

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 34 OF 2010

Wednesday, this the 14th day of September, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Ragesh Krishnan
Karthika Bhavan
Kurampala South PO, Pandalam
Pathanamthitta – 689 501

... Applicant

(By Advocate Mr. R.Sreeraj)

versus

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

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

3. The Senior Superintendent of Post Offices
Department of Posts
Pathanamthitta Division
Pathanamthitta

... Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 14.09.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is a physically challenged person suffering from Cerebral Palsy and his disability has been assessed as 40% as certified in Annexure A-3 issued by the General Hospital, Pathanamthitta. He applied for the post of Postal Assistant responding to the notification Annexure A-1, as per which one post was reserved for orthopaedically handicapped



person. Because of the disability suffered by the applicant, he sought permission to write the written test with the help of a scribe but the 3rd respondent vide Annexure A-7 informed the applicant that the competent authority has clarified that engagement of a scribe for assistance for aptitude test / computer data entry is not allowed. Impugning the stand taken in Annexure A-7 and seeking a declaration that refusal to permit the applicant to write the aptitude test for selection for appointment as Postal Assistant with the help of a scribe amounts to the denial of equality of opportunity in matters relating to employment or appointment to any office under the State guaranteed under Article 16 (1) of the Constitution of India, the present OA is filed. It is prayed that besides making a declaration, a direction may also be given to respondents to conduct the selection for appointment to the post of Postal Assistant in Pathanamthitta Division reserved for orthopaedically handicapped afresh permitting the applicant to avail the services of a scribe for aptitude test.

2. In the reply statement filed by the respondents it is their stand that though a representation was made by the applicant seeking permission to avail the services of a scribe in the aptitude test as also another candidate, both of them were informed that there is no provision to provide such assistance. There were no standing orders allowing assistance to physically challenged candidates for appearing in the aptitude test or type / computer test. No such provision is laid down in the Recruitment Rules also. The candidates were expected to manage on their own and no external assistance was envisaged as the examination was competitive in nature. Ministry of Social Justice and Empowerment has not issued any ruling regarding engagement of a scribe for assistance for the candidates

appearing in the aptitude test / type / computer test. Annexure R-1 is a letter issued by the 1st respondent addressed to the Chief Postmaster General informing the latter that no ruling has been ordered regarding engagement of a scribe for assistance for the candidates appearing in the Aptitude Test / Typing & Computer Data Entry test.

3. We have heard the counsel for both sides. The fact that the applicant is a orthopaedically challenged person suffering 40% disability is beyond dispute. Though there are no provisions enabling the applicant to write the examination in the Aptitude test with the aid or help of a scribe is also beyond doubt. But according to the applicant, when the post is reserved for orthopaedically challenged person, fully aware of the disabilities, it is incumbent on the authorities to allow the candidate to write the aptitude test by giving assistance through a scribe as otherwise the very object sought to be achieved by reserving a seat for such persons will be defeated. An identical question came up for consideration before the Hon'ble High Court of Kerala, **2009 (4) KHC 522, Ajith Kumar K.G. v. Kerala Public Service Commission and another** in W.P(C) No. 26083 of 2008 (E) and it was held therein that if the Commission provides assistance to candidates with such disabilities or provides them the assistance of a scribe to answer the questions, it will only be a step in furtherance of the will as expressed in the preamble of the Act which is in the following directions.

"We the people of India", expressed through the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 etc. It was observed in such circumstances, especially having regard to the fact that the petitioner has secured very high marks, the stand taken by the Commission cannot be sustained. Appropriate directions were issued molding the relief.



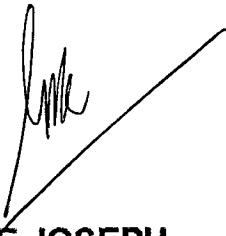
4. There also the petitioner therein had applied for the post of Last Grade Servant. He suffered a disability assessed as 60%. He was denied the assistance of a scribe, he wrote the examination which required him to darken the bubble containing the right choice. Since, it was vital that the register number be entered correctly, he sought for the assistance of the Invigilator, which was not given. The stand taken by the Commission was that there is no provision enabling persons with disability to seek the assistance of the Invigilator or of any other person for filling up any of the columns in the answer script or for darkening the bubbles. The fact that there is no provision specially made enabling the assistance of a scribe for such physically handicapped persons by itself is not a reason to deny the applicant the assistance of a scribe. A person suffering from Cerebral Palsy like the applicant who have no control over his movements or hands , it would therefore be impossible for such a person to write the aptitude test by his own hand without any help from a third person, like a scribe. The object of providing reservation to such persons is in the welfare of giving protection to physically challenged persons and the whole object of reserving seats for physically challenged persons will be defeated if in furtherance of the objectives sought to be achieved, the assistance of a scribe is not given. In the circumstances and in the light of the above decision rendered by the Hon'ble High Court of Kerala, we are of the opinion that the applicant is entitled for the assistance of a scribe to write the aptitude test though not for computer test. We declare so. Hence whenever a request comes from orthopaedically handicapped suffering from Cerebral Palsy, the authorities will allow the persons to be helped by a scribe to write the aptitude test. It is desirable that necessary guidelines



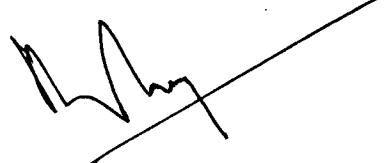
shall be issued in this regard , till then the directions issued herein above will be followed.

5. OA is allowed to the above extent. No costs.

Dated, the 14th September, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

VS