

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.419/97

Monday, this the 29th day of September, 1997.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

P Chandrasekharan Nair,  
Extra Departmental Letter Box Peon,  
Kollam Head Post Office.

- Applicant

By Advocate Mr OV Radhakrishnan

Vs

1. Postmaster,  
Kollam Head Post Office,  
Kollam.

2. Senior Superintendent of Post Offices,  
Kollam Division,  
Kollam-691 001.

3. Union of India represented by  
its Secretary,  
Ministry of Communications,  
New Delhi.

- Respondents

By Advocate Mr TR Ramachandran Nair, ACGSC

The application having been heard on 29.9.97 the  
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

The applicant who was initially engaged as a part-time Contingent Water Carrier with effect from 3.12.79 was thereafter engaged as Extra Departmental Letter Box Peon with effect from 14.9.82. While continuing as E.D.Letter Box Peon, the applicant was engaged to work as Group 'D'

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non-test category Sweeper with effect from 1.1.95 against a vacancy, as the regular incumbent Smt Omara remained absent since then. Smt Omara was thereafter allowed to retire on invalid pension with effect from 24.10.96 and the applicant is continuing on the Group 'D' post thereafter. The grievance of the applicant is that the respondents have issued A-2 notification dated 17.12.97 throwing open the vacancy to be filled only by the ED Agents of the department. Applicant states that as he has been continuing on the post and having completed 240 days as such, he is entitled to be granted temporary status in accordance with the scheme for grant of temporary status and regularisation and to be appointed on the post in preference to the ED Agents and other method of recruitment. With these allegations the applicant has filed this application to have the impugned order at A-2 set aside and for a direction to the respondents to grant him temporary status.

2. The respondents in their reply have contended that the applicant was not a casual labourer but was only an ED Agent but made to work as Group 'D' post as is permissible according to the departmental instructions and that therefore he is not entitled to be treated as a Casual Mazdoor for the grant of temporary status. The post which has became vacant is to be filled in accordance with the recruitment rules giving preference to the ED Agents, contend the respondents.

3. We have carefully gone through the entire pleadings and materials placed on record and have also heard Shri DV Radhakrishnan, learned counsel of the applicant and Shri TR Ramachandran Nair, learned counsel of the respondents.

4. The short question that has to be determined in resolving the issue involved in this case is whether the applicant has been engaged to work against the Group 'D' post of Sweeper in the capacity of an ED Agent or as a casual labourer. The argument of Shri Radhakrishnan is that though the applicant is still an ED Agent and his services on the Group 'D' post does not create a break in service as ED Agent, his engagement on the group 'D' post can be treated only as that of a casual labourer and therefore by his performance of casual service exceeding a period of 240 days, the benefit of grant of temporary status cannot be denied to him. Annexure A-9 is one of the departmental instructions which permits engagement of an ED Agent on a short term vacancy in Group 'D' post. It is worthwhile to quote the entire instructions for the purpose of easy reference:

"Appointment of ED Agent in unapproved capacity in preference to an outside: It has now been decided that where an ED Agent is available, there is no objection to his appointment in the vacancy of Postman/Group 'D' in an unapproved capacity on daily wage basis in preference to an outsider. As in the case of outsider, the ED Agent may be appointed on the personal responsibility of another permanent official. The ED Agent will

have to make arrangement for a substitute ED Agent on his responsibility. The break in extra departmental service caused by holding appointment in a departmental post will not, however, be treated as break in service and no separate orders for condonation of such breaks will be necessary. Lastly, the ED Agent should be clearly warned that such casual appointment does not confer on him any right for regular absorption in the departmental post which will be done under the existing recruitment rules only."

A careful reading of this instruction would make it clear that an ED Agent appointed against a Group 'D' post is entirely different in nature from a casual labourer. In the case of ED Agents, his appointment to the post is to be made in preference to an outsider and at the personal responsibility of another permanent official, whereas in the case of ~~an~~ <sup>✓</sup> a ~~outsider~~ or casual labourer, it is not necessary that appointment is made at the personal responsibility of another regular departmental employee. In the case of an ED Agent when posted against a Group 'D' post on a short term vacancy, there will not be a break in service for the period during which he performs duties of the Group 'D' post. He has also to make arrangement for performance of the duties of the post of Group 'D' which he holds substantively by nominating a substitute. It is obvious from the above that the applicant though working against a Group 'D' post ~~has~~ to meet the exigencies of the services as permitted by administrative instructions does not ~~lose~~ his character as an ED Agent and acquire that of

a casual labourer. The applicant therefore is not entitled to the benefit of the scheme for grant of temporary status and regularisation as claimed by him. The action taken by the respondents in inviting applications for filling up the post on regular basis in accordance with the recruitment rules cannot therefore be faulted. Learned counsel of the applicant argued that the respondents have gone wrong in specifying in A-2 that only ED Agents would be considered for selection and appointment probably, wrongly interpreting the rules R-1 which relate to recruitment to the post of test category Group 'D' and that for non-test category the ED Agents as also the casual labourers would be eligible. Learned counsel of the applicant argued that after promulgation of the recruitment rules Annexure-R6 which provided for 100% direct recruitment in it is impermissible to fill the vacancies by promoting ED Agents. The answer to this argument is available in Note 2 to the recruitment rules which reads as follows:

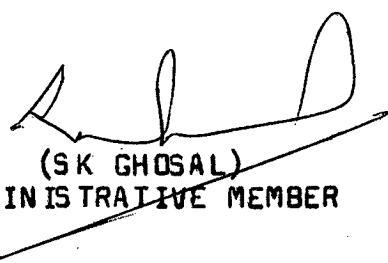
"Extra Departmental staff may be considered against the vacancies for direct recruitment in subordinate offices subject to such conditions and in such manner as may be decided by the DG P&T from time to time."

ED Agent can be considered for direct recruitment according to the terms to be stipulated by D.G. P&T.

5. In the conspectus of facts and circumstances, we do not see any merit in this application which is dismissed,

leaving the parties to bear their own costs.

Dated, the 29th September, 1997.

  
(S K GHOSAL)  
ADMINISTRATIVE MEMBER

  
(AV HARIDASAN)  
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A2 : Order No.88/44/97 dated 17.2.1997 of the second respondent.
2. Annexure A9 : Letter No.47/31/72-SPB-I dated 7-12-1972 of the Director General of Posts, New Delhi.
3. Annexure R1 : Letter No.45-24/88 SPB-I dated 17.5.1989 issued by the Director General of Posts, New Delhi.
4. Annexure R6 : Recruitment Rules and subsequent amendments of Recruitment Rules of 1970.

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