

O.A.NO. 347 of 2003

CORAM:

KK Ramesh Babu,
Postman,
Arecode.P.O.
Manjeri Postal Division,
Malappuram District. - **Applicant**

VS

1. Superintendent of Post Offices,
Manjeri Postal Division,
Manjeri-676 121.
2. Chief Postmaster General,
Kerala Circle,
Department of Posts,
Thiruvananthapuram.
3. Director General of Posts,
Department of Posts,
Dak Bhavan,
New Delhi.
4. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.

ORDER (Oral)

The applicant presently working as Postman under the Manjeri Postal Division. He was appointed as Postman on the Leave Reserve Postman(LRP) and joined on 10.11.89. The method of recruitment to the cadre of Postal Assistants for which he was aspiring is specified in columns 5 to 14 of the Schedule to the said rules. Since the applicant could not get through the

examination as per the chances granted by the respondents, he has filed this O.A seeking the following reliefs:

- i) to call for the records leading to A-9 circular dated 18.2.2003 and to quash the same to the extent it restricts the number of chances for Lower Grade Officials for taking the Departmental examination for promotion to the cadre of PA/SA as six and A-11 letter dated 10.4.2003 of the 1st respondent rejecting the candidature of the applicant for appearing in the departmental examination for promotion to PA/SAs to be conducted on 27.4.2003;
 - ii) to issue appropriate direction or order commanding the 1st respondent to permit the applicant to appear for the Departmental Examination for promotion of Lower Grade Officials to the cadre of Postal Assistants scheduled to be held on 27.4.2003 or on any other deferred date and to promote him to the cadre of Postal Assistant on the basis of the results in the above examination.
2. Respondents have filed a detailed reply statement contending that the recruitment rule 1990 amended from time to time does not prescribe larger chances to employees like applicant. As per the instructions contained in Directorate letter dated 20/26.8.1999, number of chances appearing for LGO examination is six. Applicant has availed all the six chances and applied for the 7th chance. He is not eligible for further examination and therefore, the impugned order has been passed in accordance with the rules.
3. Shri O.V.Radhakrishnan, learned Senior counsel appeared for applicant and Shri TPM Ibrahimkhan, SCGSC appeared for respondents. We have heard on both sides and gone through the pleadings and various documents produced on either side.
4. Learned counsel for the applicant argued that the matter has been considered at length by this Tribunal in order in O.A.No.975/1997 dated 23.7.1999 wherein the restriction of such number of chances has been set aside by this Tribunal. The matter was taken up before the Hon'ble High Court, and the Hon'ble High Court upheld the decision of this Tribunal. Learned counsel for the respondents on the other hand submitted that as per

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the circular of Directorate (A-6), the number of chances have been increased from 5 to 6.

5. The question involved in this case is, whether the restriction of number of chances as six, is justified or not. This Tribunal vide A-5 order held as follows:

"23. In the result we issue the following directions:

a) The impugned letters dated 20.4.89 and 17.5.90 are hereby quashed. As a result the letter dated 2.7.97 is set aside.

b) As the applicant has passed the departmental promotion examination held in the year 1998, the respondents are directed to permit the applicant to undergo the prescribed training and to appear for the training examination and consider his suitability for promotion to the post of Postal Assistant/Sorting Assistant in accordance with the rules."

It is quite clear from the above that this Tribunal categorically found that in the absence of necessary amendments in the Recruitment Rules the restriction imposed on the departmental candidate from appearing at the departmental promotion examination are contrary to the provisions contained in the Recruitment Rules. However, liberty was granted to the respondents to amend the rules, if they feel so. From the materials placed on record and on going through the arguments advanced by the learned counsel on either side, it is evident that the recruitment rules have not yet been amended incorporating the restrictions as directed by this Tribunal and the decision of this Tribunal has been confirmed by the Hon'ble High Court in O.P.No.26159/1999.

6. Apart from that, the respondents had issued A-6 dated 20.8.1999 increasing the number of chances for appearing in the LGO examination from 5 to 6 which was challenged before this Tribunal in O.A.Nos.1000 and 1006 of 2001. The Tribunal by a common order dated 12.2.2002 in the above cases set aside that letter (A-6) issued by the Ministry of Communication. In the

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circumstances, we are of the view that a letter which has been set aside by this Tribunal has become obsolete and therefore, it cannot be relied on.

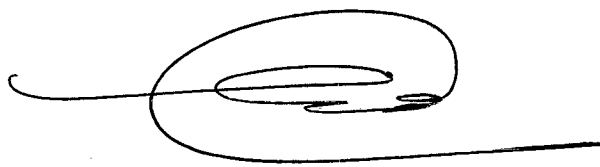
7. In the conspectus of facts and circumstances mentioned above, we are of the considered view that the applicant is entitled for the benefits claimed in the O.A. Therefore, we set aside A-9 dated 18.2.2003 to the extent it restricts the number of chances for LGO for taking the departmental examination for promotion to the cadre of PA/SA as six and A-11 dated 10.4.2003 rejecting the candidature of the applicant for appearing in the departmental examination for promotion to PA/SA, as they are not in conformity with the legal position that has been observed above. We direct the respondents to declare the results of the above examination and pass appropriate orders granting the consequential due benefits to the applicant *if he succeeds in his exam.* within a period of three months from the date of receipt of copy of this order. *b*

The O.A is allowed as aforesaid. There is no order as to costs. *a*

Dated, the 14th November, 2005.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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