

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 425 of 2002

Monday, this the 9th day of December, 2002

CORAM

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. John Mathew,
Mammoottil House,
Thannithodu PO,
Pathanamthitta.Applicant

[By Advocate Mr. P.C. Sebastian]

Versus

1. The Assistant Superintendent of Post Offices,
Pathanamthitta Sub Division,
Pathanamthitta, Pin - 689 645
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. The Union of India,
represented by Secretary,
Ministry of Communications,
Department of Post, New Delhi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 9-12-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant who claims to have been working as Telegram Messenger at Thannithodu Sub Post Office since 17-2-1996 is aggrieved by Annexure A4 notification dated 22-5-2002 issued by the 1st respondent, viz. the Assistant Superintendent of Post Offices, Pathanamthitta Sub Division, calling for applications for appointment as Gramin Dak Seva Mail Carrier (GDSCM for short), Manneera Post Office within Pathanamthitta Sub Division ignoring his claim for preference as a casual labourer with uninterrupted service since 1996. According to the applicant, since there was no sanctioned post

of Telegram Messenger, he had been engaged to deliver telegrams on a regular basis on payment of mazdoor charges at prescribed rates on monthly basis. During the period from 1-1-2001 to 15-1-2002 the applicant claims to have worked as a substitute for the regular incumbent in the post of GDSMC, Thannithode. From 16-1-2002 onwards the applicant claims to have been engaged as GDSMC, Manneera PO under the control of the 1st respondent in a transfer vacancy. According to the applicant, he was eligible to get the benefit of the DG(Posts)'s letter dated 6-6-1988 (Annexure A2). Although he is described as a Mazdoor, as a matter of fact he was a casual labourer in the light of the DG(Posts)'s letter dated 17-5-1989 (Annexure A1). It is also stated by the applicant that as per Annexure A3 the Chief Postmaster General has clarified and reiterated the DG(Posts)'s instructions contained in Annexure A2. The following reliefs are sought in this OA:-

- "(i) to call for the files leading to the issue of Annexure-A4 notification and quash the same.
- (ii) to declare that applicant is a regular casual labourer eligible and entitled to the benefit of Annexure-A2 instructions.
- (iii) to direct 1st respondent to consider applicant's claim for appointment in the existing vacancy of GDS Mail Carrier Manneera on a preferential basis, in terms of Annexure-A2 instructions, treating him as a regularly working casual labourer at Thannithodu Post Office.
- (iv) to grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.
- (v) to award costs in favour of the applicant."

2. The Original Application is resisted by the respondents by stating that the applicant has not been regularly engaged as a casual labourer, that he was only a Coolie earning his wages as and when work was given, and that for a shortwhile he was working as GDSMC, Thannithode as a substitute only. It is also

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pointed out that the applicant, not being a candidate sponsored by the Employment Exchange, could not be considered for the post of GDSMC, Manneera PO. All things being equal, he also might appear for the selection along with others. In his rejoinder the applicant has reiterated his earlier averments and stated that he had been regularly engaged as a Telegram Messenger and the records maintained in the office from February, 1996 till today would bear out the applicant's claim.

3. We have heard Shri P.C. Sebastian, learned counsel for the applicant and Shri C. Rajendran, learned SCGSC for the respondents. Learned SCGSC has produced what is purported to be a monthly statement of telegrams delivered, distance travelled and the wages determined on the basis of the distance covered by the applicant for the two months, i.e. September, 2002 and October, 2002, though this Tribunal had asked the respondents to produce the relevant records for money receipts etc. in order to examine the applicant's claim. On being specifically asked about the previous records with effect from 17-2-1996, learned SCGSC has no answer except that he had been instructed to say that these records have been sent to the Director of Accounts, Postal, Trivandrum as part of accounts return in support of the expenditure booked in the accounts of Pathanamthitta Division for the relevant period. Shri Sebastian, learned counsel for the applicant would contend that the applicant's case was squarely covered by the DG(Posts)' letters dated 6-6-1988 and 17-5-1989. It is also pointed out that the Chief Postmaster General, Kerala, Trivandrum too has clarified the position. The applicant having been regularly engaged as a mazdoor was eligible to get the benefit of a casual labourer in the matter of appointment as GDSMC, Manneera PO, according to the learned counsel for the applicant. In this connection, our attention has been invited to various

orders of this Tribunal on identical issue, particularly the order in OA No.818/2000 dated 18-12-2000 (Annexure A6). Referring to the statements in the reply statement, learned SCGSC stated that benefits of the DG(Posts)'s letter dated 6-6-1988 and subsequent clarificatory circulars were not available to the applicant, since he was only a daily rated wage earner.

4. We have gone through the records and considered all the facts. Although the respondents were given specific direction to produce the records including money receipts with effect from February, 1996 onwards, the same has not been produced. Admittedly, the applicant is a Coolie "described as 'Mazdoor' in Hindi". It is abundantly clear that mazdoors are also included in the category of casual labourers as is evident from Annexure A1. The applicant's engagement in the department right from 1996 has not been effectively controverted by the respondents. Producing a very insignificant part of the records concerning the applicant's engagement in the department does not serve any purpose, and does not, in any case, strengthen the respondents' plea that the applicant's connection with the department started with effect from September, 2002 only. Even the respondents do not have such a case. In this case, we are concerned with dispensing justice with expedition and we find no evidence against the applicant's claim that he was a casual labourer from 1996 onwards.

5. The applicant's representation Annexure A5 dated 4-6-2002 claiming that he was a Telegram Coolie Mazdoor at Thannithodu for the last six years is still pending before the 1st respondent. If the applicant does not have a long connection with the department as claimed in the representation, it would have behoved the respondents to have

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given a reply to the applicant accordingly. This is not seen done. Therefore, we are of the considered view that the applicant's claim to be considered for the post of GDSCMC, Manneera PO cannot be brushed aside without reference to all the earlier records and in view of the clear instructions contained in the DG(Posts)'s letters dated 6-6-1988 (Annexure A2) and 17-5-1989 (Annexure A1) and the CPMG, Kerala Circle's letter dated 31-3-1992 (Annexure A3).

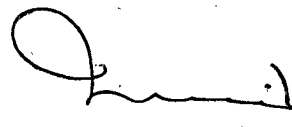
6. On similar facts considered in OA No.818/2000, this Tribunal has directed the respondents to consider the applicant therein for appointment to the post of Extra Departmental Mail Carrier in the light of the DG(Posts)'s letters cited above. The factual position being the same, we allow the Original Application setting aside the impugned notification Annexure A4 dated 22-5-2002. We direct the respondents to consider the applicant's representation for considering him for appointment as GDSCMC, Manneera PO within Pathanamthitta Sub Division in preference to others by virtue of his position as a casual labourer and pass a speaking order with reference to the entire records from 17-2-1996 onwards. The respondents shall proceed with the process of appointing the applicant as GDSCMC, if his claim regarding casual labour status is correct. The above direction shall be carried out by the respondents and the applicant be notified in that regard within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Monday, this the 9th day of December, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER

Ak.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of Letter No.45-24/88 SPB-I dated 17.5.1989 issued by the Asst. Director General (SPM), New Delhi.
2. A-2: True extract of DG Posts letter No.17-141/88 EDC & Trg. dated 6.6.1988.
3. A-3: True copy of circular letter No.Rectt/27-1/IV dated 31.3.92 issued by the 2nd respondent Chief Post Master General Kerala.
4. A-4: True copy of the Notification No.GDSMC/BO.26 dated 22.5.02 issued by the 1st respondent.
5. A-5: True copy of the representation dated 4.6.2002 submitted by applicant to 1st respondent.
6. A-5a: True English Translation of Annexure-A.
7. A-6: True copy of the order dated 18.12.2000 of the Hon'ble Tribunal in OA 818/2000.

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