

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 620/2013

Tuesday this the 27th day of September, 2016.
CORAM

***HON'BLE MR. JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MRS. P. GOPINATH, ADMINISTRATIVE MEMBER***

B.Mohan Nair,
Group D, MTS,
Vattiyoorkavu,
Thiruvananthapuram 695543. **Applicant**

(By Mr. Vishnu S. Chempazhamthiyil, Advocate)

vs.

1. Union of India, represented by the Secretary
Department of Posts,
Ministry of Communications,
New Delhi.
2. The Chief Post Master General, Kerala Circle,
Thiruvananthapuram 695 033.
3. Superintendent of Posts,
Thiruvananthapuram South Division,
Thiruvananthapuram 695 036. **Respondents**

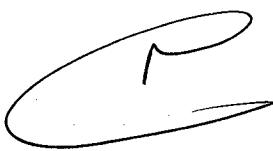
(By Mr.N.Anilkumar, Sr.PCGC (R))

(This application having been finally heard on 02.09.2016, the Tribunal on 27/9/2016
09.2016 delivered the following.)

ORDER

Per: Mrs.P.Gopinath, Administrative Member:

The applicant while working as GDS was appointed as Group D by Superintendent of Post Offices, Thiruvananthapuram South Post Offices pursuant to direction of this Court in O.A. 312/2008 and connected cases wherein direction was issued to fill up vacancies from 2002 onwards. In implementation, the applicant was appointed with effect from 1.2.2006 as per order dated 16.7.2010. It was ordered that



he would be governed by New Restructured Defined Contributory Pension Scheme which was come into force with effect from 1.1.2004. However, it was now come to knowledge of applicant that there were vacancies of Group D in the year 2002 and 2003 and the same had not been filled up. Going by the seniority, the applicant is entitled to be appointed in a vacancy of the year 2003, as the applicant is 4th senior in the list of persons appointed pursuant to O.A. 312/2008 and connected cases. If such an appointment is granted on a notional basis, he would be governed by the old pension scheme.

2. In O.A. No.312/2008 and connected cases, it was directed that the vacancies from 2002 onwards be filled up. Pursuant to the same, the respondents have appointed the applicant w.e.f. 20.2.2004. The above appointment is on the basis that no vacancies were available for the years 2002 and 2003. The respondents have now admitted in Annexure A5 that 7 vacancies were in existence for the years 2002 and 2003.

3. Relief sought by the applicant is :

1. Direct the respondents to consider the appointment of the applicant in respect of the Group D vacancies of the year 2002 and 2003 as mentioned in Annexure A5.

2. Direct the respondents to consider granting fixation of pay from the date of occurrence of vacancy and grant consequential annual increments.

4. Respondents resisted the Original Application by filing reply statement stating that as part of implementing the common order of this Tribunal in 312/2008 and other similar cases, an elaborate mechanism was put in place to scrutinize and monitor all related documents and facts and cross tally the number of vacancies from the date of their occurrence, the number of vacancies approved for filling as per the optimization scheme, the actual number of persons in position and the total sanctioned



strength of the Group D cadre in each Division. After tallying these figures from 2002 to 2008, revised rosters were prepared and lists of eligible persons were identified in each Postal Division and such persons given appointment as Group D from the date of occurrence of each vacancy strictly according to seniority, as onetime measure, in compliance with the orders of this Tribunal. The appointments were given notionally from the date of occurrence of vacancies. A total 327 posts were thus initially identified to be filled up across the Circle for the period from 2002 to 2008. Subsequently, as per the specific direction of this Tribunal, over and above the said 327 posts, 97 more posts which arose in the year 2009 were also decided to be filled up taking the total vacancies identified to be filled up across the Circle to 424. Out of these 424 Group D Posts, initially a total of 377 posts have been filled up by appointing eligible GDS/Casual Labourers. Annexure R1 is a table showing the number of vacancies available separately in each Division across Kerala Circle, number of posts filled up and reasons for not being able to fill up all the vacancies. Subsequently, 29 posts have also been filled up. The posts remaining unfilled were due to various reasons like ST Shortfall, want of casual labourers etc, as both GDS and casual labour are feeder posts for Group D appointment.

5. As evident from Annexure R-1 table, in Thiruvananthapuram South Division a total of 15 Group D posts were identified to be filled up for the period from 2002 to 2009, out of which 14 posts have been filled up by appointing eligible GDS/Casual labourers. The lone post could not be filled up for want of eligible casual labourer. This Tribunal has accepted this position in the series of contempt petitions filed by the applicants and has closed all the CPs(C) with direction to fill up all the 424 posts within a period of six months. In Trivandrum South Division, initially, a total of 12 posts for the period 2002 to 2008 were identified to be filled up. The Departmental Promotion Committee held on 16.07.2010 considered all the eligible candidates who came within the zone of consideration and recommended 11 GD Sevaks for

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appointment as Group D. As evident from the said minutes, the first two vacancies available in the Division were offered to Smt. Radhamony Amma. M.S. and Sr. Sreekumaran Nair G. who were placed higher at serial 3 and 4 of Annexure R5-9 Notional Promotion List in comparison to the applicant placed at Serial No.8 in the list. The applicant who was placed Sl. No.16 in the GDS Seniority list was offered the 4th vacancy which arose with effect from 01-02-2006 due to the retirement of Shri M.Sasi.

6. Heard the learned counsel for applicant and respondents and perused the written submissions made.

7. In compliance with the directions of this Tribunal in the common order in OA 312/08 and other OAs, the respondents as an onetime measure, had identified a total of 424 Group D Posts for the period 2002 to 2009 and had taken action to fill up these posts. After tallying these figures from 2002 to 2008, revised rosters were prepared and lists of eligible persons were identified in each Division and appointment made to from amongst all eligible GDS & Casual Labour retrospectively from the date of occurrence of each vacancy at the rate of 75% for GDS and 25% for Casual Labourer strictly according to seniority, as a one time measure. Accordingly, the applicant was directed to intimate his willingness or otherwise to include his name for appointment as Group D. The available vacancy in Thiruvananthapuram South Division was offered to the applicant on the basis of his seniority in the division and as such he has no cause to be aggrieved regarding his appointment which was made as per position in the Seniority List. Out of four vacancies occurring in 2002, one was filled up and three vacancies abolished by Screening Committee were revived and filled as per Annexure R5 DPC proceedings dated 10.02.2014 as per seniority list of GDS Officials. Similarly out of three vacancies in 2003, one was filled up and two abolished vacancies were revived and filled up in the same DPC proceedings. Of three vacancies arising in 2004, none was filled and two abolished vacancies were revived and filled in



the DPC proceedings of 10.02.2014. The applicants name appearing at serial 24 of the said DPC has been considered in turn notionally in the vacancy occurring in year 2005-06. The review DPC also considered for Group D appointment the names of applicants in OA 649/2011, 248/2012, 455/2012 notionally as per their seniority position in GDS Gradation list. The applicant cannot claim appointment from 2002 relying on Annexure A-5 RTI information as the information does contain the break up of GDS and Casual Labourer vacancies as also the reservation position of the vacancies indicated, both of which are necessary for any reserved post to be made. As already submitted, all the vacancies which arose in the year 2002, 2003 & 2005 had already been filled up and as such the applicant was offered the next available vacancy which arose on 01.02.2006, according to his seniority and in turn. The vacancy position projected by the respondents was accepted by this Tribunal while closing Contempt Petitions filed and any change of scenario would unsettle this settled position causing serious administrative inconvenience to the employees and respondents.

8. Applicant submits that the respondent had, based on Screening Committee recommendations, abolished certain posts. As per order of Tribunal in OA248/2012 and connected cases, respondents were directed to fill up the vacancies in year 2002 onwards. In pursuance of above orders a DPC was convened on 10.2.2014. The DPC reviewed the Sanctioned strength of Group D from the Establishment Register and noted that the sanctioned strength was 48. The DPC also tabulated year-wise total number of vacancies, number of vacancies filled up, number of vacancies abolished by Screening Committee and required to be revived and filled up as follows:

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Year of vacancy	Total no. of vacancies	No. of vacancies already filled up	No. of vacancies abolished as per screening committee requirement which are to be revived now
2002	4	1	3
2003	3	1	2
2004	3	1	2
2005	4	2	2
2006	4	2	2
2007	5	4	1(unfilled vacancy)
2008	2	2	-
2009	3	3	-

9. Thus the DPC considered the 3 abolished vacancies of 2002 and 2 abolished vacancies of 2003 which we note as relevant to this OA and made promotions as per seniority lists of GDS of TVM South Division. From Annexure III of Annexure A8 produced by applicant we note that the above 3 + 2 Screening Committee abolished vacancies of 2002 and 2003 have been filled up by GDS who were appointed as GDS on 10.1.1977, 13.4.1977, 16.8.1977, 1.11.1977, 7.1.1978 and 13.1.1978. Thus the 3 + 2 abolished vacancies of 2002 and 2003 have been filled up and applicant can make no claim for the same as they are filled by GDS who are senior to the applicant by virtue of their earlier date of appointment as GDS. Applicant was appointed as GDS on 14.1.1978 and hence was junior to the third person appointed on 13.1.1978 in the year 2003. Applicant was notionally appointed against a death vacancy which occurred on 20.2.2004. Hence applicant was given notional appointment for the year 2004 on 20.2.2004. Applicant's misgiving that appointments have been made against death vacancy is to be read with the fact that death vacancies were also vacancies which were abolished as brought out by Annexure A/8 DPC minutes. Applicants attempt to segregate the two or hold that death vacancy was not an abolished vacancy is not



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upheld as abolition will normally be attempted against a vacant post irrespective of the cause of vacancy. The DPC minutes of Annexure A8 confirms that all abolished vacancies are accounted for and also filled seniority wise and the applicants position thereon is confirmed.

10. The applicant has been appointed in turn, as per seniority and in a notional vacancy occurring in February 2004 and hence the contention for appointment against abolished vacancies of 2002 and 2003 cannot be sustained.

11. O.A. is dismissed. No order as to costs.


(MRS. P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K.BALAKRISHNAN)
JUDICIAL MEMBER

sj/*