

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 575/2002

Wednesday, this the 27th day of November, 2002.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

K. Sreekumar,
Casual Labourer,
Sub Record Office,
Railway Mail Service,
T.V. Division, Kollam-691001.

... Applicant

(By Advocate Mr. Thomas Mathew)

Vs

1. Sub Record Officer,
Railway Mail Service,
Kollam.
2. Senior Superintendent,
Railway Mail Service,
Trivandrum Division,
Trivandrum.
3. Chief Postmaster General,
Kerala Circle,
Trivandrum.
4. Union of India, rep. by its
Secretary,
Department of Posts,
New Delhi.

... Respondents

(By Mr. M.R. Suresh, ACGSC)

The application having been heard on 27.11.2002, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant, who commenced his service as Casual Mazdoor in the year 1984 was included in the panel of Casual Labourers, but had a break in the year 1987 and was subsequently reengaged from 10.7.1992 onwards as Casual Mazdoor by the order of the 3rd respondent dated 29.9.1995(Annexure A1). He after passing SSLC Examination had appeared in the Pre-Degree Examination of the Kerala University in the year 1983. Having been continuously working as Casual Labourer from 10.7.1992 onwards, the applicant


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claimed that he became entitled to preference in appointment to the ED Agent according to the letter of DG, Posts dated 6.6.1988. Finding that when the post of GDS Mail Man, Sub Record Office, Quilon fall vacant, without considering the applicant's candidature in accordance with the directions in the letter of DG, Posts dated 6.6.1988, the 1st respondent issued Annexure A7 notification for making recruitment from open market, applicant submitted Annexure A8 representation dated 11.4.2002 seeking appointment to the post giving him preference. Finding no response to this representation, the applicant has filed this application seeking to set aside Annexure A7 notification and for a declaration that the applicant is entitled to be considered for appointment to the post of GDS Mailman, Sub Record Office, RMS Quilon in terms of Annexure A5 and to direct the respondents accordingly.

2. The respondents in the reply statement contended that since the applicant is not an approved Casual Mazdoor sponsored by the Employment Exchange, he is not entitled for any preference, and that as the applicant has not applied for the post as an outsider, his claim cannot be considered.


3. The applicant in his rejoinder has reiterated that he has applied for the post and produced Annexure A9 copy of the representation dated 13.4.2002.

4. We have carefully gone through the pleadings and material placed on record and have heard Shri Thomas Mathew, the learned counsel for the applicant and Shri M.R. Suresh, ACGSC, the counsel for the respondents.



5. Shri Thomas Mathew, the learned counsel for the applicant argued that in the light of the what is contained in the order of Chief Postmaster General(Annexure A1), it is idle to contend that the applicant is not a Casual Mazdoor, and that the 2nd respondent, who is an authority subordinate to the 3rd respondent, has no authority to take a contention against what has been held by the 3rd respondent. We find considerable force in the arguments of the learned counsel. From Annexure A1 order of the 3rd respondent and the order in OA 1097/95 on the file of this Bench of the Tribunal it is clear that the applicant who commenced service as a Casual Labourer in 1984 after a break in 1987 was reengaged from 10.7.1992, that while continuing as Casual Labourer was removed from the roll by order dated 8.5.1995 of the 2nd respondent and that the said order was cancelled by the 3rd respondent ordering that the applicant would continue as a Casual Mazdoor in SRO, Quilon. In the O.M. of the DOPT dated 7.5.1985 the requirement of sponsorship in the case of Casual Labourers engaged prior to that date had been waived. Under these circumstances the contention of the respondents that the applicant is not a Casual Labourer and that not having been sponsored by the Employment Exchange he would not be entitled to the benefit under Annexure A5 letter of DG, Posts dated 6.6.1988 have to be rejected.

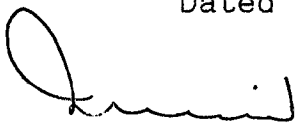
6. It is not disputed by the respondents that the applicant has been working continuously as Casual Mazdoor from 10.7.1992 onwards. Therefore in terms of Annexure A5 letter of DG, Posts dated 6.6.1988, the applicant is entitled to preference in appointment to ED posts. It is true that the applicant has not submitted his application in response to the notification on or before 30.3.2002. However, on account of the interim order dated 13.8.2002 of this Tribunal, no further proceedings on the basis of the notification has been taken.



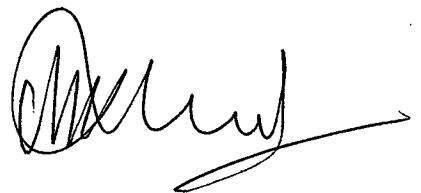
7. Under the circumstances, we are of the considered view that the respondents are bound to consider the applicant for appointment to the post of GDS Mail Man giving him due preference in terms of DG, Posts letter dated 6.6.1988.

8. In the light of what is stated above, we dispose of this application directing the respondent to consider the claim of the applicant for appointment as GDS Mail Man, SRO, RMS Quilon, as he is eligible and entitled to preference in appointment to ED Post having had more than the required length of continuous casual service in terms of Annexure A5 letter of the DG, Posts. Resort to open market recruitment or any other mode of filling up the vacancy should be ~~resorted to~~ ^{made} only if the applicant is found otherwise not suitable for appointment as GDS Mail Man and the 2nd respondent is directed to issue orders in this regard considering the claim of the applicant within one month from the date of receipt of a copy of this order. No order as to costs.

Dated the 27th November, 2002.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of order No.Vig/16-119/95 dated 29.9.1995 issued by the 3rd respondent.
2. A-2: True copy of page 1 of SSLC Book of the applicant.
3. A-3: True copy of page 6 of SSLC Book of the applicant.
4. A-4: True copy of paragraph 7 of the reply statement filed by the 3rd respondent in OA No.1097/1995.
5. A-5: True copy of para 28 of D.G's instructions under method of Recruitment to E.D.Posts.
6. A-6: True copy of letter No.Rectt/27-1/IV dated 31.3.92 issued by the Asst. Director, office of the 3rd respondent.
7. A-7: True copy of notice dated 11.3.2002 issued by the 1st respondent inviting applications to the post of GDS MM.
8. A-8: True copy of applicant representation to the 2nd respondent dated 11.4.2002.
9. A-9: True copy of application dated 13.4.2002 submitted by the applicant to the 2nd respondent.

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