

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.48/2005

Monday this the 9th day of January, 2006.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.G.Rajesh Kumar,
Gramin Dak Sevak Mail Deliverer (GDS MD)
Peyad P.O., Trivandrum – 695 573.

Applicant

(By Advocate Shri Thomas Mathew)

Vs.

1. Assistant Superintendent of Post Offices,
Trivandrum East Sub Division,
Trivandrum-5.
2. Superintendent of Post Offices, South Postal Division,
Thycaud, Trivandrum-14.
3. Chief Postmaster General,
Kerala Circle, Trivandrum.
4. Director General,
Department of Posts, New Delhi.
5. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 9.1.2006,
the Tribunal on the same day delivered the following.

ORDER (Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant claims that he has passed SSLC examination in March 1983 and Pre-degree in 1986. It is contended in the O.A. that the applicant has been working continuously as Mazdoor for the delivery of Telegrams at Peyad P.O. since 1998 till 2004. He has worked for 249 days in 2000, 240 days in 2001, 248 days in 2002 and 241 days in 2004. In the DG Posts' letter dated 6.6.1988 (Annexure A6), the instructions to be



observed in the matter of ED Appointments under Section 4 of ED Service Rules (Method of Recruitment) are stipulated. As per the Chief Postmaster General letter dated 31.3.1992 (Annexure A-7) it is instructed that casual labourers should be given preference of Extra Departmental, Part-time vacancies and there should be no rooms for complaints from them. A post of GDS Mail Deliverer became vacant at Peyad P.O. consequent on the promotion of the permanent incumbent Sri. Premchandran Nair to the cadre of Postman after passing the departmental promotion examination. The applicant has made an oral request for giving him a regular appointment on the ground that, he is holding the post from 9.8.2004 onwards and further he has also made a representation(A-10) to the 1st respondent, which are not yet responded to. Without considering his request, the department is taking steps for filling up the vacant post of GDS Mail Deliverer, Peyad P.O. Aggrieved by the inaction on the part of the respondents the applicant has filed this O.A. seeking the following main reliefs:

- i. Declare that the action on the part of the 1st respondent to fill up the post of GDS Mail Deliverer, Peyad as per Annexure A-11 notice is illegal, unfair and arbitrary and quash the same;
- ii. Declare that the applicant is entitled to be appointed on regular basis as GDS – Mail Deliverer, Peyad P.O. in view of the preferential right accrued by the applicant in terms of Annexure A6 and direct the respondents accordingly;

2. The respondents have filed a detailed reply statemnt contending that the post of GDS MD, Peyad P.O. fell vacant on 12.6.2004 due to the promotion of the regular incumbent as Postman. As per the DG, Posts letter dated 17.2.2004, the filling up of any vacant post of GDS will be decided by the Chief Postmaster General/Postmaster General keeping in view the justification in terms of workload. As the work of GDS Mail Deliverer, Peyad S.O. had to be managed, an outsider was engaged on



stop gap arrangement from 12.6.2004 to 8.8.2004. From 9.8.004 the applicant , who is also an outsider was engaged. The applicant who was engaged was not selected as per rules after a due process of selection. Employment Exchange was addressed for nominating suitable candidates and public notification was also issued calling for applications for provisional appointment. The work of delivering telegrams is being done by the Department of Posts, on behalf of the Telecom Department with specific rates. No person is engaged permanently for delivery of telegrams. Coolie charges are paid based on the number of telegrams delivered at the rate furnished in the reply statement. There is no indication in Annexure A-5 that it relates to the applicant. There is no evidence to substantiate the claim that the applicant had worked as Mazdoor at Peryad P.O. during the years 2000 to 2004. Since he was not a full-time or part-time casual labourer, he was not entitled for regular appointment. He was engaged only as a stop-gap arrangement. As per the interim order of this Tribunal the selection process has been kept in abeyance.

3. The applicant has filed a rejoinder on 8.7.2005 reiterating the same contentions raised in the O.A. and further added that the applicant has been working as Part-time Mazdoor for the delivery of telegrams at Peyad P.O. since January 1998 on payment of Mazdoor charges which is evident from A-5 ACG-17 receipt. Annexure A-5 bears the signature of the applicant in token of having received the payment.. The contention that A-6 and A-7 are not applicable to the applicant as he was not a full-time or part-time casual labourer,which is contrary to the decision taken by the DG Posts as to who is the Casual Labourer or a part time casual labourer as per letter dated 17.5.1989 (Annexure-A-13), the operative portion of which reads as under:



"It is hereby clarified that all daily wagers working in Post Offices or in R.M.S. Offices or in Administraive Offices or P.S.D.'s/M.M.S. under different designations (mazdoor casual labourer, contingent paid staff, daily wager, daily rated Mazdoor, outsider) are to be treated as Casual Labourers. Those casual labourers who are engaged for a period of not less than 8 hours a day should be described as full time Casual Labourers. Those Casual Labourers who are engaged for a period of less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued."

4. The applicant has also produced A-14 document to substantiate his case that he has been working as part-time Mazdoor for 271 days in the year 1999.

5. The respondents have filed an additional reply statement contending that the Casual Labourers employed through Employment Exchange has preference in appointment to GDS Posts, if all other conditions for appointment to the post are satisfied. The Hon'ble Delhi High Court in Civil Writ Petition No.8615/2004 and Civil Writ Petition No.9282/2004 filed by Ms.Kamala Devi and Ms.Kamlesh Vs. Union of India and others, held that the provisionally appointed GDS do not have any right whatsoever for claiming regularization of their long period of employment as a provisional appointee unless they are recruited as per the recruitment rules against sanctioned post.

6. The applicant has filed an additional rejoinder in which it is contended that , the applicant has been placed in a vacant post of GDS – Mail Deliverer on provisional basis w.e.f. 9.8.2004, when a vacancy arose at Peyad Post Office where he has been working as a Part-time Mazdoor. It is clarified in A-13 letter that even an outsider engaged, are to be treated as Casual Labourers and those who are engaged for a period of not less than 8 hours a day should be described as full-time and those engaged less than 8 hours a day should be described as part-time Casual



Labourers. The applicant has also produced a copy of the order of this Tribunal in O.A.1622/98 dated 15.6.2001.

7. Shri Thomas Mathew, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan, learned SCGSC, appeared for the respondents. Learned counsel have taken us to various pleadings, evidence and material placed on record. Counsel for applicant argued that as per A-6 and A-13 letters of the DG Posts', he is entitled to get the benefit as he was engaged to work from 1998 onwards and even assuming that he has not worked as a Full-time Casual Labourer as per the interpretation given in A-13, he should have been considered as a Full-time Casual Labourer.

8. The learned counsel for the respondents on the other hand persuasively argued that the grant of status as claimed by the applicant is only to the Casual Labourers and not for the employees who are Mazdoors or substitutes. The applicant has been engaged only as a stop-gap arrangement.

9. We have given due consideration to the arguments advanced by the counsel for the parties and perused the pleadings, evidence and material placed on record. The short question arises for consideration in this O.A. is that, whether the applicant is entitled to be considered for getting the benefit of A6 and A-7 as he fulfils all the conditions which are required for regularization and appointment as GDS Mail Deliverer or not ?

10. The Gramin Dak Sevaks, a large number of employees who have been declared by the Hon'ble Supreme Court in a celebrated decision of Rajamma' case has to be considered as Civil Servants. The other service



rules to certain extent is applicable, but they are governed by the GDS Rules itself. The counsel for respondents was good enough to produce the documents of the applicant who has been engaged from April 2004 onwards upto May 2005. Counsel for respondents submitted that the document A-14 that has been produced by the applicant is not available with them and even assuming that it is an admitted fact that the applicant has been working not as a casual labourer but only as a Mazdoor, who, will not be eligible and entitled to be considered as GDS on regular basis.

11. Learned counsel for the applicant has produced Annexure A-6 and A-13 letters to substantiate his contentions. For better elucidation the said letters are produced below.

(A-6)

"True copy of Para 28 under Section 4 of ED Service Rules containing DG Posts instructions under letter no.17-141/88 EDC & Trg. Dated 6th June, 1988.

(28) Preference to casual labourers in the matter of appointment as ED Agents.—According to the prevalent recruitment rules governing the cadre of Group 'D', the order of preference among various segments of eligible employees is as under:-

- (a) Non-test category
- (b) ED employees
- (c) Casual Labourers
- (d) Part-time Casual labourers.

2. Since the number of vacancies of group 'D' is limited and the number of ED employees eligible for recruitment as Group 'D' is comparatively large, the casual labourers and part-time casual labourers hardly get any chance of their being absorbed as Group 'D'. Thus majority of casual labourers with long service are left out without any prospects of their getting absorbed in Group 'D' cadre.

3. Keeping the above in view, a suggestion has been put forth that casual labourers, both full and part-time should be given preference for recruitments as Extra Departmental Agents, in case they are willing, with a view to afford the casual labourers a chance for ultimate absorption as Group 'D'.



4. The suggestion has been examined in detail 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 fulfill all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange.
(D.G., Posts, letter No.17-141/88-ERDC & Trg. Dated the 56th June, 1988)

(A-13)

D.o.P., Lr.No.65-24/88-SPB. I.
Dated 17.5.1989

**Clarification regarding Casual Labourers and
Part-time casual labourers.**

I am directed to say that references have been received seeking clarification as to which class of workers should be treated as full-time or part-time casual labourers.

2. It is hereby clarified that all daily wagers working in PosOffices or in R.M.S. Offices or in Administrative Offices or P.S.D.'s/M.M.S. under different designations (mazdoor, casual labourer, contingent paid staff, daily wager, daily rated mazdoor, outsider) are to be treated as casual labourers. Those casual labourers who are engaged for a period of not less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued.

3. Substitutes engaged against absentees should not be designated casual labourer. For purposes of recruitment to Group 'D' posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed:-

- (i) NTC Group 'D' Officials.
- (ii) E.D.As. of the same division.
- (iii) Casual labourers (full-time or part-time. For purpose of computation of eligible service, half of the service rendered as a part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment, to have completed one year of service as full-time casual labourer).
- (iv) E.D.As. of other divisions in the same Region.
- (v) Substitutes (not working in Metropolitan cities).



(vi) Direct recruits through employment exchanges.

Note:--Substitutes working in Metropolitan Cities will, however, above No.(iv) in the list.

12. Annexure A-6 notification issued by the DG Posts is a true copy of para 28 under Section 4 of ED Service Rules containing DG Posts instructions under letter dated 6.6.1988 which gives preference to the casual labourers in the matter of appointment as ED Agents. From the perusal of A-6 it is clear that a category of employees like the applicant is also entitled to have the preference in consideration of Group 'D' post.

13. It is further clarified in A-13 as quoted above, which denotes that even a person who has put in less than 8 hours of employment on a day has to be treated as Part-time Casual Labourers and the benefits should be extended to him. It is true that A-14 document produced by the applicant shows that the applicant has been working from January, 1999 onwards as a Mazdoor. Admittedly, the document produced by the respondents shows that from April 2004 onwards the applicant was working as a substitute till May 2005. By the interim order dated 17.01.2005 this Tribunal maintained the status quo of the applicant. Learned counsel for applicant submitted that even this service from April, 2004 to May, 2005 is counted as per the rules, the employee had put more than 240 days service and he would be entitled for the benefit. This appears from the documents produced by the respondents, that the applicant has been put in 18 months of service which will be more than 240 days. It will be worth mentioning to note that the arguments and the pleadings taken by the respondents in Delhi Civil Writ Petitions mentioned above does not pertain to this issue. On the perusal of the said decision we are of the view that, that was a case where the applicant therein was officiating and he has no fixity of employment and therefore, in the Writ



application it has been declared that the said claimants cannot be regularized. The facts and the legal position as far as this case is concerned is on a different footing. This Tribunal had an occasion to consider this issue in O.A.1622/98 in an identical case which according to the applicant, it has become final and the operative portion of which is quoted below

“9. In view of the facts and circumstances discussed above, we hold that A-8 notice is liable to be quashed and that the applicant is entitled to be absorbed/appointed as ED Messenger, Pallipuram in the vacancy which he holds from 1.11.97, subject to his satisfying the other criteria in accordance with the rules, regulations and orders in that regard.

10. In the result, the A-8 communication dated 13.10.98 is set aside. Applicant is entitled to be absorbed/appointed as ED Messenger, Pallippuram in the vacancy which he holds from 1.11.97, in view of A-2 communication, subject to his fulfilling other conditions regarding suitability. Accordingly, the respondents are directed to consider the applicant for absorption/appointment as ED Messenger, Pallippuram in the light of instructions of the DG Posts contained in A-2. Steps for direct recruitment from open market should be resorted to only if the applicant is found to be otherwise unsuitable for such appointment. Necessary orders giving effect to the above directions shall be issued within a period of two months from the date of receipt of copy of this order.”

14. We are in respectful agreement with the finding of the decision in that O.A. Considering all these aspects i.e. A6 & A-13 and also the fact that he has been engaged from 1999 on wards in any case from 2004, the applicant is entitled for the benefits. It is also made clear that the applicant has also registered in the Employment Exchange and therefore, the contention that the applicant has not been sponsored by the Employment Exchange will not stand hold good.

15. In the circumstances, the O.A. is allowed and the respondents are directed to grant the benefits of A6 and A-13 to the applicant and we declare that the applicant is also entitled for appointment as GDS Mail Deliverer and for the preferential right as mentioned in terms of the above



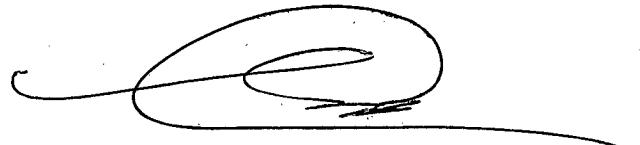
letters. Therefore, we direct the respondents to grant the reliefs to the applicant and pass appropriate orders within a time frame of 3 months from the date of receipt of a copy of this order. We also make it clear that the applicant will get the preferential treatment in preference to the outsiders from open market.

16. O.A. is allowed. In the circumstances, no order as to costs.

Dated, the 9th January, 2006.

N.Ramakrishnan

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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