

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.615/09

Thursday this the 24th day of June 2010

C O R A M :

**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Ambujakshan P.P.,
S/o.late Parameswaran Nair,
GDS Mail Deliverer, Karimugal BO.
Residing at Parekkattil House,
Ambalamedu PO, Ernakulam District – 682 303.Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr. along with Ms.Rekha Vasudevan)

V e r s u s

1. Senior Superintendent of Post Offices,
Ernakulam Division, Ernakulam.
2. Postmaster General,
Central Region, Kochi.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 24th day of June 2010 this
Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The short question involved in this Original Application is whether the stand taken by the Department that as the applicant covered 50 years of age he could not be permitted to sit in the examination for promotion to the 25% quota prescribed for ED Agents is correct or not.

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2. The applicant once appeared for the examination but he failed. Now for the second time the applicant wants to appear for the same examination and as per the rules it is clear that the quota of 25% is prescribed for this Group to which the applicant belongs. If so, the further question to be considered is whether the age limit now raised by the Department is correct or not. It is stated in the schedule annexed to the Recruitment Rules, a copy of which is produced as Annexure A-2, that "Whether age and educational qualifications prescribed for direct recruitment will apply in the case of promotions." The answer given is "No". If so, the rules itself shows that there is no age bar for appearing in the examination for promotion to the post of Postman. Further, this question has been considered by this Tribunal earlier in OA 901/03 and OA 277/04. Para 5 of the said order reads as follows :-

"5. We have heard learned counsel on both sides. The short question here is whether the filling up of the posts of Postman in terms of the Recruitment Rules from GDSs constitutes promotion or direct recruitment and as the answer to that question would depend the second question whether the approval of the Screening Committee would be required for filling up the vacancies or not. We had considered both these issues earlier along with other issues relating to prescription of age etc., in O.A.901/03 and later specifically in our common order in O.A.977/03 & O.A.277/04. In O.A.901/03 in paragraph 11, it was observed that "the Office Memorandum dated 16.5.2001 makes it abundantly clear that 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." Following the above in O.A.115/04 it was held that :-

" 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

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of the Recruiting Division or Unit failing which by GDS of the neighbouring Division or Unit by selection cum seniority and 25% from casual labours under four sub categories, namely, (1) temporary status (2) full time labours 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. The applicant being a part time casual labour, he has a right to consideration only to the 25% quota set apart for the casual labour. This position has not been disputed. Though the applicant in his rejoinder contends that he is a full time employee, it is clear from the pleadings in the O.A that he is working on a part time basis. As contended by the applicant we had occasion to adjudicate on the same Recruitment Rules in O.A.977/03 and O.A.277/04 mentioned above and it was held that the manner of recruitment in the Recruitment Rules must not be construed as direct recruitment as it only contemplates selection from employees within the recruiting division on the basis of a departmental test failing which by selection from categories of GDS and casual labours. We had also occasion to consider the relevance of Annexure A-2 memorandum of the Department of Personnel dated 16.5.2001 in this context. It is true that the Government of India enforced certain restrictions on recruitment by this memorandum so as to provide for approval by a Departmental Screening Committee for filling up the posts by direct recruitment in order to achieve the long term objective of reduction of 10% staff within five years. But it is more than evident from the instructions contained in the memorandum that the ban on recruitment referred to above was limited to direct recruitment vacancies. Paragraph 3 thereof is specific in this regard :-

“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.”

The intention was the the recruitment either by direct or open market would only be restricted by the instructions in the above OM. Therefore the reliance of the respondents on this memorandum that the clearance of the vacancies from the Departmental Screening Committee was necessary cannot be accepted. They should have taken steps for filling up the remaining three vacancies also the existence of which have been confirmed by the respondents in the reply statement.”

3. A reading of the above rule position and also the explanation explained by this Tribunal in the above order, we are of the view that the stand taken by the Department is absolutely incorrect.



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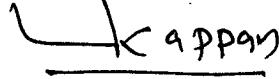
4. When the Original Application came up for admission, this Tribunal has allowed the applicant to appear for the examination with a rider that the result shall not be published. However, the result has been published and the applicant has failed in the examination. If so, this Original Application, as far as the present prayer is concerned, became infructuous. Further, counsel appearing for the applicant submitted that if the applicant tries to appear for the next time, the same objection may be taken by the Department. If so, this Tribunal may observe that the orders passed by this Tribunal is applicable to the applicant in future appearance also. We are of the view that such a declaration is not necessary as the law is very clear in the matter.

5. In the above circumstances, with the above observations this Original Application stands disposed of.

(Dated this the 24th day of June 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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JUSTICE K. THANKAPPAN
JUDICIAL MEMBER