

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 274/04

TUESDAY THIS THE 14TH DAY OF FEBRUARY, 2006

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

B.Sujatha Kumari W/o Rajan, aged 39 years
Postman (Departmental Stamp Vendor)
Sub Post Office, Pandalam
residing at Pushapalayam,
Muripparamuri, Chennirkara,
Kozhancherry Taluk
Pathamanamthitta DistrictApplicant

(By Advocate Mr. M.R.Hariraj)

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- 1 Union of India, represented by the Secretary to Government, Department of Posts, Ministry of Communications, New Delhi.
 - 2 Assistant Director of Posts, Department of Posts, New Delhi.
 - 3 Chief Postmaster General, Department of Posts, Thiruvananthapuram.
 - 4 Superintendent of Post Offices, Pathanamthitta Division, Pathanamthitta.Respondents

(By Advocate Mr. TPM Ibrahim Khan,SCGSC)

The application having been heard on 1.2.2006, the Tribunal on 14.2.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure.A1 letter dated 29.3.04 rejecting her application for appearing in the examination for promotion from Lower Grade Officials Cadre to Postal Assistant/Sorting Assistants Cadre on the ground that she has already availed herself of six chances which is the maximum.

2 The applicant is working as Departmental Stamp Vendor at Pandalam Sub Post Office. Examination for promotion to the cadre of Postal Assistant to be held on 25.4.04 was notified vide Annexure.R.1 dated 3.1.04. In this notification the respondents have given the time table of the examination, the subjects prescribed for the written examination, the maximum qualifying marks for each paper for both general and SC/ST candidates and the number of chances for the departmental candidates for appearing in the said examination. The Applicant had applied for appearing in the aforesaid examination but since she had already availed herself of the maximum of six chances earlier, she was informed that she is not eligible to take part in the said examination any further.

3 The very same issue was agitated before this Tribunal on earlier occasions also. OA 975/97 was filed by one K.R.Upendran Pillai, Head Mail Guard, Aluva. At the relevant time the applicant was governed by the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rues, 1990. In Volume No.11 of the said

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rules, method of recruitment has been provided and under this percentage of vacancies of Postal Assistants/Sorting Assistants is 50% by Direct Recruitment and 50% by promotion through departmental promotion examination. Prior to the issuance of the aforesaid rules, there was certain departmental instructions issued vide letters dated 20.4.89 and 17.5.90 that though there will be no age limit for taking the competitive examination, the number of chances will be limited to five. This Tribunal has quashed and set aside the aforesaid letters dated 20.4.89 and 17.5.90 containing the said departmental instructions prescribing number of chances for the departmental candidates to appear in the examination. The tribunal has passed this order on the basis of the judgment of the Hon'ble Supreme Court in **K.Kupuswamy and another Vs. State of TN and others, 1998(8)SCC 469** wherein it was observed as follows:

"The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory Rules,. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rules."

The Tribunal had also relied upon another judgment of the Hon'ble High Court of Punjab and Haryana in **Kirpal Singh, Officiating Assistant Sub Inspector of Police Vs. state of Punjab and others, 1969 SLR 121**. In para 10 of the said judgment it was held as under:



"If the Government prescribes any qualification for being eligible it must also provide opportunity to the officer concerned to acquire that qualification and if the examination or a training course is held or conducted by the Government every officer willing to undergo that examination or course in order to qualify himself for promotion should be allowed to pass that examination or to go through that course. No obstacle can be placed in his way by prescribing a method of selection or age limit. The relaxation of the age limit at the whim of a Selection Board can also not be sustained. It has been vehemently argued by the learned counsel for the respondents that the method of selection by a Board has been prescribed by the said instructions in order to avoid the chances of favoritism or arbitrariness in the matter of selection. But, as I have held above, the respondents are not at all justified in prescribing the course of selection by the instructions. In case the respondents wish to adopt that course they should amend the Police Rules accordingly so that statutory authority is bestowed on the method of selection. In the absence of the amendment of the Police Rules the old practice, which entitled every officer on list 'D' to go for Upper School Course in order of seniority must continue to prevail in case the passing of that course is essential before the name of an Assistant Sub Inspector is brought on List 'E' for being considered for promotion as Sub Inspector of Police. For all these reasons I hold that the respondents were not justified in not sending the petitioner for Upper School Course in the Police Training College at Phillaur."

- 4 Again two more O.As 1000/01 and 1006/01 were filed before this Tribunal by similarly placed persons and this tribunal has allowed those two OA also vide order dated 12.2.02. The common issue raised in both these applications was also whether the rejection of the candidature of the applicants in the special examination for Lower Grade Officials during the year 2001 for Postal Assistants/Sorting Assistants under special recruitment drive to fill up the backlog posts of physically handicapped/Scheduled Caste/Scheduled Tribe/PH/SC/ST for short) for the reason that they have already
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availed of six chances to qualify in the examination is sustainable in law or not. In the said OA also this Tribunal has observed that it is a well settled law that administrative instructions can be issued in the absence of statutory rules to govern particular situations and fill up the gaps in the statutory rules. It is also well settled that administrative instructions cannot over ride the statutory Rules and they can only supplement and not supplant the Recruitment Rules. Since administrative instructions issued by the respondents limiting the chances to six was beyond the provisions contained in the Recruitment Rules, this Tribunal again came to the conclusion that the action of the respondents was illegal and accordingly those O.As were allowed.

5 The respondents in their reply in the present OA has submitted that the applicants have not brought the latest position with regard to the Recruitment Rules before this Tribunal. They have submitted that the aforesaid orders in the O.As were based on the Recruitment Rules issued by the respondents vide notification No.60-52/90-SPB-I dated 27.12.90 and the amendment rules issued vide notification of even number dated 31.1.92. In these Recruitment Rules there was no provision for limiting the chances for a candidates in appearing for the promotional examination. However, the respondents used to issue departmental instructions from time to time restricting the number of chances. Earlier, the number of chances was limited to five and vide A5 letter dated 20.8.99 this has been increased to six.

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Since the provision for restricting the chance was not a part of the Recruitment Rules, this Tribunal had allowed the earlier O.As filed by the applicants therein who sought participation in the promotional examination beyond 5/6 chances. The respondents have later on amended the Recruitment Rules vide GSR 18(E) dated 9th January, 2002 which became effective from 10.1.02. In Column 8 of the Schedule in the revised Recruitment Rules the knowledge of local language of the State concerned has been made as an essential qualification. The candidates should have studied local language as a subject atleast up to matriculation level to be eligible for the post. Minimum educational qualification for direct recruits for the post has been prescribed as 10+2 standard or 12th Class passed from a recognized University or Board of School education or Board of Secondary Education with English as a compulsory subject. The educational qualification to GDS candidates for the post of PA/SA minimum marks to be secured by them and age limit have been prescribed in column 11. In column 11 of the Schedule the following note also has been incorporated in the amended rules:

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

6 The respondents have contended in their reply that the procedure for recruitment shall be governed by the administrative instructions issued by the department from time to time. In the Recruitment Rules the procedure of the examination like the syllabus

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of the examination, number of papers, qualifying marks of each paper have not been prescribed. Similarly the number of chances the departmental candidate could avail has also not been prescribed. All these factors forms the ingredients of "the procedure for Recruitment" which shall be governed by the administrative instructions issued by the Department from time to time. Accordingly the aforesaid note has been incorporated in column 11 of the Recruitment Rules. Vide Annexure.R.1 letter dated 3.1.2004 they have issued detailed procedure for recruitment including the number of chances for the Departmental Candidates for appearing in the examination.

7 We have heard learned counsel Mr. MR Hariraj, on behalf of the Applicant and Mr.T.P.M. Ibrahim Khan, learned SCGSC on behalf of the Respondents. In view of the Annexure.R.2 Recruitment Rules issued in supersession of the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990, the scenario as prevailing at the time of passing orders in OA 975/97 and OA 1000/01 & OA 1006/01 (supra) has changed. In the earlier Recruitment Rules, there was no provision for the Department to issue any administrative instructions regarding the procedure for recruitment from time to time which has since been provided in the new rules. Now the question is whether prescribing the number of chances to be availed of by a candidate should be part of the Recruitment Rules itself or it can form part of the administrative

instructions issued by the Department from time to time. The Recruitment Rules are issued by the Government under the provisions of Article 309 of the Constitution which deals with recruitment and conditions of service of persons serving in the Union or State. Such Recruitment Rules are notified on the basis of the model Recruitment Rules prescribed by the Government to maintain uniformity. However, in order to maintain brevity there are seven major heads under which the various provisions of the Recruitment Rules are made. Further details thereof are stated in the Schedule with 14 columns appended to the main Recruitment Rules. The application of the rules has been mentioned in column No.1 of the Schedule. The number of posts, classification and scale of pay are mentioned in columns 2 to 4 and method of recruitment, age limit and other qualifications are mentioned in columns 5 to 14. The details regarding method of recruitment like procedure of holding the examination like the syllabus, number of papers, qualifying marks for each paper, number of chances that can be availed of by the departmental candidates etc. are matters of details which need not form part of the recruitment Rules. 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. O.A is therefore without any merit and

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accordingly the same is dismissed. No order as to costs.

8 Before parting with this case, we are constrained to observe that the Applicants have not brought the entire facts before this Tribunal, particularly the copy of the Annexure.R.2 notification No.GSR 18(E) dated 9.1.2002 by which the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 2002 was issued by the Respondents for regulating the method of recruitment for the posts of Postal Assistants and Sorting Assistants in the Department of Posts, Ministry of Communications. They have also suppressed the fact from this Tribunal that the Respondents had issued the Annexure.R.1 letter dated 3.1.2004 by which the procedure for the next Departmental examination for promotion of Lower grade Officials to the cadre of P.As/S.As in subordinate offices has been prescribed. The Applicants have misled this Tribunal by stating as under:

"A further attempt was made to re-introduce the above limitation by order No.37-63/989-SPB I(Pt) dated 20.8.1999, of the 2nd respondent, a true copy of which is produced herewith and marked as Annexure.A5."

The actual fact was that the Respondents have amended the earlier Annexure.A3(a) and Annexure.A3(b) Recruitment Rules by the Annexure.R.2 Rules. The Respondents also has issued fresh Annexure.R.1 instructions dated 3.1.2004 instructions containing the procedure for holding the Departmental Examination which was scheduled on 25.4.2004.

9 The Applicant in this OA has sought the following interim relief:

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"To direct the respondents to permit the applicant to appear for the examination for promotion of Lower Grade Officials to the cadre of Postal Assistants/Sorting Assistants to be held on 25.4.2004 or on any deferred date, provisionally."

When the OA was listed on 15.4.2004, the argument on behalf of the Applicant was that her case was covered by the order of this Tribunal in OA 975/97 and 1000/2001. The Respondents' counsel sought time to get instructions on the point as to whether there was any subsequent amendment to the Rules and the case was adjourned to 19.4.2004. On 19.4.2004, the Respondents' counsel submitted that he has no knowledge about any subsequent amendment of rules. Considering the submissions made by both the counsels, the prayer for interim relief was allowed by directing the respondents to permit the applicant to appear in the examination for promotion of Lower Grade Officials to the cadre of Postal Assistants/Sorting Assistants to be held on 25.4.2004 or on any deferred date, provisionally and subject to further directions. If the correct facts were placed before this Tribunal in the O.A itself, the occasion to pass such an interim order would not have arisen. The Applicant has the bounden duty to place the full facts of the case before any direction was sought. Suppressing of material facts has to be viewed seriously. The Respondents have also found lacking in their responsibility to defend the case properly by placing

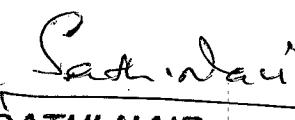
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the relevant facts before the Tribunal at the right time. The very same Annexure.R.1 and Annexure.R2 documents filed by the respondents along with the reply statement on 8.7.2004 could have been produced before this Tribunal on 19.4.2004 when the aforesaid interim relief was granted or on any date immediately thereafter, if they were diligent enough. It is the primary responsibility of the Applicant to place the full facts before this Tribunal before obtaining an interim order; otherwise it has to be viewed as suppression of material facts. Therefore, this is a fit case for imposing exemplary costs. However, considering the fact that the Applicant is only a Lower Grade Official working as Postman, we desist from imposing any heavy cost but only Rs. 500/- (Rupees five hundred only) as a token amount which shall be adjusted from the pay of the Applicant for the next month. The respondents shall also fix responsibility on the official concerned who instructed the SCGSC that there was no amendment permitting the restriction of chances.

Dated this the 14th day of February, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN