

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 417/2009

This the 26th day of November, 2009.

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Prashant C.M.
Casual Labourer
General Post Office
Thiruvananthapuram.

Applicants

By Advocate Mr. T.C. Govindaswamy & Thomas Mathew

Vs.

- 1 Assistant Superintendent of Post Offices
Trivandrum North Sub Division
Thiruvananthapuram-695 036
- 2 Senior Superintendent of Post Offices
Trivandrum North Sub Division
Thiruvananthapuram
- 3 Chief Postmaster General
Kerala Circle
Thiruvananthapuram.
- 4 Director General
Department of Posts
New Delhi.
- 5 Union of India represented by its
Secretary, Department of Posts
New Delhi.

Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 18.11.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who had worked as a substitute E.D. Packer for thirteen years and thereafter engaged as a part time Casual Labourer, seeks appointment as GDS against OBC quota and challenges Annexure A-10 notification dated 7.5.2009 on the ground that adequate representation for OBC is not made in the ED Posts.

2 The applicant has been working as ED Packer (GDS Packer) in the Philatelic Branch of GPO Thiruvananthapuram as a substitute/outsider intermittently since 1991. Knowing that the post of GDS Packer is going to be vacant due to retirement of the permanent incumbent, the applicant made representation on 27.4.2004 requesting for appointment on a regular basis. The request was turned down stating that service rendered by a substitute/provisional appointee for less than 3 years will not count for any weightage or preference for appointment as per rules. However, he has been provisionally appointed. While continuing so, his services were terminated (Annexure A-2). However, he was asked to carry out the duties on daily wage basis (A-3). When his services were terminated and another provisional hand was appointed, he approached this Tribunal through O.A. 656/2004 which was disposed of directing the 1st respondent to dispose of his representation within two months (A-4). The 2nd respondent by memo dated 8.11.2004 allowed the applicant till a regular incumbent is appointed to the post. When the post was filled up by regular incumbent on 21.12.2006, the applicant continued in service as part-time Casual Labourer on daily wage basis. While so, he came to know that the respondents are inviting applications from unreserved category for GDS Mail Deliverer at Speed Post Centre Trivandrum (A-10). The applicant submitted application for appointment under 27% OBC quota (A-12). Apprehending that the respondents are taking



steps to make selection and appointment to the post without considering his claim he filed this O.A. mainly to declare that Annexure A-10 notice issued by the 1st respondent is illegal, arbitrary and unfair and to consider his representation for appointment against OBC quota. The main grounds urged by the applicant are that (i) Annexure A-10 notice is denying acute shortage of OBC representation of GDS in Trivandrum (N) Division, out of 455 posts, only 65 have been filled up under OBC quota, though the total posts to be filled up being 122 under OBC quota, the applicant who is an OBC candidate fulfills the requisite qualifications.

3 The respondents in their reply statement admitted the averments of the applicant that he had worked as an E.D. Packer in Trivandrum Philatelic Bureau during the period from 12.4.1991 to 10.6.2006 as a substitute, and after the retirement of the regular incumbent the applicant continued w.e.f. 10.6.2004 on stop gap arrangement. The respondents submitted that the applicant's father Shri Marthanda Pillai, who was GDS Mail Packer in GPO till 2004, used to engage his son, the applicant as his substitute whenever he was on leave from 1991 to 2004. When Shri Marthanda Pillai was discharged from service on superannuation on 17.7.2004, the respondents took steps to fill up the post on a regular basis. Then the applicant moved the Tribunal through O.A.656/04 and pursuant to the direction of the Tribunal he was allowed to continue as a Mazdoor. After the appointment of the regular incumbent w.e.f. 21.12.2006, the arrangement of the applicant as Mazdoor against the GDS Mail Packer post came to an end. However, the applicant continued to be engaged intermittently as a Mazdoor. They submitted that the applicant cannot be considered as a Casual Labourer and that under the existing rules no weightage or preference can be given to the experience gained as a substitute. As regards reservation for OBC for GD Sevaks, it is submitted that post based roster prescribed for departmental employees is not being

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maintained for and that as in the case of SC/ST and; Physically handicapped categories no specific point is reserved for OBCs (Annexure R-1). But they submitted that adequate representation of OBC candidates is available among the GDS in the Division. They also submitted that the applicant cannot expect to be absorbed into the department without undergoing a regular selection process.

4 The applicant filed rejoinder specifically pointing out that he had worked as a part time Casual Labourer for the period from 19.7.2004 to 20.12.2006 and continuing to work on daily wages on various spells against Group-D vacancies has accrued a right to be appointed to a GDS post after completion of 240 days of work in a year. He has relied on the order of the Tribunal in O.A. 1622/98 in support of his case.

5 The applicants filed M.A. 702/2009 to direct the respondents to restore the service of the applicant and to continue as Casual Labourer at GPO, Trivandrum.

6 The respondents filed reply to the M.A. opposing the claim of the applicant that he has been continuing as a casual labourer w.e.f. 19.7.2004 and as such he had accrued a right for preference for appointment as GDS. They drew support from the judgments of the Apex Court in Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. V. Devendra Kumar Jain & Ors, Madhyamik Siksha Parishad UP V. Anil Kumar Mishra, Ashwani Kumar and Others Vs. State of Bihar and Others, The State of UP and Others Vs. Ajay Kumar, State of UP and Others Vs. Rajendra Kumar Singh and another.

7 We have heard learned counsel for the parties, perused the records and have gone through the pleadings.

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8 There is no dispute that the applicant who was engaged as a substitute by the regular incumbent on his own responsibility has no preferential right to continue in the post. However, the Department allowed him to continue in the post as a stop-gap arrangement. When steps were taken for filling up the post on regular basis he approached the Tribunal and obtained an order to continue in service till the regular incumbent is appointed. After the regular incumbent he was engaged intermittently as a Substitute of GD Sevaks of Trivandrum GPO as also Mazdoor in short term vacancies. By Annexure A-10 notice the respondents invited application for appointment to the unreserved post of GDS Mail Deliverer. The grievance of the applicant is that adequate representation of OBC category in the posts of GDS is not made in the Division, therefore, he contend that the post of GDS Mail Deliverer at Speed Post Centre, Trivandrum should be reserved for OBC. This contention of the applicant is answered by the respondents in the light of DG Post's letter NO. 17-132/94 ED & Trg dated 5.10.94, the relevant portion of which is extracted below:

"2 The question whether the scope of the aforesaid policy guidelines issued by the Department of Personnel and Training for application to Groups-B,C and D cadres should also be extended to cover Extra Departmental Cadres has been engaging the attention of this office for sometime past. Since EDAs are the feeder cadres for filling up posts in departmental Group C/D cadres and any deficiency in the representation of candidates belonging to OBCs in ED categories will result in inadequate representation for candidates belonging to OBCs in departmental cadres also, a decision has been taken that the provisions contained in the Compendium of Instructions on Reservation for Other Backward Classes in Services and Posts under the Government of India issued by the department of Personnel and Training will also apply to ED categories. As in the case of representation for SC and ST and persons belonging to physically handicapped categories, no specific point will be reserved for appointment of candidates belonging to OBCs in ED categories. However, efforts will be made to secure representation for candidates belonging to OBCs on the same scales as are applicable to Departmental Groups C and D cadres."

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In this connection, Annexure A-11, a copy of the seniority list was perused by us. Reservation for OBC was introduced from 1993-94 and by this time 279 GDS out of 455, have already been recruited in Trivandrum North Division. So, OBC candidate was recruited for the next Serial No. 280 and at Sl. Nos. 282 and 283, SC and ST candidates were recruited. Thereafter, 31 more OBC candidates were appointed. In fact, the last point, 455 is also filled up by an OBC candidate. Therefore, the very next vacancy cannot be reserved for OBC. There is force in the averment of the respondents that vacancies are few and far in between, and every vacancy cannot be reserved for OBC, to make up the shortage in 27%. In fact, after 26.11.2004, GDS recruitment is being notified for a single post in 2009 only.

9 The applicant submitted that he is a part-time Casual Labourer and has completed more than 240 days service in a year, thus became eligible for getting preference to be appointed as GDS. He has produced DG Post's instruction under letter No. 17-141/88-EDC&TRS dated 6th June, 1988 the relevant portion is extracted below:

"4 The suggestion has been examined in detail and it has been decided that casual labourers whether full time or part time who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED post, provided they fulfill all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service." It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange."

Even here, the condition of being sponsored through Employment Exchange is being insisted upon. The applicant does not fulfil this condition, as he has merely registered his name with the Employment Exchange.

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It is true that the applicant has put in 240 days in a year. But the contention of the respondents is that it is because of the interim direction given by the Tribunal in O.A .No.656/04 filed by the applicant. Therefore, he cannot seek help from his continuance in the past based on the interim order of the Tribunal. It is well settled that those casual labourers who are willing to be appointed should be given preference provided they fulfil all the conditions of eligibility and have put in a minimum service of one year.

10 In this view of the matter, we do not find any merit in the O.A. It is accordingly dismissed. No costs.

Dated 26th November, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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