

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.497/97

Thursday, this the 2nd day of December, 1999.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Kamamma,
Group'D'
Postal Stores Depot,
Thiruvananthapuram.

- Applicant

By Advocate Mr G Sasidharan Chempazhanthiyil

Vs

1. Superintendent
Postal Stores Depot,
Thiruvananthapuram.
2. Senior Superintendent of Post Offices,
North Division,
Thiruvananthapuram.
3. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.
4. Director General,
Postal Department,
New Delhi.
5. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.

- Respondents

By Advocate Mr P.R.Ramachandra Menon, ACGSC

The application having been heard on 2.12.99, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant was appointed as part-time Casual
Labourer with five hours work a day through Employment
Exchange with effect from 1.11.72. She was subsequently

made full time with effect from 2.11.87. As the applicant and 5 similar others were not considered for grant of temporary status and were not regularised in service, they approached this Tribunal filing O.A.608/90. That O.A. was disposed of by order dated 25.4.91. The respondents therein had contended before the Tribunal that there was no non-test category post on which the applicants' services could be regularised and indicated that proposal was pending for creation of six posts. Taking into account the rival contentions, the Tribunal ordered that the applicants should be granted temporary status with effect from 1.10.89 that they were entitled to the minimum of the pay scale of Group'D' post with effect from 2.11.87 and such bonus during 1987-88 and 1988-89 as were given to the casual workers who had more than four and a half years of continuous service as on 2.11.87, that they were entitled to be regularised immediately against the six posts of Scavengers/Sweepers for which proposal had been made by the respondents and that till they are absorbed in Group'D' cadre, they would continued as temporary status casual labourers with all consequential benefits. As the above direction was not implemented in time, the applicant herein along with 5 others in the said case moved a Civil Contempt Petition. During the pendency of the said petition, A-7 order was issued appointing all the applicants in the said case against Group'D' posts with effect from 12.10.92 and the applicant continued as a regular Group'D' employee. The applicant on 13.1.95 made a representation to the Chief PMG and the Director General, Posts praying that she may be regularised with retrospective effect, pointing out certain vacancies against which she could have been

appointed. As the representation was not considered and disposed of immediately, the applicant filed O.A.424/96 which was disposed of with a direction to the 4th respondent to consider and dispose of the representation. The 4th respondent considered the representation and passed A-5 order stating that as the vacancy pointed out by the applicant in her representation had already been filled up, it was not feasible to accede to her request for giving her retrospective appointment. Aggrieved by that, the applicant has filed the present application impugning A-5 order as also A-7 order to the extent it appoints her only with effect from 12.10.92 and for a direction to the first respondent to consider the applicant for appointment as a Group'D' notionally with effect from 18.2.83 or 29.8.89 or from the date of occurrence of the earliest of the three vacancies in A-7 for the purpose of qualifying service for pension.

2. The respondents in their reply statement have contended that the vacancies for appointing the applicant become available on conversion of the test category to non-test category and that therefore there is no legal basis for the claim of the applicant. It is further contended that challenging A-7 order now is barred by limitation and the same is also barred by resjudicata, in view of the decision of the Tribunal in O.A.608/90.

3. Considering the facts and circumstances emerging from the pleadings and the materials which are placed on record and on hearing the learned counsel on either side, though we find uncomfortable that a person who has commenced service in the year 1972 had to retire without being eligible for any pension, we find no way to grant the relief

as sought for by the applicant. As far as the applicant's claim for regularisation earlier than 12.10.92 is concerned, the same is barred by limitation. The order A-7 was issued on 12.10.92 and the applicant has filed this application only in the year 1997. Even the representation of the applicant for granting earlier regular appointment was made in the year 1995 only. Further, the claim of the applicant that vacancies were in existence on which the applicant could have been appointed is barred by principles of resjudicata, because the Tribunal in O.A.608/90 after considering the rival contentions regarding the availability of vacancy, held that the applicants were entitled to be regularised against the six posts of Scavengers/Sweepers for which proposal had been made by the respondents. If the vacancies were in existence on the date of the judgement dated 25.4.91 on which the applicant could have been regularised, the Tribunal would have given a direction in that regard. The applicant as also the respondents are bound to abide by the decision in O.A.608/90 in which it has been held that the applicants are to be regularised against one of the six posts of Scavengers/Sweepers creation of which was under consideration.

4. It has been the case of the respondents in O.A.608/90 and is still the case of the respondents herein that the vacancies which were in existence were of test category and the applicant could be appointed only on conversion to non-test category. The respondents having appointed the applicant on a Group'D' post pursuant to the order in O.A.608/90 on conversion of the post, the applicant cannot claim anything more than that. We are not shown any

rule or instruction which called for conversion of a test category post to non-test category before absorption of a casual labourer against such a post. However, since the applicant is bound by the decision in O.A.608/90, she cannot lay a claim for ante-dating her regular appointment alleging that even earlier to the date of order in that case there was a vacancy on which she could have been appointed, for the Tribunal directed the regularisation of the applicants in O.A.608/90 on the six posts creation of which was only under contemplation then.

5. In the light of what is stated above, we do not find any merit in this application which is dismissed, leaving the parties to bear their own costs.

Dated, the 2nd of December, 1999.



(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

trs/71299

List of Annexures referred to in the Order:

1. A-5: True copy of the order No.66-37/96-SPB,1 dated 17.7.96 issued by the 5th respondent.
2. A-7: True copy of the Memo No.PSD/42/Vol.V dated 12.10.92 issued by 1st respondent.