

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.281/04

Monday this the 30th day of May 2005

C O R A M :-

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

(By Advocate Mr.P.C.Sebastian)

Versus

1. The Superintendent of Postt Offices,
Idukki Division, Thodupuzha - 685 584.
2. The Sub Divisional Inspector of Post Offices,
Kattappana Sub Division,
Kattappana P.O. - 685 508.
3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Union of India represented by its Secretary,
Ministry of Communications,
Department of Post, New Delhi. Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan, SCGSC)

This application having been heard on 30th May 2005 the Tribunal on the same day delivered the following :-

O R D E R (O R A L)

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant has been appointed as Postman Kattappana South on a permanent basis and is continuing as such. It is averred that by Annexure A-3 circular the departmental exam for promotion to the cadre of Postman was announced and application was invited from eligible Lower Grade Officials. Applicant submitted her application in the prescribed form with all required documents but her candidature for the said examination was rejected by Annexure A-4 letter on the ground that she had already availed six chances as per the notification. Aggrieved

the applicant has filed this application seeking the following reliefs :-

(i). to call for the files relating to the issue of Annexure A-3, Annexure A-4 and the letter No.B1/56/04/Dig dated 31.3.04 of the 1st respondent cited in Annexure A-4 and to quash Annexure A-4 and the 1st respondent's letter cited therein.

(ii). to quash Annexure A-3 in so far as it stipulates that the number of chances for departmental candidates for appearing in the exam in question as 6 (six) only.

(iii). to declare that applicant is entitled to appear in the examination for promotion to the cadre of Postal Assistant going to be held on 25.4.04 or later, if deferred for some reason or other pursuant to Annexure A-3.

(iv). to direct the 1st respondent to admit applicant's candidature for the examination to be held on 25.4.04 or later pursuant to Annexure A-3.

2. By way of an interim order this Tribunal had directed the respondents to permit the applicant to appear in the examination.

3. Respondents have filed a detailed reply statement contending that one of the conditions for appearing in examination is that candidates should not have availed six chances. Admittedly the applicant has already availed all the six chances.

4. When the matter came up for hearing Shri.P.C.Sebastian appeared for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC appeared for the respondents. Learned counsel for the applicant has brought to our notice a decision of the Hon'ble High Court of Kerala in O.P.No.26159/99(S) dated 10th July, 2002 wherein it was held that :-



"3. Having heard the learned counsel for the petitioners and the first respondent and having considered the materials placed on record, we are inclined to agree with the view taken by the Tribunal. As rightly pointed out by the Tribunal, the recruitment rules do not contain any restriction regarding the number of chances that can be availed of by a person for appearing in the competitive examination. In the absence of any such restriction in the recruitment rules, the Department should not have imposed restrictions by way of executive orders or instructions. It is significant that in the same recruitment rules in the case of candidates appointed by direct recruitment, the number of chances for appearing in the competitive examination has been prescribed. The conspicuous inclusion of the restrictions in the case of direct recruits and the conspicuous absence of any such restrictions in the case of promotion cannot be ignored. Nothing prevented the authorities concerned from suitably amending the rules to incorporate the restrictions which they imposed through executive orders or administrative instructions. It is also important that Annexures A-3 and A-4 were issued prior to the coming into force of the recruitment rules. That means, before the introduction of the recruitment rules, the policy of granting only five chances to appear for the competitive examination was in force. But when the recruitment rules were framed, the rule making authority did not consider it necessary to incorporate the said policy in the rules. This conscious omission on the part of the rule making authority should be interpreted in favour of the first respondent. Therefore, the Tribunal was right in allowing the Original Application."

5. The main contention and the argument advanced in this case is that the applicant has availed six chances and therefore is not eligible to appear in the examination. Since this position has already been settled by the decision of this Tribunal in O.A.975/97 dated 23.7.99 and upheld by the Hon'ble High Court we are of the view that such an argument at this stage will not hold good.

6. In the result, the O.A. is allowed. Respondents are directed to verify and publish the result of the applicant. Further, if she gets through in the examination, she may be

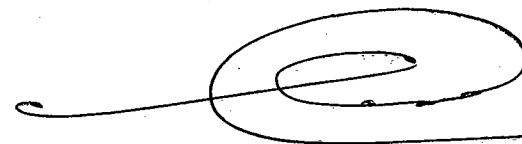


considered for the said post within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Dated the 30th day of May 2005)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K. V. SACHIDANANDAN
JUDICIAL MEMBER

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