

Central Administrative Tribunal
Ernakulam Bench

OA 592/2013

Wednesday this the *23rd* day of March, 2016

CORAM

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

E. Valsala
W/o Thankappan M,
working as Postman, Neyyattinkara.
Residing at Punnavila, Pappanam,
Ambalathinkara P.O., Kattakkada-695 572
Thiruvananthapuram.

Applicant

(By Advocate: Mr. M.R. Hariraj)

Versus

1. Union of India
represented by the Secretary
Department of Posts
Ministry of Communication
New Delhi-110 001.
2. Chief Post Master General
Kerala Circle
Thiruvananthapuram-695 033.
3. Superintendent of Posts
Thiruvananthapuram South Division
Thiruvananthapuram-695 036.

Respondents

(By Advocate: Mr. Thomas Mathew Nellimoottil)

The OA having been finally heard on 16th February 2016, this
Tribunal delivered the following order on 23.3.2016



ORDER

By P. Gopinath, Administrative Member

Applicant has filed this OA seeking the following reliefs:-

(i) Declare that the applicant is entitled to be granted notional appointment as Postman with effect from 2002 with all consequential benefits.

(ii) Quash Annexure A3 to the extent it refuses appointment to the applicant as Postman with effect from the year 2002.

(iii) Direct the respondents to treat notional service as qualifying service and fix applicant's pay with effect from her notional date of appointment in 2002 and to grant her notional increment and all attendant benefits.

2. The applicant commenced service as Extra Departmental Delivery Agent in Thiruvananthapuram South Postal Division with effect from 8.4.1980. Applicant submitted her willingness to work as Postman and was subsequently selected as Postman against one unreserved shortfall vacancy of 2006 on the basis of seniority, with effect from 14.12.2010. Despite this appointment, the notional service from 2006 to 14.12.2010 was not taken into account for fixation of pay. According to the applicant, identical issue was dealt with in OA No.649/2011. As per order in OA No.649/2011 (Annexure A5), persons who were appointed on notional basis were declared to be eligible for pay from the date of occurrence of vacancy. As evidenced from Annexure A6 RTI information, a number of vacancies remained unfilled for the years 2002-2010. However, the respondents did not fill up those vacancies. The applicant is aggrieved by the refusal of the respondents to appoint the applicant against the vacancy of 2002 and to fix the pay from the date of occurrence of vacancy. Hence this OA.



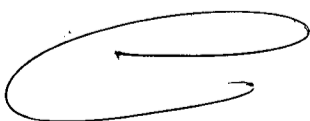
3. Respondents in their reply statement contend that as per Recruitment Rules prevailing, 50% of departmental quota vacancies were to be filled in by promotion of Group-D officials who qualify in the examination according to their seniority in Group-D cadre and the remaining 50% of Direct Recruitment quota vacancies cleared by the Screening Committee were to be filled from amongst the GDS officials. One half of these vacancies of Postman were to be filled up from amongst GDS officials on the basis of seniority and the other half were to be filled in from amongst the GDS on the basis of merit in the examination. As per DoPT letter dated 16.5.2001, from 2000-2001 onwards, all DR vacancies in Group-B, C and D should be filled only after being cleared by the Screening Committee. It is further submitted that the applicant cannot be granted notional appointment from 2006 as approval for filling up of the vacancies pertaining to the year 2006 was received only in 2009. If the applicant is given notional appointment from 2006, the seniority of those officials who were selected under UR category in the seniority quota for the year 2007 but who were senior to the applicant would become junior to her, which is not permissible. Placing reliance on order in OA No.145/10, the respondent avers that it is settled law that the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts. An employee does not have an indefeasible right to promotion. The right is for consideration only. It is further contended that various SLPs are pending before the Apex Court regarding the question whether appointment of Postman from GDS is by way of promotion or direct recruitment and that



the issue had not attained finality. The respondents had only followed the extant instructions in accordance with the Screening Committee regulations.

4. Heard learned counsel for the applicant and respondents and perused the written submissions made. The issue for consideration as raised in the grounds is the fixation of pay of applicant by taking the notional service of the applicant from 2006 to date of appointment 14.12.2010 and fix notional increment from date of notional appointment and actual pay from date of assuming charge in the post. The applicant's relief is also for notional appointment as Postman with effect from 2002 with notional increments from the said year.

5. The applicant's turn for promotion as Postman arose as a consequence of a vacancy which arose in 2006 as Sri N.Murukan, GDS MC Kokketala who had been selected under GDS seniority quota did not join the post. Sri Murukan who did not join the above Postman post, joined as a Group-D on 19.07.2010. The recruitment of Postman for the vacancies of 2007, 2008 and 2009 was over by the time Murukan took a decision to join/not join in the Postman vacancy of 2006. When recruitment for the vacancies of the years 2006-2009 was made, GDS senior to applicant were selected and appointed as Postman. The respondent contends that if notional appointment is given from an earlier year, then this would adversely affect the seniority of those officials who were selected in the seniority quota in the vacancy years of 2007 onwards, who were senior to the applicant. Thus the applicant is seeking a benefit out of turn, by upsetting the settled seniority position of those who are senior to her in the GDS seniority list. Such an



injustice of upsetting the settled GDS seniority should not be allowed to take place. The specific GDS officials who would be affected as seen from Annexure R4 are Sri R.Manikantan Nair, GDS MD, Veliyanur BO and Sri K. Anil Kumar, GDS MD, Kaanjirampara BO whose position is at S.No.54 & 55 respectively in the GDS seniority list. Applicant's seniority in the GDS seniority list is at S.No.66 and is therefore junior to the two GDS at 54 & 55 mentioned above. Hence any notional seniority given to applicant cannot be above these two senior officials.

6. The appointment of Postman from GDS has not attained finality as there are three SLPs 35323/12, 1799/13 and 22823/13 pending before the Apex Court. Any request for notional seniority cannot be granted or acceded to at the cost of others who are senior to applicant. The year of vacancy cannot be used to determine seniority, particularly when such a relief will upset the settled GDS seniority. Hence the applicant's seniority in the Postman Cadre be fixed below GDS Sri Anil Kurian who is senior and the applicant be given notional appointment accordingly as per eligible date. The respondent will work out the effective date of appointment as directed above and fix the pay of applicant from the effective date of such notional appointment with notional increments and to regulate the pay of the applicant accordingly, but without the arrears of pay and allowances on the principle of no work no pay. The actual pay will be from the date the applicant has assumed charge. OA is disposed of with directions as above.



(P.Gopinath)
Administrative Member



(N.K. Balakrishnan)
Judicial Member