

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No.576/2011

Thursday, this, the 28th day of July, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

N.Radhamany,  
W/o Raghunathan,  
Gramin Dak Sevak Mail Man,  
Sub Record Office, RMS TV Division,  
Kollam. .... Applicant

(By Advocate Mr Shafik M.A.)

v.

1. Union of India represented by  
its Secretary,  
Department of Posts, New Delhi-110 001.
2. The Chief Post Master General,  
Kerala Circle,  
Trivandrum-695 005.
3. The Senior Superintendent,  
Railway Mail Service TV Division,  
Trivandrum-695 005. .... Respondents

(By Advocate Mr S Jamal, ACGSC ).

This application having been finally heard on 22.7.2011, the Tribunal on 28.07.2011 delivered the following:

ORDER

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant is presently working as Gramin Dak Sevak Mail Man (GDS MM for short) in the office of the Sub Record Officer, Kollam. She commenced her service as an Approved Casual Mazdoor with effect from 1.11.1983. Her appointment as Casual Mazdoor was subsequently regularised with effect from 27.2.1999 as per memo dated 5.4.1999.

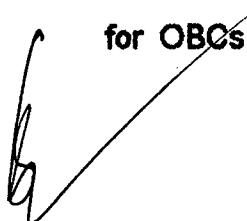


2. Twelve vacancies of GDS MM in the office the SRO, Kollam arose with effect from 11.10.2000. The applicant submitted a representation to the SRO, Kollam expressing her willingness for appointment as GDS MM. As per DG Posts letter No.17/141/88/EDC& Trg dated 6.8.1988, casual labourers who are willing to be appointed to ED vacancies should be given preference in the matter of recruitment to ED posts, provided they fulfill all the conditions and have put in a minimum service of our year.

3. The applicant satisfied all the required conditions and therefore was entitled to preference in the matter of appointment as GDSMM. Despite the same, the applicant was not considered for appointment. The SRO, Kollam issued notification No.GDS MM/Rectt/971/2001-2002 dated 25.9.2001 inviting applications for filling up the vacancies of GDSMM. The applicant has immediately responded to the said notification also and was directed to appear before the first respondent on 27.10.2001. The applicant appeared. However, no advice regarding appointment was received by her. The applicant, after a formal representation dated 15.3.2003, approached this Tribunal in O.A.No.511/2003 inter-alia seeking a declaration that she is entitled to be considered for appointment as GDSMM. The said O.A was disposed of directing the 2<sup>nd</sup> respondent to pass appropriate orders on the applicant's representation dated 15.3.2003 and also having regard to the orders of this Tribunal in various cases like O.A.No.30/1999, 1622/98, 648/2000, 571/2002 and 793/2002, vide Annexure A-2. In pursuance of this order, SRO, Kollam issued memo dated 29.7.2003, appointing the applicant as GDSMM with effect from 30.7.2003 vide Annexure A-3. In partial modification of Annexure A-3, Annexure A-4 was issued wherein it was indicated that the applicant was appointed as GDSMM in pursuance of the order in O.A.511/2003 with effect from 1.8.2003. The appointment of the applicant as GDSMM was delay due to the mistake

committed by the respondents. The applicant ought to have been appointed as GDSMM as early as on 11.10.2000. In the result, the applicant lost her qualifying service for pensionary benefits for about three years. She therefore, submitted a detailed representation on 5.4.2004 to the 3<sup>rd</sup> respondent seeking for antedating her date of appointment as GDSMM to 11.10.2000, the date on which the vacancy arose, at least for pensionary benefits. Since no orders were passed the applicant approached this Tribunal in O.A.No.393/2005 and as per order dated 15.12.2006, this Tribunal allowed the O.A and directed the respondents to verify the records of the earlier appointments and to reckon the date of appointment of the applicant within one month from the date of Interview i.e. 29.10.2001. It was also directed that the service in between is to be reckoned as notional service for the purpose of appearing in Departmental Test etc. vide Annexure-A5. Since this Court's order was silent as to reckoning such service for the purpose of appointment in the seniority quota, the applicant again filed R.A.No.33/2007 and this Tribunal allowed the same also and clarified that the benefits granted to the applicant in para 8 of the order shall be modified to the extent it refers to the Departmental test as eligible for "seniority for the purpose of consideration for promotion to any Group'D' post and/or appearing in Departmental test. Annexure A-6 refers.

4. Consequently, an order dated 25.4.2008 was issued by the SRO, Kollam advancing the date of appointment as GDSMM notionally with effect from 1.1.2002 vide Annexure A-7. Thereafter, the 3<sup>rd</sup> respondent has conducted a DPC on 25.3.2011 to till up the vacancies of MTS and the applicant being an OBC candidate has been considered and selected for appointment in the OBC quota. However, only one candidate Shri K.Somarajan has been appointed with effect from 1.4.2011 though there was more than one clear backlog vacancies for OBCs. The applicant submitted a representation on 12.5.2011 praying to



post her also as MTS in the existing vacancies in OBC quota vide Annexure A-8. It was, however, noticed that the posting is delayed since the 2<sup>nd</sup> respondent's office has directed the 3<sup>rd</sup> respondent to appoint the juniors of the applicants in O.A.691/2010 only after the disposal of the O.A. Annexure A-9 refers. In the meantime, Annexure A-1 is issued rejecting her request in the same lines. Hence this O.A seeking for the following reliefs:

- (i) To call for the records relating to Annexure A-1 to A-9 and to declare that the applicant is entitled to be appointed as MTS in OBC quota with effect from 1.4.2011, the date on which the other selected candidate is appointed;
- (ii) To direct the respondents to give effect to the applicant's selection is MTS as per the recommendations of the DPC dated 15.3.2011 and to appoint as MTS with effect from 1.4.2011 immediately.

5. Respondents have contested the O.A. According to them:

(a) The Departmental Promotion Committee which met at the office of the 2<sup>nd</sup> respondent had considered the applicant along with one Sri R Sajeev Kumar and Sri N.R.Sudheesh Kumar for appointment as MTS. The DPC also recommended their names for appointment as MTS. However, these GDS were party respondents in O.A.No.691/10 filed by one Sri K Sreenivas Kannan and others seeking to ante-date their appointment in the cadre of Group'D'. This Tribunal had directed the respondents by its order dated 22.10.2010 in O.A.No.691/10 to revise the seniority list of GDS in RMS TV Division based on the findings of the Tribunal and till such revision of the seniority list is not completed, there shall not be any appointment of the juniors to the applicants, including all the party respondents, to the post of MTS vide Annexure R-1.

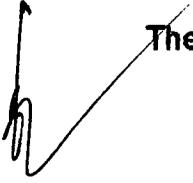
(b) The respondents have challenged the said Annexure R-1 order before the Hon'ble High Court of Kerala by filing O.P(CAT)No.778/2011 which came up before the Hon'ble High Court on 23.2.2011, when the court granted an interim stay on the operation of the CAT order for a period of one month which was extended by one more month with a rider that the Department will not permit others to overlook the respondents. Considering the pendency of this case and the direction of this Tribunal in Annexure R-1 order, it was felt that appointment of the applicant as MTS at this stage would amount to violation of the orders of this Tribunal.

in Annexure R-1 order. Hence, it was decided to keep the appointment of all the candidates junior to the applicant in O.A.691/10 in abeyance till the final disposal of the said O.P(CAT) 778/2011 pending before the High Court of Kerala. The applicant is one of such candidate waiting for appointment. If this Tribunal directs, the respondents are ready and willing to give posting to the applicant as MTS under the OBC quota.

6. Counsel for the applicant argued that the direction to the respondents by the Tribunal in OA No. 691 of 2010 is with reference to the vacancies that arise under the General Category, while the case of the applicant is that she belongs to the OBC Category and there is no senior to her in that category as categorically held by the respondents vide Annexure A-9 Minutes. As such, the applicant is entitled to be considered for appointment against the available OBC category vacancy, notwithstanding the constriction imposed by the order dated 22-10-2010 in OA No. 691 of 2010 which should be made applicable only for the general vacancies.

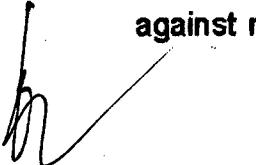
7. Counsel for the respondents submitted that the only anxiety of the respondents is whether such an appointment if given to the applicant disregarding the order of the Tribunal would result in a contempt of Court and the Respondents, as stated in the last sentence of para of the order dated 22.10.2010, are ready and willing to give posting to the applicant as MTS under the OBC quota.

8. Arguments were heard and documents perused. The only question to be decided is whether the applicant's posting as MTS under the OBC quota is interdicted by order dated 22-10-2010. True, the Tribunal has clearly stated "there shall not be any promotion of the post of Multi Skilled Employee who were juniors to the applicants including all the party respondents."

The applicant is one of the Party Respondents in the afore said OA No.

691/2010. Thus, if the applicant's posting is against any of the vacancies on which the order dated 22-10-2010 has a bearing, the posting cannot be done till seniority list is prepared. Though this order of the Tribunal has been stayed, the same has not been upset or reversed. If the applicant's contention that the appointment is against OBC quota in respect of which the applicant in OA 691/2010 has no claim, the matter would have to be approached from a different angle. In that case, it could be declared that the order in OA No. 691/2010 would not affect those vacancies coming under any of the reserved categories. For, in that event, the applicants in OA No. 691 of 2010 would not be affected by the same. However, since the general rule is that there shall be no OBC quota for promotion, whether applicant's contention would be right. True, the respondents have not stated anything about the claim of the applicant and have clearly stated that if the Tribunal directs for such appointment, the respondents are ready. The question is not the readiness in following the direction. The vital point is that the direction given by the Tribunal should be keeping in view the law point on the subject.

9. As stated earlier, there is no quota for OBC at the time of promotion. However, it is the contention of the applicant that at least two individuals have been so promoted against OBC vacancies. It is not exactly known whether there has been a change in the rules to accommodate such promotion on reservation basis at the time of promotion of the OBC candidates. It is for the respondents to verify the rule position and confirm the same. Even if the other two have been given such promotions, first, it is to be verified whether the same is a conscious decision and whether the rules provide for the same. If the rules do not provide for the same, notwithstanding the fact that two of the vacancies had been filled by OBC candidates treating the same as OBC vacancies, the same being against rules, the applicant cannot derive any benefit as the mistake cannot be



perpetuated nor could there be any negative equality. In this regard, the decisions of the Apex Court in the case of **Hari Ram vs State of Haryana (2010) 3 SCC 621**, wherein, referring to another decision in **Vishal Properties (Pvt) Ltd., vs State of U.P., (2007) 11 SCC 172**, is relevant, wherein the Apex Court has stated as under:-

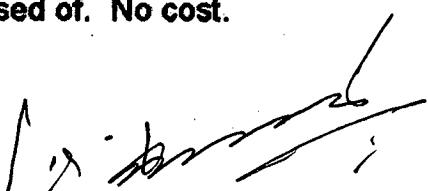
*"20. In Vishal Properties (P) Ltd. this Court reiterated the legal position that:*

- (i) Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality;
- (ii) Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship;
- (iii) Any action/order contrary to law does not confer any right upon any person for similar treatment; and
- (iv) An order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.

10. Thus, it is for the respondents to verify whether the vacancy to the post for which the applicant is selected is not affected by the orders of the Tribunal in OA No. 691 of 2010 (i.e. independent of the said order, due to the vacancies not falling against the general category about which the aforesaid OA confined to) the applicant could be accommodated against such post. If not, the applicant has to wait till the case in OA No. 691 of 2010 is over. In case the applicant could be accommodated, then her appointment shall be from the date she could have been appointed but for the aforesaid decision of the Tribunal in OA No. 691 of 2010. And, suitable orders be passed accordingly.

11. With the above observations, the OA is disposed of. No cost.

  
K NOORJEHAN  
ADMINISTRATIVE MEMBER

  
Dr K.B.S.RAJAN  
JUDICIAL MEMBER