

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.524/2009

Dated this the 17th day of August, 2010

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

A. Vasanthakumar S/o late Sri M. Gopalan
Group-D Thalassery Head Post Office
residing at Achath House, Palayad P.O. ..Applicant

By Advocate Mr. K.S. Bahuleyan

Vs.

1 Union of India represented by
Director General Posts
Ministry of Communications
Department of Posts, New Delhi.

2 The Chief Postmaster General
Kerala Circle
Thiruvananthapuram.

3 The Postmaster General
Northern Region
Calicut.

4 The Superintendent of Post Offices
Thalassery division
Thalassery

5 The Postmaster
Thalassery H.P.O
Thalassery. .. Respondents.

By Mr. M.V.S. Nampoothiry, ACGSC.

The Application having been heard on 6.8.2010, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the reluctance on the part of the respondents to ante-date his appointment to Group-D post.

2 The applicant commenced service as ED Mail Carrier at Melur Post Office w.e.f. 1.10.1977. In the gradation list of GDS Employees of Thalassery Postal Division as on 1.1.2001, upto Sl. No. 36 had been appointed to Group-D post. The applicant is at Sl. No. 37. According to him he would be crossing the upper age limit of 50 years on 28.11.2004. Apprehending delay in his appointment to group-D post, he submitted representations to the Superintendent of Post Offices in January and February, 2004 to consider him for appointment. In reply, it was stated that the approval to fill up 1/3rd vacancies for the year 2002 is awaited (A-3). Aggrieved, he moved the Tribunal through O.A. 537/2004 which was disposed of directing the respondents to consider the applicant if he is found suitable (A-4). The respondents filed R.A. 19/2005 which was dismissed on 23.12.2005. The applicant filed Contempt Petition No. 28/2006 which was closed as the order of the Tribunal in RA 19/2005 was stayed by the High Court. The High Court dismissed the Writ Petition against the R.A. Consequently, the DPC meeting was held, the applicant was selected for appointment to Group-D vacancy of the Recruitment year 2002 and was allotted to Thalassery HPO. Accordingly, he was appointed as temporary Group-D(A-7). The

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grievance of the applicant now is that though he was appointed to the post of Group-D w.e.f. 6.6.2008, the vacancy against which he was appointed was of the recruitment year 2002, hence his appointment should have been given effect to from the year 2002, itself or at least w.e.f. 3.6.2003 the date from which his immediate senior was appointed, the failure of the respondents to call DPC meeting at the appropriate time should not affect the career prospects of the applicant, the approval of the Screening Committee was not necessary in the case of appointment of GDS to Group-D post, he cannot be denied the promotion to the vacancy of the year 2002 for no fault of his, he has been working as Group-D without any break from 2002 onwards, the order of the Tribunal in O.A. 537/2003 has declared that he is entitled to be considered for promotion to Group-D, subject to availability of vacancies. Hence, he filed this OA to quash A-6 and A-8, to declare that he is eligible for appointment to Group-D post w.e.f the year 2002 or at least w.e.f. 3.6.2003 the date of appointment of his immediate senior with all consequential benefits including pension and that he is eligible to be regularised w.e.f. 2002.

3 The Respondents filed reply statement opposing the O.A. They stated that the order of the Tribunal in O.A. 537/2004 was implemented on the disposal of the WP(C) 7728/2006 by the High Court on 25.7.2007. As per the order of the Tribunal, the applicant is not eligible for appointment from a date prior to the appointment / refusal of appointment by Shri C.N. Valsarajan, who being senior had a preferential claim than the applicant. They stated that the vacancy of 2001 was filled up in 2003 and that the applicant was to be considered for the vacancies of 2002 only.



4 The applicant filed rejoinder stating that there were 3 vacancies of Group-D in the year 2002 and that he could have been appointed to the 2nd vacancy w.e.f any date or at least w.e.f. 3.6.2003. He further reiterated that the respondents failed to convene DPC in time according to the rules and instruction on the subject thereby they have not filled up the vacancies from 2002 onwards which resulted in denial of justice to the applicant.

5 The respondents filed additional reply statement reiterating that the applicant was working as Group-D from 2002 onwards on extra cost basis only, therefore he cannot claim regularisation for such engagement and that there was only one vacancy in the year 2002. They also relied on the judgment of the Apex Court in Nirmal Chandra Singh Vs. Union of India and Others, Union of India and Others Vs. Nirmal Kumar Singh (CA Nos.8058/2001 and 8059/2001) to the effect that promotion takes place from the date of being granted and not from the date of occurrence of vacancy or creation of the post

6 The first contention of the applicant is that he was considered for the vacancy of the recruitment year of 2002, therefore the order should have been given effect from that year. We have gone through the documents. We find that the applicant is not the senior most in the gradation list. Two other persons senior to the applicant are there. Whether any of the seniors are willing or not willing to be promoted are to be found out only after following the prescribed procedure.

7 Another contention of the applicant is that he was eligible for promotion from the date of promotion of his immediate senior K.

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Velayudhan when Shri Valsarajan has expressed his unwillingness to accept the promotion.. This argument of the applicant cannot be accepted as the applicant has legal right to be appointed from the date of appointment of the junior and not the senior.

8 In O.A. 537/04 the case of the applicant was he was working as Group-D on on officiating basis and that the Postmaster General may be directed to take immediate action to accord sanction for filling up the 1/3rd vacancy of Group-D posts for the year 2002 The operative portion of the order of the Tribunal is extracted below:

"In the result, we declare that the applicant is entitled to be considered for promotion to Group-D post subject to the vacancies available in 2002 or in the subsequent vacancies on the basis of seniority irrespective of the fact that he has crossed 50 years. Admittedly Shri C.N. Valsarajan the seniormost in the seniority list as on 1.1.2001 declined the appointment on personal reasons in the previous recruitment and the next eligible candidate K.Velayudhan was given appointment. The applicant being serial No. 34 (next in queue) he could have had the next chance against the said vacancy of the year 2002 but Valsarajan will have a preferential claim since his declining the post does not debar him from being considered again. Therefore, the respondents are directed to give notice to the said Valsarajan forthwith and in case he further declines, the applicant shall be considered if he is found suitable by the Departmental Promotion Committee. The appropriate orders may be passed within a period of three months from the date of receipt of a copy of this order. The OA is disposed of as above."

9 The applicant has filed M.A. 621/2010 producing copy of the minutes of the DPC held on 22.7.2010 (Annexure A-14). A perusal of the same would show that the DPC in its minutes held on 22.7.2010 at Irinjalakuda after perusal of the relevant records of 67 seniormost eligible GDS and 2 seniormost SST candidates, recommended GDS for notional selection as Group-D against the 9 vacancies earmarked for

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GDSs w.e.f. the occurrence of the vacancies (A-15). Similar notional promotions were granted in Thrissur Division also. (A-15). The learned counsel for the applicant argued that the applicant is also entitled to similar notional promotion from the date of occurrence of the vacancy. We have gone through the records and we are satisfied that the argument of the learned counsel for the applicant merits consideration.

10 There is no dispute that 3 vacancies of Group-D posts earmarked for GDS are available w.e.f. 2002 and that there are two seniors of the applicant in the Gradation list eligible for consideration before the applicant is considered, depending on the availability of vacancies. Admittedly, the applicant was officiating against one of the three posts. The Tribunal in O.A. 537/2004 directed the respondents to consider the case of the applicant irrespective of the fact that he has crossed 50 years. However, the applicant could be appointed in his turn depending on the number of vacancies available against GDS quota. The respondents have made notional appointments with effect from the occurrence of the vacancy in certain cases. They are bound to follow the same principle in the case of the applicant. The contention of the respondents that the applicant is eligible to be appointed only on refusal of the immediate senior and that the immediate senior has refused promotion only in June, 2008 can not be accepted as the promotee is entitled to the benefit of notional promotion from the date of occurrence of vacancy as has been done in the case of similarly situated persons in Annexure A-15.

11 In this view of the matter, the O.A is allowed. Accordingly, we declare that the applicant is eligible for appointment as Group-D



notionally, w.e.f the date of occurrence of the vacancy . No order as to costs.

Dated 17th August, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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