

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.92/97

Wednesday, this the 22nd day of September, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

K.Balakrishna Panicker,
Extra Departmental Mailman,
Sub Record Office,
Kayamkulam.

- Applicant

By Advocate M/s TPM Ibrahim Khan & Shafik M.A.

Vs

1. Director General of Posts,
Department of Posts,
Government of India,
New Delhi.
2. Chief Postmaster General,
Kerala Circle,
Department of Posts,
Thiruvananthapuram.
3. Senior Superintendent
Railway Mail Service, TV Division,
Thiruvananthapuram.
4. Sub Record Officer,
Sub Record Office,
Railway Mail Service,
Kayamkulam.
5. B.Sankara Pillai,
Extra Departmental Mailman,
Sub Record Office, Railway Mail Service,
Kayamkulam.

- Respondents

By Advocate Mr Mathews J. Nedumpara, ACGSC(represented) for R.1to 4
By Advocate Mr R Rajasekharan Pillai(for R.5)

The application having been heard on 22.9.99, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-5, A-7, A-11 and A-13 to the extent these orders assigned lower seniority and later entry in service to him, to declare that he is entitled to get seniority and date of entry as Extra Departmental Mailman refixed with effect

from 1.4.82 or at least with effect from 1.3.89, and to direct respondents 1 to 4 to assign him appropriate seniority in A-5 seniority list of ED Agents in Railway Mail Service, Trivandrum Division and also to direct respondents 3&4 from promoting ED Agents who entered service subsequently to 1.4.82 in Railway Mail Service, Trivandrum Division to the cadre of Group D before promoting the applicant, with all consequential benefits.

2. The applicant has been working as ED Mailman in the Sub Record Office, Kayamkulam with effect from 1.4.82 on a provisional basis as one of the two vacant posts which arose consequent on the promotion of regular incumbents M/s S.Rajendra Chettiar and S.Vasudevan to the cadre of Group D Mailman. The 4th respondent initiated proceedings for regular appointment to these posts and notified vacancies on 25.10.82. The applicant satisfied all the eligibility conditions prescribed for the post and submitted an application. Since the applicant was not sponsored by the Employment Exchange, the 4th respondent refused to consider the candidature of the applicant. The applicant aggrieved by the same, filed O.P.9475/82 before the High Court of Kerala. The High Court passed an interim order on 1.12.82 staying appointment to that post. The said O.P. was transferred to Madras Bench of the Tribunal. The Tribunal held that exclusion of applicant's candidature is unjustified and directed the 4th respondent to consider the candidature of the applicant also as in 1982 and to announce the result of the selection. In pursuance of the same the applicant was interviewed. Applicant and the 5th respondent were selected against the two existing vacancies. Though the Tribunal passed the order on 26.2.88, the 4th respondent did not make regular appointment and kept the same pending for more than one year. The 5th respondent was appointed as ED Mailman, Kayamkulam with effect from 1.3.89. The applicant was not given regular appointment and was made to continue to work on

provisional basis. Though the applicant requested respondents 3&4 to give him regular appointment, the 3rd respondent directed the 4th respondent as per memo dated 21.10.91 to post one Sasi from Head Record Office, Trivandrum against the post for which the applicant was selected. The applicant thereupon submitted a representation to the 3rd respondent. Thereafter, the applicant was served with an order appointing him as ED Mailman with effect from 1.5.92 as per A-2. The applicant says that seniority of ED Agents under the Department of Posts is governed by Director General of Posts and Telegraphs, New Delhi letters No.47-5/79-SPB.I dated 20.3.79 and 27.1.81. As per the letter dated 27.1.81 seniority of ED Agents is to be determined with reference to the date from which an official continuously working as ED Agent ignoring all spells of absence. As per A-4, the principle contained in the letter dated 27.1.81 is made applicable for preparation of gradation list. Thus, the applicant is entitled to the seniority with effect from 1.4.82. The applicant as per the seniority list of 1.10.92(A-5) is assigned the seniority and ranked at Sl.No.102 with the date of entry 1.5.92, whereas the 5th respondent has been assigned seniority at Sl.No.66 with the date of entry 1.3.89. Aggrieved by the lower ranking and seniority, the applicant submitted representations to respondents 3&4. As per A-7, this request was turned down. Certain criminal cases were pending against the applicant. He was acquitted/discharged in all the cases. as per judgement dated 29.2.92. The applicant approached this Bench of the Tribunal by filing O.A.857/95 since the respondents refused to consider his entitlement for higher seniority. This Tribunal declared that when promotion/appointment is denied or held up wrongly by the department, they have to compensate the official. He was permitted to submit a representation to the PMG. He submitted a representation accordingly. That representation was rejected as per A-11. Against A-11, he

preferred an appeal. That appeal was rejected as per A-13. A-13 is not a considered order.

3. Respondents contend that the applicant never held any Extra Departmental post in Kayamkulam Mail Service either in a provisional or in a regular capacity prior to 1.5.92 on which date he was regularly appointed to the post of ED Mailman in Kayamkulam Railway Mail Service. The applicant was working as ED Mailman in the Sub Record Office, RMS, Trivandrum Division since 1.5.92. He started his career as a part time Casual worker in Kayamkulam RMS at hourly rate of wages and consequent on promotion of the regular incumbent to the post of Mailman with effect from 1.4.82, the applicant was engaged to work in the post of ED Mailman on casual basis. The delay in appointing the applicant as ED Mailman was not due to any fault of the respondents. His alleged involvement in more than one criminal case delayed his appointment.

4. According to the official respondents, the sole reason for the delay in appointing the applicant as ED Mailman was due to the reason that he was involved in certain criminal cases. The question then arises is whether the respondents are justified in asking the applicant to wait till the criminal cases are over. In this context, the basic and fundamental principle of criminal jurisprudence that an accused is presumed to be innocent till he is convicted, cannot be forgotten.

5. In Mansarudeen Vs Secretary, K.S.E.B. and others, 1994(3) ILR(Kerala), 806, it has been held that mere pendency of criminal cases against the petitioner is not a valid ground to hold that the petitioner's character and antedecents disqualify him for appointment to any service.

6. The said decision squarely applies to the facts of the case at hand.

7. In A-5 seniority list, the seniority position of the applicant is shown on the basis that his date of entry as 1.5.92. As per A-7, the Senior Superintendent of Post Offices found that the applicant has continuous engagement as ED Mailman only with effect from 1.5.92. The appeal against it was dismissed as per A-11 and the representation submitted to the Director General was also rejected as per A-13. A-7, A-11 and A-13 cannot be sustained in the light of the principle laid down in the ruling referred to above. That being so, A-5 is also bad to the extent it relates to the seniority of the applicant.

8. Accordingly, the O.A. is allowed. A-7, A-11 and A-13 are set aside and A-5 is set aside to the extent it relates to the seniority of the applicant. It is declared that the applicant is entitled to get his seniority as ED Mailman refixed with effect from 1.3.89. Respondents 1 to 4 are directed to assign to the applicant appropriate seniority in A-5 seniority list on the basis of his date of entry as 1.3.89 with due notice to all concerned, with all consequential benefits. No costs.

Dated, the 22nd of September, 1999.


(J.L.NEGI)
ADMINISTRATIVE MEMBER


(A.M.SIVADAS)
JUDICIAL MEMBER

trs/24999

List of Annexures referred to in the Order:

1. A-2: True copy of the appointment order No.SRO/ED/Rectt dated 1.5.92 issued by th 4th respondent to the applicant.
2. A-4: True copy of the letter No.17-307/91-ED&Trg dated 27.11.91 of the DG of Posts.
3. A-5: True copy of the seniority list of EDAs of Railway Mail Services, Trivandrum Division as on 1.10.92 issued by the 3rd respondent as per letter No.B.II/III-6 dated 30.11.92.

4. A-7: True copy of the order No.B II/11-7/Kylm dated 14.6.94 of the 3rd respondent to the applicant.
5. A-11: True copy of the order No.Vig//16-97/95 dated 13.1.96 of the 2nd respondent to the applicant.
6. A-13: True copy of the communication No.45-39/96-SPB.I/ED &Trg dated 18.10.96 issued by the Dy. Director General(T&E) to the applicant.