

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.553/2012

Tuesday..... this the *18th*..... day of August 2015

C O R A M :

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

1. Prathapan.P.R.,
S/o.late P.T.Raghavan,
Postman, Pattanakkad Post Office, Cherthala.
Residing at Haritha, Thuravoor P.O.,
Cherthala – 688 532.
2. H.M.Yoosuf,
S/o.late Hassankutty,
Postman, Alappuzha Medical College PO - 688 005.
Residing at Koottungal House, Punnapra,
Alappuzha – 688 004.

...Applicants

(By Advocate Mr.O.V.Radhakrishnan, Sr. along with Mr.Antony Mukkath)

V e r s u s

1. Superintendent of Post Offices,
Alappuzha Division, Alappuzha – 688 012.
2. Postmaster General,
Central Region, Kochi – 682 018.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.
4. Director General of Posts,
Dak Bhavan, New Delhi – 110 001.
5. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi – 110 001.

...Respondents

(By Advocate Mr.K.C.Muraleedharan, ACGSC)



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This application having been heard on 29th July 2015 this Tribunal on 18th August 2015 delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicants 1 and 2 are presently working as Postman under the administrative control of the 1st respondent. The 1st applicant was initially appointed as Extra Departmental Messenger, Thuravoor on 8.2.1979. Thereafter he was appointed as Extra Departmental Delivery Agent, Pattanakkad. The 2nd applicant was initially appointed as Extra Departmental Messenger on 26.6.1979. According to the applicants for want of approval by the Screening Committee the Group D vacancies for the year 2002 and 2003 were not filled up in accordance with the Recruitment Rules. It is submitted by applicants that the question of approval by the Screening Committee has been decided by this Tribunal in O.A.No.901/2003, O.A.No.977/2003, in O.A.No.115/2004 and as also by O.A.No.115/2004 declaring that approval of the Screening Committee is not necessary for filling up the vacancies by promotion from GDS to Group D. The order in O.A.No.115/2004 has been upheld by the Hon'ble High Court of Kerala in WP(C) No.22818/2006. Thereafter the Tribunal followed the order in O.A.No.115/2004 in O.A.No.346/2005, O.A.No.312/2008 and connected case. Pursuant to the order of this Tribunal in O.A.No.312/2008 willingness was called for from the 2nd applicant for appointment as Group D against the vacancy of the year 2002. Though 2nd applicant submitted his willingness to be appointed as Group D nothing was heard thereafter.



Subsequently the 3rd respondent in implementation of the order in O.A.No.312/2008 selected the applicants 1 and 2 as Group D allotting Cherthala and Alappuzha Sub Divisions respectively against unreserved vacancies of the year 2006. Thereafter they were ordered to work on probation as Group D at Eramalloor SO and Ambalappuzha Mughya Dak Ghar vide memo dated 17.7.2010. On successful completion of computer training the applicants 1 and 2 were posted as Multi Tasking Staff in the PB-I Pay Band of Rs.5200-20200 with Grade Pay of Rs.1800/- with effect from 27.6.2011. Subsequently the applicants 1 and 2 were sanctioned Rs.20,000/- as severance amount taking into account their GDS Service upto 9.5.2006 and 1.8.2006 respectively. The applicants state that in response to the application under the Right to Information Act the 1st respondent furnished the information vide communication dated 24.1.2012 stating that two vacancies were in existence in the year 2002 and four vacancies were in existence in the year 2003 and one vacancy in the year 2004 and five vacancies in the year 2005 and against the one unreserved vacancy one Mr.Karthikeyan GDS MD, Maruthorvattom was appointed. It is submitted that the said Mr.Karthikeyan is at Sl.No.1 of Annexure A-2 and the applicants 1 and 2 are Sl.Nos.3 and 4 in Annexure A-2. Therefore, the Sl.No.2 in Annexure A-2 has to be accommodated against the 2nd vacancy of the year 2002 and the applicants 1 and 2 ought to have been appointed against the first two vacancies out of the four vacancies of the year 2003. However the applicants were accommodated only against the vacancies of



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the year 2006 with effect from 9.5.2006 and 1.8.2006 respectively stating the reason that as per the recommendations of the Screening Committee 3 posts were abolished against the vacancies of 2003, 4 posts were abolished against the vacancies of 2005 and permission was not received to fill up the vacancies of the year 2004. Thereafter, the applicants have filed individual representation to the 1st respondent dated 12.3.2012 (Annexure A-14) pointing out that the department is bound to fill up those vacancies which existed in the year 2002 to 2005 and that the Screening Committee is not competent to abolish the posts in view of the order passed by this Tribunal which was upheld by the Hon'ble High Court of Kerala. The applicants are, therefore, entitled to be promoted against one of the vacancies existed in the year 2002 or 2003. They have also requested to grant them all consequential benefits including arrears of pay and allowances and to grant them all consequential benefits including arrears of pay and allowances and to grant them pension and pensionary benefits in accordance with the provisions contained in Central Civil Service (Pension) Rules, 1972 and to refund the amount of contribution deducted from their pay towards the New Pension Scheme introduced with effect from 1.1.2004. The representation of the applicants was rejected by the 1st respondent vide Annexure A-15 dated 28.3.2012 stating that there were two vacancies in the year 2002 and of which one vacancy was reserved for ST and the same remains unfilled for want of ST candidate in the division and it will be filled up by giving promotion from eligible ST GDS candidate from the neighbouring division.



The other vacancy was filled up by giving notional promotion to Shri.Karthikeyan with effect from 1.1.2002. It is further stated that there were four vacancies in the year 2003 out of which three posts were abolished as per the Screening Committee's instructions and the other vacancy was filled by giving promotion to Shri.K.Chandramohanam, GDSMD, Olavaipu in the year 2005 and the abolished posts cannot be filled. In the judgment dated 23.12.2009 in WP(C) No.28574/2009 and connected cases the Hon'ble High Court has candidly found that "there is also no basis for the contention of the learned Central Government Standing Counsel that only the vacancies cleared by the Screening Committee can be filled up even in the matter of promotion". The Hon'ble High Court also found that "the records made available to us would show that there has never been abolition of posts in Group D cadre and refixation of cadre strength." It follows therefore, that all the posts which occurred in the year 2002, 2003, 2004 and 2005 are to be filled up in accordance with the Recruitment Rules. In that event the applicants will get appointment as Group D in the year 2003. The applicants state that similar issue was considered by this Tribunal in O.A.No.620/2003 (Annexure A-17) and this Tribunal allowed the O.A by order dated 7.7.2006 and has held that the applicants therein are deemed to have been appointed as Postman with effect from 30.1.2003 and their pay shall be notionally fixed in the scale of Rs.3050-4590 while actual pay would be from the date they have assumed charge. Their seniority shall also be accordingly fixed. The consequential



relief viz., fixation, payment of arrears of pay and allowances arising therefrom and annual increments, entitlement to pension as per the rules prevalent as on 30.1.2003 would all accrue. WP(C) No.6555/2007 filed against Annexure A-17 order was dismissed by the Hon'ble High Court as per judgment dated 30.9.2011. Therefore, Annexure A-17 order has become final, conclusive and binding on the respondents. Annexure A-17 order has been followed by this Tribunal in O.A.No.102/2010 and connected cases. The applicants are similarly situated like the applicant in O.A.No.620/2003 and O.A.No.102/2010 and connected cases and therefore, are entitled for equal treatment. The reliefs sought by the applicants are :

1. To declare that the applicants 1 and 2 are entitled to get promoted to the cadre of Group D retrospectively with effect from the date of their due turn and entitlement against the vacancies of the year 2003 and to get full service benefits from the respective dates of their retrospective promotion and also to get retiral benefits and pension determined on that basis reckoning their qualifying service for pension from the dates of their retrospective promotion with all consequential reliefs.
2. To call for the records leading to Annexure A-15 and to set aside the same.
3. Issue appropriate direction or order directing the respondents to grant full service benefits admissible to the applicants 1 and 2 consequent on their retrospective promotion to the cadre of Group D against the vacancies of the year 2003 including due annual increments, arrears of pay, seniority etc. and to treat them as a post 1.1.2004 employee for the purpose of pension under CCS (Pension) Rules, 1972 and to disburse the arrears of pay and allowances within a time frame that may be fixed by this Hon'ble Tribunal.
4. To issue appropriate, direction or order directing the respondents to refund the amounts recovered from the applicants towards the pension contribution as per the Pension Scheme made applicable with effect from 1.1.2004 with interest.
5. 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



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6. To award costs to the applicant.

2. Respondents in their reply submit that as part of implementing the common order of this Tribunal in O.A.No.312/2008 and other similar cases, an elaborate mechanism was put in place to scrutinize and monitor all related documents and facts and cross tally the number of vacancies from the date of their occurrence, the number of vacancies approved for filling as per the optimization scheme, the actual number of persons in position and the total sanctioned strength of the Group D cadre in each Division. After tallying these figures from 2002 to 2008, revised rosters were prepared and lists of eligible persons were identified in each Division and given appointment as Group D from the date of occurrence of each vacancy strictly according to seniority, as a one time measure, in compliance with the orders of this Tribunal. The appointments were given notionally from the date of occurrence of vacancies. A total of 327 posts were thus initially identified to be filled up across the Circle for the period from 2002 to 2008. Subsequently, as per the specific direction of this Tribunal, over and above the said 327 posts, 97 more posts which arose in the year 2009 were also filled up taking the total vacancies identified to be filled up across the Circle to 424. Out of these 424 Group D posts, a total of 377 posts have been filled up so far by appointing eligible GDS/Casual Labourers. The remaining 47 posts could not be filled up for various reasons like shortfall of Scheduled Tribe candidates, want of casual labourers etc.



3. It can be seen from Annexure R-1 table produced by the respondents that in Alappuzha Division a total of 8 Group D posts were identified to be filled up by appointing eligible Gramin Dak Sevaks. One post could not be filled up for want of eligible ST candidate. It is pertinent to note that the vacancy position in respect of Group D posts in the circle has been accepted by this Tribunal in the series of Contempt Petitions filed by the applicants and the Tribunal has closed all the CPCs with direction to fill up all the 424 posts within a period of six months. In Alappuzha Division initially a total of 6 posts for the period 2002 to 2008 were identified to be filled up. The Departmental Promotion Committee held on 17.7.2010 considered all the eligible candidates who came within the zone of consideration and recommended 5 GD Sevaks for appointment as Group D. It is seen from the minutes of the DPC that the lone vacancy for the year 2002 was offered to the senior most GDS, Shri.Karthikeyan. Next vacancy arose only in the year 2006 and out of 3 vacancies available for that year, the first vacancy was offered to Shri.CP Reghukumar who was senior to the applicants. The second and third vacancies for the year 2006 were offered to the applicants. It is submitted that the applicants have not at any point of time chosen to challenge their date of appointment, therefore, they would be estopped from challenging it at this point of time. The applicants are relying on the information obtained under the RTI Act vide Annexure A-12 to claim appointment from the year 2003 which, apart from informing about the vacancies that had arisen during various years, states that the claim of the



applicants to be appointed against the first two vacancies of the year 2003 cannot be acceded to as there was only one post in the year 2005 which was offered to Shri.K.Chandramohan, GDSMD Olavaipu consequent upon the abolition of three posts as per the recommendations of the Screening Committee. Hence due to non availability of vacancy in the year 2005 the applicants were accommodated against the vacancy of the year 2006 which position was accepted by the Tribunal while closing the batch of CPCs in O.A.No.312/2008. The respondents have relied on O.A.No.145/2010 which held that "...it is settled law that the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts....An employee does not have an indefeasible right to promotion. His right is for consideration of promotion only....." This Tribunal has further made it clear that "...the respondents were bound by the instructions relating to the clearance from the Screening Committee till the High Court in its judgment dated 22.3.2007 in WPC No.22818/2006 ordered that no clearance from the Screening Committee is required for filling up the posts by promotion in the Group D cadre. Respondents further submit that the applicants are misleading the Tribunal by stating that in O.A.No.623/2003 a similar issue has been considered and that the applicants therein have been given retrospective promotion. The said O.A was filed by the Postmen of Aluva Division who had appeared for the postman examination held in the year 2002, aggrieved by the delay in their appointment as Postman. This delay occurred as the matter was taken up with Directorate seeking approval



for transferring the unfilled departmental quota vacancies to GDS merit quota. Hence, the applicants sought to antedate their date of appointment as Postman with effect from the date on which the departmental quota candidate and the Gramin Dak Sevaks under the merit quota was given appointment. The said prayer of the applicants was allowed by the Tribunal which was upheld by the Hon'ble High Court. Therefore the facts in O.A.No.620/2003 are entirely different from the case in hand. They further submit that there has not been any post lying unfilled prior to 2006 in the Division. All the posts had either been filled up or abolished as per the recommendations of the Screening Committee. Though the applicants were fully aware that they would come under the new Contributory Pension Scheme at the time of getting notional appointment from 2006 they have not chosen to challenge their inclusion in the new Pension Scheme.

4. Heard counsel for applicant and respondents and considered the written submission made by the parties. Applicants are seeking promotion to Group D cadre retrospectively against the vacancies of the year 2003. There were four posts in 2005 of which three were abolished as per recommendations of the Screening Committee and one post was offered to Shri.K.Chandramohan, GDSMD, Olavaipu in 2005. Since there were no vacancies in 2005 the applicants were accommodated in the year 2006. This vacancy position has been accepted by this Tribunal while closing the batch of CPCs in O.A.No.312/2008 and connected cases. This Tribunal in



O.A.No.145/2010 had made it clear that the respondents were bound by the instructions relating to the clearance from the Screening Committee till the High Court in its judgment dated 22.3.2007 in WPC No.22818/2006 ordered that no clearance from Screening Committee is required for filling up the post by promotion in the Group D cadre. Thus the O.M dated 16.5.2001, on abolition of posts which remained vacant upto one year, was in operation till this Tribunal's order, which said promotion of ED to Group D was a promotion and not a direct recruitment. The applicants are claiming appointment from 2003 on the basis of a reply received in response to an RTI application. The reply shows the number of vacancies in Alappuzha Division without providing details of posts which were abolished as per recommendations of the Screening Committee and posts which were deemed abolished as per Ministry of Finance O.M dated 16.5.2001 if they remained vacant for one year. Applicants in this O.A are claiming same relief granted as per Annexure A-17 order on the premise that they are similarly situated as applicant in Annexure A-17 - O.A.No.620/2003. In O.A.No.620/2003 applicants appeared for Postman examination in 2002 under GDS merit quota and were appointed in 2004 because of the delay in obtaining permission from the Postal Directorate to carry over unfilled departmental quota vacancies to GDS merit quota and were claiming parity with effect from the date their counter parts under promotional quota in the same year were promoted to the post. The O.A also addressed the issue of diverting unfilled vacancies under promotional quota to GDS merit quota. Further the antedating appointment was not



done with effect from the date of occurrence of vacancies but with effect from the date their counter parts under promotional quota in the same year were promoted. The applicants in the present O.A have been considered for promotion in the order of seniority in their turn in the available vacancy arising at the earliest. This is supported by Annexure R-1 document which shows vacancy position in respect of all postal divisions in Kerala wherein Alappuzha has two vacancies in 2002 (one reserved for ST and second post filled by senior Shri.Karthikeyan). No vacancies were there in 2003-2005. Three vacancies were there in 2006.

5. From the facts and circumstances of the case, there were no unfilled vacancies prior to 2006 wherein the applicants could be adjusted. Further there is no evidence of any junior having been promoted before applicants were promoted so as to have a legitimate grievance for promotion earlier than the one challenged. O.A is hence dismissed.

(Dated this the ^{18th} day of August 2015)


P.GOPINATH
ADMINISTRATIVE MEMBER

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JUSTICE N.K.BALAKRISHNAN
JUDICIAL MEMBER