

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 475 OF 2008

Wednesday, this the 28th day of October, 2009.

CORAM:

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

N.Chandran Pillai
GDSMD, Mithrakerry (Provisional Group D,
Thiruvalla Head Post Office)
Residing at Nedumkolil, Mithrakerry ... **Applicant**

(By Advocate Mr. V.Sajith Kumar)

versus

1. Union of India represented by Secretary
to the Government
Ministry of Communications, New Delhi
2. Chief Postmaster General,
Kerala Circle, Trivandrum
3. The Superintendent of Post Offices,
Thiruvalla Postal Division
Mavelikkara
4. Thampi K.K.
Trainee Postman
Thiruvalla Head Post Officer GDSMD, Annicad
Mallapally, Thiruvalla ... **Respondents**

(By Advocate Mrs. Mini R Menon, ACGSC (R1-3)
Advocate Mr.M.R.Hariraj (R-4))

The application having been heard on 28.10.2009, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This OA has been filed challenging the following orders:-

(a) Annexure A-1 order dated 12.08.2008 whereby
the private respondent has been appointed as Postman
in Thiruvalla Division.

(b) Annexure A-4 order dated 07.01.2005 whereby it was held that the applicant is not eligible for the post of Postman under visually handicapped category.

(c) Annexure A-9 order dated 24.03.2003 whereby the applicant's disability does not qualify him for being consider under 1% reservation.

(d) Annexure A-11 order dated 29.12.1998 whereby the applicant was declared as not qualified in the test held in 1998-99.

2. The case of the applicant indeed has a chequered history. Initially OA 340/03 was filed by the applicant whereby the applicant has challenged the decision of the respondents that the applicant cannot be appointed as Village Postman in Thiruvalla. The said OA was allowed by setting aside the impugned order therein and the respondents were directed to consider the applicant for appointment to the post of Postman / Village Postman against visually handicapped reserved post. The respondents had challenged the order of this Tribunal in W.P(C) No.5634/04 which was disposed of stating that it is left to the Department to take a sympathetic view in the case of the applicant for appointment to the post of Postman, if it is otherwise in order, taking note of his services already rendered. As the respondents' action was not favourable to the applicant, another OA 85/05 was filed and the Tribunal held as under :-

"In the conspectus of facts and circumstances and considering the fact that this Tribunal categorically found in OA 340/03 that the carried forward vacancy for visually handicapped is still existing in Thiruvalla Division and the post of postman has been identified as a post which can be filled by partially blind and the applicant having completed 15 years of service is eligible to be considered for the post of Postman under

the 25% quota on the basis of seniority, we direct that the applicant may be considered for the said quota in the next available opportunity along with other eligible candidates in the said quota in accordance with law."

3. The applicant moved the Hon'ble High Court in W.P(C) No.27987/05 for a direction to the respondents to provisionally appoint him as Postman and for stay of recovery of pension contribution from him. The Hon'ble High Court has directed to implement the order of the Tribunal after reckoning the case of any other similarly placed candidate. It is by virtue of the above observation / direction that in a vacancy available at Thiruvalla the private respondent happened to be appointed and the applicant could not be appointed due to non availability of vacancy.

4. According to the applicant, the private respondent could not be accommodated against the reserved vacancy as his visual disability has been acquired much later than the date of availability of vacancy reserved for visually handicapped and it was the applicant alone who was the available and eligible candidate on the date of availability of the reserved vacancy, to be considered and appointed.

5. Respondents have contested the OA. The private respondent has also resisted the OA.

6. After the pleadings were got completed, at one stage it was found essential to ascertain the vacancies under the reserved category under visually handicapped quota both under merit quota as well as seniority quota. The respondents had accordingly intimated that there were two vacancies, one each at Trivandrum North and Kollam under the

physically handicapped vacancy (PH) under seniority quota and one vacancy has been ear-marked for Thiruvalla to be filled by visually handicapped under the merit quota. The applicant was permitted to participate in the test but unfortunately out of three papers, he could qualify only in two and failed in the third one. Hence the applicant could not be appointed under merit quota. Respondents were thereafter asked to intimate whether the two vacancies at Trivadrum North and Kollam are still available and the response to this question was that both the vacancies have been got filled up, though very recently.

7. Counsel for applicant submitted that the concession of reservation to physically challenged persons is a welfare measure and liberal construction of rules are to be adopted. He has submitted that provision exists for relaxing the standard in case of non availability of requisite number of candidates under physically handicapped quota. In this regard reference has been invited to O.M dated 29.12.2005 wherein vide Para 22 thereof, it has been stipulated as under :-

22. **"Relaxation of Standard of suitability :**
If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post / posts in question."

8. Counsel for applicant further submitted that in view of the fact that there is one clear vacancy reserved for visually handicapped at

Thiruvalla Division coupled with further fact that the applicant is the lone visually handicapped candidate eligible to be considered for the said post, notwithstanding the fact that he could not qualify in one of the papers invoking the provisions of relaxation vide para 22 of O.M dated 29.12.2005 extracted above, the respondents could consider and appoint the applicant.

9. Counsel for respondents was not in a position to accept the suggestion in the absence of instructions. The hesitation of the part of the respondents' counsel could well be understood. However, the Tribunal finds that there is a vacancy reserved for visually handicapped and a lone individual (applicant) is available for consideration. This individual has been attempting to seek justice for almost a decade by now as according to him he ought to have been appointed against 1998 vacancy. None of the orders passed so far had gone against him. It is pertinent to refer to the observation of the Hon'ble High Court while disposing of W.P.(C) No.5634/04, clearly stated "we however left it to the Department to take a sympathetic view in the case of 1st respondent for appointment to the post of Postman....." (emphasize supplied). Earlier the applicant could not be appointed in the wake of the above order as another candidate (private respondent) was available. However, now that no other candidate is competing, keeping in view the spirit with which the Hon'ble High Court had passed the order, coupled with the fact that this Tribunal had clearly stated in its order dated 16.08.2005 in OA 85/05 that Thiruvalla vacancy shall be identified as a post for visually handicapped. Interest of justice would be met if direction is given to the respondents to consider the case of the applicant, invoking the provision of Para 22 of O.M dated 29.12.2005, for relaxing the conditions and consider appointment of the

applicant against the post of Postman at Thiruvalla. The applicant's claim for pre 01.01.2004 appointment to secure pensionary benefits can however not be allowed.

10. With the above directions, OA is disposed of. No costs.

Dated, the 28th October, 2009.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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