

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.129/2005

Wednesday this the 6 th day of December 2006.

CORAM:

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**

K.Nazar, Koottupulickal House,
Emily, Kalpetta, Wayanad District.

Applicant

(By Advocate Shri P.Sanjay)

Vs.

1. Union of India, represented by
its Secretary/Director General of Posts,
Ministry of Communications,
New Delhi-110 001.
2. The Asst.Superintendent of Post Office,
Kalpetta Sub Division, Kalpetta.
3. The Sub Postmaster,
Kalpetta North.
4. The Chief Postmaster General,
Kerala Region, Trivandrum.
5. Cletus, Kalathil House,
Pallikunnu, P.O. Kalpetta,
Wayanad District. **Respondents**

(By Advocate Shri TPM Ibrahim Khan, SCGSC (R.1-4)

The application having been heard on 6.12.2006
the Tribunal on the same day delivered the following:

ORDER

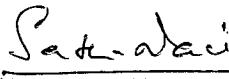
HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

Today when the matter came up before the Bench none represented the applicant. Counsel for the applicant was being represented since 22.9.2005. There ^{had} is also sought adjournments and given time.

2. In the above circumstances, we are of the view that the applicant is not interested in prosecuting the matter. Hence, O.A. is dismissed for default.

Dated the 6 th December, 2006.


Dr.K.B.S.RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.129/05

Monday, this the 4th day of June, 2007

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

K.Nazar,
Koottupulickal House,
Emily, Kalpetta, Wayanad District.

...Applicant

(By Advocate Mr.P.Sanjay)

Versus

1. Union of India represented by Secretary
Director General of Posts,
Ministry of Communications,
New Delhi – 110 001.
2. The Assistant Superintendent of Post Office,
Kalpetta Sub Division, Kalpetta.
3. The Sub Post Master,
Kalpetta, North.
4. The Chief Postmaster General,
Kerala Region, Trivandrum.
5. Cletus,
Kalathil House, Pallikunnu P.O.,
Kalpetta, Wyanad District.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC [R1-4])

This application having been heard on 13th April 2007 the Tribunal on 4th June, 2007 delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

This application has been filed against the notification issued by the 2nd respondent for appointment to the post of GDS Mail Man and the appointment of the 5th respondent pursuant thereto overlooking the preferential claim of the applicant.



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2. Briefly the facts are stated as follows :- The applicant was engaged as a GDS MD in the Department of Posts on 1.5.1995. He studied up to SSLC (failed) and is having a current registration with the Employment Exchange and all the other qualifications to be appointed as an ED Agent. While so, Annexure A-1 was issued prescribing a pass in "SSLC" being the qualification to be appointed as GDS MD. The applicant immediately submitted an application before the 2nd respondent to appoint him as GDS MD (Annexure A-2) stating that he has a legal right for preferential treatment. The applicant had on an earlier occasion approached this Tribunal by filing OA 62/05 seeking preferential treatment in appointment to the post of ED Agents on the basis of his service as casual labourer in BPM Muttill, Kalpetta. During the pendency of the said OA the 5th respondent was appointed to the post and hence the applicant had withdrawn the OA with liberty to approach this Tribunal with a fresh OA challenging the notification and the appointment on the basis of the notification.

3. The grounds urged by the applicant in this O.A are :- (i) Annexure A-1 notification prescribing a pass in SSLC being the qualification for appointment to the post of GDS MD is in violation of Rule (1), Section IV of the Service Rules for Postal Gramin Dak Sevaks which prescribes "VIII Standard" as the qualification for selection to the post of ED Delivery Agents.

(ii) As per Annexure A-2 DG Posts letter dated 6.6.1988, 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 appointment to ED posts, provided they fulfill all the conditions and have put in a minimum

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service of one year. Since the applicant has fulfilled all the conditions he was eligible for preferential treatment. The applicant has also relied on the judgment of this Tribunal in OA 360/99 which relied on the Supreme Court judgment in the case of Excise Superintendent, Malkapatnam Vs. Visweshwara Rao & Others.

4. Per contra, the respondents have submitted that the minimum educational qualification required for the post of GDS MD no doubt is a pass in VIII Standard with the condition that preference will be given to those who have passed SSLC examination and selection is to be made according to merit in the SSLC examination. The applicant has not passed the SSLC examination and therefore he was not short listed and called for verification of his certificates. They also denied his entitlement to any kind of preference in the selection as the applicant is not a casual labourer recruited or appointed as such under the prescribed procedure. He was locally engaged by the Sub Postmaster, Kalpetta North as a part time Sweeper without following the recruitment procedure. He has also not worked as Branch Postmaster, Muttal on 1.5.1995 as claimed by him. The application submitted by the applicant was duly considered. The exact reason for not considering the applicant is that preference is to be given for candidates with matriculation. Hence the applicant could not be considered for selection against the condition prescribed in the vacancy notification. It is further submitted that even if he was considered he would not have normally been selected discarding the candidates with SSLC pass which is the desirable qualification. It is also stated that the 5th respondent has not so far been appointed to the post.

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5. The applicant has filed a rejoinder enclosing Annexure A-4 in proof of his having been engaged as GDS MD, Muttill which is dated 1.4.2004 and has averred that he has been continuously working as GDS MD, Muttill till the filing of the OA and continues so. He has questioned the stand of the respondents that he cannot be considered for not being SSLC passed as the basic qualification is only VIII Standard and he also has weightage of past services which cannot be denied to him. He has again reiterated reliance on the decision of this Tribunal in OA 360/99 dated 14.9.1999.

6. We have heard Shri.P.Sanjay for the applicant and Shri.Shaji.V.A for the respondents. Learned counsel for the applicant also submitted argument notes and a copy of the judgment of the Supreme Court in Secretary, State of Karnataka and others Vs. Umadevi and others [(2006) 4 SCC 1]. We have carefully considered the arguments of both the counsel and perused the judgment referred to.

7. The following facts are borne out by the record but they have been denied by the respondents in the reply. The applicant was engaged as a casual labourer in the Department of Posts from 1.5.1995. He was provisionally appointed as BPM, Muttill, Kalpetta from 1.4.2004 (Annexure A-4) and has been continuing in the post. The 2nd respondent issued Annexure A-1 notification prescribing a pass in SSLC being the qualification for appointment to the post of GDS MD. The applicant's contention that it is contrary to the Rule 2, Section 4 of the GDS Service Rules is also found to be correct. Rule 2 is extracted below :-

ED Delivery Agents ED Stamp Vendors and All other categories of EDAs.	VIII Standard. Preference may be given to the candidates with matriculation qualifications. No weightage should be given for any qualification higher than matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English.
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8. Respondents have in the reply admitted that the minimum educational qualification required for the post of GDS MD is a pass in VIII Standard with the condition that preference may be given to the candidates with matriculation qualification. Their further contention that the applicant could not have come up for consideration even if the qualification was VIII Standard is no justification for the mistake committed in the prescription of the qualification in the notification. The notification for recruitment has to be strictly in accordance with the statutory Recruitment Rules for the post and there can be no exception to this Rule. On this count itself the notification has to be quashed and we do so.

9. The second ground on which the applicant has based his claim is that as per the DG Posts letter dated 6.6.1988 casual labourers who are willing to be appointed as GDS may be given preference, provided they applied for the post and they fulfill all the prescribed conditions. The respondents have denied that the applicant was a casual labourer appointed after a due process of selection nor was he sponsored by the Employment Exchange and therefore he was not entitled for preference as per Annexure A-2. This Tribunal had also considered this question of preference in ED Appointments and in a number of decisions held that casual labourers cannot be denied the preference for consideration to ED

appointment on the ground that initial appointment was not through Employment Exchange. In OA 360/99 cited by the applicant it was held as follows "if her initial recruitment as part time casual labourer was not through Employment Exchange it was not her fault but the fault of the authority who engaged her as a part time casual labourer and the Department which permitted her to continue for a period as long as six years. After having retained the applicant as part time casual labourer for six years the respondents cannot be now permitted to turn around and say that she is not entitled for the benefits which other part time casual labourers would have for the reason that her engagement was not through Employment Exchange." In an another decision this Tribunal in O.A 62/05 had taken a similar stand which has been upheld by the Hon'ble High Court in W.P.(C) No.3373/05. In yet another recent decision in O.A.56/06, it has been held that such casual labourers have to be given preference following the earlier decision and as confirmed by the Hon'ble High Court. Therefore, in the light of the above orders of this Tribunal which have become final and the legal position having been settled by the Hon'ble High Court that having been appointed and having gained experience such casual labourers cannot be prevented from participating in the selection and appointment solely on the ground that they were not originally appointed through Employment Exchange, the case of the applicant falls under the same category and has to be allowed.

10. We, therefore, declare that the applicant is entitled to preference in the consideration to the post of GDS MD, Muttal, Kalpetta as he possesses the minimum qualification and fulfills the conditions prescribed in DG Posts letter dated 6.6.1988. The respondents are accordingly directed to consider the applicant for the post of GDS MD as per Annexure A-3 order

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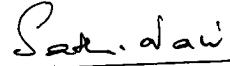
of the DG Posts against the existing vacancies and to appoint him if he is otherwise eligible to be appointed. Only if the applicant is found to be ineligible for appointment the respondents can notify the posts for direct recruitment for filling up through outside candidates. Since Annexure A-1 notification is quashed, fresh notification will have to be issued in case it is decided to appoint outsider. With these directions, the O.A is allowed.

(Dated the 4th June,.... 2007)



K.B.S.RAJAN

JUDICIAL MEMBER



SATHI NAIR

VICE CHAIRMAN

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