CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 100 of 2013
Original Application No. 121 of 2013
Original Application No. 249 of 2013
Original Application No. 334 of 2013
Original Application No. 649 of 2013
Original Application No. 670 of 2013
Original Application No. 719 of 2013
Original Application No. 834 of 2013
Original Application No. 862 of 2013
Original Application No. 1029 of 2013
Original Application No. 1184 of 2013
Original Application No. 180/00547/2014
Original Application No. 180/00598/2014
Original Application No. 180/00599/2014

THURSDAY, this the 1st day of JANUARY, 2015

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. P.K. Pradhan, Administrative Member

1. **Original Application No. 100 of 2013** -

L. Sreevidya, D/o. K. Bhargavan,
aged 41 years, GDS BPM, Mahadevi Kadu,
Karthikappally, Mavelikkara Postal Division,
residing at Kumaranchira, Prayar South,
Alumpeedika, Prayar – 690 547. ..... **Applicant**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the Government of India, Department of Post, Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum – 695 101.

3. The Superintendent of Post Office, Mavelikkara Postal Division, Mavelikkara – 690 101. ..... **Respondents**

(By Advocate – Mr. Varghese P. Thomas, ACGSC)

2. **Original Application No. 121 of 2013** -

1. Elizabeth K. Jhon, W/o. Ninan Varghese, aged 49 years, GDSBPMPunnamoodu B/o, A/W Mavelikkara, residing at Kankalil House, Thazhakkara PO, Mavelikkara.

2. K.C. Ammini, W/o. Chacko, aged 52 years, GDSMD Melppadom, residing at Kannari Vadekkathil, Melppadom – 689 627. ..... **Applicants**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by Secretary to Government, Department of Posts, Government of India, New Delhi – 110001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum – 695 001.

3. The Superintendent of Post Office, Mavelikkara Division, Mavelikkara – 690 101. ..... **Respondents**

(By Advocate – Mr. S. Jamal, ACGSC)

3. **Original Application No. 249 of 2013** -

1. K. Rathi, GDS MP, Peramangalam, Residing at Kottapurath House, PO Peramangalam, Thrissur – 680 721.

2. P.T. Madhu, GDS BPM, Manalur HS BO, Residing at Pandiyath House, Mullassery, Thrissur – 680 509.

3. P.S. Rejani, GDS MD, Kattilapoovam PO, Residing at Moongamkunnel House, Kattilapoovam PO, Thrissur – 680 028.

4. V.D. Leela, GDS MP, Karikkad, Residing at Vellandathparambil House, Akathiyoor PO, Thrissur – 680 503.

K.S. Sathchith, GDS MD, Nadathara PO, Residing at Kaliyatt House, Nadathara PO, Thrissur – 680 751.

6. C.O. Vinson, GDS MP, Anthikad,
Residing at Chiryath Muttichukonam,
PO, Veluthur, Thrissur – 680 012.

7. M.C. Vasu, GDS MD, Tolur,
Residing at Manappathparambil,
PO Parappur, Thrissur – 680 552.

8. M.K. Sukumaran, GDS MD, Manalur,
Residing at Mannuparambil House,
Thrissur – 680 617.

9. K.K. Babu, GDS MD, Vatanappally Beach,
Residing at Kizhakkan House, Vatanappally Beach,
Thrissur – 680 614.

10. K.P. Shyamkumar, GDS BPM,
Residing at Kizhakkoottayil House,
PO MG. Kavu, Thrissur – 680 581.

11. C.K. Sundaran, GDS MD, Manakkody,
Residing at Chembath House, PO Veluthur,
Thachamppilly, Thrissur – 680 012. ..... **Applicants**

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

Versus

1. Union of India, represented by its Secretary to
Government of India, Department of Posts,
Ministry of Communications, New Delhi – 110 001.

2. The Chief Postmaster General, Kerala Circle,
Thiruvananthapuram – 695 033.

3. The Senior Superintendent of Post Offices,
Thrissur Postal Division,
Thrissur HO – 680 001. ..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

4. **Original Application No. 334 of 2013** -

1. Brijesh B. Nair, S/o. V.K. Bhaskaran Nair,
aged 35 years, GDSMD, Anickad East PO,
Changanassery Division, residing at Verumkal House,
Elampally PO, Anickad (via), Kottayam (Dist.),
Pin – 686 503.

2. Binu Mon K.K., S/o. K.P. Kuriakose, aged 37 years,
GDS BPM, Moozhoor BO, Changanassery Division,
residing at Koottiyanikkal (H), Manalumkal PO,
Anickad (via), Kottayam (Dist), Pin – 686 503. ..... **Applicants**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by Secretary to
Government, Department of Posts,
Government of India, New Delhi – 110001.

2. The Chief Postmaster General, Kerala Circle,
Trivandrum – 695 001.

3. The Superintendent of Post Office,
Changanassery Postal Division,
Kottayam – 686 101. ..... **Respondents**

(By Advocate – Mrs. Deepthi Mary Varghese, ACGSC)

5. **Original Application No. 649 of 2013** -

1. S. Rajasekharan Pillai, S/o. P. Sivasankara Pillai,
aged 46 years, GDS MD, Koivila, residing at
Prasanthinilayam, Mottackal – Thevalakara PO,
Kollam District – 690 524.

2. Kumari Pushpa R., W/o. M. Chandra Mohanan Nair,
aged 46 years, GDS MP, Vadakkevil PO, Kollam,
residing at Bhadra Mundethu, Manacaud, Vadakkevila PO,
Kollam – 691 010.

3. M.S. Sreelekha, W/o. Girish Kumar S., aged 31 years,
GDS MD, Chengamanad Junction, Kottarakara HO,
residing at Girish Bhavan, Kariyara PO. ..... **Applicants**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the
Government of India, Department of the Post,
Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle,
Trivandrum – 695 101.

3. The Superintendent of Post Office,
Kollam Postal Division,
Kollam – 691 001. ..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

6. **Original Application No. 670 of 2013**

1. Ashok Kumar S., S/o. P. Sasidhara Kurup,
aged 34 yeaers, GDSMD, Maloor, Pathanapuram,
residing at Choorilethu House, Anandappally PO,
Pannivizha, Adoor, Pathanamthitta, Pin – 691 525.

2. Radhakrishna Pillai V., S/o. Vasudevan Pillai M. (late),
aged 37 years, GDSMD, Melila, A/w. Kunnicode So, residing
at Panayil Puthen Veedu, Parancodu, Valiyodu Po, Chepara,
Kottarakara – 691 520.

3. Geevarghese K. Samuel, S/o. C.G. Samuel (late), aged 42 years,
GDSMD Nariapuram – 689 513, residing at Kadakkethu House,
Vazhamuttom East Po, Mallassery (via), Pathanamthitta-689 646.

4. Rohini G., W/o. Ajayakumar K.V., aged 29 years, GDSBPM,
Prakkaram, Elanthur, residing at Panayakkunnil, Prakkara PO,
Thattayil, Edamli – 691 525.

5. Ambily V., W/o. Late Manikuttan Nair, aged 41 years,
GDSBPM Pazhekulam, residing at Kuzhilethu Vadakethil,
Ammakandakara, Adoor PO., Pin – 691 523. ..... **Applicants**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the
Government of India, Department of the Post,
Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle,
Trivandrum – 695 101.

3. The Superintendent of Post Office,
Pathanamthitta Postal Division,
Pathanamthitta – 689 645. ..... **Respondents**

(By Advocate – Mrs. Jishamol Cleetus, ACGSC)

7. **Original Application No. 719 of 2013** -

1. K.G. Krishna Kumar, S/o. R. Gopala Pillai (Late), aged 49 years, GDSMD, Govindapuram BO, Muthalamada, Palakkad – 678 507, residing at Madhurima, Peace Valley, Aruvannur Parambu, Kollengode PO, Palakkad – 678 506.

2. K.U. Gangadharan, S/o. M. Unnikrishnan (Late), aged 51 years, GDSMD, Kanjikode West (Sub Office), Palakkad, residing at R.17, Rajeev Nagar, Preoot Colony, Kanjikode West PO, Palakkad, Pin – 678 623.

3. Vincent T.P., S/o. Pappu T.M., aged 44 years, GDSMD/MC, Karimkayam BO, Vandazhy, Alathur, Palakkad, residing at Thannikkodu, Karimkayam PO, Vandazhy (via), Palakkad, Pin – 678 706.

4. Sivadasan K., S/o. K. Kannan, aged 39 years, GDS BPM, Kollengode West BO, Alathur, Palakkad, residing at Aruvanoor Parambu, Kollengode Post, Palakkad – 678 506.

5. Santhakumaran K., S/o. Kuppandi K., aged 52 years, GDS BPM, Eruthenpathy GDS BO, Kozhinjampara, Palakkad, residing at Ayya Koundan challa, Kozhippara, Palakkad – 678 557.

6. Krishnamoorthy N., S/o. Nanchappan K., aged 32 years, GDSMD, Tarur BO, Pazhambalacode, Palakkad, residing at Vadakkepavady House, Pazhambalacode PO, Palakkad – 678 544.

7. Prasad B., S/o. Balakrishnan, aged 34 years, GDS, Kairali BO, Aylur, Palakkad, residing at Peethode House, Kavasseri PO, Alathur, Palakkad – 678 543.

8. Devadas R., S/o. Ramachandran V., aged 35 years, GDSMD, Pallathery Branch Post Office, Chandranagar (Sub Office), Palakkad, residing at Aiswarya, Oorappadam, Kodumbu PO, Palakkad-678 551.

9. Murughan V., S/o. M. Velayudhan (late), aged 52 years, GDSMD, Cheramangalam, (Melarcode SO), Alathur, Palakkad, residing at Nedumgode House, Cheramangalam PO, Palakkad-678 703.

10. C. Vasudevan, S/o. C. Chukkan, aged 49 years, GDSMD, Tarur BO, Pazhambalacode, Alathur, Palakkad, residing at Pulichikunde House, Athipotta PO, Palakkad – 678 544.

11. Murali Kumar N., S/o. Neelakandan K., aged 53 years, GDSMD, Ayalur SO, Alathur, Palakkad, residing at Vadekke Veedu, Kaippencherry, Ayalur PO, Palakkad – 678 510. ..... **Applicants**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the Government of India, Department of the Post, Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum – 695 101.

3. The Senior Superintendent of Post Office, Palakkad Postal Division, Palakkad – 678 001. ..... **Respondents**

(By Advocate – Mr. Millu Dandapani, ACGSC)

8. **Original Application No. 834 of 2013** -

1. Girija S., GDS MD, Naruvamoodu, Thiruvananthapuram – 695 528, Residing at S.N. Sadanam, Sasthamkottai, Russelpuram PO, Thiruvananthapuram – 695 501.

2. Reghu P., GDS MD, Mancha BO, Thiruvananthapuram – 695 541, Residing at Panchami, Near THS, Mancha, Nedumangad, Thiruvananthapuram-695 541.

3. Sugathan S., GDS MD, Amachal BO, Thiruvananthapuram – 695 572, Residing at Sreelakshmi, Amachal PO, Thiruvananthapuram – 695 572.

4. Hari V., GDS MD, Venganoor SO, Thiruvananthapuram – 695 523, Residing at Bala Vilasom Venganoor PO, Thiruvananthapuram – 695 523.

5. Kalyanasundaram Pillai S., GDSMD, Anad – 695 511, Residing at Muriga Vilasam, Ulliyoor, Pazhakutti, Thiruvananthapuram-695 561. ..... **Applicants**

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

Versus

1. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthpauram – 695 036.

2. Union of India, represented by the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033. ..... **Respondents**

(By Advocate – Mrs. Jishamol Cleetus, ACGSC)

9. **Original Application No. 862 of 2013** -

1. Santhoshkumar K., S/o. C.G. Krishnankutty Nair,
aged 43 years, GDSMD/MC, Kallumkal PO,
Thiruvalla-689 102, residing at Talachirakuzhiyil
Puthenveedu, Vallamkulam PO, Thiruvalla,
Pin – 689 541.

2. V.G. Annasherine, W/o. George P. Mathew,
aged 32 years, GDSBPM, Kunnathumkara PO,
Othera, Thiruvalla – 689 546, residing at Peedikayil House,
Maramon PO, Pathanamthitta, Pin – 689 549.

3. K.C. Valsala, W/o. K.A. Maniyan, aged 49 years, GDSMD,
Othara West PO, Thiruvalla-689 551, residing at Limabhavan,
Othara West PO, Thiruvalla – 689 551.

4. K.R. Chandralekha, D/o. K.K. Ramachandrakurup, aged 41 years,
GDSBPM, Kanjeettukara, Pin – 689 611, residing at Mukkattu House,
Muthoor PO, Thiruvalla – 689 107.

5. N.G. Surendran, S/o. M.K. Gopalan, aged 52 years, GDSMD/MC,
Anaparambal North PO, Thalavady – 689 572, residing at
Manthrayil House, Thalavady PO.

6. T.K. Suresh Babu, S/o. T.M. Kuttappai, aged 53 years,
GDSMD/MC, Mundiappally, residing at Mailamannu,
Choorakuttickal, Kunnamthanam PO, Mallappally – 689 581.

7. K.R. Subash, S/o. Krishnan Raghavan, aged 40 years,
GDSBPM, Eramallikkara, residing at Valiyakalathil House,
Thirumoolapuram PO, Thiruvalla – 689 115. ..... **Applicants**

(By Advocate – Mr. R. Sreeraj)

Versus

1. Union of India, represented by Secretary to Government, Department of Posts, Government of Inida, New Delhi – 110 001.

2. The Chief Postmaster General, Department of Posts, Kerala Circle, Trivandrum – 695 001.

3. The Superintendent of Post Offices, Department of Posts, Thiruvalla Division, Thiruvalla – 101. ..... **Respondents**

(By Advocate – Mrs. Deepthi Mary Varghese, ACGSC)

10. **Original Application No. 1029 of 2013** -

Sreeja P.G., W/o. Suresh Kumar P.B., aged 38 years, GDS BPM, Vazhoor East, residing at Puthiyaparampil (H), Mundakayam PO. ..... **Applicant**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the Government of India, Department of the Post, Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum – 695 101.

3. The Superintendent of Post Office, Changanassery Postal Division, Kottayam – 686 101. ..... **Respondents**

(By Advocate – Mrs. Jishamol Cleetus, ACGSC)

11. **Original Application No. 1184 of 2013** -

1. Soumya M.S., D/o. Somasekhara Pillai, aged 25 years, GDS BPM, Chirakadavu Centre, residing at Puthuredathu House, Kavum Bhagam PO, Cheruvally – 686 519.

2. Santhosh Kumar K.P., S/o. Parameswaran Nair, aged 33 years, GDS MD, Anikad West PO, Anikad, residing at Kottarathunkal House, Kalloorkulam PO, Edamula, Kottayam – 686 503.

3. Sindhu T.P., D/o. T.K. Peethambaran, aged 42 years, GDS BPM, Eara North P.O., Neelamperoor, residing at Puthan Parambu House, Kalandy PO, Neelamperoor. ..... **Applicants**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the Government of India, Department of the Post, Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum – 695 101.

3. The Superintendent of Post Office, Changanassery Postal Division, Kottayam – 686 101. ..... **Respondents**

(By Advocate – Mr. S. Jamal, ACGSC)

12. **Original Application No. 180/00547/2014** -

1. Girija S., GDS MD, Naruvamoodu, Thiruvananthapuram – 695 528, Residing at S.N. Sadanam, Sasthamkottai, Russelpuram PO, Thiruvananthapuram – 695 501.

2. Reghu P., GDS MD, Mancha BO, Thiruvananthapuram – 695 541, Residing at Panchami, Near THS, Mancha, Nedumangad, Thiruvananthapuram-695 541.

3. Sugathan S., GDS MD, Amachal BO, Thiruvananthapuram – 695 572, Residing at Sreelakshmi, Amachal PO, Thiruvananthapuram – 695 572.

4. Hari V., GDS MD, Venganoor SO, Thiruvananthapuram – 695 523, Residing at Bala Vilasom, Venganoor PO, Thiruvananthapuram – 695 523.

Kalyanasundaram Pillai S., GDSMD, Anad – 695 511, Residing at Muriga Vilasam, Ulliyoor, Pazhakutti, Thiruvananthapuram-695 561.

6. Abhilash V., GDS MD, Kovalam Post Office,
Thiruvananthapuram – 695 527, Residing at Laila Bhavan,
Kovalam Junction, Kovalam PO,
Thiruvananthapuram – 695 527.

7. Santhosh Kumar K., GDS MP, Kalliyoor PO,
Thiruvananthapuram – 695 042,
Residing at Mele Mavarthala Veedu, Kalliyoor PO,
Thiruvananthapuram – 695 042.

8. Sanil Kumar M., GDS BPM, Valiyavila,
Thiruvananthapuram – 695 006,
Residing at Sheela Bhavan, Vettykonam,
Karakulam PO, Thiruvananthapuram – 695 564.

9. Jayakumar P.A., GDS MP, Peyad PO,
Thiruvananthapuram – 695 573,
Residing at J.B. Vilasom, Shanti Nagar,
Peyad PO, Thiruvananthapuram – 695 573.

10. Harihara Sarma, GDS MD, Pazhakutty,
Thiruvananthapuram – 695 561,
Residing at Lakshmi Nivas, Pazhavadi Street,
Nedumangad, Thiruvananthpauram – 695 541.

11. Aswathy G., GDS MD, Vattiyoorkavu,
Thiruvananthpauram – 695 013,
Residing at Thekkekompathu Veedu,
Mannarampara, Mundela PO,
Thiruvananthapuram – 695 543.

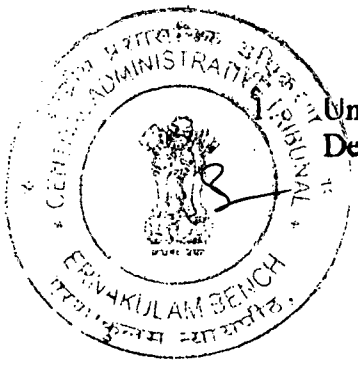
12. Sreekumar K., GDS BPM, Panayam BO,
Panavoor, Thiruvananthapuram – 695 568,
Residing at Kallidukkil, Charuvila Veedu,
Panayam PO, Thiruvananthapuram – 695 568.

13. Rajendran G., GDS MP, Dhanuvachapuram,
Thiruvananthpauram – 695 503,
Residing at Pezhuvila Kadayara Veedu,
Olathani, Neyyattinkara PO,
Thiruvananthapuram – 695 121. ..... **Applicants**

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

Versus

1. Union of India, represented by Secretary to Government,
Department of Posts, Government of India, New Delhi-110 001.



2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.

3. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthapuram – 695 036. ..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

13. **Original Application No. 180/00598/2014** -

A. Divya, W/o. T. Raju, aged 37 years, GDS MD,
Kannanallur SO, residing at Yedhukulam, Peroor,
T.K.M. College PO, Kollam – 691 005. ..... **Applicant**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the
Government of India, Department of the Post,
Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle,
Trivandrum – 695 101.

3. The Senior Superintendent of Post Offices,
Kollam Postal Division,
Kollam – 691 001. ..... **Respondents**

(By Advocate – Mr. Pradeep Krishna, ACGSC)

14. **Original Application No. 180/00599/2014** -

Salini S., W/o. Sajeev G., aged 31 years,
GDSMD, Decent Junction BO, residing at Syamalalayam,
Decent Junction PO, Mukhathala, Kollam-691 577. ..... **Applicant**

(By Advocate – Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the Secretary to the
Government of India, Department of the Post,
Government of India, New Delhi – 11001.

2. The Chief Postmaster General, Kerala Circle,
Trivandrum – 695 101.

3. The Senior Superintendent of Post Offices,
Kollam Postal Division,
Kollam – 691 001. ..... **Respondents**

(By Advocate – Mrs. Jishamol Cleetus, ACGSC)

These applications having been heard on 13.11.2014 the Tribunal on 01-01-2015 delivered the following:

ORDER

By Hon'ble Mr. U. Sarathchandran, Judicial Member-

These cases were taken up together in view of the common nature of the grievances of the applicants and in view of the common challenge of the Recruitment Rules viz. (i) Department of Posts (Postman & Mail Guard Recruitment Rules, 2010 (in short 2010 Rules) and (ii) Department of Posts (Postman & Mail Guard) Recruitment (Amendment) Rules, 2012 (in short 2012 Rules).

2. In all these cases the applicants challenge the vires of these aforesaid two rules which had down sized the opportunities of the Extra Departmental Agents (in short EDA)/Gramin Dak Sevak (in short GDS) in the matter of recruitment to the post of Postman.

3. The first Recruitment Rule for the Postman, Mail Guards & Head Mail Guards notified by the respondents was the Indian Post & Telegraph (Postman/Mail Guards/Head Mail Guards) Recruitment Rules, 1969 (for short 1969 Rules). An amendment occurred those rules in 1989 by way of the Department of Posts (Postman/Village Postman & Mail Guards) Recruitment

Rules, 1989 (for short 1989 Rules). Thereafter the Recruitment Rules were again amended in 1995 by Department of Posts (Postman/Village Postman & Mail Guards) Recruitment (Amendment) Rules, 1995 (for short 1995 Rules) which was again followed by the impugned amendments by the 2010 Rules and 2012 Rules. It is worth mentioning that all the aforementioned Recruitment Rules and amendments have been made under proviso to Article 309 of the Constitution of India.

4. Before proceeding further, it is worth-mentioning that the EDAs/ GDS in the Postal Department are a category of employees who by the nature and under the conditions of their engagement do not have any avenue of promotion within the framework of their engagement. They are governed by the ED (Conduct & Service) Rules, 1964 and presently by the GDS (Conduct & Engagement) Rules, 2011. Their only opportunity for getting recruited to the Postal Department as its regular employees is by way of the quota allotted to them in the aforesaid Recruitment Rules for being recruited as Postman/Mail Guards. Applicants state that the GDS as a whole had been benefited most by the 1989 Rules as amended in 1995 Rules which provided them opportunity to be recruited as Postman/Mail Guards under the different quotas so that a large chunk of the posts were available to EDA/GDS. The method of recruitment as per the 1989 Rules as amended in 1995 reads as follows:-

Method of recruitment whether by direct recruitment or by probation or by deputation/transfer & percentage of the vacancies to filled by various methods.
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1. 50% by promotion, failing which by Extra Departmental Agents on the basis of their merit in the Department Examination. 2. 50% by Extra Departmental Agents of the recruiting division or unit, in the following manner, namely:- (i) 25% from agent Extra Departmental Agents on the basis of their seniority/in service and subject to their passing the Departmental Examination failing which by Extra Departmental Agents on the basis of merit in the Departmental Examination; (ii) 25% from amongst Extra Departmental Agents on the basis of their merit in the Departmental Examination. 3. If the vacancies remained unfilled by EDAs of the recruiting division, such vacancies may be filled by EDAs of the postal division falling the one of Regional Directors. 4. If the vacancies remained unfilled by EDAs of the recruiting units such vacancies may be filled by EDAs of the postal divisions located at the some station. Vacancies reminds unfilled will be thrown open to Extra Departmental Agents in the region. 5. Any vacancy remaining unfilled shall be filled up by direct recruitment through the nominees of the employment exchange.

5. Applicants are aggrieved by the reduction of their opportunity by the 2010 Rules and 2012 Amendment Rules whereby their scope of getting recruited as Postman/Mail Guard became more rigorous and reduced by the 2010 Rules. The opportunity of GDS candidates became limited to 25% and the remaining 25% posts are to be filled up by selection of Multi Tasking Staff (MTS) and the balance 25% by direct recruitment from open market. The relevant portion of the method of recruitment in 2010 rules is as follows:

Method of recruitment: Whether by direct recruitment or by promotion or by deputation or absorption and percentage of the vacancies to be filled by various methods
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(a) 25% by promotion by selection of Multi Tasking Staff of the recruiting Division; (b) 25% on the basis of Limited Departmental Competitive Examination by promotion from amongst Multi Tasking Staff of the recruiting Division with three years service in the grade including service put in, if any, against an erstwhile Group 'D' post on regular basis as on the 1st January of the year to which the vacancy(ies) belong failing which by direct recruitment. (c) 25% by direct recruitment on the basis of Competitive examination limited to Gramin Dak Sevaks* of the recruiting Division who have worked for at least five years in that capacity as on the 1st day of January of the year to which the vacancy(ies) belong failing which by direct recruitment; *Gramin Dak Sevaks are holders of Civil posts but they are outside the regular Civil Service due to which their appointment will be by direct recruitment. (d) 25% by direct recruitment from open market. Note 1:The scheme for Direct Recruitment shall be as per administrative instructions issued by the Department from time to time.

6. When the Recruitment Rules were further amended in 2012 there was further change in the scenario of recruitment as shown below:

"2. (i) .....

(ii) in column (11), in the entry,-

(A) for clauses (a) and (b), the following clause shall be substituted, namely:-

"(a) 50% on the basis of Limited Departmental Competitive Examination by promotion from amongst Multi Tasking Staff of the recruiting Division with three years regular service in the grade including service put in, if any, against an erstwhile Group 'D' post on regular basis as on the 1st January of the year to which the vacancy(ies) belong failing which, from amongst Multi Tasking Staff of the neighbouring Division/Unit on the basis of the said Examination, failing which by direct recruitment from open market.".

(B) for clauses (c) and (d), the following clause shall be substituted, namely:-

"(b) 50% by direct recruitment on the basis of Competitive Examination Limited to Gramin Dak Sevaks* of the recruiting Division who have worked for at least five years in that capacity as on the 1st day of January of the year to which the vacancy(ies) belong, failing which from amongst Gramin Dak Sevaks of the neighbouring Division/Unit on the basis of the said Examination,

failing which by direct recruitment from open market.

***Gramin Dak Sevaks are holders of Civil posts but they are outside the regular Civil Service due to which their appointment will be by direct recruitment.".**

(iii) .....".

7. According to the applicants, in the 1989 Rules as amended in 1995 they enjoyed more opportunity to get promoted to the post of Postman as the words "**failing which**" appeared in those rules gave them more opportunity so that if all circumstances turned out to be favourable to them, the entire vacancies could be filled with GDSs and most of them could become Postman and eventually get the benefits of a regular departmental staff with pension and other retiral benefits which are still a distant dream for the erstwhile EDAs and present GDSs.

8. In many of the OAs considered in this common order, apart from the challenge of *ultra vires* and unconstitutionality of the 2010 and 2012 Rules, the applicants have taken up a contention that all though 2010 and 2012 Rules were brought in by the respondents the same has not touched the 1989 Rules as amended in 1995. The reason pointed out by the applicants for this contention is that in the 2010 Rules nothing is mentioned about the repealing of the 1989 Rules or the 1995 amendment thereof and that the 2010 Rules merely mentions that those Rules have been made "in supersession of the Indian Post & Telegraph (Postman/Head Mail Guards/Mail Guards) Recruitment Rules, 1969". According to the applicants in those cases, the rule against implied repeal comes into operation and therefore, it has to be held that 1989 Rules as amended in 1995 Rules still remain in operation.

9. It is also alleged by the applicants that the 2010 and 2012 Rules have been made to the detriment of the deprived class of GDSs whose promotional opportunities have become bleak and hence they are unconstitutional and violative of the principles of equality, illegal and *ultra vires* the Constitution of India. According to them whatever little chances of promotion the GDSs had now been diverted and offered to the open market candidates for direct recruitment. The applicants in almost all these cases are aggrieved by such deprivation of opportunity of getting recruited as Postman. In some cases applicants are aggrieved by the cancellation of their appointment due to the sudden change in the policy and in some other cases though they have passed the examination and had exercised option for being posted in the neighbouring divisions as per the Recruitment Rules have lost such opportunities due to the adverse changes occurred in the quota set apart for the GDSs by reason of allocation of vacancies to open market candidates..

10. Respondents on the other hand contend that there is no vested legal rights for the applicants to get appointment as Postman but their only right is for being considered for that post when they apply for such post. According to them it is trite law that the mode of recruitment and eligibility are matters within the exclusive domain of the executive. The applicants were fully aware of the provisions in the revised Recruitment Rules and having appeared and taken part in the selection process and having opted for even surplus vacancies of the neighbouring divisions, their contentions cannot be entertained. Respondents remind that the impugned Recruitment Rules have

been framed under proviso to Article 309 of the Constitution of India. Regarding the contention that 1989 Rules as amended in 1995 are still not repealed, respondents state that when the new Rules were brought in, a repeal is inferred by necessary implication when the provisions of the later rules are so inconsistent with or repugnant with the provisions of the earlier rules and the two cannot stand together.

11. Heard both sides. Mr.V.Sajithkumar and Mr.Vishnu S. Chempazhanthiyil for the applicants. Mr. Rajesh representing learned SCGSC, Mr. Pradeep Krishna, learned ACGSC, Mrs. Jishamol Cletus learned ACGSC and Mr. Thomas Mathew Nellimootil, Sr. Panel counsel appeared for the respondents. Both sides advanced elaborate arguments.

12. Learned counsel for the applicants relied on ***Chautala ETC, Transport Society*** v. ***State of Punjab*** AIR 1962 Punj. 94.

13. The respondents relied on ***State of Andhra Pradesh*** v. ***Sadanandam*** – (1989) Supp. 1 SCC 574, ***State of Madhya Pradesh*** v. ***Kedia Leather & Liquor Limited*** (Civil Appeal Nos. 151-158 of 1996), a decision of the Co-ordinate Bench of this Tribunal at Madras in ***V. Vedachalam*** v. ***Union of India & Anr.*** - OA No. 260 of 2007, a decision of this Bench in OA No. 320 of 2012 – ***Riyas T.M.*** v. ***The Senior Superintendent & Anr.***, ***State of Maharashtra & Anr.*** v. ***Chandrakant Anant Kulkarni & Ors.*** – (1981) 4 SCC 130 and ***Union of India & Ors.*** v. ***S.L. Dutta & Anr.***

14. It is settled law that the candidates applied for selection and undergone written test and selection process have no vested right but only a right to be considered for selection [*N.T. Bevin Katti* v. *Karnataka Public Service Commission* - AIR 1990 SC 1233 and *Pitta Naveen Kumar* v. *Raja Narasaiah Zangiti* - (2006) 10 SCC 261]. Similarly the Apex Court has deprecated the practice of a candidate having participated in a selection process and challenging the selection, finding that he is not selected (see *University of Cochin, represented by its Registrar, University of Cochin* v. *N.S. Kanjoonjamma & ors.* – 1997 SCC L&S 976 & *State of Jharkhand* v. *Ashok Kumar Dangi & Ors.* – AIR 2011 SC 3182). It is also well settled that if an appointment/ promotion has been made by mistake the Government is at liberty to rectify the defect [see *Union of India* v.*Narendra Singh* - (2008) 2 SCC 750; *ICAR* v. *T.K.Satyanarayan* - (1997) 6 SCC 766]. In the light of the aforementioned decisions of the Apex Court we are of the view that the applicants having taken part in the selection process are not justified in challenging the recruitment and the rules, after the selection.

15. Respondents Department being the employer has the right to frame rules for recruitment. Recruitment Rules made under the proviso to Article 309 ensures that the recruitment is taking place without any arbitrariness and in accordance with the constitutional provisions of Article 16 read with Article 14. In *Govind Dattatray Kelkar* v. *Chief Controller of Imports & Exports* - AIR 1967 SC 839 it was held by the Apex Court that where recruitment to a service or certain posts is from different sources eg. direct recruitment and promotion from lower post, it would be for the Government

to determine, having regard to the requirement and needs of a particular post what ratio, as between the different sources would be adequate and equitable. In the same case the Apex Court held that if the ratio is so unreasonable as it amounts to a discrimination, it is not possible for the Court to strike it down or suggest a different ratio. Thus, it is clear that the fixation of quota for different categories of persons for recruitment and the mode of recruitment to be adopted is within the province of the executive. The Court or Tribunals cannot step in to the shoes of the executive and to decide in any manner such recruitments are to be regulated.

16. We find force in the contention of the respondents that the amendment of 2010 and the subsequent amendment in 2012 have put in place a different mode of recruitment and hence it should be presumed that the latter rules prevail as the same are totally new and are departing from the earlier rules. Therefore, even if there is no express provision in the introductory part of the notification about the repealing of the particular rules, when the new rules bringing a different method of recruitment it should be deemed that the earlier rules have ceased to be in operation. Besides, we wish to point out that the rules made under the proviso to Article 309 are temporary in nature in view of the express provision in the proviso that such rules are ".....until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act". (see Article 309 of the Constitution of India). Therefore, since the nature of the rules made under the proviso to Article 309 being temporary in nature any amendment made thereof will also

have to be deemed to be a change made to the earlier provision.

17. It appears that applicants are aggrieved by the opening given to the open market candidates for being recruited as Postman. As per the 2010 rules 25% of the vacancy is kept aside for direct recruitment. The philosophy and jurisprudential background of induction of direct recruits has been explained by the Apex Court in ***A.N. Sehgal & Ors.*** v. ***Raje Ram Sheoran & Ors.*** – 1992 Supp.(1) SCC 304. The Apex Court held as under:

> "17. With a view to have efficient and dedicated services accountable to proper implementation of Govt. policies, it is open, and is constitutionally permissible for the State, to infuse into the services, both talented fresh blood imbued with constitutional commitments, enthusiasm, drive and initiative by direct recruitment, blended with matured wealth of experience from the subordinate services. It is permissible to constitute an integrated service of persons recruited from two or more sources, namely, direct recruitment, promotion from subordinate service or transfer from other services, Promotee from subordinate generally would get few chances of promotion to higher echelons of services. Avenues and facilities for promotion to the higher services to the less privileged members of the subordinate service would inculcate in them dedication to excel their latent capabilities to man the cadre posts. Talent is not the privilege of few but equal avenues made available would explore common man's capabilities overcoming environmental adversity and open up full opportunities to develop one's capabilities to shoulder higher responsibilities without succumbing to despondence. Equally talented young men/women of great promise would enter into service by direct recruitment when chances of promotions are attractive. The aspiration to reach higher echelons of service would thus enthuse a member to dedicate honestly and diligently to exhibit competence, straightforwardness with missionary zeal exercising effective control and supervision in the implementation of the programmes. The chances of promotion would also enable a promotee to imbue involvement in the performance of the duties; obviate frustration and eliminate proclivity to corrupt practices, lest one would tend to become corrupt, sloven and mediocre and a dead wood. In other words, equal opportunity would harness the human resources to augment the efficiency of the service and under emphasis on either would upset the scales of equality germinating the seeds of degeneration."
>
> (emphasis supplied)

18. We are of the view that the afore quoted rationale for direct recruitment would take wind out of the sails of those who oppose the opening up 25%of the posts of Postman for direct recruits from open market.

19. Taking into consideration of the rival contentions and the grounds stated in the OAs, we are of the opinion that the applicants have no legally justifiable grounds to have an order in their favour.

20. Accordingly, the OAs are dismissed. In the circumstances of the case no order as to costs.

sd/- sd/-

(P.K. PRADHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

SA

CERTIFIED TRUE COPY
Date 9.1.2015
Section Officer (Judl)