

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00762/2015

Monday, this the 24th day of December, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

C. Prabhakaran, S/o. Sri Kumaran,
 aged 49 years, Postman, Cherplacheri,
 Pin – 679 503, residing at Chaliyamparambil House,
 Kumaramputhur, Mannarkkad College PO,
 Palakkad District, Pin – 678 583.

..... **Applicant**

(By Advocate : Mr. O.V. Radhakrishnan, Sr.
Mrs. K. Radhamani Amma,
Mr. Antony Mukkath)

V e r s u s

1. Superintendent of Post Offices,
Ottappalam Division, Ottappalam – 679 101.
2. Postmaster General, Northern Region, Kozhikode.
3. Chief Postmaster General, Kerala Circle, Thiruvananthapuram.
4. Union of India, represented by its Secretary, Ministry of
Communications, New Delhi.

..... **Respondents**

(By Advocate : Mr. P.R. Sreejith, ACGSC)

This application having been heard on 12.12.2018 the Tribunal on
 24.12.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“i. to declare that the applicant is entitled to get promoted to the cadre of Postman retrospectively with effect from the date of his turn and entitlement against a vacancy of the year 2010 and to get full service benefits flowing from the date of his retrospective notional promotion;

ii. to call for the records leading to Annexure A-11 and to set aside the same;

iii. to issue appropriate direction or order directing the respondents to grant the applicant retrospective promotion to the cadre of Postman with effect from the date of occurrence vacancy in the year 2010 or at least with effect from Annexure A-9, the date on which the other selected candidates were appointed and to grant him full service benefits admissible to him consequent on his notional promotion from the date of his entitlement to the cadre of Postman against the vacancy of the year 2010 including due annual increments, arrears of pay, seniority etc. and to disburse the arrears of pay and allowance within a time frame that may be fixed by this Hon'ble Tribunal;

iv. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case;

and

v. to allow the above Original Application with costs to the applicant.”

2. The applicant is presently working as a Postman. He entered into service as GDS on 16.11.1996. While working as such a notification dated 18.5.2010 was issued for departmental examination for recruitment to the cadre of Postman/Mail Guard for filling up vacancies for the year 2010. Applicant applied for it. There were six vacancies for the Postman as per which 50% falls within the departmental candidates quota by limited departmental examination for GDS. The distribution of vacancies are two for GDS merit quota and 1 vacancy for seniority quota. Since nobody was found qualified the 3rd vacancy also fall in the GDS merit quota. In GDS merit quota one T.S. Shylaja who secured 142 marks out of 150 marks was selected to the 2nd vacancy under the OBC community. The applicant too is a OBC candidate. He has submitted an application under RTI Act, 2005 and it has been transpired that he had secured 133.5 marks in aggregate out of 150 marks. Applicant has also requested for furnishing the answer sheets of

the 5 candidates but the same was rejected stating that there is no public interest involved in it. Thereafter, on 18.12.2010 applicant again made a representation stating that his two question Nos. 3 & 7 are not valued by the examiner and requested for revaluing his answer sheet for Paper A. Initially it was submitted by the respondents that there is no provision for revaluation. Thereafter applicant submitted an appeal dated 3rd January, 2011 which was also rejected by the appellate authority under the RTI Act. He left with no other alternative approached this Tribunal by filing OA No. 722 of 2011 seeking direction to the respondents Nos. 1 to 4 to award proper marks in Paper A and after awarding correct marks he should be considered for the post of Postman/Mail Guard. This Tribunal has allowed the application and directed to re-value the answer sheet of the applicant and consider him for the Post of Postman/Mail Guard. The respondents went in appeal in OP (CAT) No. 49 of 2013 which was also dismissed. Thereafter the applicant was awarded total marks of 142.5 vide order dated 26.12.2014. Thus, applicant become rank No. 1 in the revised merit amongst the OBC candidates. He was appointed as Postman, Cherpalcheri in the existing vacancy as per order dated 14.1.2015 of the 1st respondent. Subsequently, a corrigendum dated 30.1.2015 was issued substituting the last line of Annexure A7 as from the month of February, 2015 onwards instead of from the month of January, 2011 onwards. The applicant further submitted that he has been assigned rank No. 1 in OBC category. Therefore, he is legally entitled to get appointment from the date on which rank No. 2 Smt. Sheeja P.K. was appointed as Postman. Accordingly, applicant made a representation dated 25.4.2018 requesting to grant him the vacancy of the

year 2010 with all consequential benefits. The said representation was rejected by the respondents vide Annexure A9 impugned order dated 20.5.2015. Lastly it is submitted by the applicant that he is entitled to get the vacancy of Postman for the year 2010 but he was appointed to the post only on 14th January, 2015. It is submitted that a similar issue was considered by this Tribunal in OA No. 620 of 2003. This Tribunal allowed the OA and ordered that the applicants therein shall be deemed to have been appointed as Postman with effect from 30.1.2003 and their pay shall be notionally fixed in the scale of Rs. 3050-4590/- while actual pay would be given from the date they assumed charge. The operative portion is quoted below:

“15. In the end, the OA succeeds. It is declared that the applicants 2 to 6 are deemed to have been appointed as Postman w.e.f. 30.1.2003 and their pay be fixed notionally in the scale of Rs. 3050-4590 while actual pay would be from the date they have assumed their charges. Their seniority shall also be accordingly fixed (of course, junior to those already appointed against the merit quota). The consequential relief viz. fixation of pay at higher stage on the date they have assumed the charges, payment of arrears of pay and allowances arising therefrom and annual increments, entitlement to pension as per the rules prevalent as on 30.1.2003 would also accrue. Respondents shall accordingly pass suitable orders for fixation of pay and allowances and make available the arrears of pay and allowances to the applicants 2 to 6 within a period of four months from the date of communication of this order.”

A Writ Petition No. 6555 of 2007 thereof has also been filed which was rejected by the Hon'ble High Court vide its judgment dated 30.9.2011. Thus, Annexure A12 order in the OA is conclusively binding on the respondents. In the backdrop of this he had approached this Tribunal with the above relief.

3. Notices were issued to the respondents. They entered appearance through Shri P.R. Sreejith, ACGSC learned counsel for respondents and filed a reply statement. The fact position narrated herein above is admitted

by the respondents except that the applicant is eligible to be appointed from 2.12.2010 when rank No. 2 candidate Smt. Sreeja P.K. was appointed. It is further submitted that the applicant was appointed in the cadre only on 14.1.2015 on the basis of the orders of this Tribunal dated 27.7.2012 and thereafter he is entitled for service rendered from the date of appointment. Applicant is not entitled to be awarded the services with retrospective effect as per the existing departmental rules. Lastly it is submitted that OA No. 620 of 2013 has not bearing in the present case and prayed for dismissal of the Original Application.

4. A rejoinder has been filed by the applicant reiterating the facts stated in the Original Application.

5. Heard the learned counsel appearing for the applicant and the learned counsel for respondents. Perused the records.

6. The question raised by the applicant in the present Original Application is whether the applicant is entitled to get his date of appointment retrospectively from 2.10.2010 i.e. from the date the 2nd rank candidate Smt.Sreeja P.K. has been appointed. As this Tribunal has seen that the applicant has been awarded 142.50 marks out of the total marks of 150 and declared 1st rank holder in the OBC category, applicant was nowhere at fault for not being selected on the post from the said date i.e. 2.10.2010. Actually it is the failure on the part of the Department by not carrying out the correct evaluation of his marks. Therefore, applicant was

forced to approach this Tribunal for redressal of his grievances and rightly this Tribunal has allowed his application and directed the respondents to reevaluate his answer sheets and if he is found fit he shall be considered for promotion to the post of Postman/Mail Guard. This process took time and the applicant was granted promotion in the year 2015 only. Initially the respondents had given him the promotion from 2011 which was later on cancelled vide corrigendum dated 30.1.2015 as from 2015 onwards. No explanation to that has been given by the respondents.

7. After detailed examination of the pleadings and rulings relied on by the parties concerned this Tribunal feels that the applicant has a right to get appointment from the date he has appeared in the examination and have been declared selected but because of the fault of the respondents in non-evaluating of his two questions he has been given lesser marks which is not a fault of the applicant. In other words the Department ought to have given him appointment from the date when it was due to him. Here the question of retrospective promotion does not arise for the simple reason that he was already qualified and selected on that particular date. During the course of arguments learned counsel for the respondents has relied on the judgment of the apex court in *Najithamol Y. & Ors. v. Soumya S.D. & Ors.* - (2016) 4 KHC 280 wherein it has been held that GDS is not a regular service in the Postal cadre and then it should not be counted for any purpose. The issue in the present case is quite different from the issue considered by the apex court in *Najithamol's* case (supra). Applicant is not claiming the benefits of his GDS service from a retrospective date. Here the applicant's two

questions were not evaluated and appropriate marks were not granted to him. It was only after a direction from this Tribunal the respondents awarded appropriate marks to the applicant i.e. 142.5 out of total marks of 150 and the applicant secured 1st position in the OBC category. The judgment relied on by the applicant in OA No. 620 of 2003 is not applicable to the facts and circumstances of this case. Thus, we feel that the Original Application deserves to be allowed.

8. Accordingly, the Original Application is allowed. We direct the respondents to grant promotion to the applicant as Postman/Mail Guard with effect from 2.10.2010 i.e. the date from which the 2nd rank holder Smt.Sreeja P.K. has been appointed. The applicant shall be entitled for all consequential benefits. The respondents shall comply with the order within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** - Photocopy of the notification NO. B2/3/Test/2010 dated 18.5.2010 of the 1st respondent.
- Annexure A2** - Photocopy of the memo No. B2/3/Test/2010 dated 10.11.2010 of the 1st respondent.
- Annexure A3** - Photocopy of the answer sheet along with the covering letter No. RTI/106 dated 3.12.2010 of the 1st respondent with English translation.
- Annexure A4** - Photocopy of the order dated 27.7.2012 in OA No. 722 of 2011 of this Hon'ble Tribunal.
- Annexure A5** - Photocopy of the judgment dated 17.3.2014 in OP (CAT) No. 49 of 2013 of the Hon'ble High Court of Kerala.
- Annexure A6** - Photocopy of the memo No. CAT/ OA 722/2011 dated 26.12.2014 of the 1st respondent.
- Annexure A7** - Photocopy of the order No. B2/3/GL Rectt of Postman dated 14.1.2015 of the 1st respondent.
- Annexure A8** - Photocopy of the corrigendum No. B2/3/GL Rectt of Postman dated 30.1.2015 of the 1st respondent.
- Annexure A9** - Photocopy of the order No. B2/3/GL Rectt of Postman dated 2.12.2010 of the 1st respondent.
- Annexure A10** - Photocopy of the representation dated 25.4.2015 of the applicant to the 1st respondent.
- Annexure A11** - Photocopy of the memo No. B2/3/GL Rect of Postman dated 20.5.2015 of the 1st respondent.
- Annexure A12** - Photocopy of the order dated 7.7.2006 in OA No. 620 of 2003 of the Hon'ble Tribunal.
- Annexure A13** - Photocopy of the order dated 17.6.2011 in OA

No. 102 of 2010 and connected cases of this Hon'ble Tribunal.

Annexure A14 - Photocopy of the order dated 5.4.2010 in OA No. 393 of 2009 of this Hon'ble Tribunal.

Annexure A15 - Photocopy of the judgment dated 20.8.2011 in OP (CAT) No. 988 of 2011 of this Hon'ble High Court of Kerala.

RESPONDENTS' ANNEXURES

Nil

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