

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.77/2004.

Monday this the 29th day of March 2004.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

T.A.Minikumari, W/o Eldhose,
Part Time Sweeper cum Water Carrier and
Scavenger, Tripunithura Fort P.O.,
Thannikot House, Irimpanam. Applicant

(By Advocate Shri K.S.Bahuleyan)

Vs.

1. The Senior Superintendent of Post Offices,
Ernakulam Division, Kochi-682011.
2. The Sub Divisional Inspector (Postal),
Tripunithura Sub Division,
Tripunithura-682301.
3. Union of India, represented by
Secretary, Ministry of
Communications, Department of Posts,
New Delhi. Respondents

1. (By Avocate Shri C.B.Sreekumar, ACGSC)

The application having been heard on 29th March, 2004,
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant, a Part time Sweeper-cum-Water Carrier-cum-Scavenger working in the Tripunithura Fort P.O. is aggrieved by A-2 Notification dated 4.12.03, calling for applications from open market candidates for appointment to the post of Gramin Dak Sevak Branch Post Master(GDSBPM for short), Meempara without giving preference to her as a Part-time casual Labour in terms of the instructions of the Director General of Posts, contained in A-7 letter dated 6.6.88. The applicant claims to have eligible service ~~for 240 days~~ (240 days in a year) as she has been working continuously as Part -time

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Casual Labour for the last seven years since 6.2.97. The applicant also claims to satisfy other terms and conditions for recruitment to the post of GDSBPM. The applicant is also aggrieved by the A-8 communication dated 9.1.04 informing her that she having not been sponsored by the Employment Exchange, was not entitled to any preferential treatment in the matter of recruitment to the post of GDSBPM. Therefore, the applicant has filed this application seeking this Tribunal's order setting aside A-2 Notice and A-8 communication issued by the first respondent, a declaration that the applicant is entitled to be considered for appointment to the post of GDSBPM, Meempara in preference to outsiders in the light of DG(Posts) instructions dated 6.6.88 (A7) and a direction to the 1st respondent to consider the applicant's candidature for the post of GDSBPM, Meempara in preference to others.

2. The respondents in their reply statement have maintained that the applicant was not entitled to any preferential treatment in the matter of appointment to the post of GDSBPM since she does not belong to the category of casual labourers who were sponsored by the Employment Exchange. The applicant has been working as Part-time casual labour on the strength of this Tribunal's order in O.A.1487/98 dated 9.2.01 and therefore, she could not be considered for provisional appointment to the post of GDSBPM, according to the respondents.

3. When the matter came up for consideration, Shri K.S. Bahuleyan appeared for the applicant and Shri C.B.Sreekumar, ACGSC for the respondents. Learned counsel for the applicant maintained that the respondents were wrong in not granting

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preferential treatment to the applicant in the light of the DG (Posts) instructions contained in A-7. It is not disputed that the applicant was working as Part-time casual labourer for seven years, the learned counsel for the applicant would point out. The condition regarding the sponsorship by the Employment Exchange was untenable in view of the Hon'ble Supreme Court's decision in Excise Superintendent, Malkapatnam, Krishna District, Andhara Pradesh Vs. KBN Visweshwara Rao and others (1996 (6) SCC 216) and also in the light of several decisions of this Tribunal including the one in O.A.534/03 dated 27.8.03 (A9). It is therefore, submitted by the learned counsel for the applicant that the impugned A-2 and A-8 orders were liable to be set aside and the respondents be directed to consider the applicant's case in accordance with the instructions for appointment to the post of GDSBPM, in preference to outsiders.

4. Shri CB Sreekumar, learned ACGSC has stated that the decision of the Tribunal cited by the applicant in A-9 is not applicable to the facts of the case, since the present appointment is purely provisional. It is also maintained by the learned ACGSC that since the applicant's engagement as Part-time casual labourer had not been sponsored by the Employment Exchange, it would not be proper to consider her for provisional appointment. That was the reason why the respondents took steps to fill up the post by open notification (A2). The applicant had therefore no case for giving any preferential treatment, he would urge.

5. On a consideration of the facts and contentions, we are of the view that the respondents have not followed the DG(Posts)'s

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instructions contained in A-7 letter dated 6.6.1988 wherein it has been categorically stated that casual labourers, both full-time and part-time, should be given preference in recruitment as ED Agents, in case they are willing to be appointed with a view to afford such casual labourers a chance for ultimate absorption as group 'D' employees. The respondents herein seem to have forgotten the purpose and object behind the instructions contained in A-7. No doubt, it is made obligatory to have the casual labourers sponsored by the Employment Exchange in order that ultimately the casual labourers who are considered for ED vacancies they might be those who had been initially sponsored by the Employment Exchange. In the instant case, such a condition is unworkable, since the applicant has been continuing as Part-time casual labourer for the last seven years. This is an undisputed fact. That being so, according to us, the applicant ought to have been considered irrespective of the fact that she had not been initially sponsored by the Employment Exchange. Our finding is fortified by the Hon'ble Supreme Court's decision in Malkapatnam case (1996) 6 SCC 216. This is the consistent view taken by this Tribunal in a number of decisions including a recent decision in O.A.534/03 (A-9). On facts which are substantially identical, this Tribunal in the said case has held that a Part-time casual labourer who has been continuously working for several years should receive preferential treatment in the matter of appointment to the GDS post in terms of the DG(Posts)' letter dated 6.6.1988 on the matter. It has also been held that only if the applicant or any other part-time employee like the applicant who has already applied for the post of GDSBPM was found otherwise ineligible or

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unsuitable for appointment, could recruitment from open market be taken recourse to. We respectfully follow the above finding.

6. In view of the above facts and legal position, we hold that the respondents' action is unsustainable. Applicant's eligible part-time service is not denied. The applicant was allowed to continue in part-time service for a long period of 7 years though she had not been sponsored by the Employment Exchange. In the circumstances, her right of preferential treatment in the matter of recruitment to GDS post as envisaged in A-7 letter cannot be denied to her.

7. In the light of what is stated above, we dispose of this application directing the respondents to consider the applicant giving her preference in the matter of appointment to the post of GDSBPM, Meempara subject to her satisfying other terms and conditions for such appointment in preference to outsiders. Only if the applicant or any other eligible full-time or part-time casual labourer who is similarly placed is found otherwise unsuitable or ineligible, shall recruitment by open notification be resorted to. Respondents are directed to take appropriate action as expeditiously as possible. No order as to costs.

Dated the 29th March, 2004.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER