

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No. 536/2012

.....*Tuesday*.....this the *20<sup>th</sup>* day of August, 2013.

C O R A M

**Hon'ble Dr.K.B.S.Rajan, Judicial Member**

**Hon'ble Mr.George Joseph, Administrative Member**

1. Gopalan A., S/o. Sri the late Chappan, aged 52 years, working as Gramin Dak Sevak Mail Carrier, Pozhuthana, Vythiri SO, Wayanad, residing at Alakkunu, Achooranan, Pozhuthana via, Idiyan Vayal, Wayanad District.
2. K. Sivan, S/o. The Thambi, aged 45 years, working as Gramin Dak Sevak Mail Carrier, Triikkaipetta, Meppadi, residing at Govindanpara House, Thrikkaipetta PO, Meppadi, Thrikkaipetta Village, Vythiry Taluk, Wayanad District.
3. Balan K., S/o. The late Kaippa, aged 45 years, working as Gramin Dak Sevak Mail Deliverer, Kamblakad BO, Kalpetta HO, residing at Kollivayal House, Kaniyampatta Post, Kalpetta (via), Wayanad – 673 121.
4. Mahadevan P.A., S/o. Sri Achappan M., aged 44 years, working as Gramin Dak Sevak Mail Deliverer, Kaniyampetta Post, Kalpetta (AO), residing at Palliyara House, Kaniyampatta PO, Wayanad – 673 121.
5. Madhu K.P., S/o. The late Paithal, aged 42 years, working as Gramin Dak Sevak Mail Deliverer, Kenichira S.O., residing at Kollikkal House, Koothade PO, Wayanad – 673 596.
6. Kumaran A.S., S/o. The late Sankaran A., aged 47 years, working as Gramin Dak Sevak Mail Deliverer, Kariambadi SO., Meenangadi, Arimula House, Kariambadi Post, Meenangadi (Via), Wayanad-673 591.
7. Omana M.S., D/o. Sekharan M. Aged 44 years, working as Gramin Dak Sevak Mail Deliverer, Muttill P.O., Kalpetta North SO., residing at Mathamoola House, Choottupara PO, Wayanad – 673 596.
8. Balan M., S/o. The late Peethambaran, aged 46 years, working as Gramin Dak Sevak Mail Deliverer, Wazhavatta, Kalpetta North SO, Mannamkotta, PO Kakkavayal, Kalpetta North – 673 122.

9. Balan K., S/o. The late Vellan, aged 46 years, working as Gramin Dak Sevak Mail Deliverer-II, Pallikunnu, PO Wayanad-673 121, residing at Sajitha Bhawan, Kozhinjanyad Kunnu, Kamblakad PO, Wayanad-673 121. Applicants

(By Advocates: Mr. O.V. Radhakrishnan, Sr.  
Mrs. K. Radhamani Amma)

Versus

1. Superintendent, RMS, CT Division, Kozhikode.
2. Senior Superintendent of Post Offices, Calicut Division, Calicut – 673 003.
3. Postmaster General, Northern Region, Kozhikode.
4. Chief Postmaster General, Kerala Circle, Thiruvananthapuram.
5. Director General of Posts, Dak Bhavan, New Delhi.
6. Union of India, represented by its Secretary, Ministry of Communications, New Delhi. Respondents

(By Advocate: Mrs. Jishamol Cleetus, ACGSC)

This Original Application having been heard on 8<sup>th</sup> August, 2013, the Tribunal on 20.08.13 delivered the following:

### ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The 9 applicants in this OA belong to Scheduled Tribe community who had entered the services of the respondents as Extra Departmental Agencies, presently known as Gramin Dak Sevaks, their initial engagements being during the period ranging from 1989 to 1995 in the Calicut Postal Division. According to the 2002 Recruitment Rules for Group D posts, Part II of the schedule relates to educational qualification prescribed for Direct Recruitment. Such qualifications are not insisted in case of promotions to group D. Column 11 of the Schedule relates to method of appointment according to which, 75% of the vacancies remaining unfilled after recruitment from employees mentioned at Serial No. 2 shall be filled by Gramin Dak Sevaks of the recruiting Division or Unit where such vacancies

occur failing which by Gramin Dak Sevaks of the neighbouring Division or Units by Selection-cum-seniority. While forwarding the Recruitment Rules, the Department of posts advised all the authorities concerned to follow the Recruitment Rules.

2. It is the case of the applicants that there were clear 10 vacancies for the Scheduled Tribes in group D cadre remaining unfilled on the basis of the aforesaid 2002 Recruitment Rules as on 30<sup>th</sup> of September 2009 in the RMS CT Division as communicated vide Annexure A-3.

3. The 2002 Recruitment Rules were replaced by the 2010 Recruitment Rules vide Annexure A-6, according to which, the Rules came into force w.e.f. 20-10-2010.

4. The Circle Office issued letter dated 04-10-2011 intimating the 2<sup>nd</sup> Respondent that 10 MTS vacancies in RMS CT Division could not be filled up for want of ST candidates in the GDS category and hence it has been decided to consider the case of such candidates available under the Calicut Division to fill up these short fall vacancies, depending upon their length of service and willingness. Accordingly, the first respondent issued memo dated 10-10-2011 publishing the details of GDS under ST category eligible to be considered for filling up of the unfilled vacancies and directed to submit their willingness or otherwise through Sub Divisional Head so as to reach the office of the 2<sup>nd</sup> Respondent before a specified date. Annexure A-4 refers. The said Annexure contains the name of all the applicants. Annexure A-5 is the list in the order of seniority of those who are eligible to be considered for selection for filling up the 10 ST MTS Vacancies in the RMS Division, obtained under the RTI. Thus, it is the case of the applicants that the applicants No. 1 to 9 and another individual by name Babu N are the senior most ST candidates in the Calicut Postal Division which is the neighbouring Division of RMS CT Division.

5. The reluctance on the part of the respondents in not considering the case of the applicants was that according to the instructions received by them from the higher authorities, the vacancies are to be filled up by

invoking the provisions of the later Recruitment Rules of 2010 and not as per the 2002 Recruitment Rules. In other words, the vacancies arisen when the earlier Recruitment Rules were in vogue are sought to be filled up in accordance with the later Recruitment Rules.

6. The applicants rely upon the decision by this Tribunal in OA No. 551 of 2011 dtd 16-06-2012 wherein the Tribunal has held that the applicants therein are entitled to promotion as Group D in accordance with the Recruitment Rules, 2002 against the vacancies occurred prior to the coming into the force of the current 2010 Recruitment Rules. Annexure A-7 refers.

7. Thus, on the strength of the above decision, the applicants have filed this OA seeking the following Reliefs:-

"i) to declare that the delay in making promotion to Group D vacancies remaining unfilled applying failing which clause in Column 11 of the Schedule to Recruitment Rules, 2002 shall not deny the applicants full service benefits with effect from the date of their entitlement which they would have earned but for the failure to act in accordance with the Recruitment Rules, 2002;

ii) to issue appropriate direction or order directing the respondents to take immediate steps for promoting the applicants 1 to 9 to Group D in the order of their seniority against the existing vacancies reserved for Scheduled Caste candidates of RMS CT, Division which fall under 75% quota set apart for Gramin Dak Sevak under the Recruitment Rules, 2002 and to promote them to Group D from the respective dates of their entitlement with all consequential benefits forthwith and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;

iii) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case such other;

and

iv) to award costs to the applicant."

8. Respondents have contested the O.A. According to them, in so far as the vacancies in question are concerned, the stand that the vacancies prior to the coming into force of Annexure A-6 Recruitment Rules have to be filled up in accordance with Annexure A-1 Recruitment Rules is not at all applicable. For, the vacancies in question had not actually existed prior to the notification of Annexure A-6 Recruitment Rules. The Department had

all through been considering appointment of GDS group D posts as one of Direct Recruitment and it was only after this Tribunal has held that such appointments do not fall under the category of Direct Recruitment (which decision has been up filled by the High Court) that these vacancies were not treated as belonging to Direct Recruitment. Such a decision and its implementation came much later, after the promulgation of the revised Recruitment Rules.

9. The applicants have filed their rejoinder reiterating their contention that vacancies existed prior to promulgation of revised the Recruitment Rules and further that vacancies remaining unfilled in the RMS Division of Calicut could be filled up from the neighbouring Calicut postal Division. The applicants have also added to the rejoinder a copy of status report filed by the respondents indicating the number of vacancies available in various Divisions during the years 2002 to 2009. This is the status reports filed by the respondents in CP(C) No. 71 of 2011 in OA No. 555 of 2009. They have also added a copy of judgment dated 23<sup>rd</sup> of December 2009 in WP(C) No. 32491 of 2009 wherein direction was given that the Department should consider other eligible candidates in the neighbouring Division/Unit in case of non availability of candidates/members belonging to that Division.

10. In their additional reply the respondents contended that it was only in the year 2011 that action for identifying the vacancies to be filled up was finalised in the wake of judicial pronouncements mentioned in paragraph 8 of the reply earlier filed.

11. Counsel for the applicants argued that even according to the respondents as could be seen from status report annexed to the rejoinder that there were vacancies pertaining to the years 2002 to 2009. Though these vacancies were stated to be identified in 2011, the same would not mean that these vacancies arose only in 2011. By a misconception the respondents had been treating the appointment of GDS to group D posts as one of Direct Recruitment and in case of Direct Recruitment there have been certain restraints and restrictions including abolition /deemed abolition of vacancies, if kept unfilled for a period of over one year. The stand of the

respondents all through has been that many vacancies pertaining to Direct Recruitment to be filled up by GDS had been abolished earlier. However, in view of the fact that a clear decision had been given by this Tribunal as upheld by the High Court that vacancies to be filled up by GDS cannot be one of Direct Recruitment, there is no question of such vacancies being treated as abolished. Thus there do remain the vacancies prior to the promulgation of revised Recruitment Rules and such vacancies ought to be filled up only by the method provided for as per the 2002 Recruitment Rules. Thus, the respondents are duty bound to act on Annexure A-4 communication.

12. Counsel for the respondents argued strictly on the basis of the contents contained in the reply as well as additional reply filed by the respondents.

13. Arguments were heard and documents perused. The following important issues arise: –

- (a) Whether the vacancies should be treated as vacancies that existed prior to framing of the revised the Recruitment Rules.
- (b) if answer to (a) above is in affirmative, under which Recruitment Rules these vacancies are to be filled up.
- (c) Whether the term 'neighbouring Division' would mean for postal Division the neighbouring postal Division and for RMS Division RMS Division only or they are interchangeable.

14. In so far as (a) is concerned, the status report filed by the respondents vide Annexure A-8 clearly reflects that the vacancies pertained to pre-2010. These vacancies have, by the respondents, been treated to be fresh vacancies arisen only after the promulgation of the 2010 Recruitment Rules as the decision relating to the character of appointment of GDS as non-Direct Recruitment came only in 2011. This Tribunal in a number of cases had directed the respondents to resurrect the deemed abolished vacancies. The abolition of such vacancies either actual or deemed was on account of the misconception by the respondents that such vacancies

pertained to Direct Recruitment. In fact, these vacancies are immune to such abolition on account of the fact that these are not direct recruit vacancies. Thus it must be taken for granted that such vacancies have been in existence from the date they arose, i.e. from 2002 to 2009.

15. As regards (b) above, counsel for the applicants has rightly relied upon the decision of this Tribunal in OA No. 551 of 2011, wherein the Tribunal has held as under:-

*"16. Arguments were heard and documents perused.*

*17. First as to the appellation 'Casual Mazdoor' The term 'Mazdoor' is the Hindi version of 'Labourer' and it is commonly used in the Hindi Belt of our country in the place of Labourer. In any event, by Annexure A-12, the D.G. Posts have clearly held that all casual workers by whatever name they be called would be casual labourers. This letter is of 1989 and it has been clearly mentioned therein that 'All other designations should be discontinued.' Thus it is not known as to how the respondents continue to retain the term 'casual Mazdoors' when the same should have been discontinued. Thus, the status of the applicants is no less than that of other casual labourers.*

*18. Next is the question relating to the sub head against which the payments to the casual labourers are made. Clarification at Annexure A-14 provides the answer for the same. Even after temporary status, the casual labourer remains casual labourer. The head of account is the same. If for any reason the head of account has been varied by the respondents in respect of the wages paid to the applicants, the same cannot change the status of the applicants as casual labourers.*

*19. As regards the rules that are to be applied in filling up the vacancies of 2010, law on the subject is clear and this legal issue is no longer res-integra. The vacancies pertain to 2010 and the revised Recruitment Rules came in to force on 12-12-2010. It is not the case of the respondents that all the 17 vacancies out of which 4 were to go for Casual Labourers arose only after the coming into force of the Revised Recruitment Rules. Nor is it the case of the respondents that in view of the proposal to revise the recruitment rules, a conscious decision has been taken to keep all the vacancies unfilled till new recruitment rules came into force. Vide para 3 of the reply, Annexure A-11 was issued by the respondent on 25-03-2011 which is posterior to the publication of the Revised Recruitment Rules which were published in the official gazette on 20-12-2010 and hence the revised recruitment rules have been followed.*

*20. Law on the subject is settled in the case of Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284: wherein the Apex Court has held as under:-*

*"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."*

21. *In P. Ganeshwar Rao & Ors. vs. State of Andhra Pradesh & Ors.*, AIR 1988 SC 2068, it was stated that the vacancies that occurred prior to the amendment of the Rules will have to be governed by the old Rules and not by the amended Rules.

22. *In Arjun Singh Rathore v. B.N. Chaturvedi*, (2007) 11 SCC 605, the Apex Court has held as under:-

"5. Mr Calla, the learned Senior Counsel for the appellants has argued that the matter was fully covered by the judgment of this Court in *State of Rajasthan v. R. Dayal* wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in *Y.V. Rangaiah v. J. Sreenivasa Rao* it was opined as under:

"8. ... This Court has specifically laid (*sic*) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose."

6. The above legal position has not been seriously disputed by the learned counsel for Respondents 6 and 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly."

23. *In State of Punjab v. Arun Kumar Aggarwal*, (2007) 10 SCC 402, referring to a few judgments, including *Y.V. Rangaiah* (*supra*), the Apex Court has held as under:-

"32. He has also referred to *B.L. Gupta v. MCD* (1998) 9 SCC 223 ,

"9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr Mehta to a decision of this Court in *N.T. Devin Katti v. Karnataka Public Service Commission* . In that case after referring to the earlier decisions in *Y.V. Rangaiah v. J. Sreenivasa Rao* , *P. Ganeshwar Rao v. State of A.P.* and



*A.A. Calton v. Director of Education* it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed."

24. While, the above is the legal position, one exception had been carved out in the case of *K. Ramulu (Dr) v. S. Suryaprakash Rao (Dr)*, (1997) 3 SCC 59. In that case the apex court has held as under:-

"When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in *Rangaiah* case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are *P. Ganeshwar Rao v. State of A.P.*, *P. Mahendran v. State of Karnataka*, *A.A. Calton v. Director of Education*, *N.T. Devin Katti v. Karnataka Public Service Commission*, *Ramesh Kumar Choudha v. State of M.P.* In none of these decisions, a situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules.

13. It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the respondent. "

25. In the instant case, there is no such averment that a conscious decision not to make any appointment till the amendment of the Rules has taken place. At least nothing has been brought to our knowledge. It is also not the case of the respondents that the applicants did not fulfill the qualifications as per the 2002 rules.

26. In view of the above, the applicants have made out a cast iron case in their favour. Their contention that the posts of Group D should be filled up as per the 2002 recruitment Rules in which case,

*they would be covered cannot be brushed aside. The contention of the respondents that the applicants are not casual labourer, they being casual Mazdoors is rejected in view of D.G's clarification at Annexure A-9/A-13. So is their case that they have not been on the regular pay roll, which should also be rejected in view of the clarifications as contained in Annexure A-14. And since, 'Raingiah' has clearly held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules, and since the case of the applicants do not fall under the excepted category as contained in the case of Dr. Ramulu (supra), it is declared that the applicants are entitled to be considered for the post of Group D in accordance with the provisions of Recruitment Rules, 2002. The OA is thus allowed. Since the two vacancies against which the applicants were entitled to be considered have been consumed by posting Respondents No. 6 and 7 as contained in serial No. 10 and 11 of Annexure A-11, the impugned annexure A-11 order is set aside, in so far the same related to Respondents No. 6 and 7. The applicants shall be considered for the post of Group D against the two vacancies as per the 2002 Recruitment Rules. Respondents are directed to hold necessary DPC for this purpose and consider the case of the applicants against the two posts which occurred prior to 12-12-2010. On their appointment as Group D, they could be given necessary training to uplift their status as MTS. Their seniority would be in the same way as the other two casual labourers who have been appointed against two of the four vacancies earmarked for casual labourers. This order shall be complied with, within a period of six months from the date of communication of this order. If similarly situated casual Mazdoors who are senior to the applicants are serving as such, respondents may consider their cases also, as the same would avoid litigation by such individuals.*

*27. The private respondents have not made appearance despite service of notice to them. In their case, it is for the respondents to revert them or to adjust them against future vacancies or against any supernumerary posts. The seniority of the applicants as Group D posts, in case of their selection, cannot be upset."*

16. The above decision fully applies to the facts of this case as well.

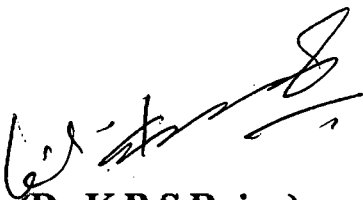
17. As regards (c) above, the explanation No. 1 appended to the Recruitment Rules is very clear that for Postal Division or Unit, the neighbouring Division or Unit as the case may be, shall be the Railway Mail Service Sub-Division and vice versa. In the instant case, the vacancies arose in the RMS Division of Calicut and the applicants belong to the Postal Division of Calicut. And as such, the applicants are eligible to be considered for the vacancies arisen in the RMS Division.

18. In view of the above the OA is allowed to the extent that it is declared that the applicants are entitled to be considered for appointment as Group D

against the vacancies for the years 2002 to 2009 in the order of their seniority as per the 2002 Recruitment Rules and if found suitable, their appointment as such would be notional from the dates the vacancies arose, actual only from the dates they join the said posts. Respondents are therefore, directed to take immediate steps for promoting applicants 1-9 to group D in the order of their seniority against the existing reserved vacancies of RMS 'CT' Division falling under the 75% quota set apart for Gramin Dak Sevak under the 2002 Recruitment Rules and on being found fit, they be promoted to Group D from the dates of their entitlement, notionally and actually from the date they take up their appointment as Group D. This order shall be complied with, within a period of four months from the date of communication. No orders as to costs.



**(K. George Joseph)**  
Administrative Member



**(Dr. K.B.S. Rajan)**  
Judicial Member

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