

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.85/2005

Tuesday, this the 16th day of August, 2005.

CORAM:

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

N. Chandran Pillai,
GDSMD,
Mithrakkerry,
(Provisional Group D,
Thiruvalla Head Post Office). Applicant

By Advocate Mr V Sajith Kumar

VS

1. Union of India represented by the Secretary to Government, Ministry of Communications, New Delhi.
2. The Chief Postmaster General, Kerala Circle, Trivandrum.
3. The Superintendent of Post Offices, Thiruvalla Postal Division, Mavelikkara.

Respondents

By Advocate Mr Thomas Mathew Nellimootttil, ACGSC

The application having been heard on 8.8.2005, the Tribunal on 16.8.2005 delivered the following:

ORDER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

Applicant commenced his service as Extra Departmental delivery Agent, Mithrakkery on 10.10.84. The applicant's case is that the respondents practically adopted the policy of reservation for physically handicapped quota in the year 1992, that he was considered

for promotion in the physically handicapped quota in 1997-98, that his request for relaxation against the carry forward vacancy stands rejected, that he made various representations in 2001-02 but rejected by A-6 order, that he filed O.A No.772/2002 which was disposed of directing the respondents to consider his representation, that by A-6 order his representation was rejected in an unfair and arbitrary manner, that the Hon'ble High Court in W.P.(C) No.5634/2004 directed the respondents to consider the appointment of the applicant as Postman and that by the impugned order dated 7.1.2005 (A-1) the respondents rejected the claim of the applicant. Aggrieved, the applicant has filed this application for the following relief:

- i) to quash A-1, A-6, A-8 and A-13 to the extent the applicant is denied appointment to the post of Postman in the quota reserved for the physically handicapped;
- ii) to declare that the applicant is entitled to be considered for promotion/appointment against the post of Postman in the vacancy reserved for the visually handicapped(PH) at Thiruvalla Postal Division with effect from the date of occurrence of vacancy/eligibility of the applicant;
- iii)to direct the respondents to consider the applicant for promotion/appointment against the post of Postman in the vacancy reserved for the visually handicapped(PH) at Thiruvalla Postal Division with effect from the date of occurrence of vacancy/eligibility of the accused with all consequential benefits, as expeditiously as possible, alternatively direct the respondents to grant appointment to the applicant in Group D cadre with all consequential benefits with effect from the date



of occurrence of vacancy or at least with effect from 27.8.2001, the date of A-9 representation.

2. The respondents' counsel has filed a reply statement contending that there is one reserved post for visually handicapped in the year 1997, that it was not filled up as there was no visually handicapped candidate declared successful in that examination, that the applicant appeared for the Postman examination held in Tiruvalla Division during 1997 and 1998 but did not qualify, that the reserved post could not be carried forward as the method of reservation was changed by introduction of post based roster at recruiting unit, that the reservation of physically handicapped were centralised on circle basis, that visually handicapped persons are not entitled to be considered for the post of Postman against 1% reservation except in Metropolitan cities, that the applicant is not the seniormost official to be considered for the post of Postman under the reserved category of physically handicapped as there is another official, viz, Shri KK Thampi who is also visually handicapped and senior to the applicant available in Tiruvalla Division, that the seniority position of Shri Thampi is at Sl.No.125 whereas the applicant is at 214, that Shri Thampi has already submitted a representation dated 26.11.97 for consideration of his appointment in visually handicapped quota, that Shri Thampi was also not considered for appointment as he did not qualify in the examination, that by virtue of the interim order of the Hon'ble High Court in W.P.(C) No.5634/2004 dated 15.6.2004 the applicant is working as Group D is not eligible for the post of Postman, that at present there is no vacancy reserved for physically handicapped in Tiruvalla Division, that 25% of the Postman vacancies are filled up from the seniormost officials who have



completed 15 years of service, that examination is necessary for consideration of GDS for promotion to the cadre of Postman under seniority quota, that no separate reservation for physically handicapped candidates for promotion under seniority quota, that the applicant can be considered only along with other GDS according to seniority, that it is not fair to give chance of a seniormost GDS to a junior GDS in relaxation of the conditions, that blind persons are not entitled to be considered for the post of Postman against 1% reservation except in Metropolitan cities, that there was one post of Postman reserved for blind in Tiruvalla Division which had to be carried forward to 1998, that the selection of the applicant under the physically handicapped quota to any one of the eligible posts will be considered during the recruitment of such category in future, that if the applicant is willing, apply for the post, take the test and get qualified and that the Hon'ble High Court let it to the respondents to take a sympathetic view in the case of the applicant for appointment to the post of Postman.

3. The applicant has filed a rejoinder and reiterated his contention in the O.A. and further added that the respondents produced only a list (A-7 in O.A.85/2005) showing the backlog of vacancies in the PH quota which would make it clear that there exist large number of vacancies in the PH quota remained unfilled in Kerala Circle. The O.M. Dated 28.2.86 issued by the Department does not restrict the right to partially blind for being appointed against the post of Postman. The respondents are taking inconsistent policy with a view to deny the claim of the applicant and hence giving reservation to other categories of PH in Kerala Circle.



4. The respondents have filed a reply to the rejoinder contending that the reservation has been centralised with effect from 1999 consequent on introduction of post based roster. A-7 is a consolidated statement about backlog carried forward vacancies in PH quota as on 1.7.2003 in Kerala circle in respect of Group A, B, C and D cadre. Even assuming that the applicant got a case, he could not give preference over Shri Thampi.

5. We have heard Shri V Sajithkumar, counsel for the applicant and Shri Thomas Mathew Nellimoottil, counsel for the respondents. We have given due consideration to the arguments, material and evidence placed on record.

6. Learned counsel for the applicant argued that rejection of the applicant's case is against law governing reservation. There is no senior physically handicapped GDS at Tiruvalla Postal Division. There are enough backlog vacancies of GDS in the department. 25% of vacancies of Postman shall be filled up from amongst GDS official with a minimum of 15 years of service and who are with the prescribed age limit on the basis of seniority. No examination is prescribed for filling up of 25% seniority quota. The applicant is qualified to be considered as PH candidate under the 25% set apart for seniority quota. Admittedly there was a carried forward vacancy of PH (Partially Blind) at Tiruvalla Postal Division. Counsel for the respondents strenuously argued that the applicant appeared for the examination for the post of Postman in 1997-98 but did not qualify. A person who has participated in the examination having failed is not eligible to be considered for the

said post. However, since the applicant has completed 15 years of service as of now, his case will be considered against 25% quota along with other eligible candidates.

7. It is borne out from the records that this is the third round of litigation between the applicant and respondents. The applicant had filed O.A.772/2002 which was disposed of by this Tribunal vide order dated 13.11.2002 directing the applicant to make a representation to the competent authority for appointment against a Group D post of Postman considering his position as a physically handicapped and reserving a post for physically handicapped. His claim was rejected against which the applicant had filed O.A.340/2003 and this Tribunal by order dated 4.11.2003 set aside the impugned order therein and directed the respondents to consider the applicant for appointment to Postman/Village Postman against the visually handicapped reserved post. The Tribunal found that there was a backlog of one vacancy for being filled up for visually handicapped. It was also found that Postman and Village Postman are both in Group D category and they are in identical pay scales and Postman has been identified as a post which can be filled by partially blind. Against this decision, the department filed a Writ Petition(C) No.5634/2004 and the Hon'ble High Court vide its judgment directed as follows:

..Medical Officer has assessed the disability of the 1st respondent more than 50%. He commenced his service as Extra Departmental Delivery Agent in Mithrakkary Branch Post Office with effect from 10.10.1984 and the visual disabilities has not affected his duties. We, therefore, leave



it to the department to take a sympathetic view in the case of the 1st respondent for appointment to the post of Postman, if it is otherwise in order taking note of his service already rendered within a period of one month from the date of receipt of a copy of this judgment."

From the above, it is clear that there is a backlog vacancy for Visually Handicapped still existing and the Village Postman has been identified as a post which can be filled by partially blind. But in A-13, the stand of the respondents is that the reservation of physically handicapped were centralised on circle basis. They are also relying on A-13 appendix which governs the subject "Jobs identified for being held by physically handicapped" and at Sl.No.929 under NCO.10 the Postman in the category of disabled, it is stated PD DPB BL (Metropolitan cities) but in A-1 one of the reasons for rejecting the claim of the applicant was that partially blind candidates are considered for the post of Postman in metropolitan cities only and as per the O.M. Dated 28.2.1986 No.36085/5/84-Estt (SCT) the post of Postman in Metropolitan cities and village Postman are categorised under Group D. There is no post of village postman nor is there any metropolitan city in Kerala Circle. It is further stated that the applicant was considered and appointed as Group D under visually handicapped category in obedience of the interim order dated 15.6.2004 issued in W.P.(C) No. 5634/2004 by the Hon'ble High Court of Kerala. The counsel for the applicant on the other hand, has taken us to A-14 wherein it is stated that the vacancies identified for 1999 in Changanacherry Division, one post has been reserved for visually handicapped and further directed the SSPOs/SPOs to notify the vacancies during the next recruitment process itself. This belyes the

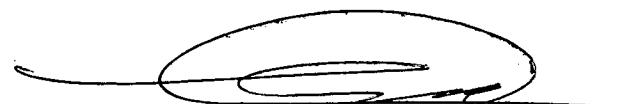


plea of the respondents that visually handicapped quota were not available in Kerala Circle and restricted to metropolitan cities and has no legs to stand. Admittedly the applicant appeared in the examination held in 1997 and 98 but did not qualify. Respondents also admit that the applicant was considered as per the interim order of the Hon'ble High Court and appointed as Group D visually handicapped category and still continuing in the said post. We also record the submission of the respondents that they have no intention to revert him.

8. In the conspectus of facts and circumstances and considering the fact that this Tribunal categorically found in O.A.340/2003 that the carried forward vacancy for visually handicapped is still existing in Thiruvalla Division and the post of Postman has been identified as a post which can be filled by partially blind and the applicant having completed 15 years of service is eligible to be considered for the post of Postman under the 25% quota on the basis of seniority, we direct that the applicant may be considered for the said quota in the next available opportunity along with other eligible candidates in the said quota in accordance with law.

10. In the circumstances, the O.A. is disposed of as above. No order to costs.

Dated, the 16th August, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sathi Nair
SATHI NAIR
VICE CHAIRMAN