

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.425/96

Wednesday, this the 26th day of February, 1997.

C O R A M

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

V Rajendran Nair,
Group D Mailman,
Head Record Office,
Railway Mail Service,
Trivandrum.

By Advocate Shri Thomas Mathew.

....Applicant

vs

1. Senior Superintendent of Post Offices,
Trivandrum North Division,
Trivandrum.
2. Chief Postmaster General,
Kerala Circle, Trivandrum.
3. Director General,
Department of Posts, New Delhi.
4. S Harikumar, Temporary Driver,
Mail Motor Service,
Trivandrum Fort,
Trivandrum--695 023.
5. Mohan Das S, Driver,
Mail Motor Service,
Trivandrum.
6. G Ramachandran, Driver,
Mail Motor Service,
Trivandrum.

....Respondents

R.1-3 by Shri TPM Ibrahim Khan, Sr Central Govt Standing Counsel.

The application having been heard on 20th February, 1997, the Tribunal delivered the following on 26th February, 1997:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant is working as a permanent Group D Mailman in the Head Record Office of the Railway Mail Service (RMS), Trivandrum. By A4, applications were invited for the post of Driver in the Motor Mail Service Unit (MMS) in Trivandrum and

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applicant applied for it and was selected. His selection was challenged in OA 630/90 and OA 705/91 and the selection was quashed by the Tribunal which directed that the selection be redone from the stage of issue of notification. Applicant submits that no reselection was done thereafter, but the two applicants in OA 630/90 and OA 705/91 were appointed as Drivers. Thereafter, by A8 order, the 4th respondent was allotted for regular appointment as temporary Group D employee against a vacant post in Trivandrum North Division which, according to applicant, was contrary to the recruitment rules. The 4th respondent approached the Tribunal in OA 264/94 seeking a declaration that he is entitled to be regularised as a Driver and the Tribunal directed consideration of a representation. By the impugned order A.10, first respondent appointed the fourth respondent temporarily as Driver in the MMS, Trivandrum. Applicant contends that the Tribunal had in OA 264/92 directed only consideration of the representation of the fourth respondent and the fourth respondent had been appointed without making any notification of the vacancy and without considering eligible candidates including the applicant. Applicant states that there were no eligible candidates in the MMS, Trivandrum in which unit the vacancy had arisen and that according to the provision in the recruitment rules and A.12 instructions, applications should have been invited from eligible candidates from other units of posts, RMS etc before the selection is made. Applicant further contends that the impugned appointment has been made under the direction of the Chief Post Master General and that the competent appointing authority, who is the first respondent, should not have acted on the dictation of the second respondent. Applicant has challenged the appointment of respondents 5 and 6 on the ground that it was made without considering eligible

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candidates including applicant. Applicant prays that the impugned appointment A.10 be quashed, that the postings of respondents 5 and 6 be declared illegal and that applicant be declared entitled to be considered for recruitment by promotion/transfer to the cadre of Driver. Applicant prays for a direction to respondents to consider him against any vacant post illegally occupied by respondents 4 to 6 with consequential benefits or to consider applicant in the next vacancy arising on 30.9.1996.

2. Respondents Department submit that applicant is borne on the strength of the RMS, Trivandrum Division, which is a distinct and separate administrative unit for the purpose of recruitment and appointment of Group D officials, Drivers etc. Though applicant had been selected against the vacancy notified in A4, the selection was quashed by RIA order of the Tribunal observing that MMS, Trivandrum is a separate recruitment unit and only those working in a particular MMS would be eligible for competing against departmental quota of vacancies. Following the orders of the Tribunal, applicant could not be considered as he belongs to a different recruiting unit. It is also submitted that 50% of the vacancies in the cadre of Drivers in the MMS has to be filled by departmental quota and the remaining 50% by outsider quota. Six vacancies arose in the MMS, Trivandrum from 1990, of which three were filled by transfer under Rule 38 of the Posts and Telegraph Manual Vol IV and one by promotion. Only two vacancies were filled by outsiders, who were applicants in OA 630/90 and OA 705/91. Since applicant could not have been considered for that selection by virtue of the order of the Tribunal in those OAs, he cannot challenge the selection of applicants in those Original Applications. The vacancy for which appointment has now been

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made by A.10 is one which has been reserved for the outsider quota and so, has to be filled only from amongst those Drivers appointed in the Department on casual basis before 1.4.85 failing which, by recruitment from amongst casual labourers having temporary status doing the job of Drivers as seen by A.12 instructions (a copy of A.12 produced by applicant in the OA shows the date as 1.4.86, but the reply statement filed by respondents 1 to 3 shows the date as 1.4.85.) It is submitted that fourth respondent was given temporary status with effect from 29.11.89 and was treated as on par with temporary Group D and continued to be deployed as Driver. Since he was not qualified educationally for appointment as Group D in the Circle Office, he was given appointment in the Trivandrum North Division for which he was found to satisfy the prescribed qualification. Fourth respondent has thereafter filed OA 264/94 which had been disposed of by the Tribunal directing consideration of his representation. The representation was considered and RLB order was passed holding that applicant who was originally recruited in 1983 as Extra Driver is eligible for consideration against the outsider quota vacancies for Drivers and that applicant (4th respondent here) shall be considered for appointment as Driver against an existing or next available vacancy for outsiders in MMS Unit, Trivandrum subject to his fulfilling conditions of qualifications. A Departmental Promotion Committee (DPC) considered the fourth respondent and selected him as Driver based on which selection, the impugned order has been issued. Respondents 1 to 3 contend that the impugned orders have been issued directly in consonance with the various orders of the Tribunal noticed above.

3. Though applicant submits in the Original Application that the applicants in OA 630/90 and OA 705/91 were appointed

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without a fresh selection in which applicant ought to have been considered, he has not challenged the appointment of those two persons. The challenge is against the appointment of respondents 4 to 6, but the appointment orders in respect of respondents 5 and 6 have not been produced. Only the order A.10 in which the fourth respondent has been appointed has been produced and challenged.

4. In RIA orders, the Tribunal has clearly stated as follows:

"9. From the Recruitment Rules it is clear that 50 per cent of the posts of Driver should be filled in by method of transfer from subordinate staff in the same Unit and the remaining 50 per cent will be appointed by direct recruitment. There is no doubt that as per these rules, transfer is made from staff from the same Unit and it cannot be from other Units. The judgement of the Tribunal, relied on by the learned counsel for the applicants in both cases, in OA 270/90 disposed of on 10.9.91 makes it clear that each MMS Unit will be a separate recruiting unit and as such only those working in a particular MMS Unit will be eligible for competing against departmental quota. This is also as per the circular of the Posts & Telegraphs Department, re-produced in the course of the same judgement. The remaining 50 per cent of the vacancies has to be filled in by direct recruitment..."

11. ...A notification was issued in July 1990 inviting applications from other Units. If it is for transfer, it has to be limited to the staff from the inferior grade in the same Department...in the same Unit, which in this case is MMS Unit. It cannot be extended to

employees in the other Units. As for the post in the direct recruitment quota, the applicants in both OAs should have been considered..."

The applicant in OA 705/91 was found suitable for appointment against the outsider quota. But the applicant in OA 630/90 was not found suitable for selection under outsider quota. He, therefore, approached the Tribunal in OA 378/90 and the Tribunal directed that he be treated as an outsider following which, he was appointed against the outsider quota. In these circumstances, we do not find anything wrong with the appointment of the applicants in OA 630/90 and OA 705/91 which incidentally have not been challenged by the applicant, though he submits in the application that the selection was not properly done since he was not considered. Applicant could not have been considered since he did not belong to the recruiting unit in terms of the judgement of the Tribunal in OA 630/90 and OA 705/91.

5. Appointment of fourth respondent was following a selection by a DPC. He was considered against an outsider quota. The DPC found him eligible for consideration and fit for recruitment as Driver in the MMS Unit. The proceedings of the DPC at RLC make it clear that the Chief Post Master General has only ordered consideration of fourth respondent for appointment as Driver against the next available vacancy for outsiders in the MMS, Trivandrum. The selection has been done by a DPC and the appointment cannot be termed to have been made under direction from second respondent. We see no reason to quash the impugned order A.10.

6. As regards the fifth and sixth respondents, there is nothing in the pleadings to substantiate the contention of applicant that they were appointed in violation of the recruitment

rules. R.L.F shows that they have been appointed by transfer under Rule 38 of the Posts and Telegraph Manual Vol IV and we see no irregularity in their being appointed after transfer.

7. In the result, the application fails and is dismissed. MA 960/96 for direction is also dismissed as applicant is not eligible to be considered for Driver, Mail Motor Service, Trivandrum. No costs.

Dated the 26th February, 1997.


PV VENKATAKRISHNAN

ADMINISTRATIVE MEMBER


AV HARIDASAN
VICE CHAIRMAN