

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 37/2006

TUESDAY THIS THE 9th DAY OF OCTOBER, 2007.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K. Nagappan S/o late K.P. Kesava Pillai
Postman, Kattoor Post Office
residing at Chullilpparambil House
Subadralayam, Madayikonam PO
Irinjalakkuda.

...Applicant

By Advocate Mr. O.V. Radhakrishnan, Sr. & Mr. Antony Mukkath

Vs.

- 1 Director General of Posts
Dak Bhavan, New Delhi.
- 2 Chief Postmaster General
Kerala Circle, Trivandrum.
- 3 Assistant Director (Recruitment)
O/o the Chief Postmaster General
Kerala Circle, Trivandrum.
- 4 Superintendent of Post Offices
Irinjalakkuda Postal Division
Irinjalakkuda
- 5 Union of India represented by its Secretary
Ministry of Communications,
New Delhi

..Respondents

By Advocate Smt. K. Girija, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed seeking the following reliefs.-

(i) to call for the records relating to Annexure A-5 letter dated 12.1.2006 and to set aside the same

(ii) to declare Rule 15 of appendix 37 of P&T Manual Volume IV, as unconstitutional, ultra vires, unreasonable and void;

(iii) to call for the answer sheet in Paper III P&T Manual Vol guide (with books) of the applicant of the Departmental examination conducted on 24.4.2005 for appointment to the post of Postal Assistant/sorting assistant and to direct the respondents to arrange revaluation of the answer scripts of Paper III P&T Manual Guide (with books) of the applicant in respect of the Departmental examination conducted on 24.04.2005 by an independent agency and to revise the marks secured him in Paper III and to declare the result of Paper III on that basis

(iv) to issue appropriate direction or order direction not to convert the departmental vacancy as direct recruitment vacancy on the basis of the result in the departmental examination held on 24.04 .2005 under Irinjalakuda Postal division and to bring down the qualifying marks to fill up the departmental quota by the Lower Grade officials who are otherwise qualified

(v) to issue appropriate direction or order directing the respondents to appoint the applicant as Postal Assistant against one of the vacancies for departmental candidates on the basis of the marks obtained by him on revaluation and to appoint him as Postal Assistant with effect from the date of his entitlement with all consequential benefits

(vi) to grant such other reliefs which this Hon Tribunal may deem fit, proper and just in the circumstances of the case and

(vii) to award costs to the applicant.

2 The applicant is presently working as a Postman, Kattoor Post office under Irinjalakuda Postal division. The applicant is one of the candidates who appeared for the Departmental examination for Lower Grade officials for promotion as Postal Assistant/Sorting Assistant in subordinate offices during the year 2005 conducted on 24.04 .2005. It has been notified that the minimum qualifying marks are 40% in each

paper for all candidates excluding SC/ST to whom the minimum qualifying marks will be 33%. The result of the examination was declared by Annexure A-2 to the effect that none had qualified for the examination. The applicant applied for communication of his marks which was given to him by Annexure A3 wherein the applicant is shown to have secured 41 marks in Paper I, 70 marks for Paper II and 38.5 marks for Paper III, on retotalling also the marks were found to be correct. The contention of the applicant is that he had fared well in the Paper III and the said answer paper has not been properly valued.,

3 The following grounds have been taken by the applicant in support of his claim:-

- (1) Rule 15 of Appendix 37 of the P&T Manual, Volume IV is an administrative instruction and has no statutory force or binding character and is oppressive, unreasonable ultra vires and void,
- (2) Fixing of cutoff marks as 40% in respect of OC candidates and the competent authority must necessarily bring down the qualifying marks to fill the departmental quota instead of opening it up for direct recruitment.

4 The respondents have filed a reply statement denying the averments of the applicant. They have pointed out that this Tribunal in OA 841/96 has held that there is no statutory or fundamental right in getting the answer revalued and that the Appendix 37 of P&T Manual

Volume IV issued by the Department of Posts has been held to have the force of ART. 309 of the Constitution in OA 748/02. The applicant cannot question the validity of Recruitment Rules prescribing qualifications and benchmarks which can be framed and also unilaterally altered by the Government. He had not challenged the circular on these grounds when it was issued and after taking part in the examination he cannot turn around and question the validity of the Rule. They have relied on the judgements of the Hon Supreme Court in Roshan Lal Tandon vs Union of India (AIR 1989 SC 169) and the case of State of J&K vs Shiv Ram Sarang (1999 SCC 1075). Therefore the said Rules are quite valid in the eyes of law and there is no violation of any right.

5 Rejoinder has been filed contending that the deponent in the reply statement is not competent to file the reply statement and that the order of this Tribunal in OA 708 of 2002 is under challenge before the Hon High court which is still pending. It has been further averred that the decision in OA 95/95 is squarely applicable in this case and that fixing of cut off marks in a Departmental examination has been frowned upon by the Hon Supreme court in Manjit Singh case reported in (2003 11 SCC 559).

6 The respondents in their Additional reply have controverted these averments pointing out that the OA95/95 was a case where marks were not allotted to certain answers and the Tribunal ordered to allot marks and it cannot be equated with revaluation. Moreover the issue

relating to cut off marks has been already examined in the order dated 3.11.2006 in OA 46/04 and it has been held that it is the prerogative of the Department to fix minimum marks in each paper depending on specific requirements of the post and other factors and there is no arbitrariness, placing reliance on the Apex Court's judgement in Madanlal vs State of J&K((53 SSC 486) and Prakash Shukla vs Akhilesh Kumar Shukla (1986 Supp SCC 285).

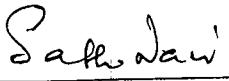
7 We heard Learned Counsel Sri Antony Mukkath for the applicant and Smt Girija ACGSC for the respondents. The counsel for the applicant reiterated the contentions in the original application and pressed for calling for the answer papers of the applicant for scrutiny by the Tribunal. On behalf of the respondents it was averred that the decision of this Tribunal in OA 46 of 2004 has settled the issue.

8 On consideration of the pleadings and on hearing the arguments of the counsels, we find that the several contentions raised by the applicant in this OA viz. constitutionality and status of the Rule 15 of Appendix 37, fixing of minimum qualifying marks in the departmental examination and the legality of the provision regarding revaluation have already been considered by this Tribunal in OAs 708/2002, 841/96 and more recently in OA 46 of 2004. and have been rejected placing reliance on Apex Court's judgements on the subject. Hence it is not necessary to cover the same ground again. Shorn of the legal trappings, the applicant's claim is solely based on the so called belief that he has done well in the examination. That this is not a ground for

judicial review has also been settled in the case of Rajendra Pandey vs Union of India reported in 1996 34 ATC 380 CAT (Cal). Therefore following our order in OA 46/2004 and the earlier judgements in OA 708/2002 and other similar cases referred to above, the applicant's prayers are rejected. OA is dismissed.

Dated 9.10.2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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