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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/01153/2014

Friday, this the 28th day of September, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Vinod.N.R.,
MTS Muvattupuzha H.O. - 686 661.
Residing at Kizhakke Koyikkal House,
Parappuram P.O., Vallam Kadavu, Aluva – 683 575. ...Applicant

(By Advocate – Mr.Vishnu S Chempazhanthiyil)

v e r s u s

1. The Senior Superintendent of Post Offices,
Aluva Division, Aluva – 683 101.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.
3. The Post Master General,
Regional Office, Kochi – 682 016.
4. Union of India represented by the Director General & Secretary,
Department of Posts, Dak Bhavan,
New Delhi – 110 116. ...Respondents

(By Advocate – Mr.N.Anilkumar, Sr.PCGC [R])

This applications having been heard on 18th September 2018, the
Tribunal on 28th September 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The O.A is filed by Shri.Vinod.N.R aggrieved by Annexure A-3 order
of the 1st respondent dated 17.12.2014 by which he has been intimated that
consequent on revaluation of the question paper in Mathematics of the

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examination for MTS for the year 2013, one Smt.Nisha.M.R and Shri.Ajesh.U.J, who secured 81 marks respectively got selected and the applicant who secured 79 marks was proposed to be reverted back to the cadre of GDS. The reliefs sought in the O.A reads as follows :

1. Call for the records leading to the issue of Annexure A-3 and set aside Annexure A-3.
2. Declare that the proposal to revert the applicant to the cadre of GDS is illegal, arbitrary, unjust and unreasonable and the same violates Article 14 of the Constitution of India.
3. Direct the respondents not to revert the applicant to the cadre of GDS and permit the applicant to continue to work as MTS.
4. Direct the respondents to consider retaining the applicant as MTS by accommodating the applicant against available vacancies of MTS in Aluva Postal Division.
5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
6. Award the cost of these proceedings.

2. The brief facts of the case are as below :

The applicant, while working as GDS, had applied to take part in Limited Departmental Competitive Examination for filling up MTS post for the year 2013 and was declared selected for appointment against UR quota having secured 80 marks. Consequently he was posted to Muvattupuzha HO where he joined on 21.11.2013. While so, Annexure A-3 order was issued reverting him back to the cadre of GDS. It is submitted that the applicant with available documents filed Annexure A-6 representation dated 26.12.2014 highlighting, among other facts, that he was denied an opportunity to apply for the LDCE to fill up MTS post for the year 2014 as he had been already appointed and that revaluation was ordered based on a

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O.A wherein he is not a party. He maintained further that vacancies in the cadre of MTS exist and it would be possible to accommodate him in any of the available vacancies.

3. It is submitted that in an identical situation in O.A.No.568/2014 filed by one Smt.Divya Krishnan, this Tribunal had granted an interim order permitting her to continue. The said O.A is pending consideration along with O.A.No.174/2014.

4. As grounds learned counsel for the applicant cited Hon'ble Supreme Court judgments in **Commissioner of Police v. Gordhandas Bhanji, AIR 1952 SC 16**, **State of Gujarat & Anr. v. Krishna Cinema & Ots., AIR 1971 SC 1650** and **Anirudhsinhji Karansinhji Jadeja & Anr. v. State of Gujarat, AIR 1995 SC 2390** to press home the point that Annexure A-3 was issued without application of mind on the part of the 1st respondent, the Appointing Authority. The applicant has also cited decision of the Tribunal in O.A.No.1082/2012 for conferment of equitable relief and prays for accommodating in any unfilled vacancies in MTS cadre in Aluva Postal Division.

5. Per contra the respondents in their reply statement submitted that the revision in the mark list and change in the select list is a natural outcome of the re-evaluation of answer scripts in compliance with the orders of the Tribunal in O.A.No.174/2014. It is submitted that the applicant was appointed as MTS on temporary basis and the appointing authority is

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empowered to reconsider and cancel the appointment on valid grounds. Department has all powers to correct a mistake that was detected subsequently and such correction of mistakes are permitted in law. Respondents have cited the decision in O.A.No.716/2013 wherein it was ordered that *“when on account of any mistake of the official respondents a person has suffered a loss and in the process of rectifying the loss the same results in loss to another individual who had been enjoying an unintended benefit, if any, there is absolutely no point in justifying the wrong.”*

6. A rejoinder has been filed by the applicant reiterating the contentions raised in the O.A. He has also filed an M.A.No.180/905/2017 producing an order of this Tribunal dated 4.8.2015 in O.A.No.755/2012 and connected cases in an identical situation.

7. Heard Shri.Vishnu S Chempazhanthiyil, learned counsel for the applicant and Shri.N.Anilkumar, learned Sr.PCGC [R] for the respondents. Perused all available pleadings, documentary and oral. When the O.A was first heard on 1.1.2015, an order of status quo was issued as an interim measure. This continues till date.

8. The facts in the case are undisputed. A selection has been made by virtue of which the applicant had been deemed successful and was appointed as MTS. Subsequent to a re-evaluation of answer scripts in compliance with the order of this Tribunal in O.A.No.174/2014, it was established that another candidate was to take his place. This put the

applicant in the unenviable position of being terminated for no fault of his. He approached this Tribunal and through the order dated 1.1.2015 he is continuing as MTS. It is important to see that the examination had been conducted by the respondent Authority and that Authority is responsible for any fault in managing the selection process. It is a matter of regret that adequate care had not been bestowed in evaluating the examination paper and consequently the selection list had to be altered. But from the point of view of the applicant in the O.A despite the fact that he had no role in the process, he came to bear the consequences. Having been declared selected and posted he could not appear in the examination conducted in the subsequent years and now finds himself in an extremely difficult situation.

9. It is ironic that this is not the first occasion when the respondent Authority has had to retrace its steps and perhaps this is a fit issue to be settled by the departmental higher ups. However, for the limited purpose of this O.A it is the duty of everyone to see that the applicant's interests are protected. It is seen that in the order of this Bench in O.A.No.1082/2012 (Annexure A-7) a view had been taken in favour of the applicant in a near-identical situation. Also in Nisha N vs. Senior Superintendent of Post Office, Thrissur Division (OA No. 182 of 2011 with connected OA No. 576 of 2012) wherein, vide para 10 - 12, the Tribunal has held as under :-

"10. What has happened in this Original Application is that the difference of one mark has the impact of making or marring the career prospects of a GDS for whom promotional avenue is negligible. The applicant worked as Postman for almost an year before her service was terminated. She suffered the additional disadvantage of not participating

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in the two exams held in Dec 2009 and Aug 2010. It is seen from Annexure A-13, that in the postman recruitment register, there are altogether 3 backlog vacancies, 2 in PH and one in ST, in 2010. Respondents would have conducted the Postmen exam for the years 2011 and 2012 by now. It is quite possible to accommodate the applicant against one of the reserved unfilled vacancies by treating her as a selected candidate of 2009 and give weightage for her appointment as Postman from 28.03.2010 to 22.02.2011. The period of break can be regularised by grant of eligible leave including leave not due, or treat it as notional service.

11. In the result, the O.A is disposed of with a direction to R1 to consider the appointment of applicant as Postman against an unfilled vacancy of any year from 2009 to 2012 within a time line of two months.

O.A 576/12

12. In this case also as a consequence of implementation of the order of the Tribunal in O.A 512/10, the selection of the applicant as Postman was cancelled and his service terminated. He appeared for the examination held on 08.11.2009. He too was accommodated in his original post of GDS. On revaluation, R-5 got 7 marks more. It is seen from the Annexure A-1. select list that candidate in serial No.2 is serving in Army Postal Service. As further promotion to the grade of Postman is generally granted in APS, it is quite possible that the official continues to work in APS. To that extent his vacancy might not have been filled up. If so, R1 can consider whether the applicant can be accommodated against his vacancy without changing the date of appointment of the APS candidate as Postman or adjust the applicant against an unfilled reserved vacancy which arose from 2009 to 2012."

10. Again closer to the present an order had been issued in

O.A.No.755/2012 on 4.8.2015 in an identical case which reads as follows :

"6. In the facts and circumstances of the cases, we are of the view that the applicants were selected and appointed as Postmen through a due selection process in accordance with rules and procedures. There is no allegation of irregularity on the part of the applicants. There is no allegation that the applicants have misrepresented in any manner in order to secure the appointment. There is no case for the respondents that the applicants have secured less than the qualifying marks in the examination. The appointment in question has become a bone of contention only for the reason that the respondents had committed the mistake of excluding from the select list certain departmental candidates who happened to score more marks than the applicants. Considering the experience and seniority gained by the applicants as GDS MS/MD and their success in the selection process as declared by the respondents earlier, it would be too harsh to cancel their appointment as Postmen at the fag end of their service for no fault of theirs. The impugned orders except in the case of Sri Anil Kumar are, therefore, set aside. In the interests of justice, the respondents are directed to consider continuation of the applicants except Sri Anil Kumar as Postmen from the date of their posting, by creation of supernumerary posts, if necessary."

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11. We feel that a similar view is called for in this case as well. By the strength of the interim order issued by this Tribunal on 1.1.2015 the applicant has been continuing as MTS. He may be allowed to continue and his seniority in MTS category will apply from the date he has joined as a MTS. In case there is no vacancy remaining for the year when he was declared selected, a supernumerary post is to be created for the purpose so that the applicant is able to continue without any break in service.

12. The O.A stands disposed of as above. No costs.

(Dated this the 28th day of September 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/01153/2014

- 1. Annexure A1** – True copy of the Memo No.B1/8/Rectt/MTS/2013 dated 13.11.2013 issued by the 1st respondent.
 - 2. Annexure A2** – True copy of the Order No.PF/NRV dated 21.11.2013 issued by Post Master, Muvattupuzha.
 - 3. Annexure A3** – True copy of the Order No.B1/8/Rectt./MTS/2013 dated 17.12.2014 issued by the 1st respondent.
 - 4. Annexure A4** – True copy of the request dated 19.12.2014 to the 1st respondent.
 - 5. Annexure A5** – True copy of the information sought under RTI Act as per request dated 19.12.2014 to the 1st respondent.
 - 6. Annexure A6** – True copy of the reply dated 26.12.2014 to the 1st respondent.
 - 7. Annexure A7** – True copy of the order dated 7.8.2013 in O.A.No.1082/2012 of the Hon'ble Tribunal.
 - 8. Annexure A8** – True copy of the order dated 4.8.2015 in O.A.No.755/2012 and connected cases of the Hon'ble Tribunal.
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