

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 548 of 2004

Thursday, this the 8th day of December, 2005

C O R A M :

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

C. Raju,
C. Chellakan Nadar,
GDS Mail Deliverer,
Vaghamon Post Office (Idukki Division),
Thodupuzha, Residing at
Sankuseriyil, Kolahalamedu,
Vaghamon PO, Idukki District.

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Applicant.

(By Advocate Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by
The Secretary, Department of Posts,
Ministry of Communications, New Delhi.
2. The Superintendent of Post Offices,
Iduukki Division, Thodupuzha.
3. The Chief Postmaster General,
Kerala Circle, Trivandrum.
4. The Director General,
Department of Posts, New Delhi.

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Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)


ORDER

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant joined the services as Extra Departmental
Delivery Agent (EDDA, for short), Vagamon Post Office, with effect

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from 31.12.1973, which is reflected in A/1 seniority list. He belongs to OBC category. The applicant submitted representation dated 16.6.2002 (A/2) to the second respondent requesting for selection to the cadre of Postman and in the alternative, to the post of Group 'D' in the existing vacancy in the office of SDI, Peerumedu or any other available post in the Division. In response to A/2 representation, vide letter dated 17.7.2002 issued by the 2nd respondent, it was informed that the Postman examination was scheduled to be held on 29.9.2002 and that Group 'D' recruitment will also be held shortly. A test was conducted by the department for selection for appointment to the cadre of Postman, but no departmental candidates have come out successful and filling up of vacancies from GDS merit quota was kept in abeyance for want of clarification. The applicant urged that certain Group 'D' posts remain unfilled in the Division and no action has been taken to absorb the applicant to Group 'D' post also. He was entitled to be absorbed to Group 'D' post atleast in the year 2002 based on seniority as per Recruitment Rules. But due to inaction on the part of the respondents, the applicant has been put to untold sufferings and agony and the delay, if any, in regularisation to Group 'D' post will cause denial of pension and pensionary benefits. Aggrieved by this, the applicant has filed this OA seeking the following main reliefs:



" To declare that the applicant is entitled for regularisation in the cadre of Postman as and when vacancy had arisen in his turn under seniority quota and direct the respondents to appoint him as Postman in the 25% seniority quota with effect from the date on which the vacancy has arisen accordingly; OR in the alternative -

To declare that the applicant is entitled to be regularised as a Group 'D' with effect from the date on which the vacancy had arisen in his turn by virtue of his seniority and to direct the respondents to appoint him in such vacancy accordingly with all consequential benefits including arrears of salary."

2. The respondents have filed a detailed reply statement contending that the date of birth of the applicant is 5.12.1952 and in the gradation list of Gramin Dak Sevaks of Idukki Division, the applicant's position is 54. The Group 'D' selection is done according to provisions contained in Department of Posts (Group 'D' Posts) Recruitment Rules, 2002, for the vacancies approved by the Screening Committee constituted for the purpose. As per the said Recruitment Rules, upper age limit is given to OBC upto 53 and SC/ST upto 55. There were 6 vacancies in Group 'D' cadre for the years 2000 and 2001. 4 vacancies out of the 6 vacancies for the years 2000 and 2001 have been approved by the Screening Committee for filling up. Out of the 4 approved vacancies 2 posts were reserved for OBC and 2 for unreserved. In OBC quota S/Shri N.S. Rajesh, GDSMD,

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Moongalar at Sl. No. 37 and T.K. Rajappan, GDSMD, Pottenkad at Sl. No. 45 were selected on 26.12.2002 and 23.12.2002 respectively. In unreserved category Shri M.D. Gopinatha Panicker, GDSMC, Murinjapuzha and Smt. V.N. Ammini, GDSBPM, Mankuva were selected on 27.12.2002 and 31.12.2002 respectively. For the year 2002, out of 2 Group 'D' vacancies only one vacancy was approved by the Screening Committee for filling up and this vacancy was filled up by OC candidate Shri P.A. Rajan, GDSMP, Ponmudi at Sl. No. 49 in the gradation list. For the year 2003 and 2004, Screening Committee has not approved any Group 'D' vacancy for filling up in Idukki Division. There are 4 Group 'D' vacancies at present existing in Idukki Division out of which 2 Group 'D' posts are lying vacant for more than one year as unfilled and hence, they are to be treated as abolished. At present there are only 2 vacant Group 'D' posts available in Idukki Division for which approval has been sought from the Screening Committee. There are 2 back log OBC posts to be filled up in the OBC cadre. It is stated that 4 GDS candidates i.e. 2 OC, 1 SC and 1 OBC were selected from the merit list of Postman examination held on 24.11.2002. The applicant did not come out successful in the merit list and hence he was not selected. There was no selection of Postman candidates directly from seniority quota of GDS for the vacancy of the year 2002. Hence no selection was made from GDS seniority quota

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for 2002. The applicant's case will be considered only when his turn comes and according to the Rules in force and also subject to availability of approved vacancies cleared by the Screening Committee. At present there is no approved vacant Group 'D' post cleared by Screening Committee in Idukki Division. As per the decision of the Hon'ble Supreme Court in Civil Appeal No. 1638-1640 of 1996, it was always open to the concerned authority to fix the age limit for Recruitment as well as examination.

3. We have heard Mr. Shafik M.A, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, ACGSC, for the respondents.

4. Learned counsel appearing for the parties took us through various pleadings, evidence and material placed on record. Learned counsel for the applicant argued that the applicant has got 30 years of unblemished service under the second respondent and he is entitled to be absorbed either as Postman or at least as a Group 'D' as per 25% seniority quota provided by Recruitment Rules. He is entitled for such consideration for the vacancies existed in the year 2000 or thereafter. Taking into consideration of upper age limit, atleast in the year 2002. The inaction on the part of the respondents has caused serious prejudice to the applicant and he may not be put to suffer due to the mistake on the



respondent's side. Even as per the seniority list of Group 'D' officials published by the 2nd respondent, 2 posts of Group 'D' have already arisen consequent to retirement as on 31.10.2003 and one post on post each on 31.3.2004 and 30.4.2004 respectively. Besides, 2 Leave Reserve Posts of Thodupuzha Post Office and Kattapana Post Office are lying vacant for a long time. The applicant is the next candidate from OBC quota to be appointed in the vacancies already existing. He is entitled to the reliefs as sought for. Learned counsel for the respondents on the other hand persuasively argued that for the year 2002, out of 2 Group 'D' vacancies only one vacancy was approved by the Screening Committee for filling up and this vacancy was filled up by the OC candidate at sl. No. 49 in the gradation list. There was no selection of Postman candidates directly from seniority quota of GDS for the vacancy of the year 2002 and hence, no selection was made from GDS seniority quota for 2002. The applicant did not come out successful in the Postman Examination held on 24.11.2002 for 50% departmental quota transferred to GDS merit quota. At present there is no approved Postman vacancy cleared by Screening committee in Idukki Division. Therefore, applicant has no case.


5. We have given due consideration to the arguments advanced by the learned counsel for parties and also perused the material placed on



record.


6. The case of the applicant is that he has been working as EDDA/GDS Mail Deliverer for the last 30 years and he attended the Postman selection under the Competitive Examination quota, but was not selected. He was also not selected considering his length of service. He is nearing 50 years. Ten years service is required for getting minimum pension. He submitted that had the right thing happened at the right time, he would have got a regular posting in Group 'D' before he attains the age of 50 years. If such selection is conducted every year as envisaged under the Rule, he would have got selected and appointed as there are number of vacancies available in the sub division.

7. The Recruitment Rules for Group 'D' post (Class IV) were notified on 20.10.1979 which were amended as per notification dated 16.11.1982. The abovesaid rules again amended by Indian Post & Telegraph (Gr.D Posts) Recruitment (Amendment) Rules, 1989. Selection to the Postman cadre is made as per Department of Posts Postman/Village Postman and Mail Guards) Recruitment Rules, 1989. According to this 50% of the vacancy will be given to the Departmental Group 'D' candidates who passes the competitive Postman Examination



and 50% will be given to the GDS who are below 50 years of age in the case of OC and 53 for OBC and 55 for SC/ST. Out of this 50%, 25% will be on seniority in the GDS and 25% on merit in Postman test for GDS conducted alongwith Group 'D' departmental quota. The unfilled departmental quota will be added to GDS merit quota. An examination for promotion to the cadre of Postman was conducted on 29.9.2002 which was subsequently cancelled and rescheduled to be held on 24.11.2002 vide CPMG letter dated 4.10.02. Number of vacancies approved for the above examination were 4 from departmental quota and there was no post available for outsiders and also under GDS quota. No departmental candidate has passed this examination. Hence 4 unfilled vacancies in departmental quota have been added to GDS merit quota. Subsequently, the Directorate has conveyed its approval for filling up of unfilled vacancy in departmental quota by transferring the vacancies to GDS merit quota. Filling up of promotion quota of Group 'D' is subject to the approval of the Screening Committee.

8. The consistent case of the respondents is that there was no vacancy and even if there were vacancies, it cannot be filled up without approval by the Screening Committee. On earlier occasion when the case was hearing, learned counsel for the respondents



was directed to produce the files relating to Screening Committee restricting filling up of vacancies. We have perused the documents submitted by them. The respondents are relying on R/2 memorandum dated 16.5.2001, which states that "all requirements of recruitment will be scrutinised to ensure that fresh recruitment is limited to 1 per cent of total civilian staff strength. As about 3% of staff retire every year this will reduce the manpower by 2 per cent per annum achieving a reduction of 10 per cent in five years as announced by the Prime Minister. In para 2.2 of the said O.M., it is stated that while preparing the Annual Recruitment Plans, the concerned Screening Committees would ensure that the direct recruitment does not in any case exceed 1% of the total sanctioned strength of Department since about 3% of staff retire every year, this would translate into only 1/3rd of direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. This Tribunal had an occasion to consider almost an identical case in O.A. No. 901/2003, P.K. Rajan vs. Superintendent of Post Offices and 3 Ors., in which all the points were considered in detail relying on the judgements of Hon'ble High Court and Hon'ble Supreme Court.

9. In the amended Recruitment Rules, 1989 issued under



Notification dated 24.2.1989, at item II in Column 9 of the Schedule for the entries "100% Direct Recruitment" shall be substituted by the following:

"By means of an interview from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be made only when no qualified person is available in the higher category.

Extra Departmental Agents of the Recruiting Division or Unit in which vacancies are announced.

Casual Labourers (full time or part time) of the Recruiting Division or unit.

Extra Departmental Agents of the neighbouring Division or Unit.

Nominees of the Employment Exchange.


Note 2 thereunder provides that Extra Departmental staff may be considered against the vacancies for direct Recruitment in subordinate offices, subject to such conditions and such manner as may be decided by the DG (P&T) from time to time."

10. As per the notification dated 28.8.1990 issued by DG Posts, EDAs who are above the age of 50 years (55 years in the case of SC/ST Communities) will not be eligible for appointment as Group 'D'. the crucial date of determining the age will be 1st July of the year in which the recruitment is made. The letter dated 28.8.90 in so far as it introduced the upper age limit of 50 years for ED Agents for



appointment as Group 'D' was struck down by this Tribunal to the extent of prescribing upper age limit by order dated 6.3.1996 in O.A. 155/95. The order has not been challenged in any higher forum and the same has become final conclusive and binding on the respondents. Thereafter certain ED agents filed OA 239/98 and OA 449/98 for directing the respondents to fill up the vacancies of Gr.D posts by ED agents. The above original applications were disposed of by a common order dated 26.8.1998. The operative portion of which is as follows :-

"In O.A.239/98 the applicant has prayed that a direction may be issued to the 1st respondent to promote the applicant to any of the existing or arising vacancies in Group D in Aluva Division on the basis of his running seniority from the date of his entitlement with all consequential benefits. Learned counsel of the applicant argued that the delay in filling up the vacancy and considering the applicant for appointment on Group D, had resulted in irreparable injury to the applicant inasmuch as effect from the date on which the vacancy arose. We are of the view that this aspect also should receive the attention of the respondents. If for the mere reason of inaction on the part of the respondents in filling up the vacancies, any ED Agent like the applicant has suffered any prejudice in the matter of length of service or eligibility for pension, the respondents have to take remedial steps in that behalf. In the result, we dispose of both these applications, directing the respondents to fill up the existing vacancies in Group D in the Kerala Circle including the Aluva Division without any delay and without waiting for the amendment of the Recruitment Rules, treating that any ED Agent who is below the age of 60 years is entitled to be considered for appointment in the absence of prescribed maximum age limit. We also direct that the respondents shall take remedial steps if any of the ED Agents in the Kerala Circle has suffered any loss by reason of the lapse on the part of the respondents in filling up the post of Group D in the Kerala



Circle. There is no order as to costs."

11. The above order of this Tribunal was taken before the Hon'ble High Court of Kerala in O.P.25172/98 which was disposed of by judgment dated 30.3.2000. The operative portion of which is as follows :-

"In view of the aforesaid limited nature of the controversy, we feel that so long as the rules which are stated to be pending consideration for amendment have not come into force, executive power can be exercised as provided in law. In the absence of statutory rules, administrative orders can govern the field. To avoid inconvenience to all concerned, the employer may consider taking action under the executive power in the matter of appointment. This exercise can be undertaken so long as the rules sought to be amended are not brought into operation.


12. On going through the said judgment we find that the Court has reiterated the dictum that in the absence of statutory rules, administrative orders can govern the field. Subsequently also, the department did not prescribe any age limit. On going through R/2 office memorandum, we find that it pertains to different selection under direct recruitment. The said O.M makes it clear that the direct recruitment would be limited to 1/3 of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the department. If the vacancy position is rescheduled in conformity with the Recruitment Rules, we are of the



view that the promotional vacancies could be much more than what has been stated in the reply statement. Moreover, the respondents are not able to convince us how and under which parameters the 4 unfilled vacancies in departmental quota have been added to GDS merit quota.

13. In view of the discussion made above, we are of the view that the vacancies position that has been calculated by the respondents is not in terms of the rules and instructions on the subject and as contended by the respondents, there would have been a vacancy in the year 2002 and had he been considered at the relevant point of time, the applicant would have come within the zone of consideration. Even assuming that the plea of overage is taken for granted, that issue has already been settled by the decision of this Tribunal in O.A. No. 901/03, P.K. Rajan vs. Superintendent of Post Offices and 3 Ors., and in these circumstances, the applicant is entitled to the relief.

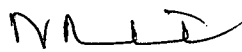
14. From what is stated above, we are of the view that the applicant succeeds in bringing out a case. In the result, we declare that the applicant is entitled to be considered for promotion to Group D post against the earliest substantive vacancy arose in the year 2002 unmindful of the fact



that he has crossed the age of 50 years and to give him appointment as Group D if he is found suitable by the Departmental Promotion Committee. In that event, the applicant should be given notional seniority with effect from the date on which a person below him in the seniority list of ED Agents has been appointed in the vacancies of the year 2002 or of subsequent years. The applicant shall not be entitled to arrears of pay and allowances on the basis of his notional appointment but it will be counted for pensionary benefits. The above orders shall be complied with within a period of three months from the date of receipt of a copy of this order.

15. The O.A. is allowed as indicated above. But in the circumstances, no order as to costs.

(Dated, the 8th December, 2005)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

cvr.