

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 130/07

THURSDAY THIS THE 26th DAY OF APRIL, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

M Gopalan S/o late M. Andi
Working as Group-D Sweeper,
Vadakara HO, GDSMD, Athiyodi SO
Vadakara Division
residing at Marappattammal House
Kayanna Bazar PO
Via Perambra SO
Pin 673 525

..Applicant

By Advocates Mr. O.V. Radhakrishnan, Mrs. K. Radhamani Amma,
Mr. Antony Mukkath, Mr. K.V. Joy.

Vs

- 1 Superintendent of Post Offices
Vadakara Division, Vadakara
- 2 Postmaster General
Northern Region, Kozhikode
- 3 Chief Postmaster General
Kerala Circle, Thiruvananthapuram.
- 4 Director general of Posts
Dak Bhavan, New Delhi.
- 5 Union of India
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 who was initially appointed as an E.D. Packer at Kakkayam Sub Office in 1979, contends that in the light of Annexure A-4 Recruitment Rules dated 23.1.2002, he was eligible to be appointed as a Group-D under the seniority quota in the 75% quota available for GDS under the rules.

2 The brief facts as stated in the Application are as follows:- The applicant was initially appointed as an Extra Departmental Packer at Kakkayam Sub Office on 21.5.1979. While he was working so, on request he was posted as EDDA, Athiyodi Post Office which post was subsequently re-designated as GDS Mail Deliverer, Athiyodi. Thereafter, his willingness was sought for working as Group-D on a leave vacancy by Annexure A-2 order dated 27.8.2004 by the Postmaster, Vadakara. The applicant furnished his willingness and he was ordered to officiate as a Group-D Sweeper, Vadakara Post Office. The applicant took charge on 6.9.2004 and is continuing as such till date. In terms of para 2 of the Schedule to the Department of Posts (Group-D Posts) Recruitment Rules, 2002 effective from 23.1.2002, according to Col. 11, 75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl. No. 2 shall be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak

Sevaks of the neighbouring Division or Unit by selection-cum-seniority. This position was brought to the notice of all concerned and directed to incorporate relevant provisions suitably in the future notification of vacancies by Department of Post's letter dated 30.1.2002 (Annexure A-5) addressed to all Principal Chief Postmasters Generals. According to the seniority list of GDS at Vadakara Division as on 1.7.2004 (Annexure A-6) the applicant has stated that he is at Sl.No. 82 and should have been appointed. The last person appointed as Group-D is at Sl. No. 61. After appointment of Sl. No. 62 there are 7 clear vacancies of Group-D in Vadakara Postal Division according to the applicant and as per the instant Recruitment Rules five vacancies should have been filled up by appointing the GDSs. It is further submitted by the applicant that he understood that he was not considered for the appointment to the cadre of Group-D on regular basis under the 75% quota for the reasons that vacancies are not approved by the Screening Committee. The above issue has already been decided by this Tribunal in O.A. 901/03, and later by common order of this Tribunal in OA Nos. 977/3 and 277/04. The Tribunal held therein that the omission of the respondents in filling up the substantive vacancies in Group-D which arose in Kollam Division in accordance with the Recruitment Rules is not sustainable. Thus this contention of the official respondents having been negated by the Tribunal the reliance of the respondents on the same position that the clearance of the vacancies by the departmental Screening Committee is

necessary cannot be accepted and therefore clear substantive vacancies in the cadre of Group-D the respondents are legally bound to make promotions against those vacancies set apart for eligible GDS without delay within a specific period and the respondents are liable to make promotions to the post of Group-D under the 75% seniority quota of GDS and approval of the Screening Committee is not necessary.

3 The respondents have filed a reply statement resisting the averments in the O.A. They have contended that the position of the applicant in the seniority list of GDS in Vadakara Postal division as on 1.7.2004 is at Sl. No. 82. The serial number of the last candidate elected as Postman on regular basis from the seniority list is 62 They have refuted the averment of the applicant that there are 7 vacancies of Group-D in Vadakara Postal Division and therefore 5 vacancies shall be filled up by appointing GDSs as per Annexure A-4 Recruitment Rules and in that case the applicant is entitled to be appointed as Group-D under 75% quota set apart for GDS as incorrect. As per the OM NO. 2/8/2001-PIC dated 16.5.2001 of the Ministry of Personnel, Public Grievances and Pension approval of the Screening Committee is required for filling up of the vacancies. This restriction has not been relaxed. Moreover in the order passed by the Full Bench of the Tribunal in Chandigarh Bench in O.A. 1055/ PN 2003 it was held that the appointment of EDAs to Group-D cadre is not by promotion but only by recruitment. Hence Screening

Committee clearance is absolutely necessary. They further submitted that though there were 7 vacancies in the Group-D cadre approval of the Screening Committee has not been received to fill up these posts. So the case of the applicant could not be considered. They further submitted that none of the juniors of the applicant were appointed as Group-D disregarding applicant's legitimate seniority.

4 When the matter came up for hearing it is admitted that the subject matter is already covered by the earlier orders of this Tribunal in O.A. 901/2003 dated 16.8.2005 upheld by the Hon'ble High Court of Kerala.

5 As admitted, the question whether approval of the Screening Committee is necessary for filling up the Group-D posts under 75% quota set apart for GDS is no longer res integra in view of the order of this Tribunal in O.A. 901/2003 which has been followed in subsequent orders also. The applicant in O.A. 901/03 was also an EDA officiating as Group-D and sought promotion as Group-D on regular basis on the basis of seniority. Though other issues like fixing upper age limit of 50 years etc. were also agitated in that O.A, the Tribunal had entered a clear finding that the OM dated 16.5.2001 (Annexure A-7 in this O.A.) stipulates approval of Screening Committee for filling up vacant posts pertained to direct recruitment only and is not applicable for promotion of GDS against Group-D vacancies. Following this finding the matter was again examined in

the common order in O.A. 977/03 and 277/04 (Annexure A-9).

Though the applicants in these OAs were full time casual labours seeking appointment to the 25% quota available to them, the respondents had taken a similar stand on the restriction of vacancies by the Screening Committee on which the Tribunal observed:

"The question that arises therefore, considered is whether the screening Committee's approval is mandatory for filling up the posts with reference to the Recruitment Rules. No documentary proof has been produced by the respondents to show what is the mandate of the screening committee referred to by them. It has been stated that Screening Committee's approval is required for filling up the vacancies by direct recruitment. From the reading of the Rules it appears that the filling up of Group-D posts by the method prescribed in column 11 cannot be construed as the method for direct recruitment as direct recruitment has been prescribed as an alternative method only if the above procedure failed. Thus, the method of appointment followed by the respondents in that nature of promotion only. 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. It has resulted in filling up only limited vacancies on regular basis and filling up the remaining vacancies on adhoc basis from the GDS and has created a situation that all the vacancies got to be manned by GDS only leaving out the other 25% category of casual labourers from consideration. This is certainly discriminatory and in violation of the prescription of the Recruitment Rules."

6 The above order of this Tribunal in O.A. 277/04 was taken in appeal before the Hon'ble High Court in WP 4956/2006. The Hon'ble High Court observed as follows:

"5 The main contention raised by the petitioners is that prior approval of the Screening Committee is a must for filling up of the vacancies and also that the method of recruitment is only by way of direct recruitment. A reading of the recruitment rules will show that the contention raised by the petitioners that only direct recruitment is the method is not correct. Apart from that, they are not justified in contending that prior approval of the

Screening Committee is required, as the same is not provided under the recruitment rules. The finding rendered by the Tribunal that the respondents who are applicants before it are entitled for promotion, is therefore perfectly in order. At any rate, the view taken by the Tribunal is not so perverse warranting interference by this Court under Article 227 of the Constitution of India."

7 In a similar WP No. 22818/06 against our order in O.A. 115/04 the Hon'ble High Court confirmed the same view:

"6 The Tribunal was right in holding that Annexure R-2 relied upon by the petitioners cannot have the effect of modifying the recruitment rules. The relevant recruitment rules do not provide for any clearance from the Departmental Screening Committee. If at all there was a ban, it was limited to direct recruitment vacancies going by paragraph 3 of Annexure R-2. Hence, the argument raised by the petitioners in that regard was also rejected rightly by the Tribunal. The Tribunal has only directed the petitioners 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. We find that the views taken by the Tribunal is not perverse warranting interference under Article 227 of the Constitution of India. Therefore the Writ Petition is dismissed."

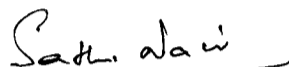
8 In the light of this settled legal position which has become final the prayer of the applicant in this OA is to be allowed. Since no clear averments regarding the number of vacancies and the entitlement of the applicant have been made we would only direct the respondents 1 to 3 to take immediate steps for assessing the exact number of vacancies as on 2004 without applying the Annexure A-7 memorandum and fill ⁶ up the 75% quota which has been set apart for GDS ~~xxxxx~~ according to the Recruitment Rules and to consider the applicant for promotion in his turn against those

vacancies and if the applicant is so appointed he shall be eligible for all consequential benefits. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. The OA is allowed. No costs.

Dated 26.4.2007



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

kmm