

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.85/2013

DATED THIS THE 9th DAY OF DECEMBER, 2014

HON'BLE SHRI U.SHARATHCHANDRAN ... MEMBER (J)

HON'BLE SHRI P.K.PRADHAN ... MEMBER (A)

G. Chacko, S/o George, Aged 53 years, GDS MD, Meeyannur, Kollam Division, R/at Kavavil, Meeyanur, P.O. Pooyapalli, Kollam Taluk, Kollam District – 691 537.

... Applicant

(By Advocate Shri V. Sajith Kumar)

Vs.

1. Union of India, represented by the Secretary to the government, Department of Post, Ministry of Telecommunications, Government of India, New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle, Trivandrum – 695 101.
3. The Senior Superintendent of Posts, Kollam Postal Division, Kollam – 691 001.

(By Advocate Shri A.D. Raveendra Prasad, Addl. Central Govt. Standing Counsel)

O R D E R

Hon'ble Shri Prasanna Kumar Pradhan, Member (A) :

This OA is filed under Section 19 of the Administrative Tribunals Act, 1985, seeking

- (i) to quash Annexure-A/3 notification;
- (ii) to direct the respondents to consider the applicant for appointment to Group D/MTS as per the 2002 recruitment rules and to grant him appointment from the date of eligibility with all consequential benefits;
- (iii) grant such other reliefs as may be prayed for and deemed fit to grant; and
- (iv) grant the cost of this original application.

The facts of the case in brief are as follows:

2. The applicant entered into service as a GDS MD with the respondent No.3 with effect from 16.06.1982. As per the seniority list, applicant is the next person to be considered for Group D/MTS based on seniority. As per the 2002 recruitment rules, the vacancies in MTS/Group D, have to be filled up mostly from GDS based on the seniority. 75% of vacancies were to be filled from GDS based on seniority and other 25% were offered for Casual Mazdoors (Annexure-A/1). The respondents had revised the 2002



recruitment rules by bringing an amendment in the year 2010. As per Clause 1(2), the rules will come into force only from the date of publication in the official gazette. The notification dated 12.12.2010 was subsequently published in the official gazette (Annexure-A/2). The 2010 rules are not being given prospective effect. The respondents had attempted to conduct direct recruitment against 25% of MTS vacancies by issuing a notification dated 04.12.2012. As per clause 2 of the notification, the respondents are proposing to fill up the vacancies for the year 2010 (Annexure-A/3). As per the seniority list, the applicant is the next person to be considered on the basis of seniority. Hence, the applicant had represented to the respondent No.3 that as per the seniority list, he is the next person to be considered on the basis of seniority and in compliance with 2002 recruitment rules, persons just above the applicant got appointment as Postman (Annexure-A/5). There was excessive reservation for SC/ST in recruitment against the vacancies of the year 2006 to 2009. Had it been rightly done, the applicant would have been appointed as early in 2008. The 2010 recruitment rules cannot be operated against 2010 vacancies.

3. In the original application, the applicant has further submitted that the 2002 recruitment rules will have force till Annexure-A/2 got notified in the official gazette. Therefore, the vacancies which were arisen upto 31.12.2010 can only be filled up only as per the 2002 recruitment rules. Usually, vacancies upto November of the respective recruitment year is taken for the purpose of recruitment. The vacancy which falls vacant in December is taken along with the vacancies of the subsequent year. There is no rationale or justification in applying annexure-A/2 recruitment rule against the vacancies for the year 2010. Hence, the applicant is entitled to the relief as sought for.

4. The respondents in their reply statement have submitted that as per the new Recruitment Rules, 2010, vacancies in the cadre of MTS are to be filled up in the following manner:

- (i) 50% of the vacancies by Gramin Dak Sevaks on the basis of selection cum seniority;
- (ii) 25% of the vacancies by holding competitive examination restricted to Gramin Dak Sevaks;



- (iii) 25% by appointment of casual labourers.

Consequent on receipt of detailed guidelines for the filling up of MTS vacancies from the respondent No.1, the office of respondent No.2 initiated action to fill up the MTS vacancies of 2010 as per the new recruitment rules. For the year 2010, there were two vacancies of MTS in Kollam Division and the respondents took action to fill up the 50% of the said two vacancies under GDS seniority quota and Sri B. Vijayan Pillai, GDSMD, Alumoodu, the senior most GDS was appointed against the lone vacancy of 2010 under GDS seniority quota. To fill up the remaining one vacancy under GDS merit quota through examination, the Annexure-A/3 notification was issued. The applicant approached this Tribunal challenging the said notification contending that he will be the next senior GDS of the division and the respondents are denying his chance for selection as MTS in Kollam Division. He further stated that since the new recruitment rules were introduced wef 12.12.2010 only, the vacancies that arose upto 31.12.2010 were to be filled up as per the 2002 Recruitment Rules. While admitting the OA on 01.02.2013, this Tribunal ordered not to release the result of the MTS examination held on 27.01.2013 and not to fill the MTS vacancy of Kollam Division. The interim order of this Tribunal has been complied with and the result of the selected candidate has been kept in abeyance till the disposal of this OA. Whether vacancies which occurred prior to the amended Recruitment Rules will be governed by the old rules or the new amended rules has been subjected to judicial scrutiny before this Tribunal in OA No.320/2012 in the case of Riyas T.M Vs. The Senior Superintendent, RMS 'TV' Division & Another. While disposing the said OA, this Tribunal has categorized the position into two different situations as follows:

- (1) If the non-filling up of vacancies was not with a conscious decision to await notification of the revised recruitment rules, then it was earlier ruled that would be pressed into service in filling up the vacancies as held by the apex Court in Y.V. Yangaiah Vs. J. Sreenivasa Rao (1983) 3 SCC 284.
- (2) If the non-filling up of the vacancies of 2011 was on account of a conscious decision taken to defer filling up of the vacancies pending revision of recruitment rules, then the vacancies can be filled up by the revised recruitment rules as held by the Apex Court in K. Ramulu Vs. Suryaprakash Rao (1997) 3 SCC 59.

5. Based on the above observations, this Tribunal vide order dated 02.11.2012 held that Chief PMG has the responsibility of ascertaining from the files/records as to whether the reason for not filling up of the 2011 vacancies has been taken with a view to filling up of the same in accordance with the revised Recruitment Rules. If so, the same procedure shall follow and vacancies of 2011 shall be filled up accordingly. If not the vacancies shall have to be filled up as per the recruitment rules prior to revision and the case of the applicant would also be dealt with accordingly in his turn (Annexure-R/1). The respondents filled up all the Gr-D/MTS vacancies of Kollam Postal Division which arose upto 2009 as per the Group D Recruitment Rules 2002 and also in compliance with the directions of this Tribunal in OA No.312/2008 and connected cases. For the year 2010, there were two vacancies of MTS in Kollam Division and as per instructions received from respondent No.2, the respondent No.3 took action to fill up the 50% of the said two vacancies under GES seniority quota and Sri B. Vijayan Pillai, GDSMD, Alumoodu, the senior most GDS was appointed against the lone vacancy of 2010 under GDS seniority quota. To fill up the remaining one vacancy under GDS merit quota through examination, Annexure-A/3 notification was issued. Consequent on introduction of the new MTS Recruitment Rules in 2010, the old Group D Recruitment Rules of 2002 became redundant and inoperative and the respondents had to follow the new recruitment rules. The applicant will be considered against the vacancies for the years 2011 and 2012 subject to availability of vacancies and his eligibility. The applicant cannot compel the respondents to accommodate him against the 2010 vacancy as per the old recruitment rules which were valid for filling the vacancies upto 2009 only. The applicant has to wait for his turn in the selection as per his eligibility and seniority.

6. In his rejoinder, the applicant has reiterated the facts stated in the original application and further submitted that the Tribunal held that unless there is a policy decision, the vacancies have to be filled as per the recruitment rules prior to the revision. The respondents have no case or material to prove that non filling of vacancies was a conscious decision taken by the department. The recruitment for the years upto 2010 already over, applicant is presently over aged to be considered against any future vacancies.

7. In their additional reply the respondents have stated that the cadre of Multi Tasking Staff (MTS for short) came into being after implementation of the 6th Pay Commission recommendations and the vacancies from 01.01.2009 had to be filled up when the cadre came into being. In the absence of recruitment rules for the cadre of MTS, the respondents were not in a position to carry out recruitment to the newly introduced cadre and as such, the decision to defer filling up of vacancies in MTS cadre was nothing but a conscious decision taken by the Department which is covered by the Apex Court decision in the case of K. Ramalu Vs. S. Suryaprakash Rao (1997) 3 SCC 59.

8. Heard the learned counsel for the parties.

9. The learned counsel for the applicant referred to his submissions already made in the OA and the rejoinder and emphasized that the 2010 Rules came into force only in December, 2010 and hence the vacancy arising in 2010 upto November should have been filled up based on the earlier 2002 Rules. He also referred to an order passed by this Tribunal in OA No.993/2010 which held that the vacancy that occurred prior to December 2010 will have to be filled up as per the earlier Recruitment Rules which have been in force upto December, 2010. He submitted that if the 2002 Rules is taken into account, the other vacancy should be filled up by promotion only. Then, the applicant who is the senior-most person in the cadre will be entitled to get promotion to the post of Postman. Therefore, he should have been granted the relief as already sought for in the OA.

10. The learned counsel for the respondents highlighted the averments made in the reply and the additional reply and submitted that following the 6th Pay Commission, the Group-D posts were converted into Multi Tasking Staff (MTS in short) and hence, the MTS vacancies could not be filled up in the absence of specific rules to that effect. Hence, the new Recruitment Rules were brought into force and it was a conscious decision of the authorities to fill up these vacancies after the new rules come into force.

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The learned counsel has relied upon the decision of the Hon'ble Supreme Court in Civil Appeal Nos.404-407/1997 which held that Government had every right to take a conscious decision not to fill up any vacancy till the amendment of existing rules. He submitted that the department was in the process of formulating the Recruitment Rules which came into force in December, 2010. Hence, the vacancies arising in 2010 were taken up for filling up based on the revised Recruitment Rules. The vacancies upto 2009 were filled up in terms of the previous Recruitment Rules. Hence, there is no merit in the contention made by the applicant.

11. The learned counsel for the applicant further submitted that the Pay Commission has only reclassified the Group-D as MTS and there is no change in the educational qualification for the existing employees. Further, the respondents have not produced any material to substantiate that it was a conscious decision on their part to defer the filling up of the vacancies after revision of the recruitment rules.

12. We have carefully considered the facts of the case and all the submissions made by the parties.

13. In the instant case, the issue that has been raised is whether the vacancies which were existing prior to the new Recruitment Rules coming into force from December, 2010 should be filled up in accordance with the earlier rules or the new Rules of 2010.

14. In terms of 2002 Recruitment Rules, for filling up of the Group-D staff in the subordinate offices, 75% of the posts were to be filled up from amongst the GDS on the basis of selection-cum-seniority. In the 2010 Recruitment Rules, this was changed to make it 50% from amongst the GDS on the basis of selection-cum-seniority and 25% by Direct Recruitment on the basis of competitive examination restricted to GDS. The 2010 Rules also stipulated age limit for appointment as GDS as 50 years on the first day of January of the year of vacancy.

15. The applicant has contended that since the vacancy arose prior to December, 2010, this should be filled by the 2002 Recruitment Rules and has relied upon the judgment of this Tribunal in OA No.323/2009 – Jose Dominic Vs. Union of India and connected OAs No.481/2009, 357/2010 and 774/2010, as well as OA No.224/2010 – Mathew Paul Vs. BSNL & several connected OAs and also the order of Chandigarh Bench of this Tribunal in OA No.505-HP/2010 – Vimal Bhardwaj &Ors. Vs. BSNL. The learned counsel has also referred to the order passed by this Tribunal in OA No.993/2010, wherein this Tribunal vide order dated 30.09.2011 has dealt with the revised Recruitment Rules of 2010 and said that the revised Recruitment Rules for MTS has been notified with effect from December, 2010 and would have prospective effect only. The vacancies till the notification of the new Recruitment Rules will have to be filled up as per the then existing Recruitment Rules.

16. The respondents, on the other hand, have relied primarily on the judgment of the Apex Court in Civil Appeal No.404-407/1997. Paras 12 and 15 of the judgment of the apex Court in the aforesaid Civil Appeal states as under:

“12. The same ratio was reiterated in *Union of India Vs. K.V. Vijeesh* (SCC aras 5 and 7). Thus, it could be seen that for reasons genuine to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. Shri H.S. Gururaja Rao, contends that this Court in *y.v. Rangaiah v. J. sreenivasa Rao* had held that the existing vacancies were required to be filled up as per the law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who were eligible prior to the date of amendment, it is seen that the case related to the amendment of the Rules. Prior to the amendment of the Rules two sources were available for appointment as Sub-Registrar, namely UDCs and LDCs. Subsequently, Rules came to be amended taking away the right of the LDCs for appointment as Sub-Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But, the question is whether the ratio in *Rangaiah* case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date of new Rules came into force. It is true, as contended by Mr. H.S. Gururaja Rao, that this Court has followed the ratio therein in many a

decision and those cited by him are *P. Ganeshwar Rao v. State of A.P.*, *P. Mahendran v. state of Karnataka*, *A.A. Calton v. director of Education*, *N.T. Devin Katti vs. Karnataka Public Service Commission*, *Ramesh Kumar Choudhary v. State of M..* In some of these decisions, a situation which has been arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules.

15. Thus, we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us. We hold that the Tribunal was not right and correct in directing the Government to prepare and operate the panel for promotion to the post of Assistant Directors of Animal Husbandry Department in accordance with the repealed Rules and to operate the same."

17. Reference has also been made to order dated 02.11.2012 passed by this Tribunal in OA No.320/2012 which has dealt with a similar issue. The said judgment, vide paras 5 to 7 held as follows:

"5, Arguments were heard and documents perused. As the respondents themselves have admitted that the applicant's case would be considered against the 2011 vacancies, all that has to be seen is as to which rule should be adopted in filling of the earlier vacancies. If the non-filling up of the vacancies was not with such a conscious decision to await notification revising the recruitment rules then it is the earlier ruling that would be pressed into service in filling up the vacancies. In this regard, the decision of the Apex Court in the case of **Y.V. Rangaiah vs. J. Sreenivasa Rao** (1983) 3 SCC 284 would apply, wherein the apex Court has held as under:

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."

Instead, if the non-filling up of the vacancies of 2011 was on account of a conscious decision taken to defer filling up of the vacancies pending revision of recruitment rules then the case would fall in the category is spelt out by the Apex Court in the case of **K. Ramulu (Dr) vs. S. Suryaprakash Rao (Dr)** (1997) 3 SCC 59 refers wherein the Apex Court has held as under:-

"But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date of the new Rules came into force."

6. In the reply there has been no mention by the respondents that pending revision of recruitment rules, vacancies for the year 2011 have been kept unfilled. No general rule or instructions of the nodal Ministry has also been brought to our notice in this regard. It is also not known whether in other Divisions vacancies of the past years were kept unfilled and have been filled up or being filled up as per the revised



recruitment rules. A uniform procedure will have to be adopted in this regard based on the decision, if any, taken to defer filling up of the vacancies pending revision of recruitment rules.

7. The Chief Postmaster General, has thus, the responsibility of ascertaining from the files/records as to whether the reason for not filling up of the 2011 vacancies in RMS, Thiruvananthapuram Division has been with a view to filling up of the same in accordance with the revised recruitment rules. If so, uniformly, the same procedure shall follow and vacancies of 2011 shall be filled up accordingly. If not, the vacancies shall have to be filled up as per the recruitment rules prior to revision. The case of the applicant would also be dealt with accordingly and in his turn."

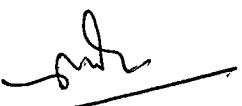
18. In the instant case, neither side has been able to place before the Court any material to indicate whether the action to fill up the vacancies for the year 2010 for MTS has been taken up in terms of the revised Recruitment Rules in all the Divisions under the Kerala Circle. The notification dated 04.12.2012 at Annexure-A/3 is by the Kollam Division only. In case in all the Divisions under Kerala Circle, the recruitment for the vacancies for the year 2010 has been taken up only in terms of the revised Recruitment Rules which came into force in December 2010, then it can be construed that it was a conscious decision on the part of the authority not to fill up vacancies of 2010 till the revised Recruitment Rules for MTS were framed and brought into force. However, if only in the case of Kollam Division the action to fill up 2010 vacancy in MTS category has been initiated in terms of the revised Recruitment Rules, then that reasoning cannot hold good. In that event, the vacancies arising in the year 2010 upto December 2010 should be filled up in terms of the earlier Recruitment Rules. This fact can be ascertained only by the Chief Postmaster General from the file records as was rightly observed by this Tribunal in OA No.320/2012 where similar issue cropped up.

19. Therefore, after careful consideration of the matter, we direct the Chief Postmaster General, to ascertain from the records as to whether there was a conscious decision by the authorities not to fill up the vacancies for 2010 in all the Divisions under his circle till the framing of the new Recruitment Rules. If this is not the case and this has been done only by the Kollam Division, then no action should be taken in terms of the notification at Annexure-A/3 and the respondents shall fill up the vacancy mentioned in Annexure-A/3 notification in terms of the Recruitment Rules which was prevailing prior to the revision in December 2010. The decision by the Chief Postmaster General shall

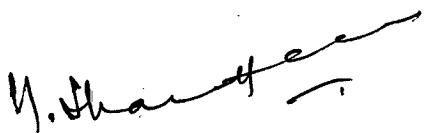


be communicated within a period of three months from the date of receipt of a copy of this order by way of a speaking order.

20. The OA is accordingly disposed of in terms of the above directions. No order as to costs.



(P.K. PRADHAN)
MEMBER (A)



(U. SARATHCHANDRAN)
MEMBER (J)

psp.