

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 1/2008

this the 11th day of July, 2008.

CO R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

R. Babu S/o Raveendran Pillai
Kuttikkaattu Malathil Puthen Veedu
Pooyappilly PO, Kottarakara.

Applicant

By Advocate Mr.P. C. Sebastian

Vs.

1 The Senior Superintendent of Post Offices
Kollam Division, Kollam-691 001

2 The Chief Postmaster General
Kerala Circle,
Thiruvananthapuram-695 033

3 Union of India represented by
the Secretary to Govt. of India
Ministry of Communications
Department of Posts, New Delhi.

Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

The Application having been heard on 3.6.2008 the Tribunal delivered the following on 11.7.08 :

O R D E R

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant in this O.A. has been engaged as a Casual Labourer at Pooyappally Sub Post Office to deliver telegrams. In January, 2004 the applicant submitted a representation requesting consideration for appointment in the existing vacancy of GDS Mail Deliverer in accordance with the provisions contained in Director general (Post's) letter dated

6.6.1988. Since no favourable response was received from the respondents, the applicant filed O.A. 475/04 before this Tribunal which was disposed of with a direction to consider and pass appropriate orders. The respondents thereafter rejected the representation of the applicant which was then challenged by the applicant in O.A. 597/05. The O.A. 597/05 was allowed by this Tribunal. The respondents were directed to consider the case of the applicant for appointment to the post of GDS in the same manner as in they did in the case of one Shri John Mathew the applicant in O.A. 425/02, in case when a vacancy falls under physically handicapped quota and if the applicant applies for the same he shall be considered in that quota as well. The Tribunal also made it clear that the applicant has to make proper application as and when vacancy is notified by the respondents and preferential treatment be given to the applicant to the extent other things being equal preference shall be given to the applicant in respect of the appointment. Subsequently the respondents notified vacancies of GDS Branch Postmaster at Kulakkada East on 1.11.2007. The applicant applied in response to the notification but he was not called for interview. This O.A. was then filed seeking the following reliefs:

(a) Call for the records relating to Annexure A-7 notice and further proceedings pursuant to the same.

(b) Declare that the applicant is eligible and entitled to be considered for appointment to the post of GDS BPM Kulakkada in accordance with Annexure A-6 order of this Hon'ble Tribunal.

© Direct the 1st respondent to consider applicant's claim appointment to the post of GDS BPM Kulakkada in preference to outsiders in terms of Annexure A-6 order of this Hon'ble Tribunal and to give him appointment if he satisfies the qualifications and eligibility conditions for the said post.

(d) Award costs of and incidental to this application.

(e) Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2 When the matter was taken up for admission on 2.1.2008 the Tribunal issued an interim direction that the applicant shall be permitted to participate in the selection and interview which was to be held on 3.1.2008 and that the selection process shall not be finalised till the disposal of the O.A. without the permission of the Tribunal.

3 The respondents have contested the O.A. and filed a reply statement. It is contended on their behalf that the applicant was earlier engaged as an outsider by the Postmaster to deliver telegrams received at Pooyanpilly Post Office. He was engaged as a coolie and was paid coolie charges at the prescribed rate. The applicant is not engaged as a full time or part time casual labourer but only as a coolie mazdoor for delivering telegrams. The respondents have challenged the order of this Tribunal in O.A. 597/05 before the Hon'ble High Court of Kerala and the matter is pending. In response to the notification dated 1.11.07, 9 candidates were sponsored by the Employment Exchange and 11 applications were received separately. The applicant had also applied for the post. All the candidates from the Employment Exchange and five candidates who got highest marks in SSLC were called for verification of documents which was held on 3.1.2008. The applicant was also called but the selection has not been finalised in accordance with the direction of the Tribunal in the interim order dated 2.1.2008. The applicant was engaged as a coolie labourer as and when it was required and therefore he cannot be treated as a casual labourer. This principle has been upheld by the Tribunal in O.A. 604/07. The applicant was never appointed as a Casual Labourer. Therefore he is not eligible for the benefits provided under the letter dated 17.5.1989 (A-2). The applicant is not eligible for preferential

treatment as per the letter dated 6.6.1988 since he is not a casual labourer. As regards his claim for a post earmarked for physically handicapped, the applicant can apply whenever vacancies for physically handicapped are notified. The applicant has not been engaged since April, 2007.

The respondents have mentioned that they have challenged the decision of the Tribunal in O.A. 597/05 before the Hon'ble High Court of Kerala and that the matter is pending. However, the respondents have not produced any order of the Hon'ble High Court staying the direction given by this Tribunal in O.A. 597/05.

4 We have heard learned counsel for the applicant Shri P.C. Sebastilan and the learned counsel for the respondents Shri Thomas Mathew Nellimoottil and have perused the documents carefully.

5 The issue for consideration in this O.A. is whether the applicant is entitled to be considered for the post of GDS Branch Postmaster, Kulakkada for which a notification was issued by the respondents on 1.11.2007 in preference to others. It is not disputed that the applicant fulfilled the essential qualifications required for the post namely passing matriculation and being in the age group of 18 to 65 years. It is also not disputed that other conditions such as residence in the area are fulfilled. The applicant had earlier challenged the rejection of his representation through O.A. 597/05. That OA was disposed of with the following direction:

9 In view of the above, the OA succeeds. Respondents shall consider the case of the applicant for appointment to the

post of GDS in the same fashion as they did in the case of John Mathew the applicant in O.A. 425/02, in case when a vacancy falls under physically handicapped quota and, if the applicant applies for the same, he shall be considered in that quota well.

10 It is made clear that the applicant has to make a proper application as and when vacancies are notified by the respondents and preferential treatment be given to him by the respondents to the extent that other things being equal preference be given to the applicant in respect of appointment.

11 As the compliance of this order depends on the availability of vacancy, no time limit can be calendared for compliance of this order.

6 It was in accordance with the aforesaid direction of the Tribunal that the applicant applied for the post of GDS BPM, Kulakkada in response to the notification issued by the respondents. However, the respondents did not call the applicant for verification of marks as only those five candidates who secured highest marks in the SSLC were called. It is noted here that the selection for GDS BPM is purely based on the marks obtained in the SSLC examination. Apprehending that he shall not be selected as his marks are perhaps lower than other applicants, he has filed this O.A. invoking the claim for preferential treatment envisaged in the letter dated 6.6.1988 and endorsed by this Tribunal in its order in O.A. 597/05.

7 The Director General (Post)'s letter dated 6.6.88 reads as follows:

(28) Preference to casual labourers in the matter of appointment as ED agents - According to the prevalent Recruitment Rules governing the cadre of Group-D the order of preference among various segments of eligible

- (a) Non test category
- (b) ED employees

© Casual labourers

(d) Part-time casual labourers.

2 Since the number of vacancies of Group-D is limited and the number of ED employees eligible for recruitment as Group-D is comparatively large, the casual labourers and part-time casual labourers hardly get any chance of their being absorbed as Group-D. Thus majority of casual labourers with long service are left out without any prospect of their getting absorbed in group-D cadre.

3 Keeping the above in view, a suggestion has been put forth that casual labourers, both full and part-time should be given preference for recruitment as Extra Departmental Agents in case they are willing with a view to afford the casual labourers a chance for ultimate absorption as Group-D.

4 The suggestion has been examined in detail and it has been decided that casual labourers, whether full-time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts, provided they fulfil all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of a casual labourer so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange.

8 It would be very clear from the above extract that all casual labourers including part-time casual labourers are to be given preference in the matter of recruitment to ED Agents provided they fulfil the conditions and have put in minimum service of one year (namely 240 days in a year). The respondents' contention that the applicant is not a casual labourer cannot be sustained. It has been clearly stated in the letter dated 17.5.1989 (A-2) that:

“2 It is hereby clarified that all daily wagers working in post offices or in RMS offices or in administrative offices under different designations (mazdoor, casual labourer outsider) are to be treated as casual labourers. These casual labourers who are engaged for a period of less than 8 hours a day should be described as part time casual labourers. All other designations should be discontinued.

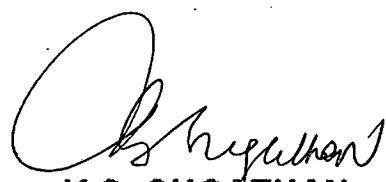
9 The above extract would clearly establish that even those who are employed on part-time basis are treated as casual labourers. This issue was also adjudicated by this Tribunal in O.A. 425/02 where the applicant was doing similar job of telegram messenger as the present applicant. It was held in that OA that the applicant was eligible for consideration as per the DG (Post)'s letter dated 6.6.1988. The respondent's contention that a coolie is not a casual labourer has no merit. The Concise Oxford Dictionary defines a coolie as "**unskilled native labourer in eastern countries**" A coolie is also a labourer and if he is engaged on certain days for delivering telegrams he fulfil the requirement of being called a part-time Casual labourer.

10 In O.A. 597/05 this Tribunal had directed that the applicant shall be given preferential treatment to the extent other things being equal. It is for the respondents to work out the manner in which such a preference is to be given. Such a preference could possibly be given by awarding certain marks for every completed year of service and adding it to the marks obtained in the SSLC examination. In view of the specific provision provided for preferential treatment to Casual Labourers including the part-time Casual Labourers in the DG(Posts)'s letter dated 6.6.1988 and in view of the specific direction given by the Tribunal in the case of the applicant, we are of the considered view that the respondents have to work out the manner in which such a preference could be given to casual labourers for recruitment to GDS.

11 For the reasons stated above the O.A is disposed of with the direction to the respondents to formulate appropriate method for finalising

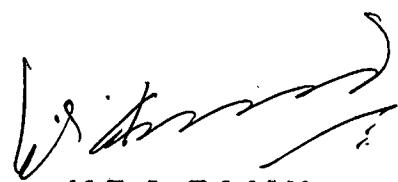
the manner in which preference envisaged in the letter of 6.6.1988 is to be given to Casual Labourers and thereafter finalise the selection process initiated in response to the notification dated 1.11.2007. The interim order shall continue till the method of giving preference is finalised and adopted for the selection process initiated by notification dated 1.11.2007. No costs.

Dated 11th July, 2008.



K.S. SUGATHAN
ADMINISTRATIVE MEMBER

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K.B.S. RAJAN
JUDICIAL MEMBER