

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 56/08

Friday this the 6th day of February, 2009

CORAM

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

A. Ramankutty S/o Azhakan
Gramin Dak Sevak Mail Deliverer
Karuvatta PO
residing at Malayil Kizhakkathil
Karuvatta North PO
Alapuzha.

Applicant

By Advocate M/s M.R. Sudheendran, M.R. Hariraj, & P.A. Kumaran

Vs

1 Union of India represented by the Secretary
to Government of India,
Department of Posts
Ministry of Communications
New Delhi.

2 Chief Postmaster General,
Kerala Circle
Thiruvananthapuram.

3 The Post Master General,
Central Region,
Kochi.

4 The Superintendent of Post Offices
Mavelikkara Division
Mavelikkara

5 R. Vivekanandan,
GDSMD, Eruva PO
now promoted as Postman,
Mavelikkara Postal Division

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

The Application having been heard on 8.1.2009, the Tribunal delivered the following



ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the refusal of the respondents to consider him for appointment as Postman on the ground that he has crossed the age limit of 50 years.

2 The applicant is presently working as Gramin Dak Sevak Mail Deliverer, Karuvatta. He commenced service as ED Messenger, Karuvatta on 29.3.1978. While so, on 19.1.2007 applications were invited for appointment to the cadre of Postman/Mail Guard of 2005 vacancies indicating the vacancy position. According to the applicant, he was refused consideration on the ground that he has crossed the age of 50 years (Annexure A1). As per the Recruitment Rules 1989 and notification of DOP dated 30.1.1995 vide Annexure R-4, 25% of the posts were to be filled by ED Agents based on seniority and pass in the departmental examination. By the Amended Rules 1994, the requirement of examination was done away with. Therefore, according to the applicant, the entire 25% quota is to be filled by ED Agents based on **seniority**. While the applicant is the seniormost GDS eligible to be promoted, the 5th respondent who is junior to the applicant was appointed. Aggrieved by the action of the respondents the applicant filed this O.A to quash Annexures A-1 and A5, or to declare that the stipulation of column 2 of Annexure A-2 is unconstitutional or to direct the respondents to consider the applicant by granting age relaxation or to appoint him to the post of Postman in the seniority quota in accordance with his seniority.

3 The main grounds raised by the applicants is that the non-selection of the applicant on the ground that he is above 50 years is

14

illegal, unreasonable and unsustainable. There is no prescription of age limit for seniority quota in the Recruitment Rules. Stipulation of age limit of 50 years by Amended Rules applies only for direct recruits and that appointment of ED Agents in the seniority quota is not a direct recruitment. The finding of the Full Bench of this Tribunal in O.A.807/99 and 1286/97 is no longer good law in the light of the judgment of the Hon'ble Supreme Court in Fatheh Chand Soni's case.

4 The second ground is that there is no age limit for the Group-D staff, therefore, imposing an age limit only for GDS is not fair and it amounts to discrimination.

5 The respondents resisted the O.A. by filing reply statement. They submitted that GDS officials are considered as outsiders for the recruitment of Postman and Gr.D. The vacancy was earmarked for Unreserved and the condition for age limit applicable for Unreserved candidate is the criterion for the selection. As per the letter of the PMG, Central Region, Kochi-16 No.ST/90/4/2007 dated 16.1.2007, 50% of the posts of Postmen are filled up by promotion of Group-D officials failing which by EDAs on the basis of merit in the departmental examination, out of the balance 50%, 25% will be filled up from GDS with a minimum of 15 years of service and who are within the prescribed age limit on the basis of their seniority and the remaining 25% vacancies will be filled from among EDAs who have put in 5 years of regular satisfactory service and are within the prescribed ages limit on the basis of merit in the examination. They have also stated that the list published on 27.3.07 is not the seniority list of GDS officials of the division, but it is the seniority list of GDSs who are eligible for appearing in the Postman examination. They have also denied



that the applicant is the seniormost GDS. They submitted that all the participants of the departmental examination were informed well in advance through Annexure A-4 notification dated 19.1.2007 and by PMG, Kochi letter No.ST/90-4/2007 dated 21.3.07 about the vacancy position in which no vacancy was earmarked for SC against 25% promotional quota for GDS. Having knowledge of the position and after participating in the departmental examination for merit quota for GDS, the allegation of the applicant that the vacancies are against promotion quota cannot be accepted. They also relied on the Full Bench judgment of CAT Ernakulam Bench dated 21.3.2000 in O.A. 807/99 and 1286/97 in support of their action.

6 We have heard Shri P.A. Kumaran the learned counsel appearing for the applicant and Advocate Smt. Jisha for SCGSC appearing for the respondents.

7 The main thrust of the argument of the learned counsel for the applicant is that the appointment of GDS in the seniority quota is not direct recruitment, it is promotion and that in the new rules there is no examination for appointment under the seniority quota and that direct recruitment is resorted to in case there is no eligible GDS. In such circumstances there is no justification to apply the qualification applicable to direct recruits in the case of GDS.

8 The learned counsel for the respondents opposed the argument of the learned counsel for the applicant and contended that the vacancy under 25% seniority quota was allotted to Unreserved and the selection was made on seniority basis and as the applicant did not satisfy the

condition of the age limit he was not considered.

9 The question raised in this O.A. relates to selection of Postman from GDS on seniority basis. The applicant herein is working as GDS Mail Deliverer. At the time of appointment to the post of Postman/Mail Guard, his case was not considered on the ground that he had exceeded the age of 50 years. The Recruitment Rules of Postmen issued through DOP letter NO. 44-31/87-SPE-I and notified on 6.7.89 vide Annexure A-2 were amended by substituting item 2(ii) of column 7 and item 2(i) of column 11 of the same notification dated 30.1.1995 at Annexure A-3. The amended portion is extracted below:

Col. 7 2(ii): For Extra Departmental Agents, the upper age limit shall be 50 years with 5 years relaxation for the Scheduled Castes Scheduled Tribes candidates as on 1st July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1st January, of the year in which the examination is held"

In effect by this amendment, the upper age for OC has been increased from 42 of 1989 Recruitment Rules to 50 and from 47 to 55 for SC and ST. Also the mandatory pass in the qualifying examination for GDS to Postman under promotion quota has been dispensed with.

Col, 11 2(i) 25% of the vacancies of postman shall be filled up from amongst Extra Departmental Agents with a minimum of 15 years of service on the basis of their seniority, failing which by the Extra Departmental Agents on the basis of departmental examination.

10 Therefore it is a fact that SC/ST candidates do enjoy an age concession of 5 years making them eligible upto the age of 55 years. Even if there is an age restriction prescribed for direct recruitment such an age restriction is not applicable in the case of promotion as found in the

74

rules framed under Article 309 of the Constitution of India and in column No. 9 of the Rules circulated by the DG, Department of Posts dated 6.7.1989 quoted above.

11 In an identical matter the Madras Bench of the Tribunal in O.A. No. 1006/2004 held that since the petitioner therein belongs to SC category, the upper age limit for promotion under 25% quota for EDAs for which selections are made on the basis of seniority, as per the amended Recruitment Rules, is to be taken as 55 years. The decision of the Madras Bench of the Tribunal was confirmed by the Hon'ble High Court of Madras in W.P.NO. 531 of 2005. Therefore, we are of the opinion that as per the amended Recruitment Rules the upper age limit for SC/ST being 55 years, the applicant would have been eligible for consideration for appointment to the post of Postman in the promotion quota on the basis of seniority. Accordingly, following the judgment of the Madras Bench of the Tribunal which was confirmed by the Hon'ble High Court of Madras, we quash Annexure A-1 letter dated 19.7.2007 and direct the respondents to conduct a review DPC for the selection to the post of Postman considering the applicant and all other eligible GDSs therein in accordance with the amended recruitment rules and the observations above. This shall be done within a period of three months from the date of receipt of this order.

Dated 6th February, , 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER