

(2021) 06 CAT CK 0006

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00721 Of 2016

Sunitha K.A.

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 01-06-2021

Acts Referred:

Citation : (2021) 06 CAT CK 0006

Hon'ble Judges : P. Madhavan, Member (J); K.V .Eapen, Member (A)

Bench : Division Bench

Advocate : V. Sajith Kumar, Brijesh A.S

Final Decision : Allowed

Judgement

P. Madhavan, Member J

1. The OA is filed seeking the following reliefs: ""(i) To quash Annexure A1.

(ii) To direct the respondents to consider the claim of application to notional appointment of MTS with effect from 13.11.2013 and to grant her the benefits of notional appointment with increments and arrears of pay.

(iii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and

(iv) Grant the costs of this Original Application.

2. According to the applicant the respondents had notified for a limited departmental competitive examination for the post of MTS from the GDS

agents who have completed one year of service as on 1.1.2013. As per the scheme and syllabus, four papers have to be cleared each carrying 23

marks. The notification is produced as Annexure A3 in this OA. The respondents had released the mark sheet on 13.11.2013 and as per the said mark

list the applicant as well as Smt. Divya Krishnan had secured 76 marks each. Smt. Divya Krishnan was selected on the basis of her age. According to

the applicant Smt. Divya Krishnan had got one mark mistakenly for a wrong answer and she got appointment overlooking the merit of the applicant.

According to the applicant in Part-B marks were given to wrong entry and at the same time her right entry was not given marks. The applicant had

submitted a representation seeking a proper evaluation of answer scripts. Her representation was produced as Annexure A5. Thereafter she filed OA

No. 174 of 2014 seeking to quash the appointment given to Smt. Divya Krishnan. The official respondents had filed a statement in the above OA

admitting the mistake and stating willingness to correct the same and appoint the applicant. A copy of the statement was produced as Annexure A6.

In the meanwhile the said Smt. Divya Krishnan had filed OA No. 568 of 2014 and the same was considered and dismissed by the Tribunal.

Accordingly, the official respondents had given an order of appointment to the applicant on 1.9.2015 and it is produced as Annexure A7. She was

given appointment only with effect from 1.9.2015. She immediately gave a representation to 3rd respondent seeking a notional appointment with effect

from 18.11.2013, the date of appointment of Smt. Divya Krishnan. She also pointed out that similar treatment was given to Smt. Rajimol of Thiruvalla

Postal Division. Her representation is produced as Annexure A8.

3. According to the applicant she is eligible to get appointment with effect from 18.11.2013 on which date Smt. Divya Krishnan was given

appointment. According to her the delay occurred only because of the mistakes committed by the respondents Department and she cannot be blamed

for that. Therefore, the respondents are liable to grant her notional appointment with effect from the date of her entitlement.

4. The official respondents entered appearance and filed a detailed reply. They admitted that the applicant was working as GDS BPM, Kannady in

Alappuzha Division and the applicant appeared for the LDCE examination for the post of MTS for the year 2013. Based on the marks obtained in the

examination and as per the recommendation of the DPC held on 11.11.2013 one Smt. Divya Krishnan who was working as GDS BPM,

Pandarakulam in Alappuzha Division was selected for direct recruitment to the cadre of Multi Tasking Staff (MTS). She joined the post on

18.11.2013. Against the appointment of the said Smt. Divya Krishnan, the applicant has filed OA No. 174 of 2014 alleging that the marks had been

granted to a wrong answer by setting a wrong answer key for denying appointment to her. The applicant claimed to be the meritorious candidate. The

grievance of the applicant is against the illegality in framing the answer key. Since Smt. Divya Krishnan was senior in the GDS cadre she was given

appointment as MTS. According to the respondents the applicant in this OA claims that she had written the correct answer to question No. 6 (set No.

1) in the examination. The competent authority had considered her representation and examined the same with the result. It was found that question

No. 6 in set No. 1 (Mathematics) was not given marks. On verification it was found that there had occurred a mistake in the key of the question No. 6

in set No. 1 and question No. 1 in set No. 2 and accordingly the revised mark list was prepared. Smt. Sunitha K.A., the applicant have scored a total

of 77 marks and she was meritorious and she became eligible for appointment against the notified vacancy. The Tribunal in OA No. 174 of 2014 filed

by the applicant had directed the respondents to appoint her as MTS. In compliance of the said order the applicant was appointed as MTS with effect

from 1.9.2015 after reverting Smt. Divya Krishnan who was mistakenly appointed as MTS. The applicant is appointed only with effect from 2.9.2015

and her claim for notional appointment was not acceded to on the ground that principle of 'no work no pay' had to be applied in her case and her

appointment cannot be pre-poned. So the claim of the applicant for notional appointment with effect from 18.11.2013 was not allowed.

5. The applicant has filed a rejoinder in accordance with her earlier statement in the OA and contended that the Department has earlier extended

notional appointment to one Smt. M Rajimol of Thiruvalla Division and the said order was produced as Annexure A9.

6. The main contention put forward by the applicant is that her appointment was delayed only because of the mistake committed by the official

respondents in properly evaluating the answer papers and she cannot be denied the benefit of appointment from the eligible date onwards. According

to the applicant one Smt. Divya Krishnan was given appointment erroneously with effect from 13.11.2013 and she was reverted as she was found not

eligible to the post. The revaluation conducted revealed that the applicant was the meritorious candidate as she secured more marks than Smt. Divya

Krishnan. So she ought to have been given appointment from the date from which Smt. Divya Krishnan was appointed. The applicant mainly relies on

the decision of the Hon'ble Supreme Court in C. Jayachandran v. State of Kerala & Ors. - AIR 2020 SC 3846 wherein it was held that the appellant

C. Jayachandran was entitled to get the appointment from the date on which others were also appointed.

7. We have gone through the various pleadings and documents produced by both sides. We have also heard the counsel appearing on both sides. On a

perusal of the pleadings and records we find that the selection was conducted for the year 2013 and the mark list was published on 13.11.2013. One

Smt. Divya Krishnan who got 76 marks along with the applicant was given appointment on the basis of her seniority. But when the applicant filed OA

No. 174 of 2014 the respondents came up with a statement that there has occurred a mistake in the calculation of marks in the answer sheets and the

applicant got one more mark and the respondents had revised their selection list accordingly. As per the order passed by the Tribunal in OA No. 174

of 2014 the applicant was given appointment with effect from 1.9.2015 as per Annexure A7 order. The applicant herein claims that she ought to have

been appointed notionally with effect from 18.11.2013 the date on which Smt. Divya Krishnan was appointed. As per the statement filed by the

respondent themselves it appears that there had occurred mistake in the evaluation of answer sheet and the said mistake was mainly due to the

answer key provided by the respondents themselves. The applicant got one more mark on revaluation and she got 77 marks in the examination. The

said Smt. Divya Krishnan got only 76 marks and the applicant was appointed after reverting Smt. Divya Krishnan who was appointed by the

Department. So it is a clear case of wrong done by the Department themselves and the Department is bound to cure the defect by giving notional

appointment to the applicant. There is no reason put forward by the respondents to deny the right of the applicant for getting notional appointment. It is

true that the applicant is not entitled to get back wages but she is eligible to get notional appointment from the date on which the earlier person Smt.

Divya Krishnan was appointed. So we find merit in the contentions put forward by the applicant in this case.

8. In the result we allow the OA and the respondents are directed to grant notional appointment to the applicant with effect from 18.11.2013 the date

of her entitlement with fixation benefit alone. No costs.