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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.495/2013

FRIDAY this the 14th day of November 2014

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

1. G.M.Thankachan,
S/o.Geevarghese Mathunny,
Postman, Chadayamangalam – 691 531.
Residing at Thejus, Cheruvakkal P.O.,
Ayur, Kollam – 691 533.
 2. Denzy K Daniel,
W/o.P.M.Shaji,
Postal Assistant, Valakom.
Residing at C.S.Cottage,
Vayakkal P.O., Valakom – 691 532.
 3. M.Sheeba Kumari,
W/o.Babu Yohannan,
Postal Assistant, Kuzhimathicaud.
Residing at Kattuvila Vadakathil,
Kuzhumathicaud P.O., Kollam District – 691 509.
 4. R.Gandhidasan,
S/o.late R.Raghavan,
Postman, Asramom – 691 002.
Residing at Anju Bhavan, Kothapuram,
Karali Junction P.O., Sarthamatta, Kollam – 690 521.
 5. G.Easwarachandra Vidya Sagar,
S/o.late P.Gopalan,
Postman East Kallada, Kollam – 691 502.
Residing at Gopalamandiram, Adichanallur,
Kollam District – 691 573.
- ...Applicants

(By Advocate Mr.V.Sajith Kumar)



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V e r s u s

1. Union of India
represented by the Secretary to the Government,
Department of the Post, Ministry of Communications,
Government of India, New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 101.
3. The Senior Superintendent of Post Office,
Kollam Postal Division, Kollam – 691 001. ...Respondents

(By Advocate Mrs.Jishamol Cleetus,ACGSC)

This application having been heard on 27th October 2014 the Tribunal on ..14th.. November 2014 delivered the following :-

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

M.A.No.560/2013 for joining together of applicants is allowed.

2. Applicants are promotees to the posts of Postmen. Those vacancies arose in 2002.Subsequently 2nd and 3rd applicants were appointed as Postal Assistants with effect from 28.11.2009. All of them were originally begun their service as Gramin Dak Sevak Mail Deliverers (GDS MD). All of them underwent the selection process as per Annexure A-1 notification which consisted of an examination held on 28.3.2004. They were selected as per the selection list dated 28.6.2004 vide Annexure A-2. According to the applicants, they would have got regular appointment prior to the introduction of New Pension Scheme, had the respondents conducted the



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recruitment for vacancies of 2002 during that year itself. They submitted Annexure A-3 and Annexure A-4 representations to 2nd and 3rd respondents on 5.11.2011 requesting for ante-dating of their promotion in the Postman cadre to 10.4.2003 ie. date on which one Shri.P.R.Thampy, Postman under seniority quota joined as Postman. Applicants submit that similarly situated persons have been given ante-dated promotions by this Tribunal vide Annexure A-5 order dated 17.6.2011. Applicants state that they are entitled to a similar treatment from the respondents. They pray for the following reliefs :

1. To direct the respondents to place the applicants notionally with effect from date of occurrence of vacancy and include them into the Statutory Pension Scheme by extending the benefits ordered in O.A.No.620/2003 or Annexure A-5.
2. To direct the respondents to stop recoveries towards the contribution of the applicants under the New Pension Scheme and to refund the amount already recovered with an interest of 10%.
3. Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
4. Grant the cost of this Original Application.

3. Respondents contested the matter stating that applicants are seeking the benefit ordered in O.A.No.620/2003. The benefits extended to applicants in O.A.No.620/2003 were mainly on the ground that there was discrimination against the applicants therein who were wrongly placed under the New Pension Scheme. Applicants in that case had taken part in the Postman Examination held on 24.11.2002, but they were appointed as Postman only after 1.1.2004 due to administrative delay and hence in order

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to ensure that the officials who had taken up the same examination held on 24.11.2002 were not treated differently, this Tribunal in O.A.No.620/2003 granted reliefs to the applicants therein and the same *ratio* has been followed in Annexure A-5 order also. Respondents state that applicant No.1 to 4 would not have qualified for appearing in the examination, had the examination for promotion was conducted either in 2002 or 2003, in view of the mandatory provisions in the Recruitment Rules that they should have 5 years of minimum service in the GDS cadre as on 1st January of 2002 or 2003. Therefore, the claim of the applicant No.1 to 4 is not sustainable. After declaring the results of the Postman examination vide Annexure A-2, they were provisionally selected for the post of Postmen along with two candidates from the Army Postal Services and were appointed as Postmen in Kollam Division with effect from 17.7.2004. Since they were trained and appointed only after 1.1.2004, they come under the New Pension Scheme. Applicants joined as Postmen on 17.7.2004 and had chosen to accept the conditions of appointment are estopped from challenging their date of appointment at this distant point of time ie. nearly 7 years after the issuance of promotion orders. The vacancies of 2002 could not be filled up on account of the Government of India instructions marked as Annexure R-4 directing that the vacancies of Group 'B', 'C' and 'D' posts should be filled up only after clearance by the Screening Committee. The vacancies were apportioned to different divisions only by 2.12.2003 and a minimum of three months time has to be given between the notification for selection


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and for actual conducting of departmental examination. Clearance of direct recruitment vacancies by the Screening Committee is an administrative procedure. Approval of the 2nd respondent was received only in January, 2004 and examination was conducted in March, 2004 itself. Applicants were aware of all these when they accepted the conditions of appointment.

4. Rejoinder was filed by the applicants pointing out that Hon'ble High Court of Kerala has held in O.P.(CAT) No.1228/2011 that since appointment of GDS to the post Postman is by way of promotion, there was no need for any clearance from the Screening Committee. The delay in conducting the examination was due to administrative lapses, the applicants cannot be penalised for such administrative lapses.

5. Respondents filed additional reply pointing out that 5th applicant has entered the department as GDS as early as in 1982 and he had enough opportunities to appear for the Postman examination held from 1987 onwards and having not taken up such examinations till 2004 when the New Pension Scheme was implemented, his contention to place him under CCS (Pension) Rules, 1972 is only to be ignored. The respondents' department had to obey the extant administrative instructions regarding the clearance of vacancies by the Screening Committee. Approval for filling up of vacancies for the year 2002 was received only in 2003. Respondents pray for rejecting



the case of the applicants.

6. When the matter was taken up for hearing, Shri.Sajith Kumar, learned counsel for the applicant fairly conceded that since applicant No.1 to 4 would not have completed the requisite 5 years of service in the GDS cadre, they would not have been eligible had there been a selection for promotion to the post of Postmen in the year 2002 itself. Therefore, he candidly submitted that the reliefs sought for in this O.A by applicant No.1 to 4 are not pressed.

7. What remains is the case of the applicant No.5. Admittedly, his date of entry as GDS is 26.11.1982. According to the respondents, he had not appeared for the selection process for the vacancies which occurred earlier between 1987 and 2001 for being promoted to the post of Postman but he chose only for the vacancies which arose in 2002. It has to be noted that the respondents took time till 2004 for getting clearance for filling up of vacancies till 2004. In the reply, respondents stated that approval for filling up of vacancies was received from 2nd respondent only in January, 2004 and soon thereafter examination was conducted in March, 2004. Respondents stated that they were bound by the administrative instructions issued by the DoP&T for getting the clearance of Screening Committee, Annexure R-4 is a copy of the Government of India instructions for filling up of vacancies. However, it has to be noted that, subsequently Hon'ble High Court of Kerala

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vide judgment dated 23.12.2009 in WPC No.33971/2009 and also vide judgment dated 22.3.2007 in WPC No.22818/2006 held that there was no need for clearance of the vacancies by the Screening Committee since the post of Postman is a promotional post from GDS.

8. Learned counsel for the respondents referring to Annexure R-1 and Annexure R-2 decisions of this Tribunal pointed out that abolition of the vacancies and requirement of clearance from the Screening Committee are well within the rights of the administration. It was also pointed out by the learned counsel that it is settled law that the promotion takes effect from the date of being granted and not from the date of occurrence of the vacancies or creation of posts (see *Nirmal Chandra Sinha v. Union of India and others* 2009 (1) SCC 671). It was also held in *Union of India v. K.V. Jankiraman* AIR 1991 SC 2010 that an employee has no right to promotion but he has only a right to be considered for promotion.

9. Referring to Annexure R-1 order of this Tribunal in O.A.No.889/2009, learned counsel for the respondents submitted that applicants herein have approached this Tribunal after nearly 9 years subsequent to their promotion. This Tribunal finds some merit in that contention because only after a lapse of long time i.e. after they have been posted as Postmen on 17.7.2004, they approached this Tribunal only on 27.5.2013 after a lapse of nearly 9 years. This Tribunal is of the view that

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this delay in approaching this Tribunal itself takes the wind out of the sails of the applicants.

10. Learned counsel for the applicant, Shri.Sajith Kumar submitted that the benefits given to applicant No.1 in O.A.No.844/2012 may be given to applicant No.5 in the present case.

11. Taking into consideration all the facts and circumstances of the case, this Tribunal is of the view that even in the case of applicant No.5 his claim is belated. Merely because of submitting Annexure A-3 and Annexure A-4 representations will not take his case out from being considered as stale one. Hence, the case of the applicant No.5 also cannot be considered at this distance point of time.

12. In the result, the O.A is dismissed.

(Dated this the ^{14th} day of November 2014)


U.SARATHCHANDRAN
JUDICIAL MEMBER

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