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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00040/2018

Thursday, this the 30th day of August, 2018

C O R A M :

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

1. K. Ajeesh,
S/o. Sri Radhakrishnan,
GDS MD, Nannamukku South,
Tirur Division, Tirur 676 104.
Residing at Kandettil House,
Thuyyam, Edappal PO,
Malappuram District.
2. P. Sudeep,
S/o. Vasu,
GDS MD, Champrassery Post,
Manjeri Division, Manjeri 676 521.
Residing at Pariyarath House,
Champrassery PO, Malappuram District.

....Applicants

(By Advocate – Mr.Shafik.M.A.)

V e r s u s

1. Union of India, represented by the Secretary/
Director General Posts, Dak Bhavan,
New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle,
Thiruvananthapuram – 695 033.
3. The Superintendent of Post Offices,
Tirur Division, Tirur – 676 104.
4. The Superintendent of Post Offices,
Manjeri Division, Manjeri – 676 121.

....Respondents

(By Advocate Mrs.Mini R Menon,ACGSC)

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This Original Application having been heard on 14th August 2018, the Tribunal on 30th August 2018 delivered the following :

ORDER

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

O.A.No.180/40/2018 is filed by Shri.K.Ajeesh and Shri.P.Sudeep both Gramin Dak Sevak Mail Deliverers (GDS MD for short) working at Nannamukku South Post Office in Tirur Sub Division and Chembrasseri Branch Post Office in Manjeri Sub Division respectively under the administrative jurisdiction of the 3rd respondent. They are aggrieved by the action of the 3rd respondent in not relieving them to join the Army Postal Service as per their selection in the Limited Departmental Competitive Examination (LDCE for short) for the vacancies of the year 2015.

2. While working as GDS MD the applicants had come across Notification No.Rectt./13-2/2015 dated 19.8.2015 inviting applications from GDS to be selected as MTS for the vacancies of the year 2015. The said notification, copy of which is produced as Annexure A-3, laid down that a LDCE was to be conducted on 25.10.2015 for filling up (i) 25% by direct recruitment on the basis of the LDCE restricted to GDS of the division or unit and (ii) 25% by direct recruitment on the basis of LDCE restricted to GDS of the recruiting division or unit for joining Army Postal Service only as Sepoy/Packer. The applicants appeared for the written examination and came out successful as per Annexure A-4 and Annexure A-5. In February 2016 the Army Recruiting Office (ARO for short) sent call

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letters to the 3rd and 4th respondents dated 27.2.2016 requesting them to relieve the applicants and directing them to report before the ARO, Calicut on 10.3.2016 with required documents (Annexure A-7 and Annexure A-8).

3. While the applicants were readying themselves with necessary documents, the 3rd and 4th respondents refused to relieve them. It was understood that the respondents did not relieve the applicants on the ground that the vacancies allotted to the division had already been exhausted. The applicants argue that there is no specific allotment prescribed for the selection within 25% quota for the Army Postal Service nor is it necessary for MTS under the Recruitment Rules to be recruited *division wise* for the purpose of Army Postal Service. It is maintained in the O.A that in other divisions Army Postal Service vacancies were allotted disregarding specific division/unit quotas. In other words, for the purpose of recruitment of MTS, the consideration was made circle wise which enabled surplus qualified candidates from one division to be considered against other divisions in the same circle where there is a dearth of qualified candidates. In fact from the next year onwards, as is seen from the notification issued for the examination to be held on 31.7.2016, the 2nd respondent had inserted a note *“The merit list of qualified candidates will be prepared circle level. The qualified candidates will be allotted to divisions where vacancy exists and the concerned Divisional Head will initiate action for dispatching the candidates to the concerned ARO/BRO for medical check up.”* A true copy of the said notification is at Annexure A-10.

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4. Not seeing any favourable view taken by the 2nd respondent, the applicants approached this Tribunal in O.A.No.180/516/2016. The Tribunal was pleased to allow the O.A and as per order dated 25.10.2016 directed the respondents to depute the applicants to Army Postal Service within three weeks. A copy of the said order is at Annexure A-11. The respondents challenged the said order before the Hon'ble High Court, filing O.P.(CAT) No.311/2016. The Hon'ble High Court as per judgment dated 20.2.2017 interfered with the order of this Tribunal to the limited extent of finding fault with the direction issued to send the applicants and instead directed the respondents to consider invocation of power under Rule 6 in Annexure A-9 Recruitment Rules while examining the deputation of the applicants to APS. As no further action was taken by the respondents the applicants filed C.C.C.No.2050/2017 before the Hon'ble High Court whereupon the respondents issued Annexure A-1 order rejecting the request of the applicants and concluding that Rule 6 cannot be invoked.

5. As grounds the applicants argues that the action of the respondents in issuing Annexure A-1 order is illegal, arbitrary and against the clear direction of the Hon'ble High Court. It is mentioned that the respondents themselves have conducted the selection against Annexure A-10 notification in which the applicants had come out successful. The Hon'ble High Court had found fault with the orders of this Tribunal only to a limited extent as is seen from the part of the judgment quoted below :

“After considering the relevant provisions in Ext.A-9 rules and also the notification, we have already arrived at the conclusion that the said specific direction to send them on deputation cannot be maintained as it is against the notification. But, at the same time, taking into account the factual position obtained as above, we are of the view that it is a fit case where the petitioners be directed to consider the question of invocation of the power to relax the rules in the case of the applicants for the purpose of sending them on deputation taking into account the aforesaid peculiar situation obtained in this case and also the fact that in respect of the persons selected pursuant to the subsequent notification, they are being sent on deputation disregarding the division to which they belong in case of existence of vacancies in any division.”

6. The 2nd respondent when faced with a contempt proceeding initiated by the applicants responded with Annexure A-1 order which reads :

“ Now, in humble obedience to the directions of the Hon'ble High Court of Kerala, the competent authority has considered the case of the applicants. After taking into consideration the facts and circumstances of the case, the competent authority has found that the case of the applicant is not a fit case to invoke Rule 6 of the Recruitment Rules and it may not be possible to invoke the provision of “Power to Relax” (ie. Rule 6 of the Recruitment Rules). Accordingly, the said decision has been communicated to the undersigned vide Directorate letter No.A-34018/28-2017-DE dated 2.1.2018.”

7. There has been no detailed examination as to why the provisions under Rule 6 cannot be invoked. Instead the 2nd respondent occupies himself with irrelevant issues. The respondents could have no objection either in terms of the length of service or on any other ground to deny deputation to the applicants that they have earned by succeeding in the examination. The following reliefs are prayed for in the O.A :

1. To call for the records relating to Annexures A-1 to A-12 and to quash Annexure A-1 and Annexure A-2 being incorrect and illegal.
2. To declare that the applicants herein are entitled to be relieved from their respective divisions with immediate effect in order to join APS as per Annexure A-5 and Annexure A-6.
3. To issue appropriate direction or order which this Hon'ble Tribunal deems fit, just and proper in the circumstance of the case

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and

4. To award costs to the applicants.

8. The respondents have filed reply statement in which it is maintained that the direction contained in Hon'ble High Court has been appropriately examined. The direction was only “to **consider** the case of the applicants to send them on deputation to APS by invoking the power under Rule 6.” (emphasis supplied) The Hon'ble High Court was aware of the fact that the power to relax is vested in the Government. The Hon'ble High Court was also of the clear view that, as it stood, 25% of the vacancies are to be filled up by direct recruitment on the basis of the LDCE restricted to the GDS of the recruiting division or unit for joining Army Postal Service. Therefore it is argued that the claim of the applicants is restricted to the vacancies in the respective division alone. There was only one vacancy each in Tirur and Manjeri Divisions respectively for the year 2015 and Shri.Ajeesh.K, the first applicant was placed at No.3 in the order of merit under Tirur Division and Shri.Sudeep P, the second applicant was placed at the 4th position in Manjeri Division. Further, assailing the eligibility of the candidates, reply statement goes on to mention that first applicant had been unsuccessful in the examination conducted in 2016.

9. Shri.Shafik.M.A., learned counsel for the applicant and Smt.Mini.R.Menon, learned ACGSC for the respondents were heard. All pleadings, documentary and oral, are examined.

10. As detailed above this Tribunal as per Annexure A-11 order dated 25.10.2016 had directed that the applicants were to be deputed to Army Postal Service by adjusting them against unfilled vacancies of the neighbouring RMS CT Division. This essentially meant that the recruitment is to be considered on Circle basis and not on division or unit wise. The respondents took this up on appeal and obtained a limited relief as the Hon'ble High Court came to the conclusion that as per Recruitment Rules in force, the selection was indeed as per division and not circle wise. Hence if the vacancies unutilised in other division or unit were to be utilized in favour of successful candidates who had become eligible over and above their division/unit allotment, suitable amendment was required to the rules. The Hon'ble High Court thus directed the respondents to consider relaxing the stated conditions by invoking "power to relax" under Rule 6 of Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015.

11. Annexure A-1 order is in purported compliance with the said direction of the Hon'ble High Court. By this order 2nd respondent comes to the conclusion that *"Now, in humble obedience to the directions of the Hon'ble High Court of Kerala, the competent authority has considered the case of the applicants. After taking into consideration the facts and circumstances of the case, the competent authority has found that the case of the applicant is not a fit case to invoke Rule 6 of the Recruitment Rules and it may not be possible to invoke the provision of "Power to Relax" (ie. Rule 6 of the Recruitment Rules)." Thus they have expressed their inability*

to amend the rules. The primary reason for the same is that the power to relax any of the provisions exists only with respect to any *class* or *category* of persons and not to individuals. The said clause is reproduced below :

6. Power to Relax – Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

2nd respondent goes on to detail other facts such as the failure to qualify in subsequent examination etc. which are indeed irrelevant to the subject in dispute here.

12. On a detailed examination of the impugned order, the primary and indeed the only reason why the respondents are helpless to invoke Rule 6, viz., the power to relax, the consideration of which is directed by the Hon'ble High Court, is because the demand for relaxation has arisen only due to the requirement of two individuals and not “any class or category”. We feel that this is not a valid argument. In fact they stand for possibly a large number of candidates who have passed the test but who are put at disadvantage because the allotment for their particular division or unit had been exhausted even though in certain other division/units vacancies are going abegging. The two applicants are representatives of this class or category. Possibly mindful of this the respondents themselves have chosen to shift the basis to Circle level the very next year as per notification issued on 31.7.2016 available at Annexure A-10.

13. We conclude that the respondents have not been sincere in affirming that Rule 6 of the Recruitment Rules cannot be invoked. As has been discussed above there is merit in considering the selection on circle level basis in contrast to division/unit level. 2nd respondent clearly has not examined the issue in an objective and fair manner.

14. Under the circumstances we direct 2nd respondent to consider the case of the applicants with due regard to the directions of the Hon'ble High Court and take an objective stand within three weeks from the date of receipt of a copy of this order. The specific time limit is to be adhered to in view of the fact that considerable delay has already occurred with Annexure A-1 order itself being issued only on 4.1.2018 in pursuance to the direction of the Hon'ble High Court which was issued on 20.2.2017. The O.A stands disposed of accordingly. No costs.

(Dated this the 30th day of August 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00040/2018

1. **Annexure A1** – True copy of the order No. CO/LC/123/OA/16 dated 4.1.2018 issued by the 2nd respondent.
 2. **Annexure A2** – True copy of the letter No. A/34018/28/2017-DE dated 26.12.2017 issued on behalf of the 1st respondent.
 3. **Annexure A3** – True copy of the notification No. Rectt/13-2/2015 dated 19.8.2015 issued by the AD (Rectt) of the 1st respondent.
 4. **Annexure A4** – True copy of the memo No. B2/Rectt/MTS/2015 dated 12.11.2015 issued by the 2nd respondent.
 5. **Annexure A5** – True copy of the letter No. B2/MTS Exam/2015 dated 18.11.2015 issued by the 3rd respondent.
 6. **Annexure A6** – True copy of the letter No. D/4114/APS dated 28.12.2015 issued by the Army Recruitment Office.
 7. **Annexure A7** – True copy of the letter No. D/4114/APS dated 27.2.2016 issued by the Army Recruitment Office.
 8. **Annexure A8** – True copy of the letter No. D/4114/APS dated 27.2.2016 issued by the Army Recruitment Office.
 9. **Annexure A9** – True copy of the Recruitment Rules for the post of MTS.
 10. **Annexure A10** – True copy of the notification dated 14.6.2016 issued by the AD (Rectt) of the 2nd respondent.
 11. **Annexure A11** – True copy of the order dated 25.10.2016 of this Hon'ble Tribunal in OA 516/2016.
 12. **Annexure A12** – True copy of the judgment dated 20.2.2017 of the Hon'ble High Court in OP (CAT) No. 311/2016.
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