

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 118 of 2012
with
O.A. Nos. 394/2012 and 395/2012

MONDAY, this the 19th day of November, 2012

CORAM:

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

1. O.A. No. 118/2012

S.Subhash,
S/o. P.K. Sankaran (late),
Aged, 50 years, GDSMD, Kuzhithura,
Department of Posts, Kollam Division,
Residing at Thazhayil, Kuzhithara P.O.,
Athinad North, Kollam District. ... Applicant.

(By Advocate Mr. V. Sajith Kumar)

v e r s u s)

1. Union of India, represented by
The Secretary to the Government,
Department of Posts, Government of India,
New Delhi : 110 001
2. The Chief Postmaster General,
Kerala Circle, Trivandrum : 695 033
3. The Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001
4. Rajani S, Postman,
C/o. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001
5. B. Anil Kumar, GDSMD/MC,
C/o. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001
6. Sindhu R, GDSMD,
C/o. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001 ... Respondents.

(By Advocate Ms. Deepthi Mary Varghese, ACGSC for R1-3
Mr. Shabu Sreedharan for R4 and 6
Mr. K.P. Satheesan for R-5)

2. O.A. No. 394/2012

Sindhu R, GDSMP, Ezhukone SO,
Aluvila Veedu, Ezhukone P.O.,
Kollam : 691 002 ... Applicant.

(By Advocate Mr. Shabu Sreedharan)

versus

1. Union of India, represented by
The Secretary / Director General of Posts,
Ministry of Communications,
New Delhi : 110 001
2. The Chief Postmaster General,
Kerala Region, Thiruvananthapuram
3. The Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001 ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

3. O.A. No. 395/2012

Rajini. S, Postman, Asramom SO,
Thaiplamvila Veedu,
Ezhukone P.O., Kollam. ... Applicant.

(By Advocate Mr. Shabu Sreedharan)

versus

1. Union of India, represented by
The Secretary / Director General of Posts,
Ministry of Communications,
New Delhi : 110 001
2. The Chief Postmaster General,
Kerala Region, Thiruvananthapuram : 33
3. The Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam : 691 001 ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

These applications having been heard on 05.11.12, the Tribunal on 19-11-12 delivered the following :-

O R D E R

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

As common facts and issues are involved in these cases, they are disposed of by this common order.

2. As per notification dated 20.10.2009, one should get at least 45% of marks in each of the 3 papers in the examination for selection from the GDS to the post of Postman against vacancies in the year 2009. The applicant in O.A. No. 118/2012, an OBC candidate, had scored 94 marks and more than 45% in each paper. The respondents 4 to 6, who also are OBC candidates had failed in paper-B although they had scored higher total marks. As they were appointed as Postman, the applicant is aggrieved and has filed this O.A. for the following reliefs:

- (i) To quash Annexure A-2 to the extent respondents 4 to 6 are selected and appointed as Postman;
- (ii) To declare that selection and appointment of respondents 3 to 6 who had failed to score 45% marks in Paper-B Arithmetic is highly illegal, arbitrary and liable to be set aside;
- (iii) To direct the respondents 1 to 3 to revise the Annexure A-2 select list by accommodating the applicant in the post reserved for OBC and by removing ineligible candidates in the select list, granting all consequential benefits to the applicant;
- (iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application.

2. The applicant contended that the selection and appointment of the

respondents 4 to 6 contrary to the qualifications prescribed is illegal and arbitrary. The applicant had scored more than 45% of marks in each of the 3 papers as required in the notification. The respondents 4 to 6 have failed to obtain 45% of marks in Paper-B. Therefore, their selection and appointment as Postman is highly illegal and unjust. So is the denial of selection of the applicant, who is qualified.

3. In the reply statement, the official respondents submitted that the respondents 4 to 6 had failed to secure the minimum of 22.5 marks in Paper-B and thus were ineligible for being selected. The 2nd respondent had given direction to cancel the irregular selection of respondents 4 to 6 and to give appointment to the applicant. However, the respondents 4 and 6 have filed O.A. Nos. 395/2012 and 394/2012 respectively challenging the notice of termination issued by the 3rd respondent wherein this Tribunal had ordered to maintain the status quo. Therefore, further action in the matter has been kept in abeyance. Although the respondents 4 to 6 ranked on top, based on their total marks, the fact that they had failed in Paper-B was overlooked while conducting the selection. The respondents had conducted a detailed enquiry in the matter and based on the findings of the enquiry, had taken remedial action.

4. The applicants in O.A. Nos. 394/2012 and 395/2012 contended that it is arbitrary and illegal to terminate their service two years after the publication of the results showing them as passed in the qualifying examination, imparting them training, allowing them to complete the probation period and absorbing them into the department. They have not adopted any malpractice

in connection with the examination or publication of the results. The retrospective correction of any mistake committed by the respondents after a long period resulting the proposal of terminating the service of the applicants is unjust and illegal. The respondents could have published the marks obtained by the candidates at the proper time during the selection process itself. As the applicants were absorbed in the service they could not participate in the selection process conducted in the year 2010 and 2011 for filling the vacant posts of Postman/Mail Guard. They have no other source of income and their families will be put to difficulty , if their service is terminated.

5. The respondents in their reply statement submitted that none of the grounds raised by the applicants are tenable in the eyes of law. The applicants in O.A. No. 394/2012 and 395/2012 did not get the minimum qualifying marks in Paper-B. The competent authority has every right to review any irregular selection and rectify the error at any point of time. The gap of 2 years in detecting the error does not justify continuance of the applicants who were appointed to a post for which they were not eligible. It would be injustice towards an eligible candidate who had qualified in the examination by scoring 45% of marks in all the papers, if he is not given appointment. As long as the applicants have failed in the examination and are not eligible for being selected as Postman, the averments of the applicants have no relevance.

6. In the rejoinder statement, the applicants in O.A. Nos. 394/2012 and 395/2012 submitted that retrospective correction made by various authorities attracts the doctrine of estoppel. They relied on the judgements of the

Hon'ble Supreme Court in AIR 1990 SC 1075 and Hon'ble High Court of Kerala in WP(C) No. 22137/11 dated 25.05.2012 as at Annexures A-10 and A-11.

7. We have heard learned counsel for the parties in respective O.As and perused the records.

8. The M.A. No.178/12 filed for condonation of delay of 360 days in filing O.A.No. 118/2012 is allowed for the reason stated therein.

9. We do not find any malafide on the part of the applicants or respondents in these O.As. The crux of the matter is that the applicants in O.A. No. 394/2012 and 395/2012 / the respondents 4 to 6 in O.A. No. 118/2012 have failed to secure the minimum 45% of marks in Paper-B whereas the applicant in O.A. No.118/2012 has passed in all the 3 papers for selection to the post of Postman. Therefore, he stands qualified for appointment as Postman. Although the applicants in O.A. Nos. 394/2012 and 395/2012 had secured higher total marks, they are not qualified for appointment as Postman as they failed in Paper-B. In the eyes of law, they are not eligible for appointment to the posts now they hold. The applicant in O.A. No. 118/2012 is eligible to get appointment for which he is qualified. The respondents have the right to review irregular selections which happened inadvertently. The reliance of the applicants in O.A. Nos. 394/2012 and 395/2012 in the cited judicial pronouncements is misplaced for the reason that they do not deal with recruitment based on merit in the examination. We do not find any justification to continue the applicants in O.A.Nos. 394/2012 and

395/2012 / respondents 4 to 6 in O.A. No. 118/2012 in the posts to which they are not eligible to be appointed or to deny appointment to the eligible candidate. Therefore, O.A. No. 118/2012 is allowed and the respondents are directed to proceed further in accordance with law. Bereft of merit, O.A. Nos. 394/2012 and 395/2012 are dismissed. The interim stays granted in O.A. Nos. 394/2012 and 395/2012 are hereby vacated. No order as to costs.

(Dated, the 19th November, 2012)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.