

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 493 OF 2008

.....FRIDAY....., this the 7th day of August, 2009.

CORAM:

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

1. P.T. Sreedharan, GDS MD,
Kariyad South, Kannur District.
2. N. Vasu, GDS MC,
Peringadi, Kannur District.
3. K.C. Sasidharan, GDS MD,
Arattuthara, Kannur District.
4. C.A. Joseph, GDS MC,
Koottupuzha, Kiliyanthara.
5. George Thomas K., GDS MD I,
Keezhpally, Payam.
6. K.M. Antony, GDS MD,
Koottupuzha P.O., Kiliyanthara.
7. V.M. Surendran, GDS MP,
Chokli.
8. C. Pradeepan, GDS MD,
Pukkot-Pathayakunnu. ... Applicants

(By Advocate Mr. P.K. Ravi Sankar)

versus

1. Union of India, rep. by its
Secretary, Department of Post,
New Delhi.
2. Chief Post Master General,
Office of the CPMG, Kerala Circle,
Thiruvananthapuram-695 033.
3. Post Master General,
Northern Circle, Kozhikode.
4. The Superintendent of Post Offices,
Thalassery Division, Thalassery. ... Respondents

(By Advocate Mr.T.P.M. Ibrahim Khan, SCGSC)


The application having been heard on 17.07.2009, the Tribunal on 7.8.09 delivered the following:

ORDER

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

The eight applicants in this OA are at present functioning as GD Sevaks in the Thalassery Division of the Postal Department. In a seniority list prepared in 2005, their names figure at certain places and according to the applicants, "if the persons who have relinquished their right to get promoted are excluded from the seniority list, the applicants would be among the senior most persons eligible to be considered." Further, according to the applicants, there are 8 Group D vacancies in the Thalassery Division and are kept unfilled under the pretext of 'want of approval by the screening committee'. These posts are managed by engaging GDS on mazdoor basis. It is the case of the applicants that there is no need to have a nod from the screening committee since this Tribunal had held in OA No. 901/2003, 977/2003, 115/2004 and 346/2005 that the posts are to be filled up by promotion for which the screening committee. Such an order had been upheld by the Hon'ble High Court of Kerala. Hence, the applicants pray for the following reliefs:-

"i) To issue appropriate direction or orders directing the respondents to take immediate steps for promoting applicants in Group D post in Thalassery Division on the basis of their running seniority against the existing vacancies which falls under 75% quota set apart or Gramin Dak Sevaks under the Recruitment Rules 2002 and to promote them to Group D category from the date of their entitlement with all consequential benefits forthwith.



ii) To declare that the applicants are entitled to be considered for appointment as Group D in the existing vacancies."

2. Respondents have contested the O.A. It has been contended by them that the posts are not, according to the Recruitment Rules, of promotion quota. Again, in so far as promotion is concerned, the GDS cannot claim any such promotion as GDS are engaged not as part of the formal cadre of the services of the postal department. The Gramin Dak Sevaks are governed by a complete code governing their service, conduct and disciplinary proceedings. They are not members of the service of the Department of Posts and as long as their employment is under a separate scheme not being a part of the formal cadre of the postal department, they cannot be treated to be in the 'same service' or 'class of service' thereby entitling them to be considered for 'promotion' in its legal sense.

3. Counsel for the applicant has furnished the written argument in which he has stated as under:-

"In OA 399/2008 on the file of this Hon'ble Tribunal exactly identical question was involved. The reply filed by the Respondent in the present OA is the verbatim reproduction of the reply filed in the above OA. This Hon'ble Tribunal allowed the said OA rejecting the contention of the Respondents that filling up of 75% quota is not by way of promotion. Hence, the present OA may also be allowed in terms of the final order in OA 399 of 2008 and other connected cases."

4. In their written submission, certain particulars have been given and the same are as under:-

"2. At the outset it is very humbly submitted that there are 5 group D vacancies available upto the year of 2006. In 2000 - 1 vacancy, 2004 - 2 vacancies, 2005 - 1 vacancy and on 2006 - 1 vacancy. Out of these above 5 vacancies one post was filled up by giving appointment to Smt. Elizabeth Francis, part-time sweeper against 25% vacancy and in accordance with the directions issued by this Honourable Tribunal in order dated 23.3.2007 in Original Application No. 286 of 2005 filed by Smt. Elizabeth Francis. The remaining posts were filled up by giving appointments to four GDS and as detailed below as per the seniority, eligibility and willingness.

1. Sri. B. Abdulla, GDS MD, Ellumannam
2. Sri. T.D. John, GDS BPM, Ellumannam
3. Sri. V.V. Thomas, GDS MD, Vattiamthode
4. Sri. P.T. Sreedharan, GDS MD, Kariyad South.

3. It is very humbly submitted that Sri. P.T. Sreedharan, is the last GDS appointed to the group D post. He is the first applicant in the present Original Application. He joint as Group D, Thalassery HO on 20.2.2009(FN) and his position in the gradation list as on 1.7.2005 is 28.

4. In this context, it is humbly submitted that now as on date there are five vacancies (including three leave reserve post) available in the Thalassery Division. That is in 2007 - 1 vacancy, 2008- 2 vacancies, 2009 - 2 vacancies. The position of the other seven applicants in the Original Application as per gradation list as on 1.7.2005 are as under :

1. Sri. N. Vasu, No.36
2. Sri. K.C. Sasidharan, No.43
3. Sri. C.A. Joseph, No.79
4. George Thomas, No.48
5. K.M. Antony, No.70
6. V.M. Surendran, No.85
7. C. Pradeepan, No.86.

The plea of the other seven applicants in the Original Application are not tenable because there are other senior GDS above applicants in the gradation list who are eligible to be promoted to Group-D. In similar matters already decided by this Hon'ble Tribunal it is made very clear that entitlement for promotion to group D post will be subject to the seniority, eligibility and availability of vacancies. Hence if any of the above 7 applicants is ordered to be posted against the vacancy posts now available it will be against the interest of other senior eligible GDS. The above process of selection and appointment is made subject to the outcome of the SLP filed before the Apex Court regarding the legality and relevance of Screening Committee."

5. Arguments were heard and documents perused. In view of the fact that in the written submission the respondents have not reiterated their contention made in the reply, about the status of the applicants to claim promotion to Group D. If they invite for a ruling in this regard, then their contention that the GDS cannot claim any promotion as they do not form part of the Postal service has to be summarily rejected for, the claim of the applicants is not on the foundation that GDS is a part of postal service, but their claim is that recruitment rules provide for "75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl. No. 2

shall be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak Sevaks of the neighbouring Division or Unit by selection-cum-seniority”.

6. In O.A. No.312/08 & other 36 connected cases decided on 15.12.08, this Tribunal has held as under:-

“64. In view of the above, all the O.As are allowed in the following terms. It is declared that there is absolutely no need to seek the clearance of the Screening Committee to fill up the vacant posts in various Divisions which are to be filled up from out of G.D.S. and Casual Labourers as per the provisions of the Recruitment Rules, 2002. Respondents are directed to take suitable action in this regard, so that all the posts, majority of which appear to be already manned by the G.D.S. themselves working as 'mazdoors' at extra cost, are duly filled. In a few cases (e.g. OA 118/2008), the claim of the applicants is that they should be considered against the vacancies which arose at that time when they were within fifty years of age. In such cases, if the applicants and similarly situated persons were within the age limit as on the date of availability of vacancies, notwithstanding the fact that they may by now be over aged, their cases should also, if otherwise found fit, be considered subject, of course, to their being sufficiently senior for absorption in Group D post. If on the basis of their seniority, their names could not be considered due to limited number of vacancies and seniors alone could considered for appointment against available vacancies, the respective individuals who could not be considered be informed accordingly. Time calendared for compliance of this order is nine months from the date of communication of this order.”

7. It is seen from the written arguments that the respondents have proceeded in the manner as spelt out in the above order. The averment in the OA that if the persons who have relinquished their right to get promoted are excluded from the seniority list, the applicants would be among the senior most persons eligible to be considered seems to be inaccurate in view of what has been stated in para 2 to 4 of the written arguments by the respondents. The applicants have to wait for their turn in their seniority. In view of the

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above, the respondents shall consider the case of the applicants on the lines specified in the above order against the future vacancies to the post of Group D of the Thalassery Division in accordance with the provisions of the Recruitment Rules quoted above and on the basis of seniority of the applicants.

8. The OA is disposed of as above. No costs.

(Dated, the 7TH August, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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