

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

C. R.

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No.27987 of 2005 (S)

AGAINST THE ORDER IN OA 85/2005 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 16/8/2005

PETITIONER:

N.CHANDRAN PILLAI, S/O.KESAVAN PILLAI,
AGED 50 YEARS, GDSMD, MITHRAKKERY (PROVISIONAL
GROUP-D THIRUVALLA HEAD POST OFFICE), RESIDING
AT NEDUMKOLLIL, MITHRAKKERY.

BY ADVS. SRI.SAJITH KUMAR V.
SMT.G.R.LEKSHMI
SRI.JOHNSON T.JOHN

RESPONDENTS:

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1. UNION OF INDIA REPRESENTED BY THE
SECRETARY TO THE GOVERNMENT, MINISTRY OF
COMMUNICATIONS, NEW DELHI.
 2. THE CHIEF POST MASTER GENERAL,
DEPARTMENT OF POST, NEW DELHI.
 3. THE CHIEF POST MASTER GENERAL,
KERALA CIRCLE, TRIVANDRUM.
 4. THE SUPERINTENDENT OF POST OFFICES,
THIRUVALLA POSTAL DIVISION, MAVELIKKARA.

R1-R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:-

EXT.P1:- A TRUE COPY OF THE ORDER IN OA NO.85/2005 DATED 16/08/2005.

EXT.P2:- A TRUE COPY OF THE ORDER NO.BB/EXAM/POSTMAN/MAILGUARD/97 THIRUVALLA DATED 29/12/98 ISSUED BY THE 3RD RESPONDENT.

EXT.P3:- A TRUE COPY OF THE REPRESENTATION DT. 27/8/2001 ALONG WITH ENGLISH TRANSLATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P4:- A TRUE COPY OF THE REPRESENTATION DATED 7/12/01 SUBMITTED BY THE PETITIONER.

EXT.P5:- A TRUE COPY OF THE REPRESENTATION DATED 6/5/02 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P6:- A TRUE COPY OF THE REPRESENTATION DATED 18/11/2002 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P7:- A TRUE COPY OF THE ORDER NO.RECTT/42-1/2001/DIGS/11 DATED 24/3/03 ISSUED BY THE 2ND RESPONDENT.

EXT.P8:- A TRUE COPY OF THE ORDER DATED 4/11/03 IN OA 340/03 OF THE HONOURABLE CAT, ERNAKULAM BENCH.

EXT.P9:- A TRUE COPY OF THE JUDGMENT DATED 25/11/04 IN WPC 5634/04 OF THE HONOURABLE HIGH COURT.

EXT.P10:- A TRUE COPY OF THE ORDER NO.RECTT/42-1/2001/DIG.II.PT. DATED 7/1/05.

EXT.P11:- A TRUE COPY OF THE LIST-DATED 1/7/03 SHOWING BACKLOG OF VACANCIES RESERVED OF PH CANDIDATES, IN KERALA POSTAL DIVISION.

EXT.P12:- A TRUE COPY OF THE RECRUITMENT RULES DATED 3/7/02 ISSUED BY THE 3RD RESPONDENT ON BEHALF OF THE 1ST RESPONDENT.

EXT.P13:- A TRUE COPY OF THE RELEVANT PAGES OF THE OM NO.36035/5/84-ESTT (SCT) DATED 28/2/1986 ISSUED BY THE PERSONNEL AND TRAINING, GOVERNMENT OF INDIA.

EXT.P14:- A TRUE COPY OF THE ORDER NO.ST/80/SPO'S DATED 2/8/99 ISSUED BY THE PMG, CENTRAL REGION.

EXT.P15:- A TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED 19/11/03 FILED ON BEHALF OF THE RESPONDENTS IN OA 388/03.

EXT.P16:- A TRUE COPY OF THE PLEADINGS IN OA NO.85/05 AND THE REJOINDER IN OA 85/05.

EXT.P17:- A TRUE COPY OF THE STATEMENT FILED BY THE RESPONDENTS IN OA 85/05.

RESPONDENTS EXTs

EXT.R1:- TRUE COPY OF THE REQUEST OF SHRI K.K.THAMPI DT. 26/11/97 WITH ENGLISH TRANSLATION.

EXT.R1(a):- TRUE COPY OF THE LETTER OF THE ASST. DIRECTOR (RECTT) DEPT. OF POSTS, DATED 9/3/99.

EXT.R1(b):- TRUE COPY OF LETTER OF THE ASST. DIRECTOR (RECTT) DEPT. OF POSTS DT. 28/6/02.

EXT.R1(c):- TRUE COPY OF LETTER OF THE ASST. DIRECTOR (Rectt), DEPT. OF POSTS DT. 11/9/02.

EXT.R1(d):- TRUE COPY OF LETTER OF THE ASST. DIRECTOR (Rectt), DEPT. OF POSTS, DT. 10/3/04.

EXT.R1(e):- TRUE COPY OF LETTER OF THE ASST. DIRECTOR (Rectt), DEPT OF POSTS, DT. 22/3/05.

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**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

C. R.

W. P. (C) No.27987 of 2005

Dated this the 3rd day of August, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The short question that arises for consideration in this writ petition is as to whether the petitioner was entitled to appointment to the post of Postman in Thiruvalla Division in a vacancy reserved for physically handicapped persons (visually handicapped).

2. The petitioner was appointed as an Extra Departmental Delivery Agent at Mithrakary Post Office in Thiruvalla Division on 10-10-1984. He was subsequently promoted to Group-D post on 13-07-2004. He was promoted to the category of Postman in May, 2010 on the basis of the recommendation made by the Departmental Promotion Committee on 30-03-2010 in a vacancy earmarked for visually handicapped. While continuing so, the petitioner

retired from service on 31-10-2014. The main grievances highlighted by the petitioner are: (1) He was denied his due promotion to the post of Postman earmarked for physically handicapped persons in 1997 for the reason that he failed in the examination conducted by the Department for that purpose. If the policy of applying relaxed standards was followed in the case of the petitioner, he would have been promoted in 1997 itself to the post of Postman earmarked for physically handicapped persons. (2) He came to the Department only on his appointment as Group-D on 13-07-2004 and retired from the Department as a Postman on 31-10-2014. Since he was not in the service of the Department prior to 01-01-2004, he is not entitled to the statutory pension as a retired employee from the Department.

3. After he was found not qualified in the written examination conducted by the Department for selection to the post of Postman in the reserved post in 2007, he pursued the matter claiming promotion to that vacancy by

submitting several representations one after another before the competent Departmental authorities pointing out his entitlement including the fact that he was entitled to relaxed standards for the purpose of selection in 1997. But, those representations were not considered by the Departmental authorities favourably. Therefore, he has approached the Central Administrative Tribunal (CAT) by filing O.A. No.772 of 2002 challenging the stand taken by the Department and claiming promotion to the vacancy that was available in 1997. That original application was disposed of permitting the petitioner to submit representation to the respondents and directing them to dispose of the same within a time frame. The establishment did not allow the claim raised by the petitioner in the representation so preferred by him. Again the petitioner approached the CAT by filing O.A. No.340 of 2003 which culminated in Ext.P8 order dated 04-11-2003. In that order, the learned Tribunal observed as follows:

“3. We have heard learned counsel on either side

and have gone through the pleadings and materials placed on record. Learned counsel for the applicant argued that it is evident from Annexure R-1 that Postman and Village Postman are both in Group D category and they are in identical pay scale. He also invited our attention to Serial No.8 in page 657 of Annexure R-1 wherein Village Postman has been identified as a post which can be filled by partially blind. It is admitted in the pleadings that there was a post of Postman in Thiruvalla Division reserved for visually handicapped which was carried forward from 1994 to recruitment year 1998. There is no case for respondents that any person who is visually handicapped has been appointed against that post after 1998. From the vacancy position as on date produced by the counsel for the respondents for our perusal, we find that there is a backlog of one vacancy for being filled by visually handicapped. We did not find any valid contention on the part of the respondents either in the reply statement or in the submissions made now as to why the applicant is not considered for appointment against that reserved vacancy which is still available. Under these circumstances, we are of the considered view that the applicant has to be considered for appointment as Postman/Village Postman against the carried forward visually handicapped reserved vacancy still existing in Thiruvalla Division.”

Therefore, the respondents were directed to consider the applicant for appointment as Postman/Village Postman against the visually handicapped reserved posts and issue orders accordingly within a period of three months from the

date of receipt of a copy of that order. The establishment challenged that order before this Court by filing W.P.(C) No.5634 of 2004. When that writ petition came up for admission, this Court passed an interim order directing the establishment to appoint the petitioner to a Group-D post. Accordingly, he was given appointment to Group-D on 13-07-2004. In the final judgment passed by this Court in that writ petition, a direction was issued as follows:

“..... We, therefore, leave it to the department to take a sympathetic view in the case of the first respondent for appointment to the post of Postman, if it is otherwise in order taking note of his service already rendered within a period of one month from the date of receipt of a copy of this judgment.”

4. Even thereafter, the establishment turned down the petitioner's claim for appointment as Postman. Aggrieved by the stand so taken by the establishment, the petitioner has preferred O.A. No.85 of 2005 before the CAT. That O.A. was disposed of by the learned Tribunal as per order dated 16-08-2005 in which it was observed that the applicant appeared in the examination held in 1997 and 1998, but did

not qualify. Also issued a direction in that order as follows:

“8. In the conspectus of facts and circumstances and considering the fact that this Tribunal categorically found in O.A.340/2003 that the carried forward vacancy for visually handicapped is still existing in Thiruvalla Division and the post of Postman has been identified as a post which can be filled by partially blind and the applicant having completed 15 years of service is eligible to be considered for the post of Postman under the 25% quota on the basis of seniority, we direct that the applicant may be considered for the said quota in the next available opportunity along with other eligible candidates in the said quota in accordance with law.”

Aggrieved by the fact that the learned Tribunal did not accept the case of the petitioner that he was entitled to appointment in 1997 to the post of Postman earmarked for visually handicapped persons applying the relaxed standards, he has preferred this writ petition challenging the order passed by the learned Tribunal.

5. Heard the learned counsel appearing for the petitioner and the learned Assistant Solicitor General appearing for the respondents.

6. Learned counsel for the petitioner submits that the

relaxed standards as applicable to Scheduled Castes and Scheduled Tribes candidates as per O.M. No.1/1/70-Esst. (SCT), dated 25-07-1970 for direct recruitment were made applicable to appointment to the posts earmarked for physically handicapped persons by O.M. No.14016/1/85-Estt. (SCT), dated 04-09-1985. Learned counsel for the petitioner made available a copy of that O.M. for our perusal. It can be seen from this O.M. that the physically handicapped persons are also entitled to relaxed standards as per this O.M. in the matter of appointment.

7. Learned Assistant Solicitor General submits that the said O.M. is applicable only to candidates belonging to the Department and not to Extra Departmental Delivery Agents. This submission appears to be incorrect. Learned counsel for the petitioner made available a copy of the letter dated 13-06-2011 issued by the Assistant Director (Recruitment), Department of Posts, Office of the Chief Postmaster General, Kerala Circle, Thiruvananthapuram, in respect of selection of physically handicapped persons against reserved vacancies

by applying relaxed standards. This letter is pertaining to declaration of review results of physically handicapped candidates who appeared in the Special Postman Examinations held on 06-09-2009 for filling up of backlog reserved vacancies for the period 1996-2005. The first sentence in this letter reads as follows:

“In accordance with the instructions contained in the DO PT O.M. No.14016/1/85-Estt (SCT) dated 04-09-1985 and Dte's letter No.9-01/2010-SCT (PH) dated 02-02-2010, the prescribed Committee reviewed the results of the Gramin Dak Sewaks candidates under PH category who appeared in the Special Postman Examination held on 06-09-2009, for promotion against unfilled vacancies by further relaxation of qualifying standards and found that the undermentioned Gramin Dak Sewaks are suitable for promotion to the cadre of Postman.”

Names of six candidates are included in this letter as selected by applying the relaxed standards. Gramin Dak Sewaks (DGS) is the present designation of the erstwhile Extra Departmental Delivery Agents. The order dated 04-09-1985 referred to in this communication is the one which was made applicable for the appointment of physically

handicapped persons to the posts earmarked by following relaxed standards as applicable to Scheduled Castes and Scheduled Tribes candidates in the matter of selection and appointment. In the light of this official letter, the argument advanced by the learned Assistant Solicitor General cannot be countenanced. Here, the O.M. dated 04-09-1985 has been followed in the case of GDS candidates and not the candidates belonging to the Department. Therefore, the contention so raised on behalf of the establishment is rejected.

8. The establishment raised another contention that the petitioner came to the Department only on 13-07-2004 in a Group-D post. He became eligible for considering appointment to the post of Postman in Group-C only on completion of three years' service in Group-D. Therefore, he qualified himself for the relaxed standards only after 13-07-2007 and, accordingly, he was selected in 2010 for the post of Postman applying the relaxed standards and given appointment as such in May, 2010. This argument also

cannot be accepted. One thing is quite clear. If the relaxed standards were applied to the case of the petitioner, he was entitled to be appointed as Postman. That the Department has done in 2010. If they have applied the relaxed standards, on the strength of O.M. dated 04-09-1985, in 1997 itself, the petitioner would have been selected and appointed in 1997 itself. But, ignoring the law applicable to such selection, all along, the petitioner was kept away by the Department without giving him appointment as Postman which was due to him in 1997. Such an illegality has to be corrected.

9. This is a case which has a chequered career. A visually handicapped person was approaching Departmental authorities in the hierarchy of the Department of Posts raising his true grievances quite a long time. Time and again, he had to approach the CAT as well as this Court for redressing his grievances. All along, even though the Tribunal as well as this Court directed to consider his genuine grievances in a sympathetic and legal way, the

Department has not cared to do so. In the light of the facts already adverted to, the petitioner should have been selected and appointed to the post of Postman earmarked for visually handicapped persons in 1997 itself in Thiruvalla Division. Since the establishment did not follow the law including the relaxed standards applicable to the petitioner, he was not given that appointment in 1997. Now the petitioner has retired from service on 31-10-2014 without the eligibility for receiving pension due to the inaction on the part of the establishment. The establishment takes the stand that he was not in the service of the Department prior to 01-01-2004 and hence, he is not entitled to the statutory pension. These injustices are to be corrected.

10. The petitioner is entitled to notional promotion as Postman from 1997 in a vacancy earmarked for visually handicapped persons in Thiruvalla Division. There cannot be any dispute with regard to the fact that the petitioner has not served as a Postman from 1997 to 2010. Therefore, the question of granting back wages from 1997 as if he was

promoted and worked as Postman from 1997 does not arise in this case. It is made clear that he will not be entitled to any pay and allowances as a Postman from 1997. But, he is entitled to reckon his service with continuity as a Postman from 1997 and it shall be taken into account by the establishment for fixing his retirement benefits including the statutory pension under the Central Civil Services (Pension) Rules, 1972.

In the result, it is declared that the petitioner is entitled to notional promotion from 1997 to the post of Postman earmarked for physically handicapped persons in Thiruvalla Division. He will not be entitled to any arrears of pay and allowances on the strength of such notional promotion. But, he will be entitled to continuity of service as a Postman from 1997 which shall be counted for his retirement benefits including statutory pension under the Central Civil Services (Pension) Rules, 1972. The concerned respondent among the respondents is directed to effect such notional promotion of the petitioner to the post of Postman from 1997 by issuing

formal orders and revise his retirement benefits on that basis and grant statutory pension under the Central Civil Services (Pension) Rules, 1972, as early as possible and, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

This writ petition is allowed as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE