

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.523/2003

Wednesday this the 30th day of August, 2006

CORAM

**HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K.P.Krishnankutty Nair,
aged 55 years, S/o the late Sankunny Pillai,
Group 'D', Office of the Senior Superintendent
of Post Offices, Aluva Division,
Aluva 683101, residing at Keepadathil House,
Alymurikara PO, Via.Koovapady
Perumbavoor.

....Applicant

(By Advocate Mr. Shafik M.A)

V.

- 1 Senior Superintendent of Post Offices,
Aluva Division, Aluva-683101.
- 2 V.K.Remani, Group D' Aluva HO
Aluva-683101
- 3 Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.Respondents

(By Advocate Mrs. Mariyam Mathai, ACGSC)

The application having been finally heard on 2.8.2006, the Tribunal on
30.8.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant in this Original Application was initially appointed as Extra Departmental Agent (EDA for short) from 14.8.73. He was selected for appointment in a Group 'D' post against an existing vacancy in Aluva Division vide Annexure.A7 Memo dated 17.10.2000 and he was appointed accordingly with effect from the same date vide Annexure. A8 letter dated 23.10.2000. He

has filed the present OA to treat him as promoted to the Group 'D' post with effect from 1.3.98, the date of occurrence of the vacancy in the Aluva Division.

2 According to the Indian Posts and Telegraphs (Class IV) Posts Recruitment Rules, 1970 notified on 20.10.1970, EDAs were eligible to be considered against the direct recruitment vacancies in Group 'D' posts subject to such conditions as may be prescribed by the DG P&T from time to time. Accordingly instructions were issued on 7.4.80 by the DG P&T raising the upper age limit for EDAs for appearing in the selection examination for appointment to Class IV posts from 40 to 42 years and later the Recruitment Rules were amended in the year 1982 vide notification dated 16.11.82 and the age limit of the EDAs who were appointed prior to the date of notification (16.11.82) of the amended Rules to Group 'D' posts was fixed as 42 in the case of general category and 47 for SC/ST and in the case of those who were appointed after the amendment, the upper age limit was fixed at 35 years for non SC/ST candidates and 40 years for SC/ST candidates. This amendment was struck down by this Bench vide order dated 28.2.90 in OA 564/88 – E.J.Andrew Vs. Senior Superintendent of Post Offices and others and its operative part is as under:

"In the conspectus of facts and circumstances we allow the application to the extent of declaring that the amendment fixing the upper age limit of 35 years for non SC/ST (40 years for SC/ST) of age for EDAs appointed after 16.11.1982 as unconstitutional. We also direct that the Extra Departmental Agents should be given the same benefit of the period spent by them as EDA for reckoning their eligibility in respect of prescribed maximum age limit in the same manner as has been allowed to casual labourers in the impugned notification dated 16.11.82 at Annexure.A1. The respondents are directed to consider those applicants who had been provisionally allowed to appear in the selection test for

appointment to Class IV cadre, if they are eligible, fall within the zone of consideration and zone of appointment, keeping in view the aforesaid declaration of the upper age limit as void and the benefit of service rendered as EDAs for reckoning the upper age limit."

Thereafter, the Director General (Posts) issued order dated 28.8.90 prescribing the upper age limit of 50 years for general category and 55 years for SC/SC which was again challenged in OA 155/95 and this Tribunal vide order dated 6.3.96 set aside the said order also on the following lines:-

"In the absence of statutory rules, administrative rules can govern the subject and such rules can be made under the power vested in the executive by Article 73 of the Constitution. But once the legislative power is exercised, executive power cannot be exercised in respect of the same subject matter, except in areas not governed by the statutory Rules. Even executive power can be exercised only by Union of India in the name of the President and in accordance with the allocation of Business Rules and not by an officer of the Union like the Director General.....The decision in O.A.K.557/88 does not hold that age limit cannot be prescribed by statutory Rules, it only holds that the upper age limit prescribed was not reasonable. We make it clear that all the powers available under the statutory rule can be exercised reasonably."

In view of the above position, as on date, the only valid Rule exists is the unamended Recruitment Rules of 1970 notified on 20.10.70. Since the amendment carried out in 1982 and the order dated 28.8.1990 prescribing the age limit for EDAs to be appointed as Group 'D' have been quashed and set aside by this Tribunal, the respondents have not been making any appointments on the basis of the running seniority. The applicant has, therefore, filed OA 239/98 aggrieved by the inaction on the part of the respondents in filling up the vacancies in Group 'D' posts. The stand of the Postal Department of the Kerala Circle was that unless the Recruitment Rules are modified suitably, the recruitment to fill up the vacant Group 'D' posts cannot be made. Vide order dated 26.8.98, this Tribunal disposed of

OA 239/98 directing the respondents to make recruitment to the existing vacancies in Group 'D' in the Kerala Circle including Aluva Division without any further delay and without waiting for the amendment to the Recruitment Rules treating the ED Agents below the age of 60 years as entitled to be considered for appointment in the absence of prescribed maximum age limit. There was also a further direction to the respondents to take remedial steps, if any, if the ED Agents in the Kerala Circle has suffered any loss by reason of the lapse on the part of the respondents in filling up the post of Group 'D' in the Kerala Circle.

3 The respondents have carried the aforementioned orders of this Tribunal in OA 239/98 and connected cases to the Hon'ble High Court of Kerala in OP25172/98(S). Vide judgment dated 30.3.2000 the High Court disposed of the aforesaid OP in the following terms:

"In view of the aforesaid limited nature of the controversy, we feel that so long as the rules which are stated to be pending consideration for amendment have not come into force, executive power can be exercised as provided in law. In the absence of statutory Rules, administrative orders can govern the field. To avoid inconvenience to all concerned, the employer may consider taking action under the executive power in the matter of appointment. This exercise can be undertaken so long as the Rules sought to be amended are not brought into operation."

4 Thereafter the Department of Posts vide letter dated 20.7.2000 (A4) issued orders to make appointments in Group 'D' posts pending notification of the necessary amendment to the Recruitment Rules for the Group 'D', from the EDAs but restricting the age limit upto 50 years (55 years in the case of SC/ST). Vide Annexure A5 letter dated 21.9.2000, again the Department of Posts directed the CPMG Kerala Circle to regularize the senior-most EDAs working against the vacancies in Group 'D' cadre arising upto 1999 in terms of the judgment of the High Court of Kerala dated

30.3.2000 and the aforesaid A4 letter dated 20.7.2000. Accordingly, the CPMG, Kerala Circle issued instructions vide Annexure.A6 letter dated 6.10.2000 to all PMGs under his control to fill up the vacancies in Group 'D' post which has arisen upto 1999 following the orders of the Hon'ble High Court dated 30.3.2000 in OP No.25172 of 1998 and the executive order dated 20.7.2000. It was after the aforesaid decisions of the Department of Posts the applicant was selected and appointed in the Group 'D' vacancy vide Annexure.A7 order dated 17.10.2000. Based on the date of appointment of the applicant as Group 'D' staff on 17.10.2000 the respondents have issued Annexure.A9 Divisional Gradation List of Postman/Group 'D' on 1.7.01 in which the applicant's name was shown at Sl.No.40. The case of the applicant is that when he came across the aforesaid Gradation List, he found that while his name was listed at Sl.No.40 with his date of appointment as 17.10.2000, Shri V.K.Ramani,Group 'D' Aluva HO. (2nd respondent) has been placed above him at Sl.No.38 with his date of appointment to the Group 'D' post as 25.6.93. According to him, the second respondent joined the Aluva Division from PSD, Trichur on transfer on request under Rule 38 on 8.7.99. (FN). According to the applicant, he was eligible and entitled to be appointed against the vacancy which has arisen from 1.3.98 consequent upon the superannuation of Shri C.K. Aravindakshan Nair,Group 'D' Kothamangalam whose name was shown at Sl.No.3 of Annexure A1 list dated 15.1.98 containing the names of officials who have retired on superannuation in the year 1998. The applicant has submitted that if his promotion was in implementation of A4,A5 and A6 letters, he could not have been promoted because according to those letters, EDAs above the

age of 50 years were not eligible to be appointed as Group 'D' staff. Moreover, the direction of the CPMG, Kerala Circle in the Annexure.A6 letter was to fill up the vacancies arisen only upto 1999. The applicant has, therefore, contended that since his appointment could not have been against any vacancy of the year 2000, it should have been related back to the vacancy which arose on 1.3.98 considering his seniority position in the list of EDAs as the delay in appointing him to the Group 'D' post was attributable only to the respondents. The second respondent who came under Rule 38 transfer from Trichur Division from 8.7.99 should not also have been shown senior to him in the gradation List. He has, therefore, contended that showing his name in the Gradation List at Sl.No.40 with the date of appointment to Group 'D' as 17.10.2000 cannot stand judicial scrutiny and the same is liable to be quashed and the respondents should be directed to show his date of entry as Group 'D' as 1.3.98, the date of occurrence of the vacancy on which he was eligible to be appointed on the basis of his seniority among ED Agents of the Alvua Division. On the same analogy, he has also sought a direction from this Tribunal to quash and set aside Annexure.A10 order dated 20.12.02 appointing him on substantive basis in the cadre of Group 'D' with effect from 19.10.2002.

5 The respondents in their reply has submitted that after quashing and setting aside the upper age limit of 50 years (55 years in the case of SC/ST) for the EDAs to be appointed to Group 'D' cadre in OA 155/95 all recruitment to Group 'D' cadre were kept in abeyance. They have submitted in Para 4 of their reply statement dated 26.8.2003 that the applicant was promoted to the Group 'D' cadre on 17.10.2000 according to the orders of this Tribunal in OA 239/98 and OA 449/98 to fill up the

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existing vacancies in Group 'D' cadre. In Para 6 of the said reply statement, the respondents have submitted that in the light of Annexures A4 and A5 and A6, 1st respondent had taken action for appointment against Group 'D' vacancies and the applicant was appointed as Group 'D' against one of the existing vacancies as directed by the Court as there was no stipulation in the judgment to appoint the applicant against a particular vacancy but only against an existing vacancy. In Para 10, the submission of the respondents was as under:-

“...The respondents have complied with the directions of Hon’ble High Court of Kerala and filled up the existing vacancies with the senior most GD Sevaks. As such 6 GD Sevaks were promoted and posted in Group 'D' cadre. The applicant was appointed w.e.f. 17.10.2000 and therefore his service can be counted only from 17.10.2000 ie., the date of joining in post.”

6 Since the above reply filed by the respondents was rather vague, on directions by this Tribunal 10.3.2006, they filed an additional reply statement in which it is stated as under:

"This statement is filed by the 1st respondent as directed by this Hon'ble Tribunal. It is submitted that the recruitment to the cadre of Group 'D' in Kerala Postal Circle was not held in 1997, 1998 and 1999. The Director General Posts had issued order dated 28.8.1990, prescribing upper age of 50 years for General category and 55 years for SC/ST category, which was challenged in OA No.155/1995 before the Hon'ble CAT, Ernakulam bench and the Hon'ble Tribunal by its order dated 6.3.1996 set aside the prescription of upper age limit, on the ground that the Director General Posts is not competent to prescribe the age limit, according to the amended Rules. The matter was taken up with the Postal Directorate to cause appropriate amendment to the recruitment rules. However, the amendments to the recruitment rules could not be made due to the pendency of Civil Appeal No.1638-1640 of 1996 against orders in O.As K.564/88, K557/88 and 100/89, in the Hon'ble Supreme Court of India. These civil appeals were disposed of by the Hon'ble Supreme Court by its order dated 7.8.2003 in which it was held that "it is always open to the concerned authority to fix the age limit for recruitment as well as for examination. Hence we are not approving the reasoning of the Tribunal.

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Two other O.As viz 239/98 and 449/98 were also filed before Hon'ble CAT seeking a direction to make recruitment to Group D posts which are lying vacant on the basis of running seniority from the date of their entitlement with all consequential benefits. The said O.As were disposed of by a common order dated 26.8.1998 directing the respondents to fill up the existing vacancies without waiting for amendment of the Recruitment Rules, treating that an ED Agent below the age of 60 years is entitled for appointment in the absence of prescribed maximum age limit. Against the said orders OP No.25172/98 was filed before the Hon'ble High Court of Kerala and the Hon'ble High Court as per it's judgment dated 30.3.2000 held that "We feel that so long as the rules which are stated to be pending consideration for amendment have not come into force, executive power can be exercised as provided in law. In the absence of statutory rules administrative orders can govern the field. To avoid inconvenience to all concerned, the employer may consider taking action under executive power in the matter of appointment. This exercise can be undertaken as the rules sought to be amended are not brought into operation." Accordingly Director General Posts, issued letter No.66-82/87-SPB/I dated 20.7.2000(Annexure.A4 letter)stating that EDAs who are above the age limit of 50 years(55 years in the case of SC/ST) will not be eligible for appointment as Group D as laid down in Directorate letter dated 28.8.90 and crucial date for determining the age will be 1st July of the year in which the recruitment is made. True copy of the said letter dated 28.8.90 is produced herewith and marked as Annexure.R.2. Postal Directorate further directed vide AnnexureA5 to regularize the senior most ED Agents working against vacancies in Group D arising upto 1999 in pursuance to the judgment in OP 25172/98 dated 30.3.2000 taking into account the provisions of Recruitment rules and executive orders issued as mentioned above. (A4 letter). The applicant was thus appointed against one of the existing vacancies in Aluva Division. Therefore it is submitted that the applicant is not entitled to claim the reliefs prayed for in the OA."

7 The respondents have also brought to our notice that they had challenged the orders of this Tribunal in OA.K.564/88 (E.J.Andrews's case) (supra) and connected O.A. K.557/88 and OA.K.100/89 before the Apex Court vide C.A.s 1638-1640 of 1996 and the Apex Court vide order dated 7.8.2003 disposed them of in the following manner:

"In the Recruitment Rules, it is always open to the concerned authority to fix the age limit for recruitment as well as for

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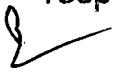
examination. Hence, we make it clear that we are not approving the reasoning of the Tribunal. However, considering the facts of the present case, subsequent amendment in the Rules and the fact that after the Central Administrative Tribunal, Ernakulam Bench (for short "The Tribunal") passed the order, the department has issued the administrative order in conformity with the order passed by the Tribunal, these appeals are not required to be decided. Hence, these appeals stand disposed of, accordingly."

8 We have heard Shri Shafik M.A for the applicant and Mrs. Mariyam Mathai, ACGSC for the respondents. In the chronology of events spanning over a period of 33 years from 20.10.1970 to 7.8.2003 ie., the date of notification of the original Recruitment Rules, 1970 for appointment of EDAs to Group 'D' posts and the judgment of the Apex Court on 7.8.2003 in C.As 1638-1640 of 1996, there were several orders issued by the Respondents, this Tribunal, the Hon'ble High Court of Kerala and the Apex Court. The position as on date is that the only valid Recruitment Rules which govern the promotion of EDAs to Group 'D' cadre in the Department of Posts is the Indian Posts and Telegraph's(Class IV Recruitment) Rules, 1970 notified on 20.10.1970 which does not impose any restrictions regarding age limit for EDAs for promotion to the Group 'D' post. The last administrative order issued by the Director General (Posts) is the one contained in letter No.44-31/87-SPB dated 28.8.90 prescribing upper age limit of 50 years for general candidates and 55 years for SC/STC candidates. After this prescription was also quashed and set aside by this Tribunal vide order dated 6.3.96 in OA 155/95, the applicant filed OA 239/98 which was disposed of by this Tribunal on 28.8.98 recognizing the aforesaid factual position regarding the Recruitment Rules and directing the respondents "to fill up the existing vacancies in Group 'D' in the Kerala Circle including the Aluva Division without any delay and without waiting for

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the amendment of the Recruitment Rules, treating that any E.D. Agent who is below the age of 60 years is entitled to be considered for appointment in the absence of prescribed maximum age limit". The respondents were also directed "to take remedial steps, if any, if the ED Agents in the Kerala Circle has suffered any loss by reason of the lapse on the part of the respondents in filling up the post of Group 'D' in the Kerala Circle". The respondents filed OP 25172/98 against the aforesaid OA 239/98 and the same was disposed of by the Hon'ble High Court of Kerala on 30.3.2000 stating that "**so long as the rules which are stated to be pending consideration for amendment have not come into force, executive power can be exercised as provided in law. In the absence of statutory Rules administrative orders can govern the field. To avoid inconvenience to all concerned, the employer may consider taking action under the executive power in the matter of appointment. This exercise can be undertaken so long as the rules sought to be amended are not brought into operation.**" Thereafter the respondents issued the Annexure.A4 order dated 20.7.2000 pursuant to the above orders of the Hon'ble High Court in OP 25172/98 and they justified the fixation of the age limit of 50 years (55 years for SC/ST)for the EDAs to be appointed to the Group 'D' post as already laid down in the aforementioned letter dated 28.8.90. Again the respondents issued Annexure.A5 letter dated 21.9.2000 to regularize all the Senior EDAs against the vacancies in Group 'D' cadre arising upto 1999 keeping in view of the instructions issued by them earlier in A4 order dated 20.7.2000. This was done in pursuance of the judgment of the Hon'ble High Court of Kerala dated 30.3.2000 in OP No.25172/98(S) which itself has arisen out of the orders of this Tribunal in

OA 239/98 directing the respondents to make recruitment to the existing vacancies in Group 'D' in the Kerala Circle including Aluva Division without any further delay and without waiting for the amendment to the Recruitment Rules treating the ED Agents below the age of 60 years as entitled to be considered for appointment in the absence of prescribed maximum age limit with the further direction to the respondents to take remedial steps, if any, if the ED Agents in the Kerala Circle has suffered any loss by reason of the lapse on the part of the respondents in filling up the post of Group 'D' in the Kerala Circle. In para 4 of the reply to this OA, the Respondents themselves have submitted that the applicant was promoted to the Group 'D' cadre on 17.10.2000 in terms of the orders of this Tribunal in OA 239/98 and OA 449/98 to fill up the existing vacancies in Group 'D' cadre. The applicant's claim in OA 239/98 was to consider him for appointment against the vacancies available on 1.3.98 on account of the retirement of Shri C.K.Aravindakshan Nair, Group 'D' on 28.2.98. As the respondents themselves have admitted that the applicant has been appointed to a Group 'D' post in pursuance of the directions of this Tribunal in OA 239/98 dated 26.8.98 and the judgment of the Hon'ble High Court of Kerala in OP No.25172 of 1998 dated 30.3.2000, the applicant should have been appointed against the aforesaid vacancy arisen on 1.3.98 and not from 17.10.2000 ie., date of issue of the Annexure.A7 letter. The very purpose of the directions in the order in OA 239/98 was to consider the applicant for appointment to the Group 'D' post without any delay and the respondents to take remedial steps, if any, if the ED Agents in the Kerala Circle has suffered any loss by reason of the lapse on their part. When the respondents themselves have issued the orders of promotion to the



applicant in exercise of their executive powers as upheld by the Hon'ble High Court, it should have been beneficial to the applicant and in conformity with the directions contained in the order in OA 239/98. Obviously the delay in appointing the applicant as Group 'D' in Aluva Division was not attributable to him but it was due to the pendency of the case before this Tribunal and later before the Hon'ble High Court. We, therefore, declare that the applicant is entitled to be appointed as Group 'D' staff w.e.f. 1.3.98, so that the loss suffered by him due to delay in appointing him as Group 'D' will not have any perennial adverse consequence to him. However, he shall not be entitled for any arrears of salary etc. from 1.3.98 to 16.10.2000. The respondents shall, therefore, pass necessary orders appointing the applicant to Group 'D' w.e.f. 1.3.98 in modification of the Annexure.A7 Memo dated 17.10.2000 and Annexure.A8 Memo dated 23.10.2000. Corresponding change shall also be made in the Annexure.A9 Gradation List dated 27.6.2002. The above directions shall be carried out within a period of two months from the date of receipt of this order. In the facts and circumstances of the case, there shall be no order as to costs.

Dated this the 30th day of August, 2006



GEORGE PARACKEN
JUDICIAL MEMBER



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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