

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA. NO. 115/2004

Friday, this the 23rd day of December, 2005

C O R A M

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

**K.M Balan S/o late Ummira
Working as Part-time Gardner-cum-Scavenger of
Quilandy Head Post Office, Vadakara
residing at Kaviledathu, Meethal,
Panthalayani, Quilandy. .. Applicant**

By Advocate Mr.O.V. Radhakrishnan

Vs.

- 1 Postmaster (HSG-I)
Quilandy Head Post Office,
Quilandy**
- 2 Superintendent of Post Offices
Vadakara Postal Division
Vadakara Pin-673 101**
- 3 Postmaster General
Northern Region,
Kozhikode**
- 4 Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.**
- 5 Director General of Posts
Dak Bhavan
New Delhi.**
- 6 Union of Indian represented by its Secretary
Ministry of Communications
New Delhi. ..Respondents**

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant seeks the following reliefs:

- i)to call for the records leading to AnnexureA-4 and to set aside the same**

ii) to issue appropriate direction or order directing the respondents 1 and 4 to take immediate steps for promoting the applicant to Group-D on the basis of his running seniority against one of the existing vacancies which falls under 25% quota set apart for Casual Labourers under the Recruitment Rules, 2002 and to promote him to Group-D from the date of his entitlement with all consequential benefits forthwith and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;

iii) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case such other and

iv) to award costs to the applicant.

2 The applicant was engaged as a Part-time Water Carrier in 1986 at Quilandy Head Post Office and is presently working as a Part-time Gardener-cum-Scavenger w.e.f. 23.2.1992. As per the revised Group-D Recruitment Rules 2002 there is a provision of considering Casual Labours for filling up 25% of the vacancies in Group-D that remains unfilled after recruitment of non-test category employees. It is the contention of the applicant that there were four vacancies of Group-D in the year 2002 and approval for filling up of only one vacancy has been received and the selection was made from working Gramin Dak Sevaks on seniority-cum-fitness basis as per rules and the non-filling up of the remaining vacancies has resulted in depriving him of the benefit of promotion provided for under the Recruitment Rules.

3 The respondents have contested the claim of the applicant in the reply statement stating that the question of filling up of the vacancies by Casual Labour will arise only after filling up 75% of such vacancies by Gramin Dak Sevak officials as envisaged in the said Annexure R-1 notification. The Department of Personnel, Public Grievances & Pension, Government of India have vide Office Memorandum dated 16.5.2001 at Annexure R-2, dated 16.5.2001 provided that only those vacancies finally cleared by the Screening Committee will be filled up. In the instant case only one vacancy was approved by the Department Screening Committee for recruitment during the year 2002 and the same was filled by eligible GDS and no vacancy was remaining unfilled for being absorbed by casual labours. The applicant's representation was considered by the second

respondent and in view of the above facts the impugned order was issued informing him of the position. According to the respondents they have acted strictly according to the rules.

4 Rejoinder has been filed by the applicant reiterating that there were four vacancies in the Vadakara Postal Division and even after filling up one post, three posts remained vacant. According to Annexure R-1 Recruitment Rules first preference goes to Casual labour with temporary status failing which full time Casual labour of the Recruiting Division of the unit are entitled to second preference. It is also contended that Annexure R-2 pertains to direct recruitment which is not applicable in the case of promotion of Casual Labours to Group-D posts. The very same question was considered by this Tribunal in O.A. 977/2003 and OA 277/2004 and held that the method of recruitment prescribed in the above rules cannot be construed as direct recruitment. Thus the method of recruitment followed appears to be in the nature of promotion and if that be so, the policy followed by the respondents for appointment of Group-D only with the approval of the Screening Committee is incorrect. The applicant being the seniormost casual labour is entitled to be promoted to Group-D.

5 We have heard learned counsel on both sides and perused the material on record. The learned counsel of the applicant argued that the instant case is fully covered by the judgment in Annexure A-5 of the Tribunal in O.A. 977/2003 and IA 277/2004. The relevant recruitment rules have been produced at Annexure R-1. There are various categories of posts in Group-D and the methods of recruitment are different. The posts in the instant case are in Part II of the Recruitment Rules relating to subordinate offices. Column 11 of the Recruitment Rules prescribe the method of recruitment which reads as follows:

“The method of recruitment shall be in the manner specified below namely-

A test shall be held to determine the working eligibility of the candidates holding the post specified against Sl. No. 2 for filling up the posts. In case the suitable candidates are not found to fill up the post by such test, the remaining posts shall be filled up by the method as specified below:-

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(i) 75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl.No. 2 shall be filled by Gramin Dak Sevak of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak Sevak of the neighbouring Division or Unit by Selection-cum-seniority.

(ii) 25% of the vacancies remaining unfilled after recruitment of employees mentioned at Sl. No. 2, such vacancies shall be filled up by selection-cum-seniority in the following order:

(a) by casual labourers with temporary status of the recruiting division or unit failing which

(b) by full-time casual labourer of the recruiting division or unit failing which

(c) by full-time casual labourers of the neighbouring division or unit failing whichever

(d) by Part-time Casual Labourers of the recruiting division or unit failing which

(iii) by direct recruitment

Explanation: (1) For Postal Division or Unit, the neighbouring Division or Unit, as the case may be, shall be the Railway Mail Service Sub division and vice versa.

(2) The aforementioned test shall be governed by the instructions issued by the Central Government from time to time.

6 Nowhere it is mentioned in the above rules that the method of recruitment is by way of direct recruitment. According to the rules, the first method to be followed is by a test to determine the eligibility of the candidates holding the post specified in the rules and in case suitable candidates are not found, the remaining posts shall be filled up 75% by GDS of the Recruiting Division or Unit failing which by GDS of the neighbouring Division or Unit by selection cum seniority and 25% from casual labours under four sub categories namely, 1) temporary status, 2) full-time labours of the recruiting division, 3) Full-time casual labour of the neighbouring division or unit failing which by 4) Part-time casual labour in that order. The applicant being a part-time casual labour, he has a right to consideration only to the 25% quota set apart for the casual labour. This position has not been disputed. Though the applicant in his rejoinder contends that he is a full time employee, it is clear from the pleadings in the OA that he is working on a part-time basis. As contended by the applicant we had occasion to adjudicate on the same Recruitment

Rules in O.A. 977/03 and 277/04 mentioned above and it was held that the manner of recruitment in the Recruitment Rules must not be construed as direct recruitment as it only contemplates selection from employees within the recruiting division on the basis of a departmental test failing which by selection from categories of GDS and Casual Labours. We had also occasion to consider the relevance of Annexure R-2 memorandum of the Department of Personnel dated 16.5.2001 in this context. It is true that the Government of India enforced certain restrictions on recruitment by this memorandum so as to provide for approval by a Departmental Screening Committee for filling up the posts by direct recruitment in order to achieve the long term objective of reduction of 10% staff within five years. But it is more than evident from the instructions contained in the memorandum that the ban on recruitment referred to above was limited to direct recruitment vacancies. Para 3 thereof is specific in this regard:

“3. The other modes of recruitment (including that of ‘promotion’) prescribed in the Recruitment Rules/Service Rules would however, continue to be adhered to as per the provisions of the notified Recruitment; Rules/Service Rules.

The intention was that the recruitment either by direct or open market would only be restricted by the instructions in the above OM. Therefore the reliance of the respondents on this memorandum that the clearance of the vacancies from the Departmental Screening Committee was necessary cannot be accepted. They should have taken steps for filling up the remaining three vacancies also the existence of which have been confirmed by the respondents in the reply statement.


7 Regarding the claim of the applicant to the 25% of the vacancies under the promotion quota no doubt he has a claim as stated above, in the order of preference provided in the Recruitment Rules. The contention of the applicant that he is the seniormost and that there are no other persons who are eligible to be considered under the other categories have to be verified with regard to factual position and there are no pleadings in this regard. Therefore any direction to promote the applicant straight away to

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the vacancy stated to be existing in the year 2002 cannot be given. In the light of our holding that Annexure R2 memorandum is not applicable to filling up of Group-D vacancies under the second respondent, the only direction that can be given to the respondents is to assess the actual number of vacancies and fill them up according to the Recruitment Rules and consider the applicant in his turn in accordance with the preference provided for in the said Rules. The respondents shall do so accordingly within a period of four months from the date of receipt of a copy of this order.

8 The OA is disposed of as above. No costs.

Dated. 23rd December, 2005.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn


SATHI NAIR
VICE CHAIRMAN