

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. No. 527 / 2006**

Thursday this the 22nd day of March, 2007.

**CORAM :**

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

T.Manmadan,  
Part Time Sweeper-cum-Scavenger,  
Thevalakkara Sub Post Office,  
Karunagapally Sub Division,  
Kollam Division. : Applicant:

(By Advocate Mr Shafik M Abdulkhadir )

Versus

1. Union of India represented by  
Chief Postmaster General,  
Kerala Circle,  
Trivandrum-695 33.
2. The Senior Superintendent of Post Offices,  
Kollam Divisin,  
Kollam.
3. The Inspector (Posts),  
Karunagapally Sub Division,  
Kollam Division. : Respondents

(By Advocate Mr. George Joseph, ACGSC )

The application having been heard on 28.02.2007, this Tribunal on 22.03.2007.delivered the following :

**ORDER**

**HON'BLE Mr. MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

Shri T Manmadhan, Part-time Sweeper-cum-Scavenger, Thevalakara Sub Post Office has filed this application, challenging the notification, calling for applications for the post of Gramin Dak Sevak Mail Packer (GDSMP).



2. He has been working in the present capacity since 1.7.1988 . On coming to know that a vacancy of GDSMP was about to arise, he sent A-2 representation on 28.5.2006. The impugned notice (A1) dated 28-5-2006 was issued, inviting applications for appointment, to the post of GDSMP. The said notice contained provisions relating to the residency qualification, educational qualifications, the mode of application, format of application, documents to accompany such application etc. He submitted A-3 application dated 20.6.2006. In addition, he submitted A-4 representation dated 11.7.2006 to appoint him against the said vacancy, giving him preference in view of the DG, Posts letter issued in 1988, that casual labourers were to be given preference.

3. Challenging the A-1 notice, he has approached this Tribunal for the following reliefs:

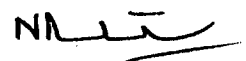
- i) quashing of A-1,
- ii) a direction that he is entitled to be appointed as GDSMP, Thevalakara as per the instructions of the 1<sup>st</sup> respondent contained in DG, P&T 17-141/88-ED & Trg. Dated 6.6.88
- iii) a direction to consider his claim for appointment in preference to the others.

4. The following grounds are relied upon:

- i) Issue of the impugned notice is in violation of the 1<sup>st</sup> respondent's instructions.
- ii) This Tribunal has decided in a number of cases regarding the preference to be accorded to the casual laborers in the matter of appointment to the post of ED Agents.

5. Respondents oppose the application. Their points are the following:

- i) The applicant was not selected initially through Employment Exchange. As envisaged by R-2 document exemption from the



sponsorship of the Employment Exchange was available only for candidates recruited before 7.6.88; the applicant was appointed on 1.7.88. Hence he is not eligible for consideration.

ii) Vide R-1 document, which is a copy of the DG, P&T letter 17-141/88-ED & Trg. dated 6.6.88, it has been decided that casual laborers, whether full time or part time who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts, implying that there is no automatic appointment of such persons

iii) Vide R-3 document an extract of DG, Posts New Delhi letter No.17-366/91 ED& Trg. Dated 13.3.93, the following has been provided with regard to educational qualification:

".....

*(iv) The minimum educational qualification for ED Delivery Agents ED Stamp Vendors and other categories of EDAs should be 8<sup>th</sup> standard. Preference may be given to the candidates with matriculation qualifications. No weightage need be given for any qualification higher than matriculation."* implying that the applicant has no preferred qualifications as compared to some other applicants pursuant to the impugned notification

iv) The applicant cannot rely upon the ratio in A-5 judgment (pp 13-16) wherein the respondents were only directed to consider the applicant therein for appointment to the post of ED Packer and to appoint him if he is found otherwise suitable.

v) The issue of A-1 notification is not arbitrary or illegal.

6. Heard the counsel and perused the documents.

*NK*

7. The only important point to be considered is whether the issuance of the impugned A-1 notification is illegal and hence unsustainable. The applicant has not brought to our notice any rule/order/instructions to the effect that when such a preferred category of part-time casual labourers is available, they should be straight away appointed, without even going through the process of calling for applications from the others. Relying upon R-1 orders dated 6.6.1988, he contends that casual laborers, whether full time or part time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts provided they fulfil all the conditions and have put in a minimum service of one year. Nothing is mentioned in this letter about the formalities to be covered prior to appointment. It is also the contention of the applicant that certain orders passed by this Tribunal in earlier O.As rule out any necessity to call for the applications when employees belonging to the preferred categories are available; the process of calling for applications should commence only after consideration of such category of employees. The following cases were referred to by him:

- 1) O.A.322/2001
- 2) (2000(1) CC Sasikala v. ASPO ATJ 63)
- 3) O.A.378/2002 and
- 4) O.A.301/2006

8. In the A-5 order referred to by him in O.A.322/2001, two limbs constitute the operative portion of the orders - the first limb refers to the evaluation of suitability of the applicant therein and the second limb stipulates that recruitment from the open market to the post is to be resorted to only if the applicant is otherwise unsuitable.

9. In the order passed by this Tribunal (2000(1) CC Sasikala v. ASPO ATJ 63) this Tribunal observed as follows:

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*"13. Further, the statement in para 4 that casual laborers should be appointed only after getting nominations from the employment exchange would give an indication that the intention was that in case there are willing casual laborers for being recruited as ED Agents, there is no further need for inviting applications from the employment exchange for recruitment of ED Agents. We are of the view that casual laborers should be given preference in the matter of recruitment to the ED posts over outsiders. In our considered view, the letter dated 6.8.88 does not envisage a comparative evaluation of merit between outsider candidates and serving casual laborers and therefore there is no need for notifying the vacancies to the Employment Exchange and calling names of candidates once a casual labour expresses willingness to be considered for posting as an ED Agents. Moreover, no instruction or rule which states that the cases of casual laborers whether part time or full time should be considered along with nominees of the Employment Exchange for selection as ED Agents has been produced."*

10. In the orders passed by this Tribunal in O.A.378/2002, it was observed as follows:

*"3. We have heard the learned counsel on either side. The fact that the applicant has been continuously working as Part-time Sweeper in the Pallickal-Kilimanoor Sub Office under the 4th respondent since 1.9.1993 is not in dispute. In terms of the instructions contained in the DG, Posts letter dated 6.6.88, a Casual Labourer, full-time or part-time, having completed the service of one year is entitled for preference in the matter of recruitment to the ED posts. This benefit is not being given to the applicant only for the reason that the applicant's name was not sponsored by the Employment Exchange for initial engagement as Part-time Sweeper. However, the applicant has continued as Part-time Sweeper without any break for nine years since 1993. Therefore, the fact that the applicant's name was not sponsored by the Employment Exchange initially loses its significance especially in view of the ruling of the Apex Court in Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh v. KBN Visweshwara Rao [1996 6 SCC 216]."*

*Natu*

11. In the order passed by this Tribunal, in O.A.301/2006 dated 25.9.2006, it was stipulated

*"5.....Since the applicant is seeking selection in accordance with the DG P&T letter's dated 6.6.1988 which gives a preference to the Part time workers in the Department, the need for conducting any election would arise, only if the candidature of the applicant to be given a preferential treatment is not found eligible in accordance with the Rules. There is, therefore, no need to go ahead with the selection inviting other candidates as the applicant's suitability according to the Rules prescribed was to be determined first."*

12. First point with reference to the above orders is that the following circulars were not factored.

- i) DG Posts, No.19-4/97 ED & Trg, dated the 19<sup>th</sup> August, 1998 (relating to the mode of inviting applications).
- ii) DG Posts New Delhi letter No. 17-366/91-ED&Trg dated 13.3.1993 (R-3)(dealing with qualifications)

13 It is necessary to examine the issue of reference to the employment exchange sponsorship and of wide circulation of notification of vacancy. It is also relevant in this context to note that, the department itself has come out with certain instructions relating to the steps to be taken in respect of appointments and certain modified instructions have been issued covering these issues which read as follows: (Vide DG Posts No.19-4-1997 ED&Trg dated 19.08.1998 referred to above: Source Swamy's Compilation on Service Rules for Postal ED Staff).

"2. The extant procedure requiring nomination to be obtained from the Employment Exchange came up for Judicial scrutiny in the Supreme Court in the matter of Excise Superintendent, Malkapatna, Krishna District, A.P v. K.B.N.Visweswara Rao & others [1996 (6) Scale 670]\*:The Apex Court held that:

*NA*

*"It should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange and Employment Exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or Undertaking or Establishment, should call for the names by publication in the newspapers having under circulation and also display on their office notice boards or announce on radio, television and Employment News Bulletin and then consider the cases of all the candidates who have applied"*

3. *In the context of selection of candidates to work as EDAs, the issue relating to notification of the vacancies to the local Employment Exchange has been further examined in the light of O.M.No.14024/2/96-Estt.(D), dated 18.5.1998 of the Ministry of Personnel, Public Grievances and Pensions (DoP&T). It has now been decided that in respect of all vacancies of EDAs, excluding those where the process of recruitment through Employment Exchange/open advertisement has already commenced, in addition to notifying through the Employment Exchange, the vacancies shall be simultaneously notified through public advertisement and the candidates nominated by the Employment Exchange as also those responding to the open advertisement will be considered..."*

The importance of this letter lies in the fact that this is based on the judgment of the Hon Apex court. In the OA 378/2002, perhaps this OM was not factored into and had it been so, the verdict could have been possibly different. It is significant to note that in that order, the same judgment of the Apex Court had been referred to. As seen from the portion quoted above of the verdict of the Apex Court, the need for a wider circulation of the fact of vacancy has been strongly stressed. The Hon apex court has had occasion to make some very important observations in respect of procedural aspects. In Secretary, State of Karnataka v. Umadevi [2006 AIR SCW 1991], the Hon. Supreme Court held:

*N A*

*"Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure.*

.....

*The words "employment" or "appointment" cover not merely the initial appointment, .... other post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (see BS Minhas v. Indian Statistical Institute and others 1983 India SC 42".*

14 In view of the law laid down by the the apex Court on the need for wider circulation of the information about the intended appointment through channels like newspapers, office notice boards, announcements on Radio, Television and Employment News Bulletins and subsequent consideration of eligible candidates,, the action taken by the respondents in calling for names of suitable candidates from the Employment Exchange and open advertisement appear to be in order. Hence, the applicant cannot rely upon the earlier orders of the Tribunal that he should be considered first even before the process of advertisement starts.

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15. Another important point to be decided is to decipher as to what constitutes "preference". This was elaborated by the Hon. Apex Court in *Sher Singh v. Union of India and others* (1984)1SCC107 wherein it observed:

*"7..... The expression 'preference' amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other. It signifies that other things being equal, one will have preference over the others. When an application for a stage carriage permit is being processed as required by Section 47, the application of the Undertaking for an inter-State route shall be examined as application of any other private operator. Their merits and demerits must be ascertained keeping in view the requirements of (a) to (f) of Section 47(1) and after comparing the merits and demerits of both, not with the yardstick of mathematical accuracy, but other things being equal, the application of the Undertaking will have preference over others."*

In the above order the point dealt with was the scope of preference to be given to State transport undertakings in considering their applications for permits. But the observations of the Hon. Apex Court would apply with equal force in this case also. It will be relevant to mention here that the compilation referred to above also makes a reference to quite a few preferential categories of candidates like Scheduled Caste and Scheduled Tribes. Secondly, even going by the R-1 letter, there are three preceding categories of preference like non-test category and ED employees and casual laborers before factoring the part time casual labourers like the applicant. If the intention of the respondents is to give preference to certain categories of employees to the extent of considering their cases first before at all calling for nominations from sources like employment exchange and open market, nothing prevented them from making a specific provision to that effect. In any matter of the case, by virtue of the law laid down by the Apex Court on the need to widely circulate the fact of recruitment, no such provision even if made, would be valid.

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16 A combined consideration of all these factors would lead us to the conclusions summarised as below:

i) The respondents are obliged to call for applications from all sources including employment exchange and notifications in the open market.

ii) All the candidates will have to be evaluated in terms of the parameters of selection mentioned in the notification.

iii) preference can be given to the candidates for their status of part-time casual labourers if all other factors are equal, and not other wise.

(v) Hence, the argument of the applicant is that even without calling for applications he should have been appointed has no basis.

17. In sum we find,

i) issuance of the impugned notification was in order.

ii) the applicant will have to be evaluated on all the parameters mentioned in the notification.

iii) preference if any, should be given on account of the status as part time casual labourer only if applicant/s belonging to categories of higher preferences are not available and the applicant shares all the other requisite suitability parameters in equal measure with other applicants to be considered in his category.

18. Under the circumstances the O.A is dismissed. No costs.

Dated, the 22nd March, 2007.

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**N.RAMAKRISHNAN**  
**ADMINISTRATIVE MEMBER**