

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.613/2000

Thursday, this the 18th day of July, 2002.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.J.Paul,
(Group 'D' Adhoc),
Extra Departmental Packer,
Kerala Circle Stamp Depot,
Kochi-20. - Applicant

By Advocate Ms K Indu

1. Union of India represented by
its Secretary,
Ministry of Communications,
Department of Posts,
New Delhi.
2. The Postmaster General,
Central Region,
Kochi.
3. The Superintendent,
Kerala Stamp Depot,
Ernakulam, Kochi-20. - Respondents

By Advocate Mr R Madanan Pillai, ACGSC

The application having been heard on 27.6.2002 the Tribunal on
18.7.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The grievance of the applicant who is working as a
provisional Group'D' on ad hoc basis in the Kerala Circle
Stamp Depot(KCSD for short), Kochi, is that the respondents
have not so far considered him for regular promotion to the
post of Group'D' to the KCSD, Kochi. The brief facts are:

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2. The applicant was appointed as Extra Departmental Packer, KCSD, Kochi with effect from 12.1.91 as per A-1 order dated 2.1.91 of the Superintendent⁷ of KCSD, Kochi. He has several years of service as Casual, Labourer to his credit. KCSD is a separate recruitment unit, as is evidenced by A-2 communication dated 24.1.90. Thus EDAs of that unit would get a preference in the matter of filling the vacancies of Group'D'. A-3 seniority list in respect of KCSD, Kochi would show that the applicant is the seniormost EDA in that unit. Hence he would be entitled to be considered for promotion as Group'D' in preference to others. By A-4 representation dated 7.11.96 addressed to the 3rd respondent, the applicant made a request for granting him promotion as Group'D' in one of the posts of Chowkidar/Carpenter at the said unit. On O.A.No.1463/96 filed by the applicant seeking a declaration of his eligibility to be considered for appointment as Chowkidar, this Tribunal took note of the respondents' submission that in accordance with the recruitment rules in force, Group'D' posts arising in the KCSD were being filled up by the ED Agents working in the said unit according to seniority and that the applicant would be appointed according to his seniority as and ~~would~~ when vacancy of Group'D'/arise(A-5). The applicant expected that he would be considered for promotion when one P.V.Joseph, ~~was~~ Group'D'/promoted to the post of Postal Assistant on 22.4.97. As per A-6 order dated 3.11.97, the applicant was given appointment as Group'D' on purely ad hoc and temporary basis for 3 months with effect from 1.11.97. The applicant still continues as Group'D' on ad hoc basis although on his further request for promotion on regular basis, he was informed that

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his case could not be considered on account of the ban in recruitment to Group'D' post. The applicant's case is that several Group'D' posts in other units have been filled, that there is an existing regular vacancy in the unit and that the inaction on the part of the respondents in giving him appointment against the existing vacancy is unjust and arbitrary. The respondents while accepting the position that the applicant had a case for appointment as Group'D' on account of his being the seniormost ED Agent in the unit, have stated that the post of Group'D' that fell vacant on 22.4.97, on account of Shri P.V.Joseph's promotion as Postal Assistant could not be filled owing to the ban imposed on recruitment to Group'D'. According to the respondents, the applicant was appointed as Group'D' on ad hoc basis on daily wages and he was still continuing in the same position. The challenge against the ban on recruitment to Group'D' posts on regular basis had been subject matter of litigation which culminated in the judgement of the Hon'ble High Court of Kerala in O.P.No.25172/98 dated 30.3.2000. The Hon'ble High Court has ordered to make executive orders prescribing upper age limit for recruitment on Group'D' and the matter is now pending before the Postal Directorate for final decision. There was no wilful denial of promotion to the applicant and the applicant's case would be considered as soon as the Postal Directorate takes a decision with regard to the upper age limit for recruitment to the post of Group'D'. It is further pointed out by the respondents that the Chowkidar's post that fell vacant was sought to be filled by promoting the applicant in the light of O.A.1463/96 was subsequently abolished and hence the applicant could not be considered for the same.

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3. We have heard Ms.Indu, learned counsel for the applicant and Shri R Madanan Pillai, learned ACGSC for respondents.

4. Reiterating the pleadings in the O.A., the learned counsel for the applicant has contended that the applicant, admittedly, the seniormost ED Agent in the Unit had the right to be considered for regular promotion as Group'D' with effect from 22.4.97 in the light of the findings of this Tribunal in A-5 order. There was no ban in respect of recruitment to Group'D'. R-1, R-2 and R-3 do not show that the respondents were prevented from filling up the real vacancy which arose and which was due to the applicant on account of his seniority. Shri Madanan Pillai, learned ACGSC, however, would contend that there was an order restraining the Heads of Divisions/Units making recruitment to Group'D' post on regular basis and that such ban had arisen out of the issue. Fixing the upper age limit for EDAs for purposes of recruitment to the post of Group'D' was pending final decision. It is pointed out by the learned ACGSC that in the light of the High Court's order dated 30.3.2000(R-3), steps have been taken to fill up the Group'D' post provisionally on the basis of seniority although the question of fixing upper age limit for such recruitment was yet to be finally decided upon. Accordingly, the applicant has been provisionally appointed as Group'D' in KCSD with effect from 9.10.2000 in pursuance of the directions contained in Postal Directorate's letter No.66-82/87-SPB.I dated 21.9.2000. Learned ACGSC would urge that the ban was thus removed with the Hon'ble High Court of Kerala's order dated 30.3.2000 in O.P.25172/98(S).

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5. On a careful consideration of the pleadings and other material on record and the submissions made by the learned counsel on either side, we are of the considered view that the respondents' contention that the applicant could not be given promotion to Group 'D' from ED Agents, is untenable. There was no real ban at any time and in any case respondents were under an obligation to consider eligible candidates from amongst ED Agents subject to fulfilment of other conditions for the post of Group 'D' as and when vacancy arose. The respondents would rely on R-1 and R-2 orders of this Tribunal and the R-3 order of the Hon'ble High Court of Kerala to support their contention that there was a period of certainty with regard to the fixation of upper age limit and this prevented the respondents from holding any recruitment to Group 'D'. However, in our opinion, R-1 and R-2 orders of this Tribunal and R-3 order of the Hon'ble High Court of Kerala do not support the theory that there was any ban on recruiting the seniormost eligible ED Agents as 'Group 'D' against actual vacancy that arose. In R-1(O.A.155/95 dated 6.3.96), this Tribunal was concerned with the Director General of Posts & Telegraph order fixing an upper age limit of 50 for appointment of ED Agents as a Group 'D' worker. This Tribunal observed that all powers available under the statutory rule/be could exercised reasonably and directed the respondents to hold fresh selection with reference to the date on which the vacancy arose and consider the case of the applicant therein on merits. In R-2 order (O.A.239/98 and 449/98 dated 26.8.98), this Tribunal considered the claim of the applicants therein for the post of Group 'D' against the existing

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vacancies. After considering the alleged ban on account of the absence of a valid provision regarding upper age limit in the recruitment rules, this Tribunal held that there was "no justification at all for the respondents in these cases to delay the recruitment to Group 'D' post in the Postal Department to the detriment of the applicants who were ED Agents..." The Tribunal went on to direct the respondents as follows:

"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 E.D.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 E.D.Aagents 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."

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It is true that/undecided question relating to the maximum permissible age limit was the subject matter of consideration of the Hon'ble High Court of Kerala in O.P.No.25172/98(S) arising out of O.A.239/98 and 449/98(referred to herein as R-2). Apparently, there was no stay of the Tribunal's order. The operative part of the Hon'ble High Court's order is quoted below:

"In view of the aforesaid limited nature of the controversy, we feel that so long as the rules which are stated to be pending consideration for amendment have not come into force, executive power can be exercised as provided in law. In the absence of statutory rules, administrative orders can govern the field. To avoid inconvenience to all concerned, the employer may consider taking action under the executive power in the matter of appointment. This

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exercise can be undertaken so long as the rules sought to be amended are not brought into operation."

6. In our opinion, there is no material reason to withhold the applicant's promotion in the light of the vacancy and in view of his seniority. The respondents have no good explanation for not filling a regular vacancy of Group'D' by promoting the indisputably seniormost EDA, viz, the applicant. One Shri P.V.Joseph, Group'D' was promoted as Postal Assistant and a Group'D' vacancy thus arose from 22.4.97. The applicant being the seniormost ED Agent had a legitimate claim. The applicant is seen to have been holding the post on ad hoc basis. It is understood that by order dated 9.10.2000, the applicant has been provisionally appointed as Group'D' in the KCSD against the vacancy of 1997 which arose when Shri P.V.Joseph was promoted as Postal Assistant in pursuance to the directions contained in Postal Directorate's letter No.66-82/87-SPB.I dated 21.9.2000. This Tribunal's observations while disposing of O.A.1463/98(A-5 order dated 7.2.1997) confirm the view that the respondents had agreed that the applicant would be appointed according to his seniority as and when vacancy of Group'D' arose. In our view, the applicant who has been continuing in that post on ad hoc basis since 1.11.97 has a right to be considered for regularisation since he had been working on ad hoc basis in the very same post against the very same vacancy which was sought to be provisionally filled by the order dated 9.10.2000.

7. In view of the aforesaid facts and circumstances, we direct the respondents to consider the applicant for promotion to the post of Group'D' in the existing vacancy on regular

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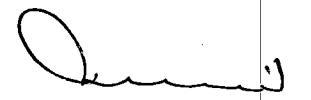
basis with effect from 1.11.97 being the date on which he had been appointed on ad hoc basis and to consider his regularisation in accordance with the extant rules, instructions and orders, untrammelled by the controversy regarding the upper age limit for recruitment to Group 'D' from amongst ED Agents, since that was not a relevant matter as far as the applicant's case was concerned. It is further declared that the applicant is entitled to all consequential benefits, including arrears, if he is not found otherwise unsuitable for appointment as Group 'D' with effect from 1.11.97. The respondents are directed to comply with the above directions within a period of two months from the date of receipt of copy of this order.

8. The application is allowed as aforesaid. There is no order as to costs.

Dated, the 18th of July, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the appointment letter No.SD/EDP/4 dt.2.1.91 issued by the 3rd respondent.
2. A-2: True copy of the letter No.B3/Gr'D/Exam/90 dt.24.1.90 issued by the Senior Superintendent of Posts.
3. A-3: True copy of the seniority list dt. nil issued by the 3rd respondent.
4. A-4: True copy of the representation dt.7.11.96 submitted by the applicant to the 3rd respondent.
5. A-5: True copy of the order in O.A.No.1463/96 dt.7.2.97 of this Tribunal.
6. A-6: True copy of the order No.SD/EDP/4 dt.3.11.97 issued by the 3rd respondent.

Respondents' Annexures:

7. R-1: True copy of the order dt.6.3.96 in O.A.No.155/95 of this Tribunal.
8. R-2: True copy of the order dt.26.8.98 in O.A.No.239/98 and 449/98 of this Tribunal.
9. R-3: True copy of the judgement of Hon'ble High Court of Kerala dt.30.3.2000 in O.P.No.25172/98.