

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 13 of 2001

Friday, this the 8th day of November, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. R. Sathikumari,
W/o Rajan,
Part-time Contingent Employee,
Thiruvananthapuram Fort Post Office,
Thiruvananthapuram-23, residing at
Kotterkuzhi Veedu, 28/1083,
Sreekanteswaram,
Thiruvananthapuram Fort (PO).Applicant

[By Advocate Mr. Sasidharan Chempazhanthiyil rep. by
Mr. Vishnu S Chempazhanthiyil]

Versus

1. Sub Postmaster, Fort Post Office,
Thiruvananthapuram-23
2. Assistant Superintendent of Post Office,
North Sub Division, Thiruvananthapuram.
3. Senior Superintendent of Post Office,
North Postal Division, Thiruvananthapuram.
4. Director General,
Postal Department, New Delhi.
5. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.
6. G. Santhakumary Amma,
ED Letter Box Peon, Fort Post Office,
Thiruvananthapuram.Respondents

[By Advocate Mr. Sunil Jose, ACGSC (R1 to R5)]

The application having been heard on 8-11-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who claimed to have been working as
Part-time Contingent employee in the office of the 1st
respondent for more than 17 years applied for appointment to

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the post of ED Letter Box Peon in the same office. Finding that the case of the applicant was not being considered and as she did not receive any reply from the official respondents, the applicant filed this Original Application initially for a direction to the 2nd respondent to consider her for appointment in the vacant post of ED Letter Box Peon, Fort Post Office on a preferential basis, to consider and pass orders on Annexure A3 representation made by her in that behalf and to keep in abeyance all further steps in the matter of recruitment to the post of ED Letter Box Peon from outside or by transfer from working ED Agents till the disposal of the Original Application. However, as it was brought to the notice of the Bench that one Santhakumary Amma was appointed as ED Letter Box Peon on 5-1-2001, the applicant impleaded the said Santhakumary Amma as 6th respondent and amended the Original Application incorporating a prayer for setting aside the appointment of the 6th respondent. It is alleged in the Original Application that as a Part-time Contingent employee the applicant has been working for 17 years continuously, she is entitled to preference in appointment to any ED post, in terms of the D.G.(Posts)'s letter dated 8-6-1988.

2. Although a notice was issued to the 6th respondent and the same was served on her, the 6th respondent did not appear to contest the application.

3. Respondents 1 to 5 in their reply statement resisted the claim of the applicant for consideration for appointment to the post of ED Letter Box Peon on the ground that the applicant having not been engaged through the Employment Exchange, in terms of the instructions contained in Annexure R-3(a) letter of the D.G.(Posts) dated 17-9-1990 she could not be considered

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for appointment by giving preference. The claim of the applicant that she has been continuously working for the last 17 years is also not admitted.

4. The applicant in the rejoinder has stated that the MMS Unit being a separate recruiting unit, the 6th respondent was not entitled to be considered for appointment to the post of ED Letter Box Peon.

5. In obedience to the order in MA No.789/2002, the official respondents produced voluminous records such as Treasuries Cash Book, Attendance Register etc. When the matter came up for hearing before the Bench on 23-10-2002, counsel on either side submitted that they would go through the voluminous records and find out the facts regarding engagement of the applicant as a Part-time Contingent employee. When the matter came up today, learned counsel on either side, namely Shri Vishnu S Chempazhanthiyil, counsel of the applicant and Shri Sunil Jose, counsel of the official respondents, stated that from the records they could find that the applicant had been continuously employed since 1-10-1991 as a Part-time Contingent employee.

6. With this background, learned counsel on either side opened their arguments. Shri Vishnu S Chempazhanthiyil, learned counsel of the applicant, argued that on the facts now undisputed the applicant has been working as a Part-time Contingent employee at least from 1-10-1991 and therefore, the applicant has become eligible for the preference in regard to appointment to ED posts in terms of the letter of the D.G.(Posts) dated 8-6-1988. This proposition is opposed by the learned counsel of the official respondents on the ground that the applicant's engagement not being made through the

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Employment Exchange, in terms of Annexure R-3(a) letter of the D.G. (Posts), the applicant could not be considered eligible for a preferential treatment.

7. This Bench of the Tribunal had occasion to consider almost similar case, i.e. OA No. 818/2000. In that case, the applicant therein was in engagement as a Part-time Contingent employee continuously for a period of 6 years and it was held that, though not sponsored by the Employment Exchange, the services of the applicant could not have been treated as a stop gap arrangement and, therefore, preference in appointment to ED posts should have been given. We are in respectful agreement with that view. Since the applicant has been working continuously from 1991 onwards as a part-time employee, though not through the agency of Employment Exchange, we find that she has become entitled to be considered for appointment on the ED post in preference to outsiders.

8. The appointment of the 6th respondent is challenged by the applicant on the ground that MMS being a separate recruiting unit, the 6th respondent who was employed as a Part-time Contingent employee of MMS Unit should not have been considered for appointment against the Group D post in the office of the 1st respondent. In OA No.994/2001, it was held that MMS Unit is a separate recruiting unit. Therefore, the Part-time Contingent employee of the MMS Unit has no right to claim preference in appointment to a Group D post in Trivandrum (North) Division. Further, since the applicant who has been working as a Part-time Contingent employee for more than 10 years was available, the 6th respondent who belongs to a separate recruiting unit and who has put in lesser length of

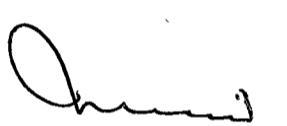
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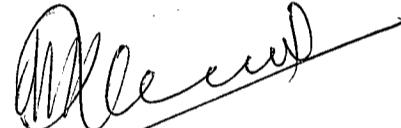
service than the applicant should not have been appointed against the ED post. Therefore, the appointment of the 6th respondent is liable to be set aside.

9. In the light of what is stated above, the Original Application is allowed. The appointment of the 6th respondent as ED Letter Box Peon, Fort Post Office, Trivandrum is set aside and the official respondents are directed to consider the applicant for appointment to the said post as she is eligible for preferential claim in appointment. The above direction shall be complied with and orders issued as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this order. No costs.

Friday, this the 8th day of November, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of SSLC Mark sheet with Registration No.128994 of 1975.
2. A-2: True copy of the receipt dated 1.5.99 for the wages of April 1999 (A.C.G.17).
3. A-3: True copy of the representation dated 22.12.2000 to the 2nd respondent.
4. A-3a: A copy of the English translation of the representation dated 22.12.2000.
5. A-4: True copy of the certificate issued by Sub Postmaster, Trivandrum Fort.

Respondents' Annexures:

1. R-3a: Copy of DG (P) Letter No.17-141/88-ED & Trg. dated 17.9.1990.
2. R-3b: Letter of appointment dated 5.1.2001 issued to the applicant.

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