

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 576 / 2006Wednesday, this the 16th day of July, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

M.M.Raju,
Gramin Dak Sevak Mail Carrier,
Thiruvarpu P.O.
Now working as Group'D'
Kottayam Head Post Office.Applicant

(By Advocate Mr Martin G Thottan)

v.

1. The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam.
2. The Senior Post Master,
Kottayam Head Post Office,
Kottayam.
3. The Union of India represented by
Secretary to Government of India,
Department of Posts,
New Delhi.
4. K.M.Harindran,
Formerly GDSM MC Kurumulloor,
LR Group D Kottayam HPO,
Kottayam.Respondents

(By Advocate Mr S Abhilash, ACGSC for R.1 to 3)

This application having been finally heard on 29.5.2008, the Tribunal on
16.7.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The grievance of the applicant in this O.A. is that the 4th respondent who is junior to him has been appointed as a Group D on regular basis ignoring his position in the combined seniority list of Extra Departmental Agents (EDA for short), re-designated as Gramin Dak Sevaks (GDS for short) in Kottayam Division as on 1.1.2000.

2. The brief facts of the case are that the applicant belongs to the Scheduled Caste category and he was working as an Extra Departmental Mail Carrier, redesignated as Gramin Dask Sevak Mail Carrier (GDSMC for short) in Kottayam Division with effect from 13.11.1975. As per Annexure A-5 "Combined Seniority list of ED Agents in Kottayam Division as on 1.1.2001" he is at Sl.No.122. All the eligible GDSs upto Sl.No.101 of that list have since been promoted in accordance with the Department of Posts (Group D posts) Recruitment Rules, 2002 issued by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution as notified on 23.1.2002 (hereinafter referred to as the Recruitment Rules) and the last person promoted was one Shri George Thomas (Annexure A-6 letter dated 11.2.2003).

3. As per the procedure prescribed for appointment of GDS as Group D staff, a Selection Committee consisting of the Head of the Division and a Gazetted Officer of the Department of Posts or any other Central Government Department at the station should hold the selection in the month of January every year. All Group D posts should be calculated in January each year and the select list will have to be drawn strictly in the order of seniority (subject to satisfactory service) and the EDAs put on the select panel should be allotted



immediately to the Sub Division/Recruiting Unit.

4. The applicant submitted that the respondents have not been holding the DPC regularly inspite of the availability of number of vacancies on the ground that the Screening Committee constituted for this purpose has not cleared the vacancies for the respective years and there are 7 regular vacancies of Group D at Kottayam Head Post Office itself at present and against one of them, the applicant himself has been working on ad hoc basis continuously with effect from 10.9.2001. He has also submitted that the non-filling of Group D vacancies for years together has affected the promotion prospects of large number of GDSs including him. Many of them had to retire without any promotion and many others lost the chance of getting even minimum pension on superannuation since they would not be able to complete 10 years of regular service after getting promotion to pensionable service. He has alleged that, instead of regularising the ad hoc Group D against regular vacancies, the Chief PMG, Kerala has issued instructions vide letter No. ST/19/DIG. dated 17.2.2004 to terminate all ad hoc arrangements in the existing Group D vacancies exceeding one year. Against the aforesaid purported move to terminate the services all the ad hoc Group D staff, he made the Annexure A7 representation dated 15.4.2004 requesting the respondents to take action for regularizing his service as Group D, considering his seniority. Since the respondents did not respond to his representation he along with other similarly placed persons approached this Tribunal earlier vide O.A.336/2004 for the redressal of his grievance. The said O.A was admitted with an interim direction to the respondents not to replace the applicant with any junior person. During the pendency of the said O.A, the PMG, Central Region, Kochi, vide Annexure A-8 letter dated 11.2.2005 informed the SPOs/SSPOs that the Screening Committee has cleared 1 vacancy for the year 2003 for Kottayam Division. Hence, the respondents vide Annexure A-9



letter dated 4.3.2005, after holding the DPC, appointed the 4th respondent, Shri K.M.Harindran, GDSMC Kurumulloor as Group D staff in the Kottayam Division. Again, vide Annexure A-10 letter dated 5.3.2005, the respondents have allotted Shri Harindran to Kottayam Division. According to the applicant, the aforesaid Annexure A-9 and A-10 orders appointing Shri Harindran is illegal and arbitrary as he is junior to him at Sl.No.130 in the Annexure A-5 seniority list. He has, therefore, withdrawn his earlier O.A.336/2004 and filed the present O.A to challenge the appointment of the 4th respondent.

5. The respondents in their reply have admitted the fact that the applicant belongs to SC category and he was working as GDSMC in the Kottayam Division with effect from 13.11.1975 and he was permitted to officiate as a Group D at Kottayam Head Post Office with effect from 22.4.1999 against a vacant post. They have given the following details of vacancies which have occurred from 1997 to 2005 and number of vacancies which have filled during that period:

S.No.	Year	No. of vacancy occurred	Filled up
1.	1997	4	-
2.	1998	-	-
3.	1999	3	3
4.	2000	5	1
5.	2001	3	1
6.	2002	1	1
7.	2003	4	1
8.	2004	2	1
9.	2005	3	1"
		<hr/>	
		Total	25
			9
		<hr/>	

6. They have further submitted that as per the existing instructions, the appointment to any Group D post could be made only against the vacancies approved by the Screening Committee. The Screening Committee has cleared only one vacancy in 2005 out of the 4 vacancies which have arisen in the year

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2003 and it was earmarked for unreserved category. The selection for the said post was held in 2003. The upper age limit fixed for GDS for appointment to the post of Group D is 50 years with 5 years relaxation for SC/ST. As such the condition for selection as unreserved category is that the candidate should not exceed 50 years of age as on 1st July of the recruiting year i.e. as on 1.7.2005 in the case of the applicant. The date of birth of the applicant being 18.2.1955, he has crossed the aforesaid age limit of 50 years applicable for SC/ST and therefore he was not found eligible for appointment against the unreserved vacancy. Therefore the next eligible GDS candidate, Shri Harindran as per the seniority list was selected as Group D.

7. The applicant relied on the order of the Madras Bench of this Tribunal in O.A.1208/2004 – A Ganesan v. Union of India and others decided on 10.10.2006. In the said case, the applicant was an ED Messenger with effect from 1.11.1971. He was offered to officiate as Postman with effect from 25.6.2001. In the seniority list of EDAs as on 1.7.1995 he was at Sl.No.98. He was at Sl.No.1 in the year 1999 awaiting selection as Group D or Postman from the seniority quota. However, the respondent No.4 who was junior to him in the seniority list was appointed as Group D, overlooking his seniority. According to the respondent, for the year 2000, one vacancy was available in the unreserved category and since the applicant was over 50 years as on 1.7.2001, the DPC met on 25.3.2001 has selected respondent No.4. According to the respondents, since the vacancy was notified for unreserved category in the year 2000, the age should not have been more than 50 years as on 1st July of the year in which recruitment is made. The Tribunal held that the applicant who belonged to OBC category was eligible for 3 years age relaxation and therefore non-consideration and non-selection of the applicant to the OBC vacancy was clearly illegal. The operative part of the said order is as under:

"21. In O.A.31/2006 dated 19.9.2006 this Tribunal on an identical question held as follows: Thus it could be seen while the policy of reservation and grant of concession an relaxation regarding age limit is provided to the SC/ST candidates and has been reiterated by the Govt. ever since 1952 and the Constitution Bench judgment of Hon'ble Supreme Court holding that the SC/ST candidates selected on merit cannot be counted towards the quota meant for them, an interpretation is ought to be given as a clarification that this adjustment is permissible only if they have been selected without relaxed standards. This has been further clarified as to mean the grant of age relaxation. The stand of the respondents is that the age relaxation and other concessions will not be allowed in case of filling up of unreserved vacancies. In other words, the concession and relaxation would be restricted which these concessions are granted to the SC/ST candidates. As already held by the Hon'ble Supreme Court the concessions and relaxations provided under Art. 16(1) is different from reservation made under Art.16(4A). The clarification given in GOI DOPT OM No.36011/1/98 Estt(Res) dated 1.7.1998 cannot take away the rights conferred on the SC/ST by way of relaxation and concession including age limit, experience etc. the original OM made in GOI DOPFT OM No.360//2/13/88 Estt (SET) dated 22.5.1989 and OM No.36011/1/98 Estt (Res) dated 1.7.1998 relates to the steps taken to increase the representation of SC/ST in the service of the Central Govt. in the direct recruitment vacancies. It was decided that the candidates selected on their own merit without relaxed standards will not be considered against the reserved share of vacancies. The clarification was issued obviously in reference to direct recruitment. Further the said clarification speaks about the counting of SC/ST candidates against reserved vacancies after selection. Neither the initial OM nor the clarificatory OM speaks of promotion and eligibility to apply and contest in case of promotion in unreserved vacancy.

14. What the Govt. has set out in the OM dated 1.7.1998 is that if the SC/ST candidates want their selection to be counted on their merits, then the question of considering their claim would arise and that they may not be adjusted with relaxed standards. But in this case, even before going for selection for promotion, the SC/ST candidates are denied their concessions and relaxation. The Government order never intended that these concessions are available to SC candidates only to the vacancy set apart on reservation. In other words, the SC/ST candidates are entitled to seek promotion with the age relaxation even in unreserved vacancies. The question of counting them on their own merit arise in the case where the vacancies are unreserved and after selection.

15. The Constitution Bench of the Hon'ble Supreme court in the case of State of Kerala v. NM Thomas AIR 1976 SC 490 was concerned with the provision extending the period of two years for promotion to members of the SC/ST of the Constitution and upholding the validity of this Rule, the Hon'ble Supreme Court held as follows.

(Signature)

"44. Our Constitution aims at equality of status and opportunity for all citizens including those are socially, economically and educationally backward If members of Scheduled Castes and Tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Articles 15(4) and 16(4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Articles 14, 15(1) and 16(1). The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutionally permissible object. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are a rational classification recognised by our constitution. Therefore, differential treatment in standards of selection are within the concept of equality.

45 A Rule in favour of an under represented backward community specifying the basic needs of efficiency of Administration will not contravene Articles 14, 16(1) and 16(2). The rule in the present case does not impair the test of efficiency in administration inasmuch as members of Scheduled Castes and Tribes who are promoted have to acquire the qualification of passing the test. The only relaxation which is done in their case is that they are granted two years more time than other to acquire the qualification. Scheduled Castes and Tribes are descriptive of backwardness. It is the aim of our Constitution to bring them up from handicapped position to improvement. If classification is permissible under Article 14 it is equally permissible under Article 16 because both the Articles lay down equality. The equality and concept of equality is that if persons are dissimilarly placed they cannot be made equal by having the same treatment. Promotion of members of Scheduled castes and Tribes under the impeached rules and orders is based on the classification with the object of securing representation to members of Scheduled Casts and Tribes, efficiency has been kept in view and not sacrificed."

16. The Hon'ble Supreme Court of India in Superintendent Engineer, Public Health Chandigarh v. Kuldip Singh in AIR 1997 SC 2133 has laid down that the appointing authority is under constitutional duty coupled with power.

A public servant entrusted with duty and power to implement the

constitutional policy under Article 16(4) 16(4A), 15(4) 335 and in all inter related directive principles, it should exhibit transparency in implementation and of accountable (sic) for due effectuation of constitutional goals."

22. The clarification in reference to relaxed standard has to be understood in the context of the relevant rules.

For instance the Indian Administrative Service (Appointment by Competitive Examination) regulations 1955, provides for age relaxation under Regulation 4. Regulation 7 deals with the list of successful candidates. Sub Rule 2 of Regulation 6 says that candidates belonging to SC/ST may, to the extent of number of vacancies reserved for them be recommended by the Commission by the relaxed standard subject to the fitness of the candidates for selection to the service. The Proviso to Sub rule says candidates who have been recommended without resorting to relaxed standards shall not be adjusted against vacancies reserved for SC/ST/.

The implication of the above provision is that within the quota set apart for SC/ST candidates shall be selected by relaxed standards. The rule further states that those candidates selected without relaxed standards, shall not be adjusted against the quota. The relaxed standard is therefore referable only to the examination conducted for selection.

The Hon'ble Supreme Court in *Union of India v. Staya Prakash* (2006 (4) SCC 550)), while referring to a similar provision of Civil Services Examination rules, 1996 held that a reserved category candidate recommended by the Commission (UPSC) without resorting to the relaxed standard will have the option of preference from the reserved category but while computing the quota/percentage of reservation, the candidates will be deemed to have been allowed seats as an open category candidate. Their Lordships also referred and approved the view of the Hon'ble Supreme Court in *Ritesh R Sah v. DR Y L Yamul* (1996 3 SCC 263).

Therefore, the concession given in the form of age relaxation, cannot take away the right of SC/ST candidates to claim for unreserved vacancies."

8. At this stage, it is necessary to consider certain developments which have already taken place in the matter of appointment of GDS as Group D on regular basis. The Department of Posts published a letter No.454-31/87-SPB.I dated 28.8.1990 in which it was laid down that EDAs/GDSs who are above 50 years (55 years in case of SC/ST communities) will not be eligible for appointment as Group D. Thereafter, the respondents have initiated action to provide for the

aforesaid age relaxation in the recruitment rules itself by amending the same. As a result, all promotions of EDAs/GDSs as Group D on regular basis has made to a stand still. Aggrieved by the aforesaid attitude of the authorities, the Service Unions and some of the affected EDAs filed O.A.239/1998 and O.A.449/1998 before this Tribunal. By order dated 26.8.1998, this Tribunal allowed the said O.As and directed the respondents to fill up the existing vacancies in Group D 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 above of prescribed maximum age limit. The aforesaid order reads as follows:

"6. In the light of what is stated above, we are of the considered view that the respondents have to be directed to make recruitment to the existing vacancies in Group D in the Kerala Circle, including the Aluva Division, without any further delay and without waiting for the amendment to the Recruitment Rules.

7. 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 he would lose the length of service required for being eligible for pension and for that reason, it is necessary in the interest of justice to direct the respondents to appoint the applicant, if he is otherwise eligible on Group D with effect from the date of 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 or 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."



9. The respondents challenged the aforesaid order of this Tribunal dated 26.8.1998 before the Hon'ble High Court of Kerala in O.P.No.25172/1998. The High Court disposed of the aforesaid O.P. Vide judgment dated 30.3.2000 with the direction that "...*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...*"

10. Thereafter, the Government of India, Department of Posts issued Annexure R-1 letter No.66-82/87-SPB.I dated 20.7.2000 in modification of their earlier letter No.44-31/87-SPB.I dated 28.8.1990 referred to above, issued instructions stating that pending notification of necessary amendment to Recruitment Rules for Group D, EDAs who are above the age of 50 years (55 years in case of SC/ST) will not be eligible for appointment as Group D. However, in the Department of Posts (Group D Posts) Recruitment Rules, 2002 notified on 23.1.2002, still there was no clarity regarding age limit for appointment of GDSs and Casual Labourers as Group D. The 1st method of recruitment was to hold a test to determine the working eligibility of the candidates holding the post of Peons/Letter Box Peons/ Mail Peons/Packer/Porter/Runner/Van Peon/Orderly/Gatemen/Attendant-cum-Khansama/Cleaner in Mail Motor Service/Pumpmen. In the case of suitable candidates are not available, 75% of the unfilled vacancies were to be filled up from among the eligible GDSs and 25% from among the eligible Casual Labourers failing which by direct recruitment. Age limit was between 18-25 years was prescribed for only the first category. There was no age limit prescribed for the GDSs and Casual Labourers. The method of recruitment as specified in Column 11 of the Recruitment Rules was under:

"A test shall be held to determine the working eligibility of the candidates holding the post specified against Sl.No.2 for filling up the posts. In case the suitable candidates are not found to fill up the posts by such test, the remaining posts shall be filled up by

the method as specified below:

- (i) 75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl.No.2 shall be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak Sevaks of the neighbouring Division or Unit by selection-cum-seniority.
- (ii) 25% of the vacancies remaining unfilled after recruitment of employees mentioned at Sl.No.2, such vacancies shall be filled up by selection-cum-seniority in the following order:
 - (a) by casual labourers with temporary status of the recruiting division or unit failing which,
 - (b) by full time casual labourers of the recruiting division or unit failing which,
 - (c) by full time casual labourers of the neighbouring division or unit failing which,
 - (d) by part time Casual Labourers of the recruiting division or unit failing which,
- (iii) by direct recruitment.

Explanation: 1. For Postal Division or Unit, the neighbouring Division or Unit, as the case may be, shall be the Railway Mail service sub Division and vice versa.

2. The afore-mentioned test shall be governed by the instructions issued by the Central Government from time to time."

11. Thereafter, the Department of Posts vide the letter dated 8.12.2004 clarified that the age limit as fixed by them vide letter No.44-31/87-SPB.I dated 28.8.1990 is still valid. The said letter dated 8.12.2004 is extracted below:

"No.45-28/2004.SPB.I
 Government of India
 Ministry of Communications & IT
 Department of Posts
 Dak Bhavan, Sansad Marg,
 New Delhi 110 001.

Dated: 8.12.2004

To

All the Pr. Chief Postmasters General/
 Chief Postmasters General.

Subject: Department of Posts (Group D Posts) Recruitment Rules, 2002 – clarification regarding age limit applicable for Gramin Dak Sevaks and Casual Labourers

Sir/Madam,

I am directed to refer to this Department's letter No.37-15/2001 SPB.I dated 30.1.2002 forwarding a copy of Notification dated 23.1.2002 notifying Department of Posts (Group D Posts) Recruitment Rules, 2002. References have been received from



some circles seeking clarification regarding the age limit applicable for Gramin Dak Sevaks and Casual Labourers for appointment to Group D basis.

In this regard, it is clarified that the age limit of 50 years (55 years in case of SC/ST communities) for GDSs to be eligible for appointment as Group D as prescribed vide Department's letter No.44-31/87-SPB.I dated 28.8.1990 is still valid. For casual labourers, age relaxation to the extent of service rendered by them as casual labourers will be granted for the purpose of appointment as regular Group D, as provided in this Department's letter No.45-95/87-SPB.I dated 12.4.91 regarding Casual Labourers (Grant of Temporary Status and Regularisation) Scheme.

Yours faithfully,
Sd/-
R Srivasan
Assistant Director General(SPN)"

12. Further development in the matter was that the Ministry of Personnel, Public Grievance and Pension issued OM No. 2/3/2001-PIC dated 16.5.2001 regarding optimization of direct recruitment to civilian posts, according to which recruitment is limited to 1/3rd of direct recruitment vacancies with the ceiling that it does not exceed one percentage of the total strength of the department and recruitment process could commence only after obtaining the vacancies approved by the Screening Committee. The said OM reads as under:

"OFFICE MEMORANDUM

Sub: Optimisation of direct recruitment to civilian posts

The Finance Minister while presenting the Budget for 2001-2002 has stated that all requirements of recruitment will be scrutinized to ensure that fresh recruitment is limited to 1 per cent of total civilian staff strength. As about 3 per cent of staff retire every year, this will reduce the manpower by 2 per cent per annum achieving a reduction of 10 percent in five years as announced by the Prime Minister.

1.2 The Expenditure Reforms Commission had also considered the issue and had recommended that each Ministry/Department may formulate Annual Direct Recruitment Plans through the mechanism of Screening Committees.

2.1 All Ministries/Departments are accordingly requested to prepare Annual Direct Recruitment Plans covering the requirements of all cadres, whether managed by that Ministry/Department itself, or managed by the Department of Personnel & Training etc. The Task

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of preparing the Annual Recruitment Plan will be undertaken in each Ministry/Department by a Screening Committee headed by the Secretary of that Ministry/Department with the Financial Adviser as a Member and JS (Admn) of the Department as Member Secretary. The Committee would also have one senior representative each of the Department of Personnel & Training and the Department of Expenditure. While the Annual Recruitment Plans for vacancies in Group B, C and D could be cleared by this Committee itself, in the case of Group A services, the Annual Recruitment Plan would be cleared by a Committee headed by Cabinet Secretary with Secretary of the Department concerned, Secretary (DOPT) and Secretary (Expenditure) as Members.

While preparing the Annual Recruiting Plans, the concerned Screening Committees would ensure that direct recruitment does not in any case exceed 1% of the total sanctioned strength of the Department. Since about 3% of staff retire every year, this would translate into only 1/3rd of the direct recruitment vacancies occurring in each year being filled up. Accordingly, direct recruitment would be limited to 1/3rd 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. While examining the vacancies to be filled up, the functional needs of the organisation would be critically examined so that there is flexibility in filling up vacancies in various cadres depending upon their relative functional need. To amplify, in case an organisation needs certain posts to be filled up for safety/security/operational considerations a corresponding reduction in direct recruitment in other cadres of the organization may be done with a view to restricting the overall direct recruitment to one third of vacancies meant for direct recruitment subject to the condition that the total vacancies proposed for filling up should be within the 1% ceiling. The remaining vacancies meant for direct recruitment which are not cleared by the Screening Committees will not be filled up by promotion or otherwise and these posts will stand abolished.

2.3 While the Annual Recruitment Plan would have to be prepared immediately for vacancies anticipated in 2001-02, the issue of filling up of direct recruitment vacancies existing on the date of issue of these orders, which are less than one year old and for which recruitment action has not yet been finalised, may also be critically reviewed by Ministry/Departments and placed before the Screening Committees for action as at para 2.2 above.

2.4 The vacancies finally cleared by the Screening Committees will be filled up duly applying the rules of reservation, handicapped, compassionate quotas thereon. Further, administrative Ministries/Departments/Units would obtain before hand a No Objection Certificate from the Surplus Cell of the Department of Personnel & Training/Director General, employment and Training that suitable personnel are not available for appointment against the posts meant for direct recruitment and only thereafter place indents for Direct Recruitment. Recruiting agencies would also not accept any indents which are not accompanied by a certificate indicating that the same has been cleared by the concerned Screening Committee and that suitable personnel are not available with the Surplus Cell.

3. The other modes of recruitment (including that of 'promotion') prescribed in the Recruitment Rules/Service Rules would, however, continue to be adhered to as per the provisions of the notified Recruitment Rules/Service Rules.

4. The provisions of this Office Memorandum would be applicable to all Central Government Ministries/Departments/Organisation including Ministry of Railways, department of Posts, department of Telecom, autonomous bodies wholly or partly financed by the Government, statutory corporation/bodies, civilians in Defence and non/combatised posts in Para Military Forces.

5. All Ministry/Departments are requested to circulate the orders to their attached and subordinate offices, autonomous bodies, etc under their administrative control. Secretaries of administrative Ministries/Departments may ensure that action based on these orders is taken immediately."

13. As a result of the aforesaid O.M dated 16.5.2001, the respondents did not fill up a number of vacancies of Group D posts which have fallen vacant from the year 2001 as the Screening Committee has not issued the necessary approval. Whenever, the vacancies have been cleared by the Screening Committee, the respondent-Department has held DPC and promoted the seniormost GDS/Casual Labourers as per the provisions contained in the Recruitment Rules. The affected GDSs/Casual Labourers have filed several Original Applications before this Tribunal stating that the OM dated 16.5.2001 referred to above does not apply in their case as it was meant for only direct recruitment and method of appointment of Group D posts in Postal Department is by way of promotion. They have contended that the respondent-department ought to have held the DPC for promotion to the post of Group D periodically as prescribed in the DG Posts letter No.47-11/93-SPB.I dated 25.8.1993 and of even No. dated 31.3.1994. The aforesaid two letters reads as under:

"DG Posts, letter No.47-11/93 SPB.I dated the 25th August, 1993
(V.3) DPC for appointment to Group D:

It has been reported to the Directorate that in number of circles, the Departmental promotion committee for ED Agents to Group D is not being held in time. As the maximum age prescribed for promotion of ED Agents to Group D is 50 years, some of the ED

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Agents lost their chance to get promoted as Group D. It is, therefore, requested that the DPCs for promotion of ED Agents to Group D should be held as per the prescribed schedule, particularly keeping in view those cases where some of the ED Agents due for promotion are nearing the age of 50 years as prescribed in the recruitment rules."

"DG Posts, letter No.47-11/93 SPB.I dated the 31st March, 1994
(V.4) Constitution of DPC for appointment to Group D:

For appointment of ED Agents as Group D as per the revised procedure, necessary action to hold DPC may be initiated in the beginning of the year itself and the process of selection completed by March. The following shall be the composition of DPC for this purpose:

(i) Divisional Head/Group A Postmaster as	Chairman
(ii) Another Group A or Group B Postal/RMS officer as the station or in the region as	Member
(iii) A Group B Officer from Telecom Department at the station or in the Region as	Member
The composition of DPC in PTCs shall be as follows:	
(i) Vice Principal as	Chairman
(ii) Administration Officer as	Member
(iii) A Group B Officer of Department of Telecom at the station/District as	Member

14. However, the respondents relied upon an order of the Chandigarh Bench of the Tribunal in O.A.1033/PB/2003 dated 26.5.2005 in **Surjith Singh v. Union of India & others** and contended that appointment to Group 'D' post is not by promotion but only by recruitment. The said order is reproduced as under:

"Applicant Sh Surjith Singh filed this case praying for the following relief:

- (i) This Hon'ble Tribunal may be pleased to call for the entire record of the case.
- (ii) After perusal of the same, this Hon'ble Tribunal may be pleased to issue appropriate order or direction as it may deem fit in the facts and circumstances of the case for counting of service of the applicant rendered as EDBPM from 7.7.89 to 7.3.94 as a qualifying service for the purpose of determining his pension and other retiral benefits.
- (iii) This Hon'ble Tribunal may further be pleased to grant any other appropriate relief to the applicant as it may deem fit kin the facts and circumstances of the case in the interest of justice, equity and fair play.



Finding that there was a legal question involved which required opinion of Full Bench, the matter was referred to the Hon'ble Chairman, CAT, Principal Bench, New Delhi. After obtaining orders from Hon'ble Chairman the Full Bench heard the following points of reference:

- (i) Whether the post of Extra Departmental Branch Post Master being a feeder post for further promotion to Group D is a public post?
- (ii) Whether the service rendered as EDBVPM followed by promotion as Group D employee which is a pensionable post can be taken into consideration or the purpose of determining as qualifying service for the purpose of pension and other benefits.
- (iii) Whether the view taken by a Division Bench of this Tribunal in O.A.No.283/HP/2003 (Ratan Singh vs. Union of India and others) decided on 4.4.2003 is correct view?

The Full Bench has answered the legal questions referred to it in the following manner:

- (i) Extra Departmental Agents are holders of Civil Posts as has been held by the Apex Court in State of Assam & Others v. Kanak Chanra Dutta AIR 1967 SC 884 as also in Superintendent ,of Post Offices and others v. P.K.Rajamma and others, 1977 3 SCC 94 but their appointment to Group D is not by promotion but only by recruitment.
- (ii) The service rendered as Extra Departmental Branch Post Master even if followed by appointment as Group D is not to be reckoned as a qualifying service for the purpose of pension.
- (iii) O.A.No.238/HP/2003 (Rattan Singh vs Union of India and others) was correctly decided.

It is clear from the pleadings of the applicant that he seeks declaration of counting his entire service as EDA w.e.f. 7.7.1989 to 7.3.1994 to be counted as qualifying service for purpose of pension and if not entire service at least half of it to be so counted. A Bench of this Tribunal in the case of Rattan Singh v. UOI in O.A.238/HP/2003 on similar circumstances and facts as pleaded by the applicant in the present case has taken a view that services rendered as Extra Departmental Agent (including EDBPM) followed by regular appointment as Group D cannot be reckoned for computing the qualifying service for pension. The Full Bench has held that view to be correct. In these circumstances the claim made by the applicant is not tenable under the law. In the judgment in case of Rattan Singh (supra), the Bench had taken into consideration the provisions of Rule 4 of the 1964 Rules applicable to the EDAs which clearly lays down that the EDAs are not entitled to any pensionary benefits. At this stage, we would like to make reference to a recent judgment of Hon'ble Supreme Court in the case of UOI and others v. Kameshwar Prasad 1998 SCC (L&S) page 447 wherein the system and object of engaging



EDAs and their status was considered and adjudicated upon. It has been held that P&T Extra Departmental Agent (C&S) Rules, 1964 are a complete code governing service, conduct and disciplinary proceedings against EDAs. Rule 4 thus will have its full force besides what the Full Bench has held in the reference made by this Bench in the case of Kameshwari Prasad, the Supreme Court held that EDAs are government servants holding civil posts, getting protection of article 311(2). They have explained as to what is the nature of such appointment in para 2 of the report which we are reproducing below for understanding the same.

"The Extra Departmental Agents system in the Department of posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmaster, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the department for the purpose."

In view of the findings recorded by the Full Bench and the points of law decided by it and the opinion expressed by the Hon'ble Supreme Court as mentioned above, we find that his O.A has no merit. Applicant cannot count any part of his service rendered as EDBPM for joining it with regular services as Group D for computing the qualifying services for pension.

Learned counsel has appeared in the court little late and at his request we had given him the option to address arguments, as he desired. We had pronounced in the open court that this O.A stands disposed of without mentioning whether it is being allowed or being dismissed to enable the learned counsel to argue on whatever points he wanted to address before the disposal of the O.A to be followed by the detailed order. We, however, record with sad heart that he has failed to address any further arguments except what he mentioned at the Bar that the applicant fell short of ten years of his regular service by merely three months. While having been selected as a Group D on regular post, the respondents had failed to give him posting orders immediately. Had they given him regular appointment immediately after his selection, he would have had ten years of qualifying service making him eligible for pensionary benefits. The court can have compassion for litigants but cannot go against the rule to grant him the benefits which under the rules, cannot be given. If he is short of the requisite length of service, this court cannot fill up that gap. Being not possessed of the requisite length of service, one cannot find fault with the actions of the respondents in denying him pensionary benefits.

Before parting, we may make reference to another judgment in the case of Dhyan Singh vs. State of Haryana and others 2003 SCC (L&S) page 1020 in which it was held that a person who is given appointment by Govt. under a scheme, that employment not being the part of formal cadre of services of that Govt. it is difficult to hold that the period for which an employee rendered service under such scheme could be counted for the purpose of pensionary benefits. In our opinion system of EDAs and their engagement is definitely under such a scheme and they perform the duties not as member of any formal cadre of the Central Govt.

For the reasons discussed above, this O.A is dismissed. No order as to costs."

15. The applicability of OM NO.2/3/2001-PIC dated 16.5.2001 issued by the Ministry of Personnel, Public Grievances & Pensions regarding optimization of direct recruitment to civil posts was considered by this Bench in a number of cases and held that the approval of the Screening Committee is not required for filling up the Group'D posts as it related to only the direct recruitment and the appointments of GDSs/Casual Labourers are by way of promotion. In the common order in O.A.977/2003 and 277/2004 dated 7.10.2005, the Tribunal has held as under:

"The question that arises therefore for consideration is whether the Screening Committee's approval is mandatory for filling up the posts with reference to the Recruitment rules. No documentary proof has been produced by the respondents to show what is the mandate of the Screening Committee referred to by them. It has been stated that Screening Committee's approval is required for filling up the vacancies by direct recruitment. From the reading of the rules it appears that the filling up of Group D posts by the method prescribed in Column 11 cannot be construed as the method for direct recruitment as direct recruitment has been prescribed as an alternative method only if the above procedure failed. Thus the method of recruitment followed appears to be in the nature of promotion only. If that be so, the policy followed by the respondents for appointment of Group D only with the approval of the Screening Committee is incorrect. It has resulted in filling up only limited vacancies on regular basis and filling up the remaining vacancies on ad hoc basis from the GDS and has created a situation where all the vacancies got to be manned by GDS only leaving out the other 25% category of Casual Labourers from consideration. This is certainly discriminatory and in violation of the prescription in the Recruitment rules.

10. Coming to the applicants in these OAs, it is admitted by the respondents themselves that the applicant in OA No.277/2004

belongs to the first preferential category and is the seniormost and eligible to be appointed. It is also admitted by the respondents that the applicant in O.A.977/2003 is second in the list. Therefore both the applicants are eligible to be considered against the 25% quota for Casual Labourers and belonged to the first preferential category among the Casual Labourers i.e full time casual labourers with temporary status. Since the vacancy position has not been clearly stated by the respondents we are not in a position to compute the actual number of vacancies which fell within the 25% quota to which the applicants belong. However, the clear position that has emerged is that there are posts which the respondents had not filled up on regular basis but which are being manned by making short term appointments from the GDS. In our view this action of the respondents is contrary to the Recruitment Rules and therefore illegal and discriminatory and that the applicants should have been considered against the 25% quota available to them. However, we are not in a position to accept the argument of the learned counsel for the applicants that the O.As are covered by the decision of this Tribunal in O.A. 901/2003 which was pertaining to the applicability of upper age limit of 50 years for appointment to the Group-D posts in the Recruitment Rules and not to the question of filling up the quota earmarked for casual labourers.

11. Though the applicants have prayed for certain other reliefs like increment, bonus, GPF contribution and other consequential benefits these are not pressed during the arguments and therefore have not been considered.

12. In view of the above, we hold that the omission of the respondents in filling up the substantive vacancies in Group-D which arose in Kollam Division in accordance with Annexure A4 Recruitment Rules is not sustainable and direct the respondents to take immediate steps for computing the Group-D vacancies available (year-wise) against 25% quota for Casual Labourers in accordance with the Recruitment Rules 2002 and to appoint the applicants to these posts from the date of available vacancies with consequential benefits within a period of three months from the date of receipt of a copy of this order."

16. The Hon'ble High court of Kerala has upheld the aforesaid order dated 7.10.2005 in W.P.(C) No.3618 and 4956 of 2006 by judgment dated 22.3.2007 has held as under:

"The petitioners herein are challenging the common judgment of the Central Administrative Tribunal in O.A.Nos.977/2003 & 277/2004. Short facts leading to the case are the following:

2. The respondents in the writ petitions are working as Casual Labourers and they approached the Tribunal to issue appropriate directions to take immediate steps to appoint them as Group D against 25% quota set apart for casual labourers under the relevant recruitment rules 2002. The respondent in writ petition

No.36118/2006 who is the applicant in O.A.977/2003, has been doing sweeping work in the office of the Senior Superintendent of Post Offices, Kollam Postal division, Kollam. She was appointed as a full time casual labourer with effect from 1.1.1997 and is continuing as such. The Department has conferred temporary status to him in implementation of an earlier order passed by the Tribunal. The respondent in Writ Petition No.4956/2006 who is the applicant in O.A.277/2004 was conferred with temporary status with effect from 2.5.1999. In both cases the respondents claim their right for appointment against 25% vacancies of Group D posts.

3. The Tribunal in paragraphs 9 and 10 of the order, after considering the contentions of the parties, found that the method of recruitment provided in claims like these, is in the nature of promotion and it is not by way of any direct recruitment. It was also found that the contention raised by the petitioners that approval of the Screening Committee is mandatory for filling up of the posts, is not correct. The Tribunal, on an analysis of the relevant column of the recruitment rules, clearly found that the casual labourers who are entitled to be considered for promotion was left out from being promoted, resulting in discriminatory treatment. The Tribunal clearly found that there were sufficient vacancies which would definitely fall under the 25% category set apart for casual labourers. This being a finding of fact, it cannot be interfered with in proceedings under Article 227 of the Constitution of India and the petitioners could not point out that the said finding is perverse.

4. As far as the claim of the respondents for promotion is concerned, the petitioners clearly admitted in the pleadings that the applicant in O.A.277/2004, the respondent in Writ Petition No.4956/2006 is the seniormost eligible to be appointed and the respondent in writ Petition No.3618/2006 is the second in the list. They being casual labourers with temporary status, they are clearly covered by the method of recruitment. Accordingly, the Tribunal directed the petitioners to fill up the substantive vacancies in Group D which arose in Kollam Division in accordance with the relevant recruitment rules and to appoint the respondents to those posts from the date of vacancies.

5. The main contention raised by the petitioners is that prior approval of the Screening Committee is a must for filling up of the vacancies and also that the method of recruitment is only by way of direct recruitment. A reading of the recruitment rules will show that the contention raised by the petitioners that only direct recruitment is the method, is not correct. Apart from that, they are not justified in contending that prior approval of the Screening Committee is required, as the same is not provided under the recruitment rules. The finding rendered by the Tribunal that the respondents who are applicants before it are entitled for promotion, is therefore perfectly in order. At any rate, the view taken by the Tribunal is not so perverse warranting interference by this court under Article 227 of the Constitution of India.

Hence, the writ petitions are dismissed upholding the order of the Central Administrative Tribunal."

17. Similarly, the order of this Tribunal dated 23.12.2005 in O.A.115/2004 held as under:

"6. Nowhere it is mentioned in the above rules that the method of recruitment is by way of direct recruitment. According to the rules, the first method to be followed is by a test to determine the eligibility of the candidates holding the post specified in the rules and in case suitable candidates are not found, the remaining posts shall be filled up 75% by GDS of the Recruiting Division or Unit failing which by GDS of the neighbouring Division or Unit by selection cum seniority and 25% from casual labourers under four sub categories namely, (1) temporary status, (2) full time labourers of the recruiting division, (3) full time casual labour of the neighbouring division or unit failing which by (4) part time casual labour in that order."

18. Again the Hon'ble High Court in W.P.22818/2006 dated 22.3.2007 confirmed the aforesaid order as under:

"Therefore, the Tribunal was right in holding the Casual Labourers have got a claim in respect of 25% of the vacancies remaining unfilled after recruitment of employees mentioned at serial No.2 and such vacancies shall be filled up by selection cum seniority in the order mentioned in that column itself. The contention raised by the petitioners therefore falls to the ground.

6. The Tribunal was right in holding that Annexure R2 relied upon by the petitioners cannot have the effect of modifying the recruitment rules. The relevant recruitment rules do not provide for any clearance from the Departmental Screening Committee. If at all there was a ban, it was limited to direct recruitment vacancies going by paragraph 3 of Annexure R2. Hence, the argument raised by the petitioners in that regard was also rejected rightly by the Tribunal. The Tribunal has only directed the petitioners to assess the actual number of vacancies and fill them up according to the recruitment rules and consider the applicant in his turn in accordance with the preference provided for in the said rules. We find that the view taken by the Tribunal is not perverse warranting interference under Article 227 of the Constitution of India.

7. Therefore, the writ petition is dismissed."

19. This issue was again considered extensively in O.A.346/2005 – **K.Sasidharan & others v. Senior Superintendent RMS EK Division, Ernakulam & others** decided on 2.11.2007. The operative part of the said order is worth reproducing here as under:



11 On a wholesome reading of the columns pertaining to the selection and mode of recruitment as provided in the schedule to Part 1 of these rules it can be reasonably concluded that the scheme of recruitment envisaged only "promotion" by "selection-cum-seniority" initially from the categories as mentioned in the category 2 in schedule 2 and in case such categories are not available by the same method of "selection cum seniority" from the categories as mentioned in col. 11 of the Recruitment Rules in accordance with the percentages as stipulated. Only if any of the above methods fail the provision had been made in for "direct recruitment." Since the term "direct recruitment" is specifically referred to in the Recruitment Rules with reference to failing which clause as a last resort, it would be a natural corollary that the rest of the procedure should be construed as promotion. This view is further fortified by the provision of the Recruitment Rules relating to the consideration of the DPC and also by the method of selection prescribed as "selection cum seniority". In a case of direct recruitment there is no scope for seniority. Even if there is any ambiguity in the Recruitment Rules, a harmonious interpretation of the various provisions in the rules has to be undertaken and on that basis we had come to the conclusion that the selection of GDS under the 75% quota and also the selection of Casual Labourers under the 25% quota would fall under the category of promotion only. The orders in the OAs referred to supra and as confirmed by the Hon'ble High Court relate to part-time and full time Casual Labourers under the same rules who qualified under the 25% quota. However, the principle whether the method of selection was direct recruitment or promotion would remain the same for both the categories. We therefore reiterate our earlier view. In this context, advertizing to Annexures R-4 and R-5 orders of the Full Bench of this Tribunal referred to by the respondents, it is seen that Annexure R-4 order that the points referred to the Full Bench were whether the appointment of GDS as Postman in the 25% seniority quota is by way of direct recruitment or promotion. The rules of promotion to the post of Postman are entirely different from the rules in question in this O.A. Therefore, any reliance of this has no basis. Similarly Annexure R-5 order on the Full Bench the point of reference were as follows:

- (i) Whether the post of Extra Departmental Branch Postmaster being a feeder post for further promotion to group-D is a public post?
- (ii) Whether the service rendered as EDBPM followed by promotion as Group-D employee which is a pensionable post can be taken into consideration for the purpose of determining as qualifying service for the purpose of pension and other benefits?
- (iii) Whether the view taken by a Division Bench of this tribunal in O.A. NO. 283/HP/2003 (Rattan Singh Vs. Union of India and others) decided on 4.4.2003 is correct view?

Hence the legal question referred to the Full Bench was whether the service rendered as an EDA can be considered as qualifying service

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for purpose of pension on the ground that it is a public post. It is also an entirely unrelated issue and the Recruitment rules for the post of Group-D which is under consideration in this case were not covered by the above judgment. Hence we do not find that as far as this issue is concerned the stand of the respondents is legally defensible and the matter has already been settled by other earlier decisions as confirmed by the Hon'ble High Court.

12 The second aspect is whether for filling up the existing vacancies the approval of the Screening Committee is required or not. The answer to this question flows directly from the decision above whether the posts are to be filled up by direct recruitment or by promotion. It is clear that Annexure R-2 memorandum of the Department of Personnel and the instructions contained therein was limited to direct recruitment vacancies. Para 3 thereof is specific in this regard and this was already dealt with by us elaborately in our order in O.A. 115/2004. Therefore the reliance of the respondents on the Memorandum again has no basis and only shows the reluctance on the part of the respondents to accept the settled legal position. It is no doubt, true that it is the prerogative of the Department to take a conscious decision whether at any point of time the vacancies arising should be filled up or not. They can take a conscious decision not to fill up a post on the existence of a situation. While accepting their reliance on such a ratio in the judgment of the Hon'ble Supreme Court in AIR 1991 SSC 1612. It is also true that the court further observed therein:

“However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test, and no discrimination can be permitted.....”

There is no such stand taken by the respondents that they had taken any such decision not to fill up the posts.

13 The applicants have claimed that there are 27 vacancies, the respondents have now stated that from the year 2005, 29 posts are lying vacant of which 8 Group-D posts are to be abolished. This is a decision within the authority of the department and we cannot find fault with the same. However, it is not clear whether this recommendation for abolishing the 8 posts was accepted by the competent authority. In any case, the respondents have admitted that there are three posts vacant at present but they are unable to fill up those posts since the clearance of the Screening Committee is awaited. We have already held that the approval of the Screening Committee is not mandatory for filling up the vacant posts by promotion in accordance with the Recruitment Rules. A decision for abolishing the posts has to be distinguished from a decision for getting the clearance for filling up. While abolishing is a permanent measure, obtaining clearance is a temporary restriction imposed by certain instructions. In this case it has been found that the restriction would operate only in the case of direct recruitment. Therefore, it is to be reiterated that such a clearance from the Screening Committee is not required to go ahead with the filling up of the three vacant posts admittedly available in the Division and the Screening Committee can be apprised of the position.

14 In the result, the respondents are directed to consider the case of the applicants excluding applicants 1 & 3 in accordance with their rank and seniority under the 75% quota set apart for Gramin Dak Sevaks under the Recruitment Rules 2002 without waiting for clearance of the Screening Committee and to promote them according to their eligibility and seniority against the available vacancies. It shall be done within two months from the date of receipt of this order. The OA is disposed of as above. No costs."

20. We have heard Shri Martin G Thottan, counsel for applicant and Shri S Abhilash, ACGSC for respondents 1 to 3.

21. Admittedly, between the years 2002 and 2005, 10 vacancies of Group D have arisen in Kottayam Division. Out of them, only 4 vacancies have been filled up. The only reason given by the respondents in not filling all the vacancies in accordance with the provisions contained in the Department of Posts Group 'D' posts) Recruitment Rules, 2002 and the instructions contained in the DG, Posts letter No.47/11/93-SPB.I dated 25.5.1993 and of even number dated 31.3.1994 (supra) is that the Screening Committee have not cleared those vacancies. Since this Tribunal vide common order dated 7.10.2005 in O.A.977/2003 and 277/2004 (supra) has categorically held that the Screening Committee's approval was not mandatory in filling up the posts with reference to the Recruitment Rules and the Hon'ble High Court of Kerala has upheld the aforesaid order vide judgment dated 22.3.2007 in W.P.(C) No.3618 and 4956 of 2006 (supra) the aforesaid reason of the respondents is no more valid. The order of this Tribunal in O.A.115/2004 dated 23.12.2005 and the judgment of the High Court of Kerala in C.M.P.No.22818/2006 dated 22.3.2007 (supra) are also an identical lines. Again, this Tribunal has passed similar orders in O.A.346/2005 (supra) on 2.11.2007. We also, therefore, reiterate that the clearance from the Screening Committee cannot be validly held as a pre- condition for promoting the GDSs or the Casual Labourers in accordance with the Recruitment rules. It is a well accepted principle that when a field is already occupied by statutory provisions,

no policy order contrary to it can be followed unless the rules are amended correspondingly to implement the order. It was because the respondents have not considered the applicant for promotion to Group 'D' in time in accordance with the Recruitment Rules that he could not be appointed as Group 'D' before he has crossed the maximum age limit prescribed by the respondents for such appointment.

22. The Apex Court in **Nirmal Chandra Bhattacharjee & others v. Union of India & others** [1991 Supp (2) SCC 363] has held as under:

"The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants."

The respondents shall, therefore, hold a review DPC for promotion to the post of Group D and consider the applicant for promotion on the basis of his seniority and appoint him as Group D with retrospective effect from the date he became due for that post on the availability of vacancy. In the facts and circumstances of this case, the principle of "no pay for no work" during the period of notional promotion will not applicable in the present case.

23. In **Rajappan Nair v. State of Kerala** [1984 KLT 141], the Hon'ble High Court of Kerala considered the question whether a Government servant not promoted in time for no fault of his and later promoted with retrospective effect is entitled to restoration of his all benefits due to him or not and held as under:

"It is quite often happens that a Government servant does not get his due promotion on the date he ought to have got it, but later it is given to him with retrospective effect from an earlier date. If for no fault of his, promotion to a Government servant is delayed was due, the Government servant is naturally entitled to restoration of the benefits which he has lost not on account of his conduct or laches. It is only proper that the Government should restore to him all that is lost by way of salary or other emoluments. This is a principle stated by our learned brother Khalad J, in *Narayana Menon*

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v. *State of Kerala*, 1978 KLT 29, a principle concerning which we could not see how any exception could be taken. Since the question has been elaborately considered by our learned brother with which we are in respectful agreement we do not think we should go into this any further."

24. In **Nelson Edward v. KSRTC** [ILR 1991 (3) Kerala 98] the Hon'ble High court of Kerala has held as under:

"This attitude cannot be approved, since this court has repeatedly said that when on a particular day or for a promotion with effect from a particular date and for no fault of his, the same was denied, he is entitled to all the benefits, as if he has been appointed on the day on which he has been appointed."

25. In **Soman v. State of Kerala** [1992(1) KLT 83] also the High Court of Kerala has had the same view and observed that it was only proper that Government should restore all that is lost by way of salary or other emoluments for no fault of the employee. The operative part of that judgment reads as under:

"5. The essential principle to be borne in mind is that a Government Officer cannot be penalised for no fault attributed to him. It is against all legal principles and fair pay for any Government to take the stand that a mistake committed by the Government should remain eternally detrimental to the interests of the Government servant. It is indeed difficult to hold that a Government servant has forfeited his claim for arrears of salary when he did not get his due promotion for no fault attributable to him. In *Narayana Menon v. State of Kerala* (1978KLT 29) this Court held that a Government servant does not forfeit his claim for arrears of salary when he did not get his due promotion by a mistake of the Government. The above decision was approved by a Division Bench of this Court in *Rajappan Nair v. State of Kerala* (1984 KLT 141). This Court held that it is only proper that the Government should restore to the officer all that was lost by way of salary or other emoluments."

26. In **Somakuttan Nair v. State of Kerala** [1997 (1) KLT 601] the High Court held that when an individual is entitled to get promotion from an earlier date and such a promotion was unjustly denied to him, such mere retrospective promotion will stand an entirely different footing and he shall be declared entitled



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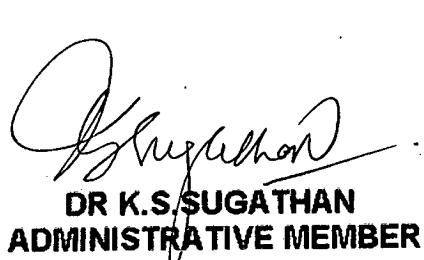
26. In **Somakuttan Nair v. State of Kerala** [1997 (1) KLT 601] the High Court held that when an individual is entitled to get promotion from an earlier date and such a promotion was unjustly denied to him, such mere retrospective promotion will stand an entirely different footing and he shall be declared entitled to get monetary benefits also. The operative part of the judgment reads as follows:



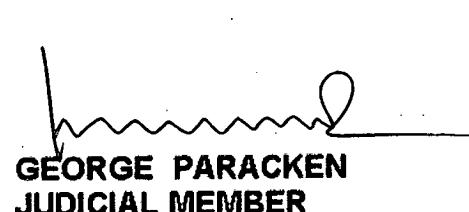
"When a Court declares that a particular individual is entitled to get earlier date of promotion and such a promotion was unjustly denied to him, such retrospective promotion will definitely stand on an entirely different footing."

28. It is a well settled law that valid rules made under the proviso to Article 309 of the Constitution of India operates so long as the said rules are not repealed or replaced. The respondents, therefore, cannot make the provisions of Department of Posts (Group D Posts) Recruitment Rules 2002 inoperative partially or fully holding that an extraneous authority, viz, Screening Committee should clear the vacancies and then only the selection committee can fill up the available vacancies.

29. We, therefore, declare that the applicant was entitled to be considered for appointment as Group 'D' in his turn when the vacancy was available in accordance with the provisions contained in the Department of Posts (Group D Posts) Recruitment rules, 2002 and the instructions of DG Posts letter No.47-11/93-SPB.I dated 25.8.1993 and of even No. dated 31.3.1994. The respondents shall hold review DPC and consider the applicant for promotion as Group 'D' with reference to the vacancy against which he should have ordinarily been considered in his turn in accordance with the Recruitment Rules and if he is found suitable, he shall be appointed retrospectively from that date as a Group 'D' with all consequential benefits including seniority, arrears of pay and allowances etc. The aforesaid direction shall be complied with within a period of two months and necessary order shall be issued. There shall be no order as to costs.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER