

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.536 OF 2005

Wednesday, this the 10th day of January, 2007.

CORAM :

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

C.K.Saraswathy Amma
Gramin Dak Sevak Branch Postmaster
Chempilavu PO
Residing at : Nedumattathil House
Kidangoor South P.O

: **Applicant**

(By Advocate Mr. P.C.Sebastian)

Versus

1. The Senior Superintendent of Post Offices
Kottayam Division, Kottayam
2. The Senior Postmaster
Kottayam Head Post Office
Kottayam - 686 001
3. The Union of India represented by its Secretary
Ministry of Communications
Department of Posts
Dak Bhawan, New Delhi
4. K.M.Haridasan
formerly GDS MC Kurumulloor
LR Group D Kottayam H.O

: **Respondents**

(By Advocate Mr TPM Ibrahim Khan, SCGSC (R1-3)
Advocate Mr.V.J.James (R4)

The application having been heard on 30.11.2006, the Tribunal on
10.01.2007, delivered the following :

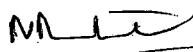
ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant int his case, Smt C.K.Saraswathi Amma, is aggrieved by
her non-promotion to the cadre of Group D post in the Department of Posts.

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2. The applicant entered service as Extra Departmental Branch Post Master (redesignated as GDSBPM) on 8.10.75. Recruitment to the cadre of Group D is made in accordance with provisions contained in Department of Posts(Group D posts) Recruitment Rules 2002. The applicant claims that such posts are filled in by absorption of the ED Agents (GDS) in the order of their seniority. An upper age limit of 50 years has been prescribed, vide A-9 communication from the Ministry of Communications to the CPMG, Kerala. It also specifies that the age should be determined as on the 1st July of the year in which recruitment is made. A specified set of procedures has been laid down relating to the recruitment process. Thus, vide R-1 document which is an O.M. from the Department of Personnel, Government of India, dated 16.5.2001, all Ministries and Departments are to prepare annual direct recruitment plans covering the requirements of all cadres, which should be approved by a Screening Committee headed by the Secretary of the Department. Recruitment process should commence, only thereafter. After the approval of vacancies, a selection committee of prescribed composition would hold meetings every January and draw a select list, strictly in the order of seniority and postings made therefrom. The applicant's grouse is that despite instructions from the DG, Posts, for the regular holding of departmental promotion committee meetings, the Postal authorities did not hold the same from 1997 onwards for some time, affecting the promotion prospects of candidates like the applicant. As per the seniority list published, her position as on 1.1.2000, is at 120 (A-4). Recruitment was made, as per this list, of one Shri George Thomas (Sl.No.101) vide A-5 order dated 11.2.2003, though the year when such vacancy arose remains unknown. Subsequently, vide A-6 dated 11.2.2005, it was informed that one vacancy at Kottayam Division was, among others, approved by the Screening Committee and necessary steps to convene the DPC were to be taken. This vacancy was of the year 2003. In pursuance of the same, appointment was made of



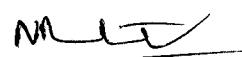
respondent No.4 vide A-7 impugned order. According to the applicant, this was overlooking her seniority because respondent 4 was junior to her in the seniority list as his position was 130, compared to hers at 120. She avers that this was because the year of appointment was 2005, the date of reckoning age of candidates was 1.7.2005, and only those candidates who were not above 50 years as on that date, were considered. Her argument is that the reckoning date should be the 1st of July of the year of origination of the vacancy; if the vacancy was of the year 2003, the date of reckoning age should be 1.7.2003. If that were so, on that date, she was below 50 years, she was senior to respondent 4 and hence would have been selected for promotion.

3. She seeks the relief of quashing of A-7 and A-8 and of consideration of her case, factoring the date of occurrence of vacancy for reckoning the age.

4. The main ground relied upon by her is the need for relying upon the year of occurrence of vacancy for the purpose of assessing the age of eligibility.

5. The respondents oppose the application on grounds that

- vide R-1 document, annual recruitment plans should be prepared by all Ministries,
- such plan should be approved by a Screening Committee.
- recruitment can be made only against vacancies approved by the Screening Committee.
- no recruitment during 1997-99 was made due to court cases.
- no approved Group D vacancy was cleared by the Screening Committee in Kottayam Division, for quite some time, the last GDS was appointed only with effect from 14.2.2004.
- for selection to the Group D posts, the candidate should not be above 50 years on 1st July of the recruiting year.



- such year being 2005 in the case of impugned order, 1.7.2005 was taken as the date for reckoning age of candidates.
- the applicant's age was reckoned in the year of recruitment and not year of occurrence of vacancy.
- on 1.7.2005, the applicant had crossed the age limit and hence she was not selected for appointment to Group D post.
- it is the prerogative of the Government to decide when to make recruitment to the civil posts.

6. Heard the parties and perused the documents.

7. The first point for consideration is whether she could have been considered for promotion even if hypothetically it is assumed that 1.7.2003 should be taken as the date of reckoning of the age for the vacancy which arose in 2003. This question has arisen because this is one of the reliefs asked for by the applicant, viz, to direct the respondents to consider applicant for recruitment to the Group D vacancy against which 4th respondent has been recruited, retrospectively from the date of occurrence of the vacancy and issue appropriate orders for her promotion with all consequential benefits. Assuming that Shri George Thomas of Sl.No.101 in the A-4 seniority list was promoted against the 2002 vacancy, the vacancy that arose in 2003 should be filled in after considering the available eligible candidates from Sl.No.102 onwards. The applicant is at Sl.No.120. Hence, there are 17 candidates above her in seniority. The age limit of 50 to be reckoned on 1.7.2003 would mean that only those candidates, who are born after 1.7.53, can be considered. We find that there are three candidates fulfilling the above conditions (including one SC candidate). The applicant says that one of them was subsequently posted as Postman and the other is no more. The date on which such posting was made of the first or on which death occurred of the second is not made clear. We feel that whether

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these events occurred at least on the date of consideration of candidates for filling in of the 2003 vacancy is important. In the absence of these data and if seniority were the only criterion as claimed by the applicant, probability of her selection should be deemed to be nil on account of the availability of three seniors.

8. That brings us to the question of whether the applicant has any vested right to get an yearwise indexation of the vacancy for the purpose of age-reckoning. It is true that for quite some time no recruitment was made due to reasons beyond the control of the applicant. It is equally true that this was beyond the control of the respondents, too. In the present case, the vacancy is of 2003 but it was filled in 2005. So what should be the date of age reckoning 1.7.2003 or 1.7.2005? No document is produced by the applicant nor any case law cited to substantiate her assertion that it should be 1.7.2003. The respondents would argue that it is the prerogative of the executive to fill in the vacancy and also to decide the timing thereof. Besides, vide A-9 document it is laid down as follows:

"3 The crucial date for determining age will be 1st of July of the year in which recruitment is made."

This decision communicated on 20.7.2000 has remained unchallenged ever since, including in this O.A. This would only amount to acquiescence of the above decision. The settled law is that administrative orders can fill in the gap on any area left unfilled by the rule. In this case, the reference date to reckon the age of candidates for recruitment against a vacancy to be filled in is one such area. Annexure A-9 is an administrative order specifying that 1st of July of the year of recruitment should be such reference date for checking in the age limit of candidates. These points have not been successfully countered in any rejoinder by the applicant. Available records indicate that the respondents strictly followed the policy dictates of the Government relating recruitment. We have to conclude therefore that no vested right is available of indexation of

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vacancy against a year as demanded by the applicant.

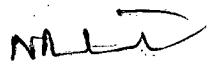
9. In sum, it is found that the applicant did not have any probability of selection even if the date for age reckoning was kept at 1.7.2003 and her claim for keeping 1.7.2003 as such date has not been substantiated successfully, either.

10. Under these circumstances, the O.A fails and is dismissed. No costs.

Dated, the 10th January, 2007.



GEORGE PARACKEN
JUDICIAL MEMBER



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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