

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 545 of 2012

Tuesday, this the 11th day of June, 2013

CORAM:

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

H. Justin Stephen,
Part time contingent employee,
Vizhinjam Post Office,
Residing at Sheeba Bhavan,
Perumaram, Vizhinjam (P.O),
Thiruvananthapuram – 695 521.

... Applicant

(By Advocate Mr. Vishnu S. Cehmpazhanthiyil)

versus

1. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthapuram – 695 036.
2. The Assistant Superintendent of Post Offices,
Thiruvananthapuram East Sub Division,
Thiruvananthapuram – 695 020.

... Respondents

(By Advocate Mr. Pradeep Krishna, ACGSC)

This application having been heard on 11.06.13, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A had earlier filed O.A. No. 312/2012 claiming appointment as Gramin Dak Sevak Mail Packer (GDS MP), Vizhinjam Sub Post Office in preference to open market candidates, which was disposed of directing the respondents to consider and dispose of the representations of



the applicant. In compliance, the representations of the applicant were considered and disposed of vide Annexure A-12 order dated 08.06.2012, rejecting the request of the applicant for giving preference for posting him as GDS. Aggrieved, the applicant has filed this O.A for the following reliefs :

- “1. Direct the 1st respondent to consider the applicant for appointment to the post of GDS Mail Packer Vizhinjam Sub-Office in preference to open market candidates.
2. Declare that the applicant is entitled to the benefit of Annexure A1 and direct the respondents to take action accordingly.
3. Direct the 1st respondent to re-consider and pass orders on Annexure A7 and A8 representation in the light of Annexure A2, A3, A4, A9, A10, A11, A13 and A14.
4. Call for the records leading to the issue of Annexure A12 and set aside Annexure A12.
5. Direct the respondents to proceed with Annexure A6 only after considering the claim of the applicant under Annexure A1 in tune with the direction in Annexure A2, A3, A4, A9, A10, A11, A13 and A14.
6. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
7. Award the cost of these proceedings.”

2. The applicant submitted that he should be considered in preference to others to the vacant post of GDS MP, Vizhinjam Sub Office, as he satisfied all the conditions prescribed in Annexure A-1. Denying consideration on the ground that the applicant was not initially sponsored by the Employment Exchange is illegal and arbitrary. The respondents have relied on the order in O.A. No. 527/2006 which has already been set aside by the Hon'ble High Court of Kerala in W.P. (C) No. 14560/2007. He has completed 240 days in a year. He has been working as part-time contingent/casual employee since



1992. This Tribunal has repeatedly held that only after considering the claims of casual labourers, open market recruitment might be resorted to. He relied on Annexures A-2, A-3, A-4, A-9, A-10, A-11, A-13 and A-14 orders of this Tribunal in support of his contention. The applicant submitted that the respondents could have verified from the records available with them to conclude whether the applicant was in fact, working as casual labourer in their office since 1992 or not.

3. The respondents in their reply statement submitted that the applicant is only an outsider engaged intermittently to sweep the Vizhinjam Post Office. Such outsiders engaged intermittently cannot claim any regular appointment. This view has been upheld by this Tribunal in O.A. No. 398/2010 wherein it was held that since the applicant has worked intermittently only as a substitute of the regular incumbent, he has no legal right to claim the benefit of DG Posts letter dated 18.05.1979. The applicant has not produced even a scrap of evidence to substantiate his claim that he has been working as part-time contingent/casual employee since 1992. In as much as he is not a casual labourer, he is not entitled to get the benefit of Annexure A-1. He was not served with any appointment order by the respondents. The respondents relied on the judgement of the Hon'ble Supreme Court in Secretary, State of Karnataka vs. Uma Devi to buttress their arguments.

4. In the rejoinder statement filed by the applicant, he submitted that the respondents had admitted that the applicant had been engaged as an outsider intermittently. The evidence of the applicant's working as a part time casual labourer since 1992 is available with the respondents themselves as the

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paid vouchers contain the signatures of the applicant. An outsider is also a casual labourer as per DG Posts letter dated 17.05.1989. Similar issue was also considered in O.A. No. 300/2005 which came to be allowed in favour of the applicant therein. The said order was confirmed by the Hon'ble High Court in W.P.(C) No. 5719/2011 and the respondents had already implemented the order by appointing the applicant therein. The applicant cannot be blamed if the competent authority had not issued him an appointment order.

5. In the additional reply statement, the respondents submitted that they had not admitted that the applicant was working as part time contingent casual labourer. The engagement of the applicant to sweep the Post Office can only be considered as outsourcing of the work as per provisions of Annexure R-4 letter dated 19.11.2010 which directed that no casual labourers shall be engaged in the administrative offices with effect from 01.12.2010 and that outsourcing may be resorted to wherever feasible. The intermittent engagement of the applicant cannot crystallize any claim upon the applicant for preference for appointment as GDS. He can only be considered as a person outsourced to do such work going by the provisions of Annexure R-4.

6. We have heard Mr. Vishnu S. Chempazhathiyl, learned counsel for the applicant and Mr. Pradeep Krishna, learned ACGSC appearing for the respondents and perused the records.

7. The applicant has claimed preference available to the part time casual labourers as per DG Posts letter dated 06.06.1988 (Annexure A1) in the

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matter of appointment, to the post of GDS MP, Vizhinjam Sub Office. His claim is that he worked as part time contingent / casual employee continuously and that he has completed 240 days in a year, since 1992. Hence in terms of letter dated 06.06.1988, he is eligible for preference therein in the matter of the said appointment. The respondents take the stand that the applicant is an outsourced employee to sweep the Vizhinjam Post Office. As such he is not a casual labourer Vide letter dated 17.05.1989 (Annexure A-15), the DG Posts has clarified as under :

"DG Dept. of Posts, New Delhi letter No. 45-24/88 SPB-I, dated 17.5.1989

Sub:- As above.

Sir,

I am directed to pay that reference have been received seeking clarification as to which class of workers should be treated as full time or part time casual labourers.

2. It is hereby clarified that all daily wagers working in post offices or in RMS offices or in administrative officers under different designations (mazdoor, casual labourer outsider) are to be treated as casual labourers. These casual labourers who are engaged for a period of less than 8 hours a day should be described as part time casual labourers. All other designations should be discontinued.
3. Substitutes engaged against absentee should not be designated as casual labourers, for purposes of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank list in priority, but will be above outsiders. In other words, the following priority should be observed.

- i. NIC Group D officials
- ii. EDAs of the same division
- iii. Casual labourers (full time or part time)

For purpose of computation of eligible service, half



of the service rendered as part time casual labourers should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years he will be treated, for the purpose of recruitment to have completed one year as of service as full time casual labourers.

- iv. EDAs of other division in the same region.
- v. Substitutes (not working in metropolitan cities).
- vi. Direct recruits through employment exchange.

Note:- Substitutes working in metropolitan cities will however, rank above No. (iv) in the list.

4. Please acknowledge receipt immediately.

Sd/-
 Dr. Sarjaram
 Asst. Director General (SPN)"
 (emphasis supplied)

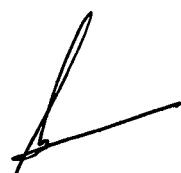
8. All daily wagers working in the Post Offices under different designations as mazdoor/casual labourer/outsider are to be treated as casual labourers. Such casual labourers who are engaged for a period of less than 08 hours a day should be described as part time casual labourers. The respondents have admitted that the applicant had been engaged intermittently to sweep the Vizhinjam Post Office as an outsider and that such engagement was on daily wage basis. If so, as per the letter dated 17.05.1989 (Annexure A-15), the applicant is a part time casual labourer. The respondents have not refuted that he did work for 240 days in a year; if he had worked, then he qualifies for the preference in the letter of 17.05.1989. The respondents have not stated that they have engaged somebody else other than the applicant to sweep Vizhinjam Post Office. In O.A. No. 398/2010, this Tribunal held that a substitute of the regular incumbent has no legal right to claim the benefit of DG Posts letter dated 18.05.1979. This order has no application to the case on hand as the applicant is not a substitute. If the applicant had not been



provided with an appointment letter or if he was engaged contravening any of the instructions of the Government or rules or not sponsored through Employment Exchange, the blame lies on the respondents. The applicant is only seeking the benefit that is granted to him by the respondents vide letters dated 06.06.1988 and 17.05.1989 respectively. The respondents themselves have given the benefit of these letters to a number of casual labourers similarly placed as the applicant, on the strength of the orders of this Tribunal in various cases and upheld by the Hon'ble High Court of Kerala. Annexures A-2, A-3, A-4, A-9, A-10, A-11, A-13 and A-14 orders have been cited by the applicant himself. The applicant is not seeking a back door entry. Therefore, the decision of the Hon'ble Supreme Court in Uma Devi's case will not apply to the present case.

9. It is obvious that the applicant has not been given any formal appointment letter. But the respondents have enough evidence with themselves in the form of paid vouchers containing signatures of the applicant since 1992. If the paid vouchers in the possession of the respondents presented a different picture, it was open to them to present the same for consideration of this Tribunal. But they have not done so.

10. In the impugned order, a reference is made to O.A. No. 527/2006 with a similar prayer as that of the applicant herein, which was dismissed by this Tribunal. It is a matter of regret that the respondent No.1 pretends that the decision of this Tribunal is final. But in fact, as stated by the applicant, the said order was set aside by the Hon'ble High Court of Kerala in W.P.(C) No. 14560/2007.

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11. The respondents have submitted that the applicant can be considered as a person outsourced to do the work of sweeper going by the provisions of Annexure R-4. The issue for the respondents to confront themselves with is whether they have followed the instructions in Annexure R-4 and similar letters or not. The respondents have not produced any proof of having outsourced the work of sweeping. What is prohibited by Annexure R-3 is the engagement of casual labourers in anticipation of approval from the Directorate. It does not prove that the applicant who had been engaged intermittently for sweeping the Post Office on daily wages is not a casual labourer in terms of the letter dated 17.05.1989 (supra) and therefore, not eligible for the preference in Annexure A-1 letter. The respondents have not stated that the intermittent engagement of the applicant was for less than 240 days in a year. If the respondents consider in the present scenario, no preference should be given to the casual labourers, the right course of action for them is to cancel Annexure A-1 and related letters.

12. In W.P(C) No. 5719/2008 confirming the decision of this Tribunal in O.A. No. 300/2005 which is identical to the present O.A, the Hon'ble High Court of Kerala held as under:

"This writ petition is filed by the Central Government challenging the order of the Central Administrative Tribunal, directing the appellant to consider the respondent in the selection of Gramin Dak Sevak M.D. (GDS MD). We have heard the learned Central Government Standing Counsel for the appellant and the counsel appearing for the respondent. After hearing both sides and after going through the orders of the Tribunal and records in the case, we do not find any reason to interfere with the order of the Tribunal because admittedly, the respondent was working as a casual employee since 1984 and

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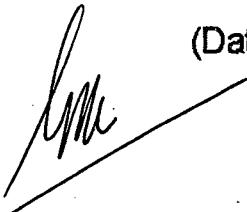
his claim is that he has been working more than 240 days in a year. Though, the appellant denied this allegation, they have not furnished any details of other persons employed during the days on which the respondent was not employed. In the absence of any evidence and materials furnished by the appellant, the Tribunal assumed that the respondent who was always retained as a sweeper would have been employed for the required days that is for more than 240 days in a year as claimed by the respondent. It is seen that the respondent is employed from 1984 onwards and we see no reason why, the appellant declined to consider him for selection to GDS MD.

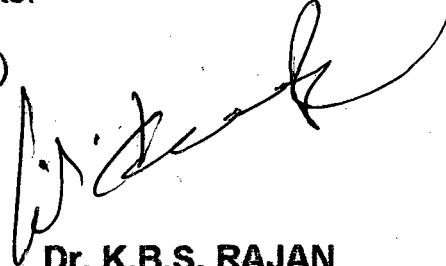
(emphasis supplied)

13. In view of the settled legal position as above and in Annexures A-2, A-3, A-4, A-9, A-10, A-11, A-13 and A-14 orders, the O.A. is allowed as under.

14. The impugned order at Annexure A-12 dated 08.06.2012 is set aside. It is declared that the applicant is entitled to the benefit of Annexure A-1 letter dated 06.06.1988. Accordingly, the 1st respondent is directed to consider the applicant for appointment to the post of GDS Mail Packer, Vizhinjam Sub Post Office in preference to open market candidates. Only if the applicant is found ineligible for appointment as GDS MP, the respondents can proceed to appoint a candidate from the open market. No costs.

(Dated, the 11th June, 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

CVR.