

**Union of India, vs Reshmi K,**

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**SooperKanoon Citation : [sooperkanoon.com/1319640](https://sooperkanoon.com/1319640)**

**Court : Kerala**

**Decided On : May-31-2024**

**Judge : Honourable Mr. Justice Amit Rawal,Honourable Mr. Justice Easwaran S.**

**Appeal No. : OP (CAT)/62/2024**

**Appellant : Union of India,**

**Respondent : Reshmi K,**

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR. JUSTICE EASWARAN S. FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 AGAINST THE ORDER/JUDGMENT DATED 16.10.2023 IN OA NO.590 OF 2021 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH PETITIONERS/RESPONDENTS: 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, DEPARTMENT OF POSTS, MINISTRY OF COMMUNICATIONS, GOVERNMENT OF INDIA, NEW DELHI, PIN - 110001 2 THE CHIEF POSTMASTER GENERAL, KERALA CIRCLE, TRIVANDRUM, PIN - 695033 3 THE SENIOR SUPERINTENDENT OF POST OFFICES,

MAVELIKKARA DIVISION, ALAPPUZHA, PIN - 690101 BY ADV  
SHRI.T.V.VINU, CGC RESPONDENT/APPLICANT:

RESHMI K, D/O. RADHAKRISHNAN, GDS MD, ABPM, NJAKKANAL  
P.O., KAYAMKULAM SUB DIVISION, PRESENTLY OFFICIATING AS  
POSTMAN, PUTHUPALLY, KAYAMKULAM POSTAL SUB DIVISION.,  
DEPARTMENT OF POSTS, RESIDING AT ERICKAL THARAYIL,  
KOIPPALLYKARAZHMA, OLAKETTIAMPALAM, 690 510.,  
MAVELLIKARA, PERUNGALA, ALAPPUZHA, KERALA, PIN - 690510  
BY ADVS. SAJITH KUMAR V. H.KIRAN VIVEK A.V. AMMU M.  
SREEHARI V.S. SHERIN DAVIS THIS OP (CAT) HAVING BEEN  
FINALLY HEARD ON 31.05.2024,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:  
AMIT RAWAL & EASWARAN S., JJ. -----  
----- Dated this the 31st day of May, 2024

## **JUDGMENT**

### **Easwaran, J.**

Respondents 1 to 3 in O.A.No.590/2021 are the petitioners before this Court. The application was filed by the applicant who was an aspirant to the post of Gramin Dak Sevak-Mail Deliverer (GDS-MD). By Annexure-A1 notification dated 4.10.2021, applications were invited by the petitioners for selection to the post of Gramin Dak Sevak. The applicant, who

was working as a Postman at Puthuppally SO under Kayamkulam Sub Division and who joined service on 15.5.2015 as per appointment memo dated 24.11.2015, had applied for the post. However, her application was not considered and she was not allowed to take part in the examination, which prompted her to approach the Central Administrative Tribunal

by way of Ext.P1 Application. The challenge in the Original Application was to the specific clause in Annexures-A1 and A5, wherein there was an additional

prescription of qualification that the candidate should have studied Malayalam at least up to 10th Standard. Therefore, the following reliefs were sought for: (i) To quash clause (ii)c of the Annexure A1 and clause

(ii) of column 7 in Annexure A5.

(ii) To declare that clause (ii) of column 7 in Annexure A5

insisting that a candidate should have studied local language atleast up to 10th standard is a condition in violation of Article 14 to 16 and Article 30 of the Constitution of India.

(iii) To direct the respondents to permit the applicant to take part in the Departmental examination pursuant to Annexure A1 Notification and to grant her all consequential benefits.

(iv) Alternatively direct the Respondents to implement the conditions as regards local language only prospectively against the employees who were recruited subsequently to Annexure A5. The respondents (petitioners herein) appeared and filed their

reply statement raising maintainability of the Original Application. It was contended that none of the grounds raised by the applicant was sustainable under law and that there was no violation of any of the provisions of the Constitution, especially Article 16. It was specifically pointed out that in

terms of the interim order passed by the Tribunal, the candidate was provisionally permitted to appear for competitive examination. The prescription of qualification for appointment is within the domain of the Department and therefore, that cannot be subjected to judicial review. It was with an intention to ensure betterment of service that the Rules were consciously reviewed and modified in every organisation after assessing the

nature of job. The conditions/rules for job were framed/modified on the basis of nature of work aiming a constant improvement in service and since the work carried out by a postman is unique in nature, special clause is essential for

recruitment to this cadre.

2. The Tribunal considered the issue along with a

**batch of other Original Applications and came to the conclusion**

that there is violation of Articles 15(1) and 16 of the Constitution of India and that is discrimination made by the Department in the matter of issuance of the notification, wherein clause (ii) under column 7 has been issued with an intention to restrict the candidate from competing for open selection and accordingly by the order impugned quashed clause 7(iii) of the Recruitment Rules dated 20.9.2018 and also clause 3(ii)(c) of the notification dated 26.8.2019.

3. In the above premise, Union of India is before us in a petition under Article 227 of the Constitution of India.

4. We have heard Sri.T.V.Vinu, learned Central Government Counsel, and Sri.Sajith Kumar V., learned counsel appearing for the respondent/applicant.

5. While the Original Petition was admitted, this Court passed an interim order staying the operation of the impugned

**order on condition that the petitioners shall not make**

appointment without orders from this Court.

6. Sri.T.V.Vinu, learned Central Government Counsel, appearing for the petitioners contend that there is no rationale behind the orders passed by the Central Administrative

Tribunal, Ernakulam Bench. The Tribunal erred egregiously in allowing the Original Application, especially when the present notification, Annexure-A5, has been issued not on the basis of 2018 Rules, whereas it was issued on the basis of 2021 Rules. He would further contend that 2018 Recruitment Rules were amended on 5.3.2020 and later only Annexure-A5 notification was issued. Annexure-A1 notification dated 4.10.2021 though challenged before the Tribunal was not upheld

by the Tribunal, whereas it set aside a notification which was not in issue at all

before the Tribunal. He would further contend that the discrimination as found by the Tribunal in terms of Article 16 of the Constitution of India was misplaced and the element of discrimination alleged on the basis of language was not a point to be agitated by the applicant since the same is not provided under Article 16 of the Constitution of India. He further pointed out that it was his specific intention that the knowledge of local language of the concerned State/Union Territory, that the Department introduced the said restriction in Annexure-A5

notification. Since the selection process is for a particular zone/State, it cannot be said that the appointment is on All India Basis, therefore, the restriction imposed was reasonable and was not open for judicial scrutiny at the hands of the Tribunal.

7. On the other hand, Sri.Sajith Kumar, learned counsel

appearing for the respondent/applicant would contend that the Tribunal was justified in interfering with the restrictive clauses in the impugned notification and the Rules. According to him, the Rules are discriminatory since a candidate, who had studied Malayalam up to 9th Standard and for some reason had not chosen to continue with the subject in the 10 th Standard and is also locally conversant with the language, is not allowed to participate in the examination because of the restrictive clause would be arbitrary. Though the power of the Union of India to

prescribe qualification or restrict the appointment to a particular class is not disputed by Sri.Sajith Kumar, it is his specific case that such restriction has to find some rationale in

**order to pass the test of reasonableness.**

8. We have considered the rival submissions raised across the bar.

9. A perusal of the order impugned reveals that the Tribunal had considered the principles laid down by the Supreme Court in V.N.Sunanda Reddy & Ors. v. State of Andhra Pradesh & Ors. [AIR 1995 SC 914]. We are afraid that the reliance placed by the Tribunal on the aforesaid

## **judgment was completely misplaced. The Tribunal misdirected**

itself to the entire issue at large. The facts of the case in V.N.Sunanda Reddy (supra) was entirely different and had no relevance to the facts in the present case. In V.N.Sunanda Reddy (supra), the Supreme Court was considering a case where weightage was given in a selection to a post to those

persons who had studied in Telugu Medium school. On an analysis of the various provisions of the Constitution of India, the Supreme Court came to the conclusion that the said weightage of giving additional marks to persons who had passed in Telugu Medium does not stand the test of Articles 14 and 16 of the Constitution of India and accordingly, had declared the said weightage as invalid.

10. On an analysis of the law laid by the Supreme Court, we fail to see as to how the Central Administrative Tribunal could have applied the principles laid down in the above

## **judgment to the case on hand. A close reading of the order**

impugned would show that the Tribunal held in the absence of any satisfactory material to satisfy that there were valid reasons for introducing such clause in the present Rules and the fact that the anterior and posterior Recruitment Rules did not contain such Rules clearly shows that the provisions were arbitrarily introduced and not supported by any justifiable reasons. We do not subscribe to the said finding, especially in view of the fact that the restriction which is stated to have been caused as per Annexure-A1 notification and Annexure-A5 Rules, does stand the test of Article 16 of the Constitution of India. Therefore, the discrimination based on the language cannot be a ground to test the validity of a Recruitment Rules.

11. Still further, it is pertinent to note that Annexure-A5

Recruitment Rules though challenged was not interfered with. What was interfered with was the posterior rules, namely Recruitment Rules of 2018 and the notification issued on this behalf. The notification which was interfered by the

Tribunal was not applicable to the case of the applicant, since she admittedly did not apply pursuant to such notification.

12. Even assuming for a moment that the reasoning adopted by the Tribunal was a plausible one, even then, we are not persuaded to hold that merely because such restriction was

not contained in the anterior and posterior Rules, the Recruitment Rules could be challenged on the ground of inequality under Article 16 of the Constitution of India.

13. It is advantageous to point out that in the revised

Recruitment Rules, which was issued on 30.8.2023, there is a separate prescription by which the person who does not possess the knowledge of a local language had applied for appointment, would be required to pass a test in the local language to be conducted in the manner as decided by the Postal circle concerned and passing of such local language test shall be a pre-condition for completion of probation. We have referred to the aforesaid Rules only to drive home the point that the requirement of knowledge of local language was always in the mind of the petitioners, either expressly under the Recruitment Rules, which would disable the candidate from applying or though not expressly provided under the Recruitment Rules,

which would enable such candidate to apply, such candidates are required to pass test in the local language as a pre-condition for passing their probation. Therefore, the requirement of having a knowledge in the local language was always in minds of the petitioners/respondents, insofar as selection to the post of GDS-MD was concerned.

14. Having analysed the legal position as above, we would now come to the specific qualification of the applicant as

could be seen from a reading of the impugned order. It is pertinent to note that the Tribunal had not called for the application and also the decision which made the minds of the authorities from rejecting the application of the applicant. Be that as it may, from the undisputed facts as could be seen from the order impugned, it is

clear that the applicant had studied Malayalam only up to 9th standard and whereas she had opted for Sanskrit for the 10th Standard thereby making her ineligible for applying to the post pursuant to Annexure-A1 notification. Therefore, we are clear in mind that the applicant was not eligible for applying to the post and accordingly, the Tribunal

ought not to have granted the interim order allowing the candidate to appear provisionally for the examination.

### **The result of the above discussion leads to a conclusion**

that the petitioners are entitled to succeed. Accordingly, the Original Petition is allowed. Ext.P3 order dated 16.10.2023 in O.A.No.590/2021 of the Central Administrative Tribunal is set

### **aside. The restriction placed by this Court in its interim order**

dated 5.4.2024 is lifted. The Original Application would stand accordingly dismissed. No order as to costs.

Sd/- AMIT RAWAL JUDGE Sd/- EASWARAN S. JUDGE jg APPENDIX OF OP (CAT) 62/2024 PETITIONER ANNEXURES Annexure A1 A TRUE COPY OF THE NOTIFICATION NO. RECTT/12- RESPONDENT Annexure A5 A TRUE COPY OF THE RECRUITMENT RULES TO THE POST OF POSTMAN ISSUED AS PER GSR 899E DATED 20.09.2018 BY THE 1ST RESPONDENT Annexure A2 A TRUE COPY OF THE ORDER OF APPOINTMENT MEMO NO. GDSMD-1/NJAKKANAL PO DATED 24.11.2015 ISSUED BY THE INSPECTOR OF POSTS, KAYAMKULAM SUB DIVISION Annexure A3 A TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE OF THE APPLICANT DATED 08/05/2009 ISSUED BY THE GOVERNMENT OF KERALA Annexure A4 A TRUE COPY OF THE GRADUATION CERTIFICATE NO. VICE CHANCELLOR, UNIVERSITY OF KERALA Annexure A6 A TRUE COPY OF THE LETTER NO. GD-GR/1/2021-ACUM- CNH-428 DATED 04.10.2021 ISSUED FROM THE O/O. THE COMMISSIONER FOR LINGUISTIC MINORITIES IN INDIA Annexure R1 TRUE COPY OF THE DEPARTMENT OF POSTS POSTMAN AND MAIL GUARD

(GROUP 'C' POST) RECRUITMENT (AMENDMENT) RULES, 2020 DATED 05.03.2020 Exhibit P1 A TRUE COPY OF THE ORIGINAL APPLICATION DATED 01.11.2021 IN O.A. NO. 180/00590/2021 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH BY THE RESPONDENT HEREIN Exhibit P2 A TRUE COPY OF THE REPLY STATEMENT DATED 07.02.2022 IN O.A. NO. 180/00590/2021, FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH BY THE RESPONDENTS HEREIN Exhibit P3 A TRUE COPY OF THE ORDER DATED 16.10.2023 IN O.A. NO. 180/00590/2021, ISSUED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH Exhibit P4 THE TRUE COPY OF THE LETTER NO. 09-03/2017-SPB- I, DATED 04.12.2017, OF THE DIRECTOR (SPN), DEPARTMENT OF POSTS ALONG WITH THE FINAL REPORT THE COMMITTEE FOR REVIEWING THE RECRUITMENT RULES OF MULTI-TASKING STAFF, POSTMAN, MAIL GUARD, POSTAL ASSISTANT AND SORTING ASSISTANT

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