

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 353/2005

THURSDAY, THIS THE 20TH DAY OF JULY, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHARMAN
HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER**

Jissy George D/o Shri George
Postal Assistant
Vytilla PO, Kochi-19
resident of Chakyattil House
Geegee Mapilacherri Road
Vytilla, Ernakulam.

.. **Applicant**

By Advocate Mr. T.C. Govindaswamy

Vs

- 1 Union of India represented by
Secretary to the Government of India
Ministry of Communications,
Department of Posts,
New Delhi.
- 2 The Chief Postmaster General
Kerala Circle, Trivandrum
- 3 The Senior Superintendent of Post Offices
Kottayam Division, Kottayam
- 4 The Senior Superintendent of Post Offices
Ernakulam Division, Kochi-19
- 5 The Postmaster General
Central Region, Kochi-16

.. **Respondents**

By Advocate Mrs. Mariam Mathai, ACGSC

ORDERHON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in the OA presently working as a Postal Assistant, is aggrieved by the letter bearing No.B-6/11-3/2004 dated 3.5.2005 at Annexure A-13 rejecting her request for communication of marks and the nonfeasance on the part of the respondents to grant her substantive status even after completing regular service of five years and passing the qualifying examination.

2 The factual sequence of events leading to her appointment is narrated as under. A notification is issued during 1998 for selection to the post of Postal Assistant. The applicant participated in the test, qualified, was empanelled and was finally appointed as a Postal Assistant under the third respondent. She was asked to report in Annexure A1 and was directed to undergo training and had successfully completed her training at the Postal Training centre Mysore and also the practical training at Vaikom Head Office. Finally the applicant was appointed as Postal Assistant by order dated 9.4.1999 and was placed on probation for two years. By Annexure A-6, the applicant was absorbed as Postal Assistant with effect from 17.4.1999. Later during March 2000, the applicant was transferred to Ernakulam Postal division by mutual consent and she also qualified in the confirmation examination as borne out by Annexure A-7 dated 28.9.2000. The applicant's appointment itself was subject to the outcome of OA 1484/98. This Original Application came to be dismissed by an order dated 23.4.2001. A notice was issued by the 4th respondent stating that the Tribunal had quashed the selection to the cadre of Postal Assistants and appropriate action would follow. The applicant thereupon submitted a detailed representation and there was no response to the same and continued on that basis in the post. The applicant also participated in the qualifying examination for Post offices and Railway Mail Service Accountants held during May, 2003

and May, 2004. Though the results of these examinations were declared and marks sheets issued to those who had applied for it, the name of the applicant was not included in the results. The applicant thereupon submitted a representation dated 30.3.2005 to the second respondent and it has been replied to by the impugned order stating that there is no provision for communication of marks to the provisionally admitted candidates. She has also appeared for the examination for promotion to the posts of Inspectors wherein also she has been allowed to participate only on provisional basis. The applicant 's case is that Rule 13 of the Appendix-37 of Postal Manual Vol IV Part II(A) does not distinguish between those who are provisionally permitted to participate and those who are allowed to participate as a matter of course for the purpose of communication of marks and the impugned order is therefore arbitrary and discriminatory and she has already appeared for the examination in the years 2003 and 2004 and is being kept in a state of uncertainty as to whether she would have to appear for the examination again. It is also urged that there was no justification to keep the applicant's appointment in a suspended state and the respondents are bound to grant her substantive status by passing appropriate orders as done in the case of other employees.

3 The respondents have submitted that the applicant is a candidate appointed in the 1998 Direct Recruitment conducted to fill up the posts of Postal Assistant /SA and in OA No.1689/98 filed by one Sri Sivaramakrishnan and 3 others this Tribunal had quashed the selections of 1998. The said order was taken on appeal and the Hon High Court has given an interim stay in OP No 19088/2001. On the basis of the stay order all the affected Postal/Sorting Assistants have been allowed to continue in service subject to the outcome of the pending OP. Many affected parties have also approached this Tribunal in OA 465/01 and the Tribunal has granted a stay of the earlier order in OA1689/98. The above Direct Recruitment candidates were admitted in all

departmental examinations provisionally subject to outcome of the pending OPs before the Hon High Court of Kerala. The applicant was admitted in the PO and RMS Accountant Examination provisionally. Though the applicant has qualified in the examinations, the marks secured by the applicant were not communicated to her as her appearance was provisional and for the same reasons the applicant cannot be confirmed in her post nor be given substantive status.

4 In the rejoinder the applicant has contended that the order in OA1689/1998 has been stayed, any action incidental to the original order is illegal and that she is not a party to OA465/2001. It is also submitted that there are no restrictions imposed under Rule13 of Appendix 37 of Postal Manual Vol-V Part II(A) for communicating marks to provisional candidates.

5 The respondents have refuted the above contentions by filing an additional reply statement. The Hon'ble High Court has only stayed the order and till it is set aside it will continue to stand and submitted that the grounds mentioned in the original application are not tenable or sustainable in law or facts.

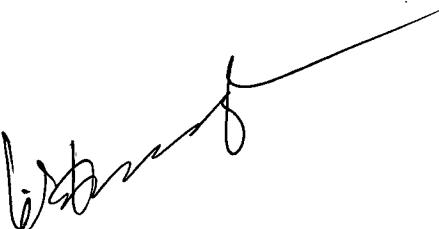
6 We heard the Learned counsel on either side and have gone through the pleadings. From the averments made above it is seen that the applicant is aggrieved on two counts viz 1) by the non-communication of her marks obtained in the PO and RMS Accountant examinations and 2) her non-confirmation. As regards the first issue relevant instructions have been produced before us and the latest instruction of the Department of Posts dated 15th February 2006 states that it has been decided that marks will be communicated to the provisional candidates as well for increasing the transparency of the system, with a stipulation that such communication does not confer any right for claiming regularisation. Therefore we do not see any difficulty in following these

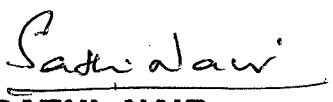
instructions in the case of the applicant also.

7 As regards the second prayer of the applicant the respondents have admitted that the result of the confirmation examination held on 18.6.2000 was announced and the applicant passed the exams. as per Annexure A7 dated 28.9.2000. But the difficulty in confirming her is not on account of any Rule or Instruction to the contrary but in view of the cancellation of her selection itself by the Tribunal and the OP filed against the order in the OA is pending before the Hon'ble High Court. We are inclined to agree with this view. Confirmation is an exercise of conferring permanency on an employee and when the original selection itself has not attained any finality, substantive status cannot be conferred on the individual. The applicant has to await the outcome of the OP. She is not singled out for this purpose and there are others selected along with her who are also facing this predicament. If the decision in the OP is favourable to the applicant she would be entitled to all benefits from the retrospective dates.

8 In view of the above facts and law, we direct the respondents to communicate the marks of the applicant in the PO and RMS Accountant Examination forthwith in terms of the instructions in Letter F.No 34022/4/2006 dated 15th February 2006. Annexure A-13 is quashed. OA is partly allowed. No costs.

Dated 20.7.2006


K.B.S. Rajan
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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