings, we are of the opinion that the corrective measures taken by the respondents was perfectly in tune with the requirements of Article 16 of the Constitution of India. Had the applicant been allowed to continue in service on the basis of an inherently defective application, certainly it would have resulted in unequal treatment to the other eligible candidates belonged to the OBC category whose applications were in order. Therefore we find no illegality committed the Review Committee in correcting the mistake by Annexure A.I decision,

13. In the result the O.A. Is dismissed. The parties are directed to suffer their own cost.


(MRS. P. GOPINATH)
ADMINISTRATIVE MEMBER
(U. SARATHCHANDRAN)
JUDICAL MEMBER

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