

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A 469 OF 2010**

.....Monday..., this the ..06<sup>th</sup>.....day of December, 2010.

**CORAM:**

**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

D.K. Mohanan, S/o. Kumaran,  
Fulltime temporary status casual labourer,  
RMS 'CT' Division, Kannur,  
Residing at Pushpa Nivas,  
Kannothumchal, Chowa (P.O.),  
Kannur – 6.

... Applicant

(By Advocate Mr. T.A. Rajan )

**Versus**

1. Union of India represented by  
Secretary, Government of India,  
Ministry of Communications,  
New Delhi.
2. The Chief Postmaster General,  
Kerala Circle, Trivandrum.
3. The Post Master General,  
Northern Region, Kozhikode.
4. The Senior Superintendent of Post Officers,  
RMS CT Division, Kozhikode. ... Respondents

(By Advocate Mr. Millu Dandapani, ACGSC)

The application having been heard on 30.11.2010, the Tribunal  
on .....06-12-10..... delivered the following:

**ORDER**

**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

This O.A. has been filed by the applicant for the following reliefs :



- i) to declare that the non filling up of Group D post under the 25% quota reserved for casual labourers is arbitrary and illegal.
- ii) to declare that the applicant is eligible and entitled to be considered for appointment to Group D post under the 25% quota based on his seniority.
- iii) to direct the respondents to consider the applicant for appointment to Group D post against the 25% quota reserved for casual labourers.
- iv) In alternative direct the 4<sup>th</sup> respondent to consider and dispose of Annexure A4 representation without further delay.
- v) Award costs of and incidental to this application.
- vi) Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant who was initially appointed as part time casual labourer on 04.02.1981 became a full time casual labourer on 01.10.1983 was granted temporary status with effect from 01.10.1994 in the office of the Inspector, RMS CT-1 Sub Division, Kannur. The applicant's contention was that the respondents were not filling up the vacancies under 25% quota for casual labourers with temporary status in Group-D post. Being at serial No. 2 in the seniority list of full time temporary status casual labourers, the applicant is eligible to be considered for appointment against the 25% quota. The representation submitted by the applicant in this regard has not been considered by the 4<sup>th</sup> respondent. Being aggrieved, the applicant has filed this O.A.



3. Respondents have contested the O.A. In the reply statement filed by the respondents, it was pointed out that the applicant was made a full time casual labourer with effect from 01.10.1993 and not from 01.10.1983. It was further submitted that 20% of unfilled Group-D vacancies in the Department of Posts are set apart for casual labourers. The respondents have considered the case of the applicant in accordance with the provisions in the recruitment rules and his seniority position and he has been ordered to be appointed as Group-D, Ottapalam H.O. In Ottapalam Postal Division for a vacancy occurred in the year 2006 with notional service from 2006, vide Memo No. B2/4/Group D/Rectt dated 16.07.2010. However, the applicant is yet to assume the charge of the post. Further, it was submitted that there was no vacancy approved by the competent authority remaining unfilled in RMS CT-1 Division, when the representation was received. In view of the above, the applicant is not entitled to any reliefs as prayed for in the O.A.

4. In the rejoinder, the applicant admitted that he was made a full time casual labourer as on 01.10.1993 and the same was correctly stated in para 2 of the O.A. and that the typographical error in the date mentioned in synopsis may be excused. It was further submitted that the applicant is working in Railway Mail Service (RMS). The Postal Division and the RMS are entirely two different seniority units and the employees in RMS will be considered for appointment in the Postal Division, only if there is no vacancy in the RMS and vice versa. In spite of having several vacancies in the RMS, the applicant was appointed in the Postal Division, which is arbitrary and illegal. At the same time, several juniors of the applicant were given

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appointment in the RMS as can be seen from the Annexure A-7 memo dated 16.07.2010. The representations submitted by the applicant dated 19.07.2010 and 04.08.2010 have not been considered by the respondents till now. Therefore, the O.A. Should be allowed as prayed for.

5. Arguments were heard and documents perused.

6. As per column 11 (ii) (PART-II - Post of Subordinate Offices) of Department of Posts (Group D Posts) Recruitment Rules, 2002, 25% of the vacancies are to be filled up by part time casual labourers recruiting division or unit, the relevant portion of which is reproduced below:

"(ii) 25% of the vacancies remaining unfilled after recruitment of employees mentioned at Sl. No.2, such vacancies shall be filled up by selection-cum-seniority in the following order:

- (a) by casual labourers with temporary status of the recruiting division or unit failing which,
- (b) by full-time casual labourers of the recruiting division or unit failing which,
- (c) by full-time casual labourers of the neighbouring division or unit failing which,
- (d) by part-time casual labourers of the recruiting division or unit failing which,

(iii) by direct recruitment.

Explanation : 1. For Postal Division or Unit, the neighbouring Division or Unit, as the case may be, shall be the Railway Mail Service Sub-Division and vice-versa."



7. As per explanation No. 1 above, in the case of the applicant who is in the RMS, Postal Division is a neighbouring Division. The applicant has given an appointment in the Postal Division instead of RMS Division as per order dated 16.07.2010. The contention of the respondents is that he could not be given a posting in the RMS, because, in compliance of the orders of Hon'ble High Court of Kerala and this Tribunal, they had filled up the vacant Group-D posts in Kerala Circle and no vacancy approved by the competent authority for filling up, was remaining unfilled in the RMS Division when the applicant's representation was received. The respondents would have appointed the applicant in the RMS if there was a vacancy approved by the competent authority. It has been made clear in the judgement in W.P.(C) No. 28574/2009 and connected Writ Petitions that any clearance by the screening committee to fill up the vacancies in the promotion quota is not required at all and there is no question of abolition of posts to be filled up for the promotion quota. This position was clearly brought out while allowing the O.A. No. 628/2010 and connected cases on 27.10.2010. The relevant part of the order is reproduced as under :

“ With regard to the first question of abolition of the posts, as per the finding entered by the Hon'ble High Court of Kerala in Writ Petition No. 28574 of 2009 and connected Writ Petitions, it is categorically held that there shall not be any question of abolition of posts to be filled up for the promotion quota as the abolition question comes only to the direct recruitment quota. Further the Hon'ble High Court has held that there is no question of any clearance by the screening committee to fill up the vacancies. It is also found by the Hon'ble High Court that there is no records to show that these posts were abolished on the basis of any order given by the competent authority and even if any abolition has been now ordered, it is only applicable to the direct recruitment quota.



With the above finding entered by the Hon'ble High Court of Kerala, the vacancy position existed from 2000 to 2009 are 431 vacancies including 286 vacancies alleged to have been abolished. If the Department wants to comply with the order passed by this Tribunal the Department shall take either to revive all the vacancies abolished without permission of law or without an order passed by the competent authority with regard to the promotion quota. Further it is also held that if they are not in a position to fill up the vacancies already existed they should adjust the vacancies now arisen during the year 2009 i.e. 97 vacancies."

8. In view of the above decisions, clearance by the competent authority for appointment and abolition of posts in the promotion quota are out of question. Therefore, the respondents should reassess the number of vacancies available in the promotion quota. If there is any vacancy available in the RMS CT Division, Kannur / Kozhikode, the applicant should be accommodated. This exercise should be carried out within a period of 2 months from the date of this order.

9. The O.A. is allowed to the extent indicated above. No order as to costs.

(Dated, the 06<sup>th</sup> day of December, 2010.)



**K. GEORGE JOSEPH  
ADMINISTRATIVE MEMBER**