

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 516/2005

FRIDAY THIS THE 6th DAY OF OCTOBER 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

**K. Valsala w/o late V. Karthikeyan
Chirayil House, CMC D/147
Cherthala P.O.**

Applicant

By Advocate Mr. P.C. Sebastian

Vs.

- 1 The Superintendent of Post Offices
Alappuzha Division
Alappuzha-688 012**
- 2 The Asst. Supdt. Of Post Offices
Sub Division
Alappuzha. 688011.**
- 3 The Director General
Central Region
Kochi-682 016**
- 4 The Union of India
represented by its Secretary
to Government of India
Ministry of Communications
Department of Posts,
New Delhi.**
- 5 K. Chandramohanhan
Group-D, Ambalapuzha PO
Alappuzha.**

Respondents

By Advocate Mr. P. Parameswaran Nair, ACGSC for R 1-4

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this OA is a Gramin Dak Sevak with 28 years of service and has approached this Tribunal aggrieved by the inaction and unjustifiable delay on the part of the respondent to consider him for regular promotion in spite of his being the senior most and granting promotion to the cadre of Grade -D to the 5th respondent who is his junior.

2 The applicant, according to his submissions entered service as a Departmental Delivery Agent (now designated as GDS Mail Deliverer). He was empanelled for working in Grade-D Vacancies in Alappuzha Division, considering his seniority and eligibility and had been working in Grade- D vacancies in Alappuzha Head Post office and Cherthala Head Post office on ad hoc basis with short breaks. On 1.1.2003 the applicant was reallocated to Cherthala Head Post office to work in the existing Gr. D vacancy on ad-hoc basis and while continuing on the post, he submitted representations requesting regularisation in the existing Grade-D vacancy considering his seniority in the GDS cadre and the availability of vacancy. No positive action was forthcoming from the respondents on the applicant's long pending grievance. Now, the first respondent has issued Memo No.B-2/Allotment Group-D/05 selecting the applicant's junior to the cadre of Grade-D overlooking the applicant

and hence the OA.

3 The applicant submits that according to the extant instructions, Group D posts in the Department are filled by absorption of ED Agents in the order of their seniority and the vacancies of Grade-D should be assessed and calculated in January each year and select list drawn up strictly in order of seniority and the ED agents put on the select panel should be allotted immediately to the Sub Division Recruiting Unit in accordance with the number of vacancies. The Director General as per his circular letter no 47-11/93 has reiterated the need for timely holding of the DPC for ED Agents. The applicant has been working as GDS for the last 28 years without getting any promotion. The respondents have not taken any action to fill up the posts since 2000 and the denial of promotion to eligible candidates due to failure on the part of the Government departments to hold DPC/Exam in time was held to be unjust and unreasonable by the Hon'ble Apex Court in a number of cases, State of Maharashtra Vs Jagannath Achuth Karandikar (AIR 1989 SC133) being one such case. Further, the action of the 1st respondent in selecting the 5th respondent who is junior to the applicant has also been assailed on the ground that the criterion for promotion for Gr D is seniority and the applicant who is the seniormost eligible candidate should have been considered.

4. The respondents have contested the averments of the applicant in their reply statement. It is admitted that the applicant had been

engaged on 28.2.77 as GDS MD and was being engaged to work as Grade -D on daily wage basis in vacant posts due to nonavailability of Grade-D in the whole division. It is also admitted that vacancies in Grade-D posts are filled by absorption of the Gramin Dak Sevaks in the order of their seniority subject to rules of reservations and the provisions laid down in Annexure R-1 Recruitment Rules. It is further submitted that the vacancies for the years 1997 to 2000 could be filled up only on 7.7.2000 due to an interim stay order in OP No. 25172 of 1998 before the High Court of Kerala and seven GDSs were appointed against these vacancies. Two vacancies were also filled up for the year 2001. The vacancies have to be cleared by a Screening Committee in terms of the OM dated 16.5.2001 of the Dept. of Personnel and Training. No vacancy was cleared for the year 2002 in Alappuzha Division. One vacancy was cleared for 2003 and vacancies for 2004 are yet to be cleared by the Screening Committee. It is also submitted that the applicant is not eligible for appointment as Gr D as per existing Recruitment Rules Rs as those who are above the age of 50 years and 55 years in the case of SC/ST will not be eligible for appointment as Grade-D and he became over aged on 15.1.2001. Against the order in OA239/98 and 445/98, OP was filed before the High court of Kerala and in accordance with the judgement in the said OP, the DG posts issued letter no 66-82/87-SPBI dated 20.7.2000- reiterating that ED agents who are above the age of 50 years will not be eligible for appointment as Grade-D as laid down in the Rules. It is also submitted that the

5th respondent was selected and appointed as Grade-D as he was eligible and the vacancy was cleared by the screening Committee and it was an unreserved vacancy. The applicant had already become over-aged on 15.1.2001.

5 The fifth respondent has not filed any reply.

6 We heard the Learned counsels.

7 The Revised recruitment rules for Grade-D posts in circle, administrative and subordinate offices of the Postal Department have been issued under Article 309 of the Constitution of India. The said rules came into effect from 23.01.2002. As per the said Rules, all the posts in Serial No.2 of Schedule Part II are earmarked for GDSs and 75% of the posts in Serial No. 1 remaining unfilled are also set apart for GDSs. They are considered against the vacancies for direct recruitment on the basis of seniority. This position is not disputed. The dispute is regarding the vacancies and the stipulation regarding age.

8 As far as the position of vacancies is concerned the applicant's contention is that he had been working in Gr. D vacancies on adhoc basis in Alappuzha Division and hence he should have been appointed on a regular basis as several vacancies existed in this division from 1999 onwards. The respondents have stated that they could not fill up these vacancies due to the pendency of the OP25172 before the Hon High court and the stay order of the court and hence vacancies for 1997 to 2000 were filled up in the year

2000 only. Two GDSs were appointed in 2001. Since the stipulation regarding clearance by screening committee came into force in 2001, no appointments were made in 2002 as the committee did not clear any vacancy. The applicant has not laid any claim for these vacancies as it appears he became entitled for the promotion according to seniority only in 2003.

9 His challenge is mainly against the vacancy in 2003 which has been filled up by the 5th respondent. The applicant's first representation for consideration of his appointment is dated 1.2.2003-Annexure A-10. We shall therefore restrict the consideration of his claim to this vacancy. He has also contended that there were 4 vacancies as on 2003 and the committee had cleared only one vacancy and if all the vacancies had been taken up for being filled up, he would have got a chance. We do not want to express any opinion on this aspect of non filling up of vacancies, as it is a matter to be decided solely by the administration keeping in view the needs of the Department as well as other circumstances including the directives of the Finance Ministry to observe economy in expenditure which might have necessitated a temporary suppression of posts for some time.

10 The reason for not appointing the applicant in the vacancy for 2003 given by the respondents is that he was overaged on that date and that it was an unreserved vacancy and the applicant was

not eligible on that count to get the relaxation of 5 years granted to SC/ST candidates.

11 It is admitted that the applicant completed 50 years as on 15.1.2001. There is no age limit laid down in the Recruitment Rules. However a Foot Note in the rules stipulates that "Gramin Dak Sevaks may be considered against the vacancies for direct Recruitment in subordinate offices subject to such conditions and in such manner as may be decided by the department from time to time." The DG Posts has by way of instructions laid down in Lr no44-31/87-SPBI dated 28.8.90 and reiterated in Lr dated 20.7.2000 that GDSs who are above the age of 50 years (55 years in the case of SC/ST) will not be eligible for appointment as Gr. D. The applicant who became 50 years on 15.1.2001 was thus clearly not eligible to be considered in terms of the above instructions. It is however the contention of the applicant that he being an SC candidate was eligible to be considered up to 55 years. According to the respondents the vacancy was a general vacancy and not a reserved vacancy.

12 The question therefore to be considered is whether a scheduled caste candidate when he is being considered against an unreserved vacancy is eligible for the age concession. The applicant has produced the relevant instructions of the Department of Personnel in this regard. which are self explanatory as-Annexures

A14 & A-15. By A-14, the relaxation in age limits granted to SC/STs in Direct Recruitment has been extended by the Government to promotions. A-15 is an extract of the clarifications given by the DOPT to certain doubts expressed by the Departments in implementing the Reservation roster. Point 2 clarifies the issue raised in this OA thus:

Doubt

Whether a seniormost official in a cadre belonging to reserved category can be considered for promotion on seniority cum fitness basis despite of excess representation of such reserved category in higher post. If yes, the point against which the official can be shown in the roster of higher post.

Answer

If a vacancy arises in a cadre which falls on an unreserved point of the Reservation roster and the seniormost candidate in the feeder grade belongs to SC or ST category, such SC or ST candidate cannot be ignored on the plea that the post is not reserved. Such a candidate will be considered for Promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.

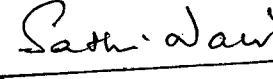
13 It is clear from the above that the SC candidate has to compete on par with the general candidate in all respects when he is being considered against an unreserved vacancy. In such circumstances, the age limit of 50 yrs would be applicable to the applicant and not the relaxed limit of 55 years. Hence the respondents are right in contending that the applicant was not eligible for appointment to Gr-D as per the recruitment rules in the year 2003 as he had become over-aged for such recruitment and therefore his juniors had to be appointed. The vacancy which arose on 2004 was also an unreserved vacancy. The applicant will have to await his turn against

a reserved vacancy in accordance with his seniority position.

14 In the result we do not find any justification or reason to interfere with the impugned orders. OA is dismissed. No costs.

Dated 6.10.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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