

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.597/2005

Friday, this the 11<sup>th</sup> day of Aug: 2006.

**CORAM:**

HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

R. Babu,  
Working as Telegram Messenger,  
Pooyappally Post Office,  
Residing at Kuttikkattu Melathil,  
Puthenveedu, Pooyappally P.O.,  
Kottarakara. Applicant

(By Advocate Shri P.C. Sebastian)

VS.

1. The Assistant Superintendent of Post Offices,  
Kollam South Sub Division,  
Kollam – 691 001.
2. The Senior Superintendent of Post Offices,  
Kollam Division,  
Kollam – 691 001.
3. The Chief Postmaster General,  
Kerala Circle, Thiruvananthapuram.
4. The Union of India represented by  
Secretary to Govt. of India,  
Ministry of Communications,  
Department of Posts, New Delhi.

(By Advocate Shri P.S.Biju, ACGSC)

The application having been heard on 1.8.2006  
the Tribunal on ...11-8-06...delivered the following

ORDER

## HON'BLE MR. K. B. S. RAJAN, JUDICIAL MEMBER

The applicant through this O.A. has claimed that he should be declared as a part time casual labourer for the purpose of preferential treatment in respect of appointment as GDS, or, in the alternative, to be made entitled to be considered for appointment to that post in the reserved quota of Physically Handicapped person.

2. The brief facts of the case are as under:

The applicant is a Physically Handicapped person, which is substantiated as per Annexure-A1. Consequent on the abolition of the post of Gramin Dak Sevak Mail Messenger at Pooyappally Sub Post Office, the applicant was engaged as Casual Labourer w.e.f 1.1.2002 to deliver the telegrams, but he was not issued any appointment order. The wage was given to him at the rates prescribed for delivery of telegrams and it was given on monthly basis. As per DG(Posts) letter dated 17.5.1989 (A2), all daily wagers (Mazdoor, casual labourers, outsiders etc. ) working in the Post Offices or in RMS Offices, are to be treated as casual labourers, either full time or part-time, depending upon the duration of their duty hours.

3. It is averred in the O.A. that, as per DG, Posts' letter dated 6.6.1988, casual labourers, whether full time or part time, who are willing to be appointed in ED (GDS) vacancies are to be given preference in the matter of recruitment to such vacancies, if they possess the prescribed qualifications and have completed one year service. The 3<sup>rd</sup> respondent as per his letter No.Rectt/27-1/IV dated 31.3.1992 has instructed all his subordinate authorities concerned to follow the said instructions strictly so that there should be no room for complaints from the casual labourers. It is also averred that, no physically handicapped persons have been given appointment in the GDS Cadre under the 1<sup>st</sup> respondent and as such he has an additional claim for appointment in the reserved category of physically handicapped. The applicant on 13.1.04 has made a representation-A5(a) to the 1<sup>st</sup> respondent requesting to consider him for appointment in the existing vacancy of GDS Mail Deliverer/MC at Kummalloor B.P.O.under the jurisdiction of the 1<sup>st</sup> respondent which is not yet disposed of. Aggrieved by the same, the applicant has approached this Tribunal in O.A.475/04 seeking a declaration that the applicant was entitled to be considered for appointment in the existing vacancy of GDS MC, Kummalloor . This Tribunal disposed of the said O.A. as per order dated 25.6.2004 directing the 1<sup>st</sup> respondent to consider and dispose of the representation and to pass appropriate orders within two months.. Vide order dated 12.8.04 the representation submitted by the applicant was rejected stating that he is not eligible for the same, since he does not come under the category of part-time casual labourer . Aggrieved by A-8 he filed this O.A..

4. The respondents have contested the O.A. and their stand is as under:

There is no post of casual labourer in the office for delivery of telegrams. An outside person engaged to deliver telegrams on coolie charges does not come under the category of casual labourer. The applicant is not a daily wager and as such, he cannot be treated as casual labourer as per A-2. Preference is being given to casual labourers in the recruitment of GDS agents. Since the applicant is not a casual labourer, he cannot be given any preference. The applicant in O.A.818/2000(A-6) is not similarly situated as the applicant in this case. Therefore, the order in that O.A. does not apply to the instant case. The vacancy applied for by the applicant is not earmarked for physically handicapped candidates. His candidature can be considered only for those vacancies which are reserved for physically handicapped persons and if he applies for such posts as and when notified.

5. In his rejoinder, while reiterating his stand the applicant has also annexed a copy of the order dated 9.12.02 in O.A. 425/02.

6. Arguments were heard and documents perused. Counsel for the applicant submits that, the fact that the applicant has been engaged by the respondents for delivery of telegrams right from 1.1.2002 has not been denied. Again his engagement in such a capacity was consequent on the abolition of the post of GDS Mail Messenger, Pooyappaly. He has relied upon the decision of this Tribunal in O.A.425/02 wherein the applicant was a Telegram Messenger and on identical contentions preferred by the respondents as in the instant O.A., the Tribunal negatived the same and held that the applicant in the said O.A. is entitled to the benefits of the order dated 6.6.88 as per which, preference has to be given to the Telegram Messengers treating them as Casual labourers.

7. Per contra, the counsel for the respondents submits that the said decision of this Tribunal cannot be considered as a good precedent because, in that case, the documents relating to payment of wages/delivery charges were not made available wherein in the instant case, the respondents were made available a copy of the memo of charges for the month of May 2006 as per which the applicant was paid the delivery charges at the stipulated rates. Delivery charges are in accordance with Clause 39 of Postal Manual vol (6) Part III- (Part-VII- Accounts), an attested copy of which has also been produced by the respondents.

8. It is also stated by the counsel for the respondents that the order dated 9.12.02 in O.A.425/02 was not appealed against and the same, was implemented by considering the applicants therein for engagement as a GDS. When such is the situation we are of the considered view that, since the decision to implement the aforesaid order was taken consciously and since the case of the applicant herein is identical to that in the other O.A., the applicant's claim to treat him at par with the applicant in O.A.425/02 cannot be rejected, otherwise, it would lead to a hostile discrimination.

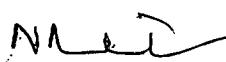
9. In view of the above, the O.A. succeeds. Respondents shall consider the case of the applicant for appointment to the post of GDS in the same fashion as they did in the case of John Mathew, the applicant in O.A.425/02, in case when a vacancy falls under physically handicapped quota and, if the applicant applies for the same, he shall be considered in that quota as well.

10. It is made clear that the applicant has to make a proper application as and when vacancies are notified by the respondents and preferential treatment be given to him by the respondents, to the extent that other things being equal, preference be given to the applicant in respect of appointment.

11. As the compliance of this order depends upon the availability of vacancy, no time limit can be calendared for compliance of this order.

12. In the above circumstance, there shall be no order as to costs.

Dated the ..... 11th ..... August, 2006.

  
**N.RAMAKRISHNAN**  
ADMINISTRATIVE MEMBER

rv

  
**K.B.S.RAJAN**  
JUDICIAL MEMBER