

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION No. 462 OF 2008

Dated Wednesday, 16th September, 2009

CORAM:

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr K GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.K.Chacko, S/o late Kunjachan, aged 58 years
working as Group-D, Mannarkkad Mukhya Dak Ghar,
R/o Kochattukalayil House, Mele Kandiyoor,
Jellippara PO, Via Agaly, Palakkad District.

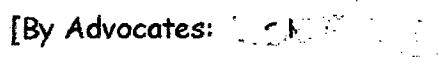
Applicant

[By Advocate : Ms Rekha Vasudevan for Mr. O.V.Radhakrishnan Sr.]

-Versus-

- 1 Superintendent of Post Offices
Ottappalam Division, Ottappalam-679101.
- 2 Postmaster General, Northern Region, Kozhikode.
- 3 Chief Postmaster General, Kerala Circle,
Thiruvananthapuram.
- 4 Director General of Posts, Dak Bhavan, New Delhi.
- 5 Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

Respondents

[By Advocates:  Mr. Sunil Jose, ACGSC]

The application having been finally heard on 16th September, 2009, the
Tribunal delivered the following:

ORDER

(Hon'ble Mr. K. George Joseph, AM)

- 1 In this OA the applicant challenges the rejection of his claim for

counting his ad hoc service in the post of Grade-D w.e.f 10.8.99 to 18.10.2000 as qualifying service for all purposes including pension and pensionary benefits and prays for a direction to reckon the ad hoc service as qualifying service for pension.

2 The applicant was appointed as Extra Departmental Delivery Agent on 13.1.75. Later he was appointed vide order dated 26.7.99 to work as outsider on ad hoc basis in the vacant Group-D post of Departmental Mail Packer at Kattukulam SO. Thereafter he worked as Group-D outsider from 10.8.99 to 17.10.2000. He was selected as Group-D on 16.10.2000 and was appointed as Group-D at Mannarkkad SO w.e.f 18.10.2000 in an existing vacancy. His appointment in the year 2000 was against the recruitment Year 1998. 10 years service is mandatory for pension. The applicant who is retiring on 31.12.2009 is falling short of about 15 months. He had requested for taking into account his ad hoc service from 10.8.99 to 16.10.2000 so as to make him eligible for pension. His representation was rejected by the Superintendent of Post Offices as well as by the Postmaster General, Southern Region, Calicut. Hence this O.A.

3 The contention of the applicant is that there was a regular vacancy in Group-D from the recruitment year 1998 onwards at Ottappalam sub-division where he was appointed as Group-D on ad hoc basis on 26.7.99. The recruitment was done only in the year 2000 on account of some administrative delay. However, the recruitment was against the vacancy of the year 1998 which should necessarily relate back the date of his appointment as Group-D on ad hoc basis as per settled law. Therefore, the

entire service from 10.8.99 will have to be computed in reckoning pensionary benefits. The Hon'ble Suprme Court held in Direct Recruit Class II Engineering Officers Association's case, (1990) 2 SCC 715, that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted. Therefore, there is no justification whatsoever in not reckoning the ad hoc service rendered by the applicant in the post of Group-D followed by regular service for the purpose of pension and pensionary benefits.

4 The respondents contested the OA. His case was examined in detail and it was found that he was not in the select list of candidates for appointment of Group-D when he was made to work as an outsider in the post of Group-D at Mannarkkad. Hence that period cannot be included in the qualifying service for pension. On getting approval for filling-up of the vacancies of 1997, 1998 and 1999, DPC was held. Even though the applicant had completed 50 years of age as on 20.12.99 and according to the Recruitment Rules/instructions in force in normal course he would not have been eligible for appointment, his eligibility for appointment was decided with reference to the seniority list of GDSSs as if the recruitment was held in the respective year. The applicant was considered for vacancy of the year 1998 and he was appointed as Group-D at Mannarkkad w.e.f 18.10.2000. As the applicant was appointed w.e.f 18.10.2000 as Group-D, he will not be having the prescribed minimum qualifying service for pension and pensionary



benefits. As he was not in the select list when he was made to work as outsider in Mannarkkad, the service rendered by him as Group-D at Mannarkkad from 10.8.99 to 17.10.2000 cannot be taken as qualifying service.

5 The learned counsel were heard and documents perused.

6 It is an admitted fact that the applicant was working against a clear vacancy from 10.8.99 onwards, first as outsider in the vacant post of Group-D from 10.8.99 to 17.10.99 and 18.10.2000 onwards as regular Group-D. The only reason for rejecting the period of service as an outsider in the post of Group-D at Mannarkkad was that he was not in the select list of the candidates for appointment as Group-D at that time. This was also an admitted fact that the applicant was considered for the vacancy of the year 1998 as he had not completed 50 years of age on 1.7.1998 although he was appointed on a regular basis w.e.f 18.10.2000.

7 In Baleshwar Das Vs. State of UP reported in AIR 1981 SC 41 the Hon'ble Supreme Court held that "While temporary and permanent posts have great relevancy in regard to the career of Government servants, keeping posts for temporary for long, sometimes by annual renewals for several years, and denying the claims of the incumbents on the score that their posts are temporary makes no sense and strikes as arbitrary, especially when both temporary and permanent appointees are functionally identified.... It is irrational to reject the claim of the 'temporary' appointee on the normal score of the terminology of the post. Officiating service in a post is for all practical purpose of seniority as good as service on a regular



basis." The applicant worked in the post of Group-D on ad hoc basis for the period from 10.8.99 to 17.10.2000 and there was no functional difference in ad hoc service followed by regular service. Therefore, the ad hoc service for all practical purposes is as good as regular service. The applicant is entitled to count the ad hoc services as qualifying services for his pension and pensionary benefits. The sole reason that he was not in the select list of the candidates for appointment as Group-D is unreasonable because the respondents were not in a position to make select list of candidates for the years 1997, 1998 & 1999 in time and DPC was held for all the 3 years together on account of administrative delay.

8 On another plane too, he was recruited against a vacancy in the year 1998. Technically speaking he was deemed to have been recruited in 1998. It would mean that he was deemed to be in the select list for that year, though he was appointed in the year 2000. The requirement of being in the select list for the year 1999 is more than adequately met by being deemed to be in the select list for 1998.

9 It should be remembered that he was with the department since 1975. For having spent a life time working for the department, with a blemishless record, most of the time for a pittance, counting a few months spent working against a clear vacancy on ad hoc basis for inclusion in service for calculating pension and pensionary benefits is a matter of grace, that should have been given without litigation. Such a course of action in the circumstances and facts of this case especially in the context of the delay in conducting the recruitment for the years 1997, 1998 and 1999 would meet

the ends of justice, fairness and equity and will go well with the role of Govt as a model employer.

10 In the result this OA is allowed. Annx.A8 order dated 16.10.05 and A9 order dated 21.11.07 are quashed and set aside. The respondents are directed to count the ad hoc service rendered by the applicant in the Group-D Post w.e.f 10.8.99 to 17.10.99 as qualifying services for all purposes including pension and pensionary benefits.

11 No order as to costs.

Dated the September 16th, 2009


(K. George Joseph)
Administrative Member


(Dr KBS Rajan)
Judicial Member

kkj