CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.As. NOs. 85 and 90 of 2011

Tuesday, this the 13th day of March, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. NO. 85 OF 2011 :

Bhaskaran P.N.,
Aged 39 years, S/o. Nallambira,
Officiating Gramin Dak Sevak Mail Carrier,
Puthupadi Sub Post Office,
Eangapuzha, Calicut District,
Residing at : Kanjamvayal, Puthupadi PO,
Eangapuzha, Calicut-673 586. ... Applicant

(By Advocate Mr.T.C. Govindaswamy)

versus

1. Union of India, represented by
Secretary to the Government of India,
Ministry of Communication,
Department of Posts,
New Delhi – 110 001.

2. Inspector of Posts,
Kunnamangalam Sub Division,
Kunnamangalam, Calicut-673 571. ... Respondents

(By Advocate Ms. Deepthi Mary Varghese, ACGSC)

2. O.A. NO. 90 OF 2011 :

Preetha E.,
Part time contingent employee,
Chelakara Post Office, Thrissur. ... Applicant

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

versus

1. The Senior Superintendent of Post Offices,
Thrissur Division, Thrissur-680001.

2. The Postmaster General, Central Region,
Kochi-682 018. ... Respondents

(By Advocate Mr. M.K. Aboobacker, ACGSC)

The applications having been heard on 01.03.2012, the Tribunal on 13-03-12 delivered the following:

ORDER

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

In the above O.As, the issue to be adjudicated is whether the applicants are eligible for preference in the matter of appointment as Gramin Dak Sevak Mail Carrier (GDSMC) or Gramin Dak Sevak Branch Postmaster (GDSBPM), as the case may be. Hence, they were heard together and are disposed of by this common order.

2. The applicants contend that they are fully qualified for the post of GDSMC / GDSBPM. Since 2001, they have worked as casual labourers and are entitled for the benefit of preference for appointment as GDS. They relied on the letter of Director General, Department of Posts, New Delhi, No.17-141/88/ EDC & Training dated 6.6.1988, which is reproduced as under :

> ***"DG Posts Letter No.17-141/88-EDC & Trg., dated the 6th June,1988 :-***
>
> Sub : 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 employees is as under :-
>
> (a) Non test category
> (b) ED employees
> (c) 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 as 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 casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange."

3. The respondents in their reply statement submitted that the applicants could not produce any evidence to show that they are casual labourers engaged by the department in accordance with due procedure. They were engaged for a few hours in a Post Office for certain duties, but that was without reference to the Employment Exchange. Relying on the decision of this Tribunal in O.A. No. 527/2006, they contended that the applicants have no right to be considered in preference to others.

4. We have heard Mr. T.C. Govindaswamy and Mr. Vishnu S. Chempazhanthiyil, learned counsel for the applicants and Ms. Deepti Mary Varghese, and Mr. M.K. Aboobacker, learned ACGSCs appearing for the respondents in the respective O.As and perused the records.

5. In a number of cases, this Tribunal has held that the casual employees of any type on fulfilling the conditions in the letter of DG Posts

dated 06.06.1988 (supra), are eligible for preference in the matter of appointment as GDS, even if they have not been sponsored by the Employment Exchange. The orders of this Tribunal have been upheld by the Hon'ble High Court of Kerala. In O.A. No. 109/2010, this Tribunal held as under :

> "7. It is amply clear that the casual labourers whether full time or part time are eligible for preference in the matter of recruitment to ED posts if they fulfil all the conditions and have put in a minimum service of one year, i,e, 240 days in a year. The respondents have admitted that the applicant is a part time sweeper/scavenger engaged in the Beypore Sub Post Office from November, 2005 onwards and he is continuing so even today. He has got more than four years service as a part time employee. But not giving an appointment order to the applicant is a willful default on the part of the respondents to circumvent the ban on recruitment of contingent employees in the department in 2005. The respondents have taken the work of a casual labourer for many years without a break by appointing him on daily wage basis without an appointment letter. If he is not appointed following due process of selection, the fault lies with the respondent and not the applicant. Having taken the work of a casual labourer ever since 2005, it is not fair on the part of the respondents to deny the benefit of preference for which he is eligible on the basis of the letter dated 6.6.1988. It was open to the respondents not to have taken work from him continuously. They could have appointed the applicant on contract basis. They could have outsourced the job he was doing. They could have appointed others in such a way that they do not put in a minimum service of 240 days in a year. Once 240 days is completed in a year by a casual labourer, whether full time or part time, if he is willing to be appointed to ED vacancy he is eligible for preference in the matter appointment to ED post provided he fulfills all the conditions. By not giving a letter of appointment, after engaging him for years together, the respondents cannot deprive the applicant of his accrued eligibility for preference as envisaged in the letter dated 06.06.1988.
>
> 8. It is relevant here to quote the letter of Director General of Posts No. 45-24/88 SPB-I dated 17.5.1989:
>
> > "Copy of DG Dept. of Posts, New Delhi letter No. 45-24/88 SPB-I, dated 17.5.1989
> >
> > Sub:- As above.
> >
> > Sir,
> > I am directed to pay that reference have been received seeking clarification as to which class of

workers should be treated as full time or part time casual labourers.

2. It is hereby clarified that all daily wagers working in post offices or in RMS offices or in administrative officers 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.

3. Substitutes engaged against absentee should not be designated as casual labourers, for purposes of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank list in priority, but will be above outsiders. In other words, the following priority should be observed.

i. NIC 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 as part time casual labourers should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years he will be treated, for the purpose of recruitment to have completed one year as of service as full time casual labourers.

iv. EDAs of other division in the same region.
v. Substitutes (not working in metropolitan cities).
vi. Direct recruits through employment exchange.

Note: Substitutes working in metropolitan cities will however, rank above No. (iv) in the list.

4. Please acknowledge receipt immediately.

Sd/-
Dr.Sarjaram
Asst. Director General (SPN)"

In terms of the above letter, the applicant who is working in Beypore Sub Post Office for a period less than 8 hours a day should be described as part time casual labour.

9. In an identical matter in O.A. No. 534/2003, this Tribunal decided as under:

"3. We have heard the learned counsel on either side and have perused the material on record. The contention of the respondents that the applicant is not entitled to any preference as per A-3 notice because her name was not sponsored for appointment as part time sweeper is no more tenable in view of the orders of this Tribunal in OA Nos.818/2000 and 936/2001. Under identical circumstances, this Tribunal held that as the applicants in those cases had been permitted to continue as part time casual labour for a long time and had been appointed by the competent authority, the fact that their names were not sponsored by the employment exchange could not be held out to be a valid reason for denying them the benefit of the long service for preference for appointment to ED posts. We find that there is no reason to differ from the view taken. It is a fact that the applicant has been working continuously from 1.6.95 onwards till date. If the appointment was irregular and the service would not give any benefit to the applicant, the respondents should have resorted to a process of selection through employment exchange and made appointment to the post of part time sweeper. They did not do that but allowed the applicant to continue for more than 7 years. In these circumstances, we find no justification for not considering the applicant for appointment by giving preference in terms of A-3, in spite of repeated instructions contained in A-4.

4. In the light of what is stated above, we allow the application and direct the first respondent to consider the request of the applicant for appointment to the post of GDS MD, Velliapally, giving preference to her in terms of A-3 and A-4 despite the fact that the applicant's appointment as a part time Sweeper was not routed through employment exchange."

10. In O.A. No. 571/2001 also, similar decision was taken by this Tribunal. The relevant part is extracted as follows :

"3. An identical issue came up for consideration before the Bench in OA 818/2000. In that case, the part time contingent employee who had been working from December 1993 onwards was denied the benefit of preference in the matter of appointment to ED post for the reason that the applicant was not sponsored by the Employment Exchange. The Tribunal held that as the applicant had worked as Part Time casual labourer for a long period, this benefit should not be denied to him solely for the reason that he was not engaged as casual labour through the intervention of the agency of Employment Exchange. The facts of this case are also similar. The applicant admittedly is working as Part time contingent Sweeper with effect from 1.1.1996

onwards without break and the 3rd respondent has forwarded her representation to the 2nd respondent. The 3rd respondent forwarded the application being convinced that the applicant having been working continuously from 1996 onwards was eligible to be treated as a regular Part time Contingent Sweeper and was eligible to be appointed as ED Agent in preference to outsiders.

4. In the result, the application is allowed. The respondents are directed to consider the applicant for appointment to the post of EDMC Chittanjur treating her as a regular Part time employee giving her the benefit of the directions contained in the letter of Director General of Posts, dated 6.6.88 and 31.3.92. Recruitment to the post of EDMC, Chittanjur through open market should be resorted to only if the applicant is found unsuitable for such appointment."

11. In O.A. No. 03/2005, it was held by this Tribunal as under :

"7. Therefore the contention of the respondents that the applicant had not been sponsored by Employment Exchange cannot hold good. Further, in (1996) 6 SCC 216, Excise Superintendent, Malkapatnam, Krishna District, A.P., the Apex Court has held that, restricting the selection only to the candidates sponsored by the Employment Exchange, was not proper. In the circumstances, the applicant has made out a case and therefore we are of the view that the relief has to be granted to the applicant The contention of the applicant that vide Annexure A-5 notification the respondents are attempting to fill up the said vacancy on provisional basis, on going through the said notification, we find that though appointment is on provisional basis it is likely to be regularised. In the circumstances, we are of the view that it is a fit case where direction be given to the respondents to consider the applicant for an appointment to the post of GDS BPM Ambalathara.

8. In the light of the above submissions, the application is allowed. Respondents are directed to consider the applicant for an appointment to the post of GDS BPM Ambalathara and give her the benefit contained in the letter of Director General of Posts. It is made clear that selection through open market could only be resorted to, if the applicant is found unsuitable for such appointment. With above direction the O.A is allowed. In the circumstances, no order as to costs."

The order of this Tribunal in OA 3 of 2005 fully covers the

present OA.

12. In Writ Petition (C) No. 33732/2005 challenging the order in the said OA, the Hon'ble High Court of Kerala held as follows :

> "..... Going by the department instruction, such casual labourers are to be given preference in the matter of recruitment. It is for the department to ensure that the appointments even on casual basis are not made through the back door. Having appointed people like the applicant and such applicants having gained experience as casual labourers they cannot be prevented from participating in the selection and appointment. It is seen that the Tribunal as well as this court has consistently taken the stand as above, and the directions have been implemented also. We do not find any merit in this writ petition and it is accordingly dismissed."

13. In OA No. 744 of 2009, this Tribunal held as under:

> "7. In view of the above position, we allow this OA and declare that the applicant is eligible and entitled to be considered for appointment as GDS Mail Packer, Ayyanthole in preference to outsiders in terms of Annexure A-3 letter dated 6.6.1988. Consequently, the respondents are directed to consider the applicant for appointment to the post of GDS Mail Packer Ayyanthole giving her the benefit contained in the letter of Director General of Posts (Annexure A-3). It is made clear that selection through open market could only be resorted to, if the applicant is found unsuitable for such appointment. The aforesaid direction shall be carried out by the respondents within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

The applicant is similarly placed as the applicant in the aforesaid OA in as much as both are part time sweepers, without formal appointment orders on daily wage basis.

14. In the light of the decisions of this Tribunal in a number of cases and the decision of the Hon'ble High Court, the respondents cannot deprive the applicant of the benefit of the departmental instruction to give preference in the matter of recruitment on the plea that they have not given an appointment letter but only taken work from the applicant for so many years. If the post in question is going to be filled up by transfer, appointment of outsider in preference to the applicant does not arise. But the applicant is entitled to preference if he fulfills all conditions, for appointment as GDS in any vacancy.

> 15. In the result, the O.A. succeeds. The first respondent is directed to consider the applicant for appointment to the post of GDS BPM, S.V. Colony P.O., in preference to open market candidates giving the benefit of Annexure A/1 letter dated 06.06.1988 within a period of 60 days from the date of receipt of a copy of this order. If the vacancy at S.V. Colony is filled up by transfer, he should be considered for any other vacancy. No order as to costs."

If the respondents have engaged the applicants without reference to the Employment Exchange, the fault lies with the respondents only. That cannot be a legitimate reason to deprive the applicants of the right of preference.

6. As regards the decision of this Tribunal in O.A. No. 527/2006relied on by the respondents, it was pointed out by the learned counsel for the applicants that the same was challenged in W.P.(C) No. 14560/2007 before the Hon'ble High Court of Kerala and it was allowed. The relevant part of the said judgement is extracted as under:

> "In the result, the impugned order of the Tribunal is set aside and it is directed that the respondents should consider the applicant (petitioner herein) for appointment to the post of GD Packer in Thevalakkara Post Office, within forty five days from today, treating him as a regular part time sweeper cum scavenger, if he is otherwise suitable. That shall be done with effect from the date of original application before the Tribunal, for all intents and purposes, except monetary benefits by way of wages. Benefits as to wages will flow only from the date of expiry of forty five days from now, unless the establishment treats the applicant/petitioner as unsuitable. Recruitment from open market shall be resorted to only if the applicant is not found to be otherwise suitable. The writ petition ordered accordingly."

7. In view of the settled legal position as above, we have no hesitation in allowing the O.As. The applicants in these O.As are entitled to have preference over others in the matter of consideration for regular appointment as GDS as per the DG Posts letter dated 06.06.1988 quoted

above. The respondents are directed to consider the applicant in O.A. No. 90/11 alongwith other similarly situated contingent employees for appointment to the post of GDSBPM, Thozhupadam, in preference to open market candidates. In respect of the applicant in O.A. No. 85/11, the respondents are directed to consider the service rendered by him as Part Time Contingent Sweeper for the period from 20.03.2001 and to grant him the preference over others in appointment as GDSMC and to grant consequential benefits thereof. It is clarified that the recruitment from open market can be resorted to only if the applicants are found unsuitable for appointment as GDS. Appropriate orders shall be issued within a period of two months from the date of receipt of a copy of this order.

8. The O.As are allowed as above with no order as to costs.

(Dated, the 13th March, 2012)

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.