

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.447/2002

Thursday, this the 19th day of June, 2003.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

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

S.Raju,
Casual Mazdoor,
Sub Record Office,
Railway Mail Service(TV) Division,
Alappuzha.

- Applicant

By Advocate Mr Shafik.M.A.

Vs

1. Union of India represented by
Secretary/
Director General of Posts,
Ministry of Communications,
New Delhi-110 001.
2. The Chief Postmaster General,
Kerala Region,
Trivandrum.
3. The Senior Superintendent of
Railway Mail Service,
Trivandrum Division,
Trivandrum.
4. The Sub Recoord Officer,
RMS(TV) Division,
Alappuzha-688 012.

- Respondents

By Advocate Mr SK Balachandran, ACGSC

O R D E R

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

The applicant claims himself to be a Casual Labourer fully eligible for selection to the post of Gramin Dak Sevak Mail Man(GDSMM) under the 4th respondent at Alappuzha in the

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light of the 1st respondent's letter dated 6.6.88. He is aggrieved that the respondents are taking steps to finalise selection to GDSMM from amongst candidates from open market ignoring the applicant's preferential claim on account of his uninterrupted casual service since 1995. Apart from relying on the D.G's letter dated 6.6.88, the applicant also seeks support for his claim from a number of decisions of this Tribunal as in O.A.Nos.987, 1031/2001 etc. The main reliefs sought are:

i) To call for the records relating to A-1 to A-3 and to declare that the applicant is entitled to be considered for the post of GDS Mailman available under the 4th respondent with preference over outside candidates as per the 1st respondent's instructions dated 6.6.88 and to direct the 4th respondent to grant preference to the applicant for appointment as ED Mailman in one of the 4 available vacancies now notified and to appoint him as such if he is otherwise to be appointed; and

ii) To declare that the selection of ED Agents from open market when eligible casual labourers are available in the office who are entitled for preference in appointments as ED Agents, is illegal and to quash the present selection resorted by the 4th respondent as illegal and arbitrary.

2. The respondents, as per reply statement dated 16.8.2002, oppose the averments in the O.A. by stating that

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the applicant is not a Casual Labourer but was engaged only as a substitute. According to the respondents, the applicant did not have the eligibility as per the DG, Post's letter dated 6.6.88 [R3(1)]. The applicant did not have a minimum of one year's (i.e. 240 days) service. As per the details of total number of days of engagement, the maximum period of engagement as outsider Mazdoor allowed to the applicant since 1995 was for 97 days in the year 2002 (upto 30.6.2002). It is maintained by the respondents that he was never recruited as Casual Labourer through the prescribed norms of recruitment. Though the applicant was also considered for the 4 posts of GDS, on verification of the certificates and other particulars, his position was 40th out of the 40 applicants. It is further pointed out that sponsorship by Employment Exchange was also wanting in the applicant's case, though non-sponsorship by the Employment Exchange by itself was not the reason for the ineligibility of the applicant. Thus the rationale of the orders of this Tribunal in O.A.987/2001, O.A.1031/2001 and O.A.360/1999 was not applicable to the facts of the applicant's case.

3. In his rejoinder, the applicant would maintain that no casual labourer including the applicant had been informed of his actual status and that therefore, the details regarding the number of days of engagement and the nature of engagement as furnished in the reply statement could not be relied on. Attendance Register/Acquittance Roll and other related records would bear out the exact nature of the applicant's engagement. As the applicant is not made aware of the exact nature of

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engagement whether as substitute or outsider mazdoor, he would not be in a position to file any further evidence in that regard. The respondents' reference to non-sponsorship by the Employment Exchange had no substance as has been held by this Tribunal in a number of cases, the applicant would submit.

4. The respondents filed an affidavit enclosing set memos to show the nature of engagement of the applicant as substitute or as outsider mazdoor. R3(3), purported to be a summary of the duty particulars of the applicant, shows the applicant's engagement as a substitute since 1.1.95 to 30.6.2002. R3(4) is claimed to be a summary of the particulars regarding the applicant's engagement as Mazdoor between 15.1.1995 and 30.6.2002. As per R3(3), the applicant is stated to have put in substitute service of 156, 126, 275 and 165 days respectively for 1999, 2000, 2001 and 2002 (upto 30.6.02). In the light of R3(4), the respondents would maintain that the applicant was engaged as an outsider Mazdoor for 63 days, 43 days, 80 days and 97 days during 1999, 2000, 2001 and 2002 periods. In the reply statement, the respondents have maintained that the set memos should reflect the nature of engagement of a worker as outsider/Casual Labourer/Substitute and that the same information can be verified from the attendance sheet, daily report also. However, there is an admission in the reply statement that in the applicant's case, the correct position of his engagement as substitute or as Casual Labourer is not invariably reflected in the records maintained although instructions in that regard had been issued to the subordinate authorities

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concerned. The following paragraph in the reply affidavit requires to be quoted verbatim:

"It is humbly submitted that the above position was reiterated to all concerned including the 4th respondent by circular No.J-7/Cont/GNL dated 12.12.2001 of this respondent. True copy of the circular dated 12.12.2001 is produced and marked as Annexure R3(5). But Sub Record Officer, Alappuzha, the 4th respondent failed to observe these instructions properly on many occasions. In the case of the applicant also, his name was not marked as 'substitute' in many set memos. This is a discrepancy committed by Sub Record Officer, Alappuzha. His explanation dated 24.9.2002 on the matter is produced and marked as Annexure-R3(6)."

In the additional reply statement filed by the respondents, it is contended that the applicant who was engaged both as substitute GDSMM and as outsider Mazdoor has worked mostly as substitute GDSMM. The respondents have reiterated their earlier stand that the maximum number of days for which the applicant was engaged as outsider Mazdoor was for 97 days upto 30.6.2002 as against 165 days of substitute service for the same period. Before that he had worked for 80 days in 2001 as outsider Mazdoor while he is shown to have been engaged for 275 days as a substitute during the same period. It is also mentioned that on certain days between November, 2000 and September, 2002, the applicant was engaged both as substitute in one set and as outsider Mazdoor in another set on the very same day.

5. We have heard Shri Shafik, learned counsel for the applicant and Shri S.K.Balachandran, learned ACGSC appearing on behalf of the respondents. We have also considered the

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argument notes filed by the learned counsel on either side. According to Shri Shafik, learned counsel for the applicant, the set memos filed by the respondents did not establish the claim regarding the applicant's service as substitute for most part of the period under consideration, it was necessary that substitute service was to be supported by leave applications of the regular incumbent since it was as his nominee or substitute that the applicant would work. In other words, engagement not supported by leave applications and other documents to show that the applicant was engaged as a substitute would have to be construed as regular engagement as Casual Labourer and due credit has to be given for such service, learned counsel for the applicant would maintain. Drawing our attention to the fact that admittedly the applicant worked for 275 days as substitute and 80 days as outsider Mazdoor in 2001, learned counsel for the applicant would forcefully contend that it was obligatory on the part of the respondents, therefore, to substantiate the substitute engagement for 275 days failing which the engagement should be taken as regular. If proper records corroborating the nature of applicant's engagement was not maintained by the respondents, their statement that the applicant's engagement was only a substitute and that therefore, the period of engagement should not be considered for the purpose of determining his eligibility for applying for the post of GDSMM would not stand to reason, it is urged by the learned counsel for the applicant.

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6. Shri S.K.Balachandran, learned ACGSC has relied on the reply statement and the affidavit filed by the respondents and the connected documents in support of the averments therein. According to him, the only question that arose was whether the applicant fulfilled the primary condition of having the minimum required service of 240 days in a year that would make him eligible for consideration for the preferential treatment. He would maintain that the burden of proof lay on the applicant to show that he is entitled for the relief sought. According to the Annexures filed by the respondents, the applicant had worked beyond 240 days only in 2001 as in that year according to the respondents, he had worked for 275 days as a substitute GDSMM and 80 days as outsider Mazdoor. Thus, even if it is taken that he had worked for more than 240 days in a year, he did not satisfy the crucial condition of having put in 240 days as Casual Labour during any year since substitute service has to be straight away ignored for that purpose. Learned counsel would invite our attention to the set memos and the details furnished as per R3(3) and R3(4) and would plead that the particulars of date, time and hours of engagement shown in the various Annexures would tally with the set memos and eventually those could be reconciled with the information available in the attendance register also. With regard to the leave applications of the original incumbents of the ED Posts which formed the basic documents regarding substitute service rendered by the applicant, the learned counsel has however, admitted that the respondents have been able to furnish 45 applications before the Tribunal's perusal. He would therefore, urge that based on the material produced

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by the respondents, the number of days the applicant had worked as Mazdoor for the relevant period upto 24.9.2001, viz, the due date of notification inviting applications should be conveniently worked out.

7. We have carefully considered the rival contentions with regard to the applicant's casual labour status. The dispute is with regard to the number of days for which the applicant was actually engaged as Casual Labourer, full or part time during any year, in order to ascertain whether the applicant can claim the benefit of DG, Post's letter dated 6.6.88[R3(1)]. The avowed purpose of R3(1) letter is to afford the casual labourers the chance of ultimate absorption as Group'D'. The crucial part of R3(1) dated 6.6.88 reads as follows:

"4. The suggestion has been examined in details 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 posts provided they fulfil all the conditions and have put in a minimum service of 1 year. For this purpose a service of 240 days in a year may be reckoned as one year's service."

While the applicant has claimed that he was engaged as Casual Labourer in an uninterrupted manner since 1995, he has expressed his inability to furnish full details regarding the nature of engagement as all the records and related particulars are with the respondents. Respondents' contention is that the applicant was a substitute for one or the other person and that his engagement as casual labourer was for very brief, intermittent spells not sufficient to make him eligible

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to be a casual labourer. Accordingly, we had to enquire as to whether the applicant had put in 240 days of casual labour in any year in terms of DG; Post's letter dated 6.6.88 (R3-1). It is seen that the engagement of the applicant either as casual labourer or as substitute started in 1995. The applicant claims to have put in 240 days of casual service in 2000 and 2001. The respondents argument on the other hand is that the applicant was for most part of his engagement worked as substitute. By the respondents' own admission, during 2000, the applicant worked as substitute for 126 days and as an outsider mazdoor for 43 days while for 2001, he was engaged as a substitute for 275 days and as outsider 80 days. The date of notification for the 4 posts of GDSMM, Alappuzha is 24.9.2001. If, therefore, the applicant could be shown to have put in 240 days of service as on the date of notification, he could definitely seek the benefit of the DG's letter dated 6.6.88[R3(1)]. As is clear from R3(3) and R3(4), the applicant is seen to have been engaged for 309 days between October 2000 and 24th September 2001. During the said period the applicant is stated to have put in substituted service for 215 days. But this is not substantiated by proper records. Substitute service can and should easily be corroborated by the relevant leave applications of the regular incumbent in whose place the applicant enters as a substitute. In fact under specific direction from this Tribunal, the respondents filed as many as 45 leave applications of ED Agents in whose place the applicant stepped in as a substitute between January 1999 and July 2002. Out of these, 22 leave applications relate to the period October 2000 to 24.9.2001

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and these involve 39 days. Thus, it is clear that the respondents have been able to prove substitute service of only for 39 days for the year ending 24.9.2001. Evidently the applicant worked for 270 days between October 2000 and September 2001(309-39). The respondents' contention that only 93 ^{mazdoor} days / service rendered by the applicant is totally unacceptable for the reason that the same is not corroborated by any record which they are bound to maintain. It cannot be comfortably argued by the respondents that it is for the applicant to prove as to the nature of his service. When a regular incumbent goes on leave, he nominates another person as his substitute at his risk and on his responsibility. For such arrangement, proper records are bound to be maintained in the office of the authorities concerned. We cannot be persuaded to believe that the respondents had preserved leave applications at random and the rest of the leave applications have been allowed to perish. Clear instructions are there on the matter as its implications are serious. We are not also impressed by the respondents' suggestion that records were not maintained strictly in accordance with the instructions by the Sub Record Office, Alappuzha and that accordingly memo was issued against the said authority. Such explanation would not absolve the respondents of their responsibility to properly record a person's service details especially when the particulars of such service will have implications on his regularisation, eligibility to offer himself for further career advancement etc. and the consequent liability to the Government. After excluding the days on which the applicant worked as a substitute in the light of clear evidence

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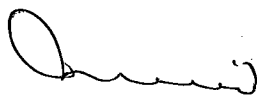
available on record, we come to the conclusion that the applicant worked at least for 270 days during the period October 2000 to 24th September 2001. That being the position, the applicant has to be construed as having put in the required 240 days of service during the year ending with the date of notification (24.9.2001) calling for application for appointment to the post of GDSMM, Alappuzha. In this view of the matter, we hold that the applicant is bound to succeed.

8. In the result the application is disposed of with the following directions/orders:

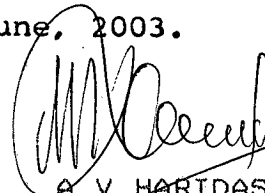
We declare that the applicant is entitled to be considered for the post of GDSMM, Alappuzha available under the 4th respondent in preference to outside candidates as per the 1st respondent's instructions dated 6.6.88 [R3(1)]. The 4th respondent is directed to consider the applicant for appointment to the post of GDSMM in one of the available vacancies notified as per notification dated 24.9.2001 and issue appropriate orders of appointment, if he is otherwise eligible to be appointed.

9. There is no order as to costs.

Dated, the 19th June, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN