

Central Administrative Tribunal
Ernakulam Bench

OA No.556/2012

Thursday, this the 13th day of June, 2013.

C O R A M

Hon'ble Dr.K.B.S.Rajan, Judicial Member
Hon'ble Mr.K.George Joseph, Administrative Member

A.Santhosh Kumar
Part-time Contingent/casual employee
Office of Assistant Superintendent of Post Offices
East Sub Division, Thiruvananthapuram
South Postal Division, Thiruvananthapuram-695 020.
Residing at Varuvilakath, Koprapura Veedu
Naruvamoodu P.O., Nemom
Thiruvananthapuram-695 020. Applicant

(By Advocate: Mr.Vishnu S.Chempazhanthiyil)

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.Millu Dandapani, ACGSC

This Original Application having been heard on 13.06.2013, the Tribunal on the same day delivered the following:-

O R D E R

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The matter is short and simple. The applicant claims that he was a part-time casual labourer in Respondents' organization and had served for more than 240 days in 2011. He is a matriculate and his case is that in accordance with the provisions of Annexure-1 DG Posts Letter No. 17-141/88-EDC & Trg, dated 6th June, 1988, part-time casual labourers have a preferential claim for appointment as GDS compared to the general candidates and the request of the applicant has not been acceded to.

2. According to the applicant, the Tribunal on many an occasion considered the above point and held that part time contingent employees/full time contingent

employees, as a class, have preference in recruitment to the post of ED. In this regard, the applicant has relied upon the following:-

- (a) Order reported in (2000) 1 ATJ 63
- (b) Order dated 27-08-2003 in OA No. 534 of 2003.
- (c) Order dated 04-09-2001 in OA No. 571 of 2001
- (d) Order dated 10-06-2005 in OA No. 3/2005 which order has been upheld by the High Court in W.P. No. 33732/2005

3. Respondents have published certain notification calling for application for appointment of Mail Deliverer, in Naruvanmoodu Sub-Post Office, Karamana Sub Post Office and Poozhanad Post Office. Annexure A-6 series refers. Applicant filed a representation vide Annexure A-7. This request was renewed by a subsequent representation vide Annexure A-8, wherein the applicant had cited certain examples also, vide Annexure A-9 order in OA No. 109 of 2010 and also another OA No. 785 of 2010 and 85 and 90 of 2011. In all these cases, either the Tribunal or the High Court had been consistently holding that part time employees have preference over general candidates. As no action was taken, the applicant has approached the Tribunal seeking the following reliefs:-

- a) Direct the respondents to consider the applicant along with similarly situated contingent employees for appointment to the post of GDS, MD, Naruvanmoodu Sub Post Office, Karamana Sub Post Office and at Poozhanad Post Office and GDS BPM Peppara B.O. in preference to open market candidates.
- b) Declare that the applicant is entitled to the benefit of Annexure A1 and direct the respondents to take action accordingly.
- c) Direct the 1st respondent to consider and pass orders on Annexure A7 and A8 representation in the light of Annexure A2, A3, A4, A9, A10 and A11.
- d) 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 and A11.
- e) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- f) Award the cost of these proceedings.

4. Respondents have contested the OA and stated that the applicant is projecting as if he had been a casual leave labourer since 1998. He was only a substitute of the regular GDS working in various Post Offices and around a place called Nemom. Thus, he is an outsider engaged against leave vacancies of Regular GDS. He was also engaged to sweep the office of the second respondent since

2010 after shifting of the office to Nemom in 2009. Nominated substitutes are not entitled to claim any regular appointment to the post nor can they stake a claim to continue in the post till a regular appointment is made. Thus, he has no right to claim any benefit of the DG P & T letter dated 18-05-1979. No proof has been shown to reflect that the applicant has been functioning as a part time casual labourer since 1998. Recruitment of fresh casual labourer is banned vide order dated 15-05-1988.

5. In his rejoinder, the applicant has stated that the applicant relies upon the order dated 06-06-1988, which provides for preferential treatment for part time casual labourer compared to outsiders. The applicant does not stake his claim on the basis of the services rendered as a substitute. The applicant has further submitted that Respondents themselves have stated that the applicant has been asked to perform the duties of a sweeper since 2009.

6. In their additional reply, the respondents have annexed Annexure R-2 -details of the work performed by the applicant as Sweeper. They have also attached certain annexures, whereby it has been stated that there is a ban on engagement of casual labourer.

7. Counsel for the applicant submitted that the fact is that the applicant has been engaged as a part time sweeper for the years 2010 onwards. Though there could be some communication relating to ban on engagement of casual labourer, it is to be seen here that the job assigned to the applicant is sweeper and it is trite knowledge that the work cannot be dispensed with. In other cases also, such part time casual labourers were entrusted with the work of sweeping and cleaning. And, what the applicant seeks is only preference to outsiders for appointment as GDS. In fact, part-time casual labourer has been placed as the last in the list of persons who can be given preference to outsiders. It is only when there are no other candidates in other categories, that the applicant along with other similarly situated would be considered. The counsel further submitted that there cannot be any proof held by the applicant as no order of engagement is given. The cash vouchers held with the respondents could well be verified to ascertain that the applicant has served for over 240 days in a year.

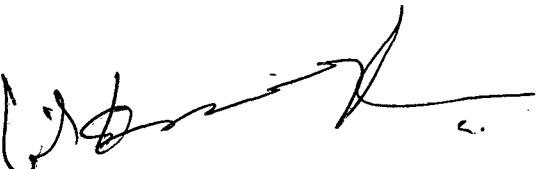
8. Counsel for the respondents stated that the applicant claims that he worked as GDS for years, which cannot be accepted. The engagement of the applicant as part time casual labour is in fact at a time when there was no clear path to engage casual labourer.



9. Arguments were heard and documents perused. Annexure R-2 does contain the details of work performed by the applicant. It must be kept in mind that the engagement of the applicant is for sweeping and this is a job which neither can be avoided nor accumulated. Orders of the DG Post could well apply for engagement as a full time casual labourer, as the same would entail claim for temporary status, followed by regularisation etc., And, the benefit available to the applicant is not the one of regularization and the like but certain preferential treatment compared to outsiders. Thus, keeping in view the fact that such cases in the past have all been considered and allowed, interest of justice would be met if the OA is disposed of with a direction to the respondents to ascertain from the cash vouchers/ledgers available with the respondent whether the applicant had worked for a period of 240 days in the calendar year of 2011 and if so give the benefit of the order dated 06-06-1988 in respect of selection to the post of GDS in the next selection. No cost.


(K. George Joseph)
Administrative Member

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(Dr. K. B. S. Rajan)
Judicial Member