

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 521/96

FRIDAY, THIS THE 3RD DAY OF APRIL, 1998.

C O R A M:

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

S. Raghukumaran Nair
S/o Siman Nair
Extra Departmental Delivery Agent,
Venpakkal Post Office,
Trivandrum South Division,
Residing at 'Ravilla Veedu'
TC 25/3406
Chirakulam Road
Trivandrum-1

..Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India through
the Secretary to the Govt. of India
Department of Posts,
"Dak Bhawan", Sansad Marg,
New Delhi.
2. The Director General of Posts,
Ministry of Communications,
Department of Posts,
New Delhi.
3. The Chief Postmaster General,
Kerala Circle,
Vikas Bhawan Post,
Trivandrum-33
4. The Superintendent of Post Offices
Trivandrum South Division,
Trivandrum-14.
5. K. Gopakumar,
Substitute/Casual Labourer,
Head Post Office,
Thycaud.
6. K. Rajendran Nair,
Substitute/Casual Labourer,
Head Post Office/Thycaud
Trivndrum-14
7. Sasikumar
Substitute/Casual Labourer
Head Post Office, Thycaud,
Trivandrum-14

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8. Ms Daisy
Substitute/Casual Labourer
Head Post Office,
Thycaud,
Trivandrum-14
9. V.S. Rajkumar
Raj Vihar,
T. C. 28/1126,
Kunnumparam
Trivandrum.

By Advocate Mr. P.R. Ramachandra Menon, ACGSC for R1-4
By Advocate Mr. Thomas Mathew for R-7
Mr. M.R. Rajendran Nair for R-5, 6 & 8
Mr. Sasidharan Chempazhanthiyil for R-9

The application having been heard on 10.3.1998, the Tribunal delivered the following on 3.4.1998.

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicant in this case has been working as an Extra Departmental Delivery Agent (EDDA) at Venpakkal Post Office, Trivandrum South Division. His allegation is that the respondents 5 to 8 are being continually issued with orders of appointment by the 4th respondent i.e. the Superintendent of Post Offices, Trivandrum South Division, Trivandrum as substitutes against short term vacancies arising in Group 'D' and 'C' posts under his (4th respondent) control.

2. The applicant feels aggrieved by these orders and has sought the following reliefs:

- a) Declare that Annexure A1 is arbitrary, discriminatory and unconstitutional and hence nullity, void, non-existent and in-operative and quash the same;
- b) Declare that the Extra Departmental Agents like the applicant are eligible to be considered for appointment on officiating basis against Group 'C' and 'D' vacancies in preference to substitutes/outsiders like the respondents 5 to 8 and direct the respondents accordingly;
- c) Pass such other orders or directions as deemed just,



fit and necessary in the facts and circumstances of the case."

3. The order at Annexure A1 which has been impugned by the applicant is an order which was originally issued in 1930 and amended in 1938. The A1 order prescribes that casual leave vacancies of Postmen, Village postmen and Group 'D' postal officials should normally be filled up by paid substitutes. The applicant has alleged that this old order is violative of the provisions of Articles 14 and 16 of the Constitution of India which guarantee equal treatment and equal opportunities in respect of public employment.

4. The applicant has referred to various instructions issued by the 2nd respondent i.e. the Director General of Posts, Ministry of Communications, Department of Posts, New Delhi, reproduced as Annexures A5 and A6, in this behalf. Both A5 and A6 clearly indicate that in filling short-term vacancies in Group 'D' posts, the Extra Departmental Agents (EDAs) are to be given preference. According to the applicant, in violation of these instructions at A5 and A6, the 4th respondent has preferred to appoint persons like the respondents 5 to 8, even though, according to the applicant, they are to be considered as mere outsiders and as substitutes.

5. The applicant has alleged that in the absence of preference being accorded to the EDAs vis-a-vis the outsiders and substitutes, the opportunity for officiating at a promotional post like a Group 'D' post is being denied unjustly and illegally by the 4th respondent to the applicant.

6. The reliefs prayed for by the applicant have been resisted strongly by the party respondents. The main defence put forward on behalf of the party respondents for continuation of the present method of their appointment to



fill up the short-term vacancies in the category of Group 'D' posts is that they are casual labourers who have been granted temporary status under the scheme for the grant of temporary status and regularisation of casual workers, formulated and implemented by the respondent Department of Posts.

7. The applicant incidentally has admitted that it is understood that on direction from the Tribunal, the party respondents have been conferred with the temporary status under that scheme. He, nevertheless, questions the very basis of conferment of temporary status on the party respondents on the ground that they were originally appointed as 'substitutes' to fill up short-term vacancies in certain posts and therefore were not eligible to be considered as casual labourers who can be appointed for casual work without any relation to particular posts.

8. The party respondents have /^{further} pointed out that the applicant had earlier approached this Tribunal in O.A. 1725/94 which was disposed of by the Tribunal on 28.7.95. The Tribunal did not grant the reliefs prayed for in that O.A. The party respondents have also drawn our attention to the order passed by the Chandigarh Bench of the Tribunal in Raj Kumar Vs. Union of India (1992 (2) ATJ 480 which was decided on 20.8.92 laying down the dictum that according preference to EDAs and ignoring a casual worker for appointment in an unapproved capacity on daily wages basis was illegal and unconstitutional. While expressing that view, that Bench noted that it was fortified by the dictum of the Full Bench in G. Manjunath Vs. Postmaster General, Bangalore and others (1992) 20 ATC (FB) 402).

9. Essentially the party respondents have maintained that the applicant as an EDA has no preferential claim for appointment to short-term vacancies in Group 'C' or 'D', /if in

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the circumstances prevailing at the time of occurrence of a short-term vacancy in a Group 'D' or 'C' post, it is not possible to consult the EDAs who are not working in that very same office or station where such short-term vacancies have arisen, the respondent Department is entitled to appoint party respondents. According to them, depending upon the availability of an EDA at the very same office/station where such a vacancy takes place and taking into account even the preference of such EDAs for appointment on an officiating basis to fill up these vacancies, the respondent Department has in effect been following the policy of according preference to such EDAs. It is only when the respondent Department has found that it is not possible to consult the EDAs, who may not be working at the same office/place and to ascertain their preference for appointment on officiating basis to fill up such short-term vacancies in category 'D'/'C' posts expeditiously, that such short-term vacancies are being filled up by persons similarly situated as the party respondents.

10. The official respondents have by and large endorsed the position taken by the party respondents. Besides, on behalf of the official respondents, it has been averred that the respondent Department has already granted temporary status on the party respondents in compliance with the directions of the Tribunal which have become final and therefore the issue of treatment of the party respondents as mere substitutes cannot be revived at this stage. We agree with this position of the respondents.

11. We have considered the pleadings in this case carefully. We have also heard at length the learned counsel appearing for the parties.

12. The applicant has not alleged that in respect of the regular appointment to a Group 'D'/'C' post, which is regulated by the Recruitment Rules at Annexure A3 and A4 and

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as amended subsequently, the respondent Department has committed any irregularity or taken any action against the provisions of those statutory rule. It is admitted that even after the ^{Dept.} amended the statutory rules for regular appointment to a Group 'D' post, the casual workers are placed below the EDAs of the same recruitment unit. However, what we are concerned with in this O.A. is not regular appointment to the category 'D' or 'C' posts at all. On the other hand, it is precisely in the matter of filling up of short-term vacancies in the category 'D' posts, which according to the applicant should be strictly governed by the administrative instructions issued under A5 and A6, that the 4th respondent is alleged to have shown undue favour to the party respondents contravening these provisions of A5 and A6.

13. On a detailed consideration of the contents of the administrative instructions at A5 and A6, we are persuaded to hold that these instructions are only guidelines to be followed ordinarily. The official respondents have in their reply statement clearly admitted that they are ordinarily bound by these instructions and, to the extent feasible, they have been implementing these guidelines. At the same breath, it has been pointed out clearly on behalf of the official respondents that in a large number of cases the incumbent of a category 'D' post may proceed on short-term leave without much advance notice and when such a short-term vacancy cannot be filled up by the employees who are on leave reserve, the administration has to have recourse to certain arrangements in order to carry on with the essential work in the Postal Department. In such situations, if the EDAs are available at the same office/station, it has been averred by the official respondents, they are invariably given a preference to fill up these short-term vacancies. However, where the EDAs are not available at the same office or station and it has not been possible to keep such posts vacant for the purpose of



consultation with the EDAs at other offices and stations, these short-term vacancies have been filled up with casual workers who have been granted temporary status like the party respondents.

14. We are of the considered view that the above position explained by the official respondents is perfectly legal and valid. In the interest of sound administration and particularly for causing least dislocation in an essential service like that rendered by the Postal Department, any other arrangement in our opinion would not be feasible. The applicant has failed to bring to our notice any legal right accrued to an EDA for being appointed in an officiating capacity against the short-term vacancies in such circumstances. As we have already pointed out, the administrative instructions at A5 and A6 are in fact guidelines which should be complied with by the respondent Department in ordinary circumstances. The applicant has not rebutted the position clarified by the official respondents in their reply statement that to the extent it is feasible in the circumstances prevailing at the time of the occurrence of the short-term vacancies in the offices/stations, the guidelines incorporated in A5 and A6 are indeed being followed by the Department. The applicant in particular has failed to provide instances to the contrary.

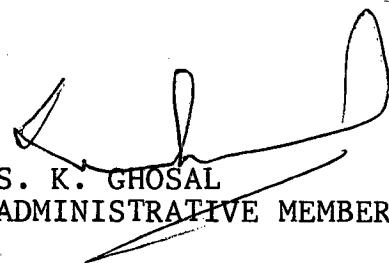
15. We also find ourselves unable to lay down an inflexible and invariable rule that irrespective of the exigency of the situation, whenever a short-term vacancy arises at an office/station, in the respondent Department in a category 'D' or 'C' post, which discharges a function of essential nature, not only the EDAs at the same office/station should be consulted and accorded preference in the matter of filling up of a short term vacancy, but that the same preference should

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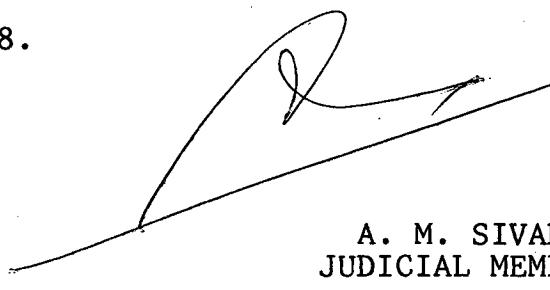
be extended to the EDAs working at the offices/stations which are not located in close proximity where such vacancies have arisen. What does constitute close proximity is not for the Tribunal to decide in absolute terms. It should be left to the discretion of the administration in the respondent Department to consider and decide upon what is going to be a feasible arrangement in a given situation while in general granting preference to EDAs for filling up these short-term vacancies. No hard and fast rule can be laid down in the matter jeopardising smooth rendering of an essential service like Postal Services. We also note that it is trite law that the government servants do not have any legal right to adhoc or short-term officiating appointments as long as their right of consideration for regular appointment or promotion under the Recruitment Rules is not affected.

16. In the light of the above discussions, we are not convinced that the applicant has a case for any of the reliefs that he has sought. In the result, we dismiss the application. There shall be no order as to costs.

Dated the 3rd APRIL 1998.


S. K. GHOSAL
ADMINISTRATIVE MEMBER

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A. M. SIVADAS
JUDICIAL MEMBER

List of Annexures

1. Annexure-A1: The Posts & Telegraphs Manual, Vol.IV, Appendix-6, issued by the Government of India.
2. Annexure-A3: The Department of Posts (Postman/Village Postman & Mail Guards) Recruitment Rules, 1989 issued by the second respondent.
3. Annexure-A4: The notification dated 16.11.82 containing Indian Posts and Telegraphs Recruitment (Amendment) Rules, 1982 as published in Section (I) of Section 3 of Part II of the Gazette of India, dated 25.12.1982.
4. Annexure-A5: Extract of the letter No.17-498/90-EDC & TRG dated 11.7.91 issued by the 2nd respondent.
5. Annexure-A6: The letter No.45-80/89-SPB-I(Pt) dated 21.12.92 issued by the Government of India, Ministry of Communications, Department of Posts.