

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 354 of 2003

Monday, this the 14th day of November, 2005.

CORAM:

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

M.C.Vijayan,
Mail Guard,
Sub Record Office,
Railway Mail Service,
TV Division, Kayamkulam. - Applicant

By Advocate Mr Thomas Mathew

vs

1. Senior Superintendent,
Railway Mail Service,
TV Division, Trivandrum.
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,
Department of Posts,
New Delhi. - Respondents


By Advocate Mr George Joseph, ACGSC

The application having been heard on 14.11.2005, the Tribunal on the same day delivered the following

O R D E R (Oral)

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

The applicant presently working as Mail Guard working at Sub Record Office, Kayamkulam. He was appointed as Mailman in Railway Mail Service with effect from 14.6.01. His next promotion is to the cadre of Sorting Assistant. According to the Recruitment Rules, 50% of the vacancies of the Sorting Assistants are filled up by promotion of the lower grade officials like



the applicant. The applicant is aggrieved by A-1 circular prescribing the number of chances for departmental candidates for appearing the above examination as six. 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 quash A-1 to the extent it stipulates the number of chances for Lower Grade Officials for appearing the departmental Promotion Examination;
- ii) Declare that the applicant is entitled to appear the departmental promotion examination to be held on 27.4.03 to the cadre of Sorting Assistant irrespective of the number of chances already availed.
- iii) Direct the respondents to admit applicant's candidature for the departmental promotion examination to be held on 27.4.2003.

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. Applicant had already 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 Thomas Mathew, learned counsel appeared for applicant and Shri George Joseph, ACGSC 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 the circular of Directorate, 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 order in O.A.No.975/1997 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, this Tribunal by a common order in O.A.Nos.1000 and 1006 of 2001 dated 12.2.2002 set aside the letter issued by the Ministry of Communication restricting the number of chances to appear in the examination as six. In the 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.

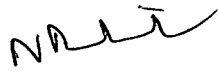
7. In the conspectus of facts and circumstances mentioned above, we are of the considered view that the applicant is entitled for the benefits



claimed in the O.A. Therefore, we set aside A-1 dated 27.2.2003 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, as it is 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 the exam.} within a period of three months from the date of receipt of copy of this order. L

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

Dated, the 14th November, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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