

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.71/12
...*Friday*... this the ~~14th~~ day of April, 2013

C O R A M :

HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

Y.Babu
S/o. Yohannan
Part time Casual Mazdoor
Odanavattom Post Office
Odanavattom SO 691 512
residing at Syam Sadanam
Odanavattom P.O
Kottarakkara, Kollam District

..... Applicant

(By Advocate Mr.V Sajith Kumar)

V e r s u s

1. Union of India, represented by the
Secretary to the Government Department of the post,
Ministry of Communications, Government of India
New Delhi – 111 001
2. The Chief Postmaster General, Kerala Circle
Trivandrum – 695 003
3. The Senior Superintendent of Post Office
Kollam Postal Division
Kollam – 691 001
4. Smt.Lathika
Group D, Kundara Post Office
Kollam – 691 501
5. K.Ramanan, Group D
Kottarakkara Head Post Office
Kottarakara – 691 506

...Respondents

(By Advocate Mr.Pradeep Krishna, ACGSC (R1-3))

This application having been heard on 14th March 2013 this Tribunal
on 12.4.2013 delivered the following :-

ORDER**HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER**

1. The applicant is aggrieved by the denial of selection and appointment as Group D in the quota earmarked for part-time Casual Mazdoors/Casual Labourer in preference to his juniors.
2. The applicant avers that he commenced his service as part time casual labourer (Mazdoor) on 15.05.1977 while the fourth respondent joined only on 01.01.1978 as per the entries in the Contingent Register (Annexure A-3). While the name of the applicant appears at serial No.18, that of R4 is at serial No.27. Therefore, being senior to R4, he should have been considered for appointment as Group D from the quota of part time casual labourers. The name of R5 does not figure in the Contingent Register even though he was selected and appointed as group D in Kottarakara Head Office. The applicant submitted various representations to R2 pointing out the appointment of R4 and R5 as incorrect and illegal. In response to an RTI query it was intimated that fourth respondent's service commenced only from 01.01.1978 and her date of birth is 15.04.1960. He produced a copy of the DPC proceedings to show that the date of entry in the Department of R4 is shown as 08.03.1972. The DPC in the first instance postponed the selection of Group D candidate as the details of R4, since the service details of R5 were incomplete. The applicant further averred that her name was not even placed before the DPC while the name of Smt.Radha who entered service in 1993 was considered along with R5. Her name appears only at Serial 56 in the copy of the Contingent Register (Annexure A-3). The applicant therefore contends that the appointment of R4 & 5 ignoring the seniority of the applicant is illegal and unjust.



3. The respondents contested the O.A and filed reply statement. They submitted that as part of implementing the common order of this Hon'ble Tribunal in OA 312/08 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 optimisation 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 Division. They were appointed as Group D from the date of occurrence of vacancy in each Division strictly according to seniority, as a onetime measure, in compliance with the orders of this Tribunal. The appointments were given notionally from the date of occurrence of vacancies. A total of 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 vacancies 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. A table showing the number of vacancies available separately in each Division across Kerala Circle, number of posts filled up and reasons for not filling up all the vacancies in certain categories was produced as Annexure R-1.

4. As far as Kollam Division is concerned 16 Group D posts were identified to be filled up for the period from 2002-09 and out of these three vacancies were earmarked for being filled up from casual labourers under the 25% quota.

5. The undermentioned candidates were selected against the said 3 vacancies based on their eligibility and seniority.



(i) Sri.Arumugham, the lone Full Time Casual Labourer conferred with temporary status available in the division.

(ii) Sri.K.Remanan, the senior most Full Time Casual Labourer of Kottarakara Head Post Office (5th respondent in the OA)

(iii) Smt. Lathika, Part Time Casual Labourer of Kavanad/Sakthikulangara working from 1972 onwards (4th respondent in the OA).

6. They denied the fact that R4 & 5 are juniors to the applicant. According to them R5 was working as part time Casual Labourer in Kottarakara Head Post Office from 1981 onwards and from 1999 he was converted into a full time casual labourer. Hence, he has a better claim for appointment as Group D in accordance with the Recruitment Rules at Annexure A-8. R4 is working as part time casual labourer in Kavanad and Sakthikulangara Post Offices from 08.03.1972 onwards. While a fresh contingent register was being prepared based on the entries in the old contingent register, certain typographical errors crept in. That is why the date of birth was shown as 15.04.1960 and date of entry as 01.01.1978 instead of 21.12.1958 and 08.03.1972 respectively in the computerised entries in the new register. This mistake was communicated in the reply furnished for the RTI query. The Departmental Promotion Committee perused the old Contingent Register and the special reports received from the sub appointing authorities, and completed the selection procedure.

7. They produced the special reports for R4 at Annexure R-2 and R3 at R4 for R5.

8. The applicant filed M.A 1145/12 with a prayer for directing the respondents to produce the contingent registers and age proof for R4. He also filed a rejoinder wherein he contended that R5 cannot be treated as full time

74

Casual Labourers since he was allotted duty for only 7 ½ hours in a day.

9. Arguments were heard and records perused.

10. It is seen that the applicant whose date of birth is shown as 15.04.1962 was engaged on 15.05.1977 as Sweeper-cum-Scavenger for 1 ½ hours as per the entries in the Annexure A-3/4 i.e; the Contingent Register. In the same register as contended by the applicant the name of R4 appears at Serial No.27 who was also appointed as Sweeper-cum-Scavenger for 2.13 hours at Kavanadu and Sakthikulangara Post Offices. The respondents have placed before the DPC the special reports from the sub appointing authorities. This probably was resorted to verify the particulars of engagement of all the part time casual labourers. Annexure R-2 which is the special report submitted by the Inspector of Post Offices, Kottayam, North Sub Division shows clearly her date of appointment of R-4 as 08.03.1972 and date of birth as 21.12.1958. The entries in the old Contingent Register were perused by me, to verify the same. At the instance of the applicant for production of age proof for R4 the respondents produced a copy of the electoral identity card issued as ordered by the Election Commission of India. This was issued at Kottayam on 06.10.1997 wherein, the age of R4 as on 01.01.1997 is shown as 39. The age as shown in the Electoral Identity Card tallies with the date of birth of 21.12.1958 shown in the old Contingent Register. Therefore, I am inclined to accept the plea of the respondents that a genuine mistake was committed while copying the entries from the old to the new contingent register. As far as R 5 is concerned, the Post Master Kottarakara Head Post Office has prepared the Annexure R-3 special report, wherein his date of commencement of casual labourer service is shown as 1981 and his age as 52 years. A copy of the Transfer certificate given in favour of R5 was enclosed with the special report of Post Master Kottarakara

TH

Head Post Office as proof of his date of birth. As submitted by the respondents a full time casual labourer has a preferential claim over part time casual labourer, as seen from Annexure A-8, circulated by DG Posts vide its letter No.5-24/88-SPB-I dated 17.05.1989 based on DOPT's letter. Para 3 of the aforesaid letter is extracted below:-

"Para 3. For the purpose of recruitment to Group D post the following priority should be observed.

(i) NTC Group 'D' Officials.

(ii) EDAs of the same Division

(iii) Casual labourers (full time or part time. For purpose of computation of eligible service, half of the service rendered a part time casual labourer should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years will be treated, for purposes of recruitment, to have completed one year of service as full time casual labourer.

(iv) EDAs of divisions in the same Region.

(v) Substitutes (not working in Metropolitan cities)

(vi) Direct recruits through employment exchanges.

11. A perusal of para 3 shows a part time casual labourer has to put in double the service of a full time casual labourer. The contention of the applicant that R5 is not a full time casual labourer since he was given allowance only 7 ½ hours of duty is not correct as he is entitled for ½ an hour lunch break. Hence he is to be treated as a full time casual labourer only. Therefore, the respondents are right in their contention that the full time casual labourer has a preferential claim as compared to a part time casual labourer. Hence, I do not find any irregularity or illegality in the selection and appointment of R4 & 5.

12. During the final hearing, the counsel for the applicant mentioned casually that R4 has entered the service before he was 18 years old. Going by the age in the contingent register, it is seen that the same holds good in the case of the applicant also as he is started his service in 1977 while his date of birth is shown as 1962. It is quite possible that part time casual labourers who are engaged to attend the sweeping and scavenger work of small Post Offices and who are

Handwritten signature

engaged only for little over 2 hours as in the case of the applicant and R4, no appointment order is issued as they are engaged on hourly wages, paid out of the contingent head funds. As such, there is no insistence on production of a copy of date of birth certificate at the time when they are engaged on hourly wages prior to 1989 when such engagement was ordered to be made through employment exchanges. The counsel for the applicant argued strenuously to show that the case of the applicant merits consideration as he is physically handicapped up to 40%. He also pointed out that one vacancy for the quota of casual labourers in the neighbouring Division of Pathanamthitta is yet to be filled up. His another contention was that out of 16 vacancies in Kollam Division, 4 should have been earmarked for casual labourer quota. In the peculiar circumstances of the case, the respondents are directed to examine whether physically handicapped point at 1, 33 or 66 is filled up as per the Group D recruitment register. If there is any backlog under the physically handicapped quota, the respondents can very well utilise the unfilled vacancy of the Pathanamthitta Division for considering the case of the applicant.

13. In view of the foregoing, the respondents are directed to consider the case of the applicant for appointment as Group D under physically handicapped quota in accordance with law, within a time line of 6 months.

14. The Original Application is disposed of with the above direction. No Costs.

(Dated this the 1st day of April, 2013)


(K NOORJEHAN)
ADMINISTRATIVE MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P(C)108/13 in O.A.No.71/2012

Tuesday , this the 19th day of November, 2013

C O R A M :

HON'BLE MR.JUSTICE A.K BASHEER, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Y.Babu

S/o.Yohannan

Part time Casual Mazdoor

Odanavattom Post Office

Odanavattom SO -691 512

residing at Syam Sadanam

Odanavattom P.O

Kottarakkara, Kollam

(By Advocate Mr.V Sajith Kumar)

- Petitioner

Versus

1. Smt.Shanti S Nair
Chief Post Master General
Kerala Circle, Department of Post
Thiruvananthapuram - 695 003

2. M.Sasindran
Senior Superintendent of Post Office
Kollam Postal Division
Kollam District - 691 001

- Respondents

(By Advocate Mr.Pradeep Krishna, ACGSC)

This application having been heard on 19th November, 2013 this Tribunal on the same day delivered the following :-

ORDER

BY HON'BLE MR.JUSTICE A.K BASHEER, JUDICIAL MEMBER

When this petition is taken up for consideration, learned counsel for the petitioner submits that this petition is not being prosecuted any further since respondents have already complied with the order of this Tribunal.

2.  Accordingly this Contempt Petition is closed as infructuous.

**K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER**

SV


**JUSTICE A.K.BASHEER
JUDICIAL MEMBER**