

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

O.A.No. 135/2013

.....*Tuesday* this the 31st day of May, 2016

CORAM:

**HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR. P.K. PRADHAN, ADMINISTRATIVE MEMBER**

1. P.S. Padmakumar, GDSBPM,
Parandode P.O.,
Thiruvananthapuram, r/a Padma Bhavan,
Valiyakalam, Eravoor, Aryanad P.O.,
Thiruvananthapuram 695 542.
2. K. Krishna Pillai, GDSMP,
Neyyattinkara Town P.O.
Thiruvananthapuram, r/a Lekshmi Sadanam,
Fadithoppu Convent Road,
Neyyattinkara, Thiruvananthapuram 695 121. **Applicants.**

(Applicants by Mr. Vishnu S. Chempazhanthiyil, Advocate)

v.

1. The Superintendent of Post Offices,
Thiruvananthapuram South Division.
2. The Chief Postmaster General, Kerala Circle,
Thiruvananthapuram 695 033.
3. Union of India, represented by the Secretary & Director General,
Department of Posts, Dak Bhavan, New Delhi 110 116.
4. Rajendran Nair F., S/o Falgunan Nair, aged 50 years,
GDSMD, Kallar P.O. Vithura 695 551
residing at Revathy, Charupara,
Vithura P.O., Thiruvananthapuram 69551. **Respondents**
5. Harikumar B. S/o Bhaskaran Nair,
Aged 49 years,
GDSMD, Perukavu, Reyad p.O. Thiruvananthapuram,
698 572, Residing at Arathi,
Haritha Nagar, Papparamcode,
Thiruvananthapuram 695 018. **Respondents**

**(Respondents by Mr. N. Anilkumar, Sr.PCGC (rep) for R.1 to 3
Mr. Hariraj, advocate for R.4 and 5 (rep))**

This Application having been finally heard and reserved for orders on
15.03.2016, the Tribunal on 31.05.2016 delivered the following:

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ORDER**Per: Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER:**

Applicants are G.D.S. who are presently working as Group 'D' on extra cost basis in the Thiruvananthapuram Postal Division of the Kerala Postal Circle. Applicant No.1 entered service as G.D.S. on 3.11.1981. He had filed O.A. 404/2008 questioning the delay in making appointment to group D post from among the G.D.S. in terms of the Recruitment Rules in force, from 2002 onwards. Applicant No.2 started service as G.D.S. on 25.9.1981. He also had filed O.A. No. 243/2008 questioning the delay in making appointment in Group 'D'. The aforesaid two O.As. along with 36 similar other cases including O.A. 312/2008 were heard together by this Tribunal. The relevant extracts from the said order read:

"64. In view of the above, all the O.As are allowed in the following terms. It is declared that there is absolutely no need to seek the clearance of the Screening Committee to fill up the vacant posts in various Divisions which are to be filled up from out of G.D.S. and Casual Labourers as per the provisions of the Recruitment Rules 2002. Respondents are directed to take suitable action on this regard, so that all the posts, majority which appear to be already manned by the G.D.S. themselves working as 'mazdoors' at extra cost, are duly filled. In a few cases (e.g. O.A. 118/2008), the claim of the applicants is that they should be considered against the vacancies which arose at that time when they were within fifty years of age. In such cases, if the applicants and similarly situated persons were within the age limit as on the date of availability of vacancies, notwithstanding the fact that they may by now be over aged, their cases should also, if otherwise found fit, be considered subject, of course, to their being sufficiently senior for absorption in Group D post. If on the basis of their seniority, their names could not be considered due to limited number of vacancies and seniors alone could be considered for appointment against available vacancies, the respective individuals who could not be considered be informed accordingly. Time calendared for compliance of this order is nine months from the date of communication of this order."

2. For implementation of the above directions respondents invited willingness from qualified persons i.e. those who come within the prescribed age limit of 50 years and those with sufficient seniority vide Annexure A/2 communication dated 7.6.2010 wherein the applicant No.1 and 2 figure at serial Nos.19 and 18 respectively. Thereafter respondent No.2, vide Annexure A/3 communication changed the age limit for consideration of G.D.S. as Group 'D' from 50 to 60 as on the date of occurrence of the vacancy. Therefore, the applicants



filed O.A. Nos. 654/2010 and OA 628/2010 challenging the change in age limit. Both the aforesaid O.As. were dismissed. When the decision was challenged before the High Court vide O.P. (CAT) No. 822/2012 and connected cases, the same was also dismissed.

3. Non-implementation of the above order resulted in several contempt applications. The contempt petitions were disposed of by this Tribunal vide Annexure A/4 order, the relevant portion of which reads:

"21. In view of the above, taking judicious note of the fact that so far no contumacious act has been committed, we are inclined to close these Contempt Petitions, but with the firm direction that in so far as implementation of the earlier order dated 15.12.2008 which stands upheld by the High Court as early as in 2009, action should be taken to fill up all the vacancies meant for GDS and Casual labourers. The 424 posts referred to by the respondents shall all be filled up. There shall be a time bound plan in this regard and progress thereof shall be monitored by the Chief Post Master General. Adequate budgetary provisions should therefore be made to cater for the salary and other benefits to the incumbents. The entire action of consideration of the cases of applicants and similarly situated persons in Kerala Circle should be completed within a period of six months. This part of the order is passed invoking the provisions of order 24 of the CAT Procedure Rules 1987, for proper implementation of the order of the Tribunal. No cost."

4. First applicant is presently working as Group D on extra cost basis without any break from 2009 in Manacaud Post Office and Applicant No.2 also is working as group D on extra cost basis without any break from January 2003 at Neyyattinkara Head Post Office. According to the applicants, Applicant No.2 is working in the retirement vacancy of Shri Viswambhara Panicker who retired in 2003. They contend that in December 2010 the respondents issued Annexure A/5 new Recruitment Rules prescribing the age limit of 50 for GDS to be appointed as MTS. The applicants have thereby become eligible to be considered for as MTS as they are above 50 years of age. Therefore, applicants pray for:

1. Direct the respondents to revive and fill up 424 posts of MTS and consider the applicants as against such vacancies, in terms of the direction in Annexure A/4 judgement.
2. Direct the respondents to regularise the applicants as MTS in the respective posts were they are presently working.
3. Any other further relief or order as this Tribunal may deem fit and proper to meet the ends of justice.
4. Award the cost of these proceedings."

During the pendency of this O.A. an interim order dated 18.4.2013 was passed in M.A. 441/2013 directing that the Applicant shall not be dislodged from the present place of posting. The said interim order was clarified on 10.2.2013 in MA 1331/2013 stating that the same will not stand in the way of the department from filling up of the vacancies of the year 2013 as notified in Annexure MA.2.

5. Respondents contested the O.A. mainly on the ground that applicants have not reached the zone of consideration in terms of the directions in Annexure A/4 order of this Tribunal. According to them a total of 327 posts were initially identified to be filled up across the Kerala Circle for the period 2002-2008. Subsequently as per the specific direction of this Tribunal 97 more posts which arose in the year 2009 also were decided to be filled up. Thus the total vacancies identified to be filled up across the Kerala Circle were 424. Out of this 424 Group 'D' posts a total of 390 posts have been filled up so far by way of eligible GDS/Casual labourers. 34 posts could not be filled up for various reasons like shortfall of scheduled tribe candidates, want of casual labourers etc. In Thiruvananthapuram South Division, a total of 15 group D posts were identified to be filled for the period from 2002-2009, out of which 14 have been filled by eligible GDS/Casual labourers. One post could not be filled up for want of eligible casual labourer. The position of the last candidate selected for appointment in the Group 'D' in the seniority list of Gramin Dak Sevak is 43 whereas the applicants are at 108 and 105 respectively indicating that they were not in the zone of consideration. The applicants are presently seeking regularisation as MTS on the ground that they are working as MTS on extra cost arrangement from 2009 and 2003 respectively. They had not raised this issue in their O.A. 628/2010 and 654/2010 which has resulted in Annexure R/1 order which again was upheld by the High Court in Annexure R/2 common judgement. Therefore, respondents contend that the present O.A. is hit by the principle of constructive *res judicata*.

6. The above contentions of the officials respondents were disputed by the applicants in the rejoinder in which it is alleged that respondents have not filled up seven vacancies in Thiruvananthapuram South Postal Division and that the said vacancies are even now available as per Annexure A/6 information the applicants obtained under the R.T.I. Act 2005.

7. Referring to Annexure A/8 copy of Minutes of the Review DPC held on 10.11.2014 applicants state that there are GDS officials who are yet to get any promotion though eligible for promotion as per the review and therefore, their willingness have to be obtained. According to the applicants Annexure A/8 the minutes of the proceedings of the Review DPC held on 10.2.2014, indicates that there are 10 vacancies available to be filled up. According to them implementation of the direction in Annexure A/4 is crucial as far as applicants are concerned as it is the only chance for them for being considered for the post of MTS.

8. In the additional reply statement it was submitted by the respondents that the review DPC as per the Annexure A/8 was convened to fill up all the vacancies from 2002 to 2009 including those vacancies which were treated as abolished earlier. Thus all the vacancies which arose from 2002 onwards due to retirement, promotion, death etc were taken into account by the DPC by recommending the eligible GDS as per their seniority, date of appointment, age and willingness submitted for working as Group D. The DPC considered 97 GDS right from Serial No.2 of the seniority list and after eliminating the ineligible 35 GDSs including casual labourers were found eligible for notional promotion for the period from 2002 to 2009. This list showing the GDS officials and casual labourers who were coming under the zone of consideration is produced as Annexure R/3 list. As per the aforesaid list of GDS officials and casual labourers coming under the zone of

consideration, the position of the applicants in the seniority list is 139 and 136 respectively. With regard to the contention of the applicants that they are continuing to work as group D M.T.S. on extra cost basis.

9. A statement was filed by the Sr. PCGC on behalf of the officials respondents stating that the 424 vacancies of MTS were filled up selecting eligible GDS and casual labourers and that all those vacancies were from 2002 to 2009 were filled up as an one-time measure to comply with the aforesaid common order of this Tribunal in O A.No.312/2008 and connected cases irrespective of the proportion of the GDS and casual labourers. It is also stated by the learned Sr.PCGC that recruitment to the cadre of MTS for the year 2011 was done as per the recruitment rules 2010 and as per the later recruitment rules amended in 2012 - a copy of which is annexed as Annexure R/4.

10. On the basis of the above pleadings and the record produced by both sides, we have heard learned counsel appearing on both sides. Although two persons were impleaded as additional respondents Nos. 4 and 5 it was submitted by their counsel on 11.9.2015 that as they have been given appointment they do not have any subsisting grievance. They have also submitted that they are not pressing MA. Nos. 910/2014, 100/2014, 1331/2013 and 441/2013 and hence the aforesaid MA.s were closed on the same day.

11. Shri Vishnu Chempazhanthiyil, learned counsel for the applicants, submitted that the applicants are claiming for the vacancies of Group 'D' posts which arose prior to 2010 in view of the circumstance that they are working in the vacancies and posts which fell vacant in 2003 -2004 respectively. According to Shri Vishnu Chempazhanthiyil in the light of the common order of this Tribunal in O.A. NO. 312/2008 and connected cases and Annexure A/4 order applicants are eligible to be considered for regularisation in the vacancies they are at present working as Group D on extra cost basis.

12. We have carefully considered the case set up by the applicants. It appears to us that the applicants seek for regularising them in the Group D posts in which they are currently working on extra cost basis. The contention of respondents that as per the order of this Tribunal in OA. No.312/2008 and connected cases the applicants in those cases had to be considered in the quota set apart for GDS based on 2002 recruitment rules, based on their age and seniority position appears to be in concordance with the orders of this Tribunal. They further point out that in the light of Annexure A/4 order and the aforesaid common order of 424 vacancies were to be filled up all over the Kerala Postal Circle out of which 15 Group D posts were identified to be filled in the Thiruvananthapuram South Division to which the applicants belong, for the vacancies which arose during the period from 2008-2009. They further state that out of the said 15 vacancies 14 have been filled up by appointing eligible casual labourers whereas one post could not be filled up for want of eligible casual labourer. In the subsequent counsel statement made by the Senior PCGC it was submitted that all the posts identified in the Kerala Circle were filled up in the light of the aforesaid orders of this Tribunal.

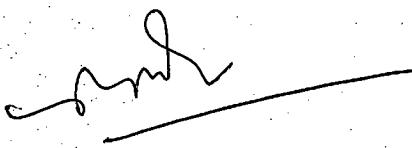
13. Placing reliance on the information received under the R.T.I. Act and Annexure A/8 minutes of the Review DPC held on 10.12.2014, applicants contend that even now there are vacancies to be filled up. Nevertheless, applicants seem to be totally silent on the contentions of the respondents that they were not in the zone of consideration and that their position in the seniority list was 139 and 136 respectively. The applicants have been conveniently shutting their eyes to the unpleasant portion of the order of this Tribunal that this selection should be based on the seniority position also. Annexure R/3 copy of the proceedings of the Review DPC held on 10.2.2014 shows the list of GDS/Casual Labourers who were in the zone of consideration for regularisation (page No. 128 to 141 of the paper book)

indicating their seniority position. It contains the names of persons who are in the zone of consideration and those who were recommended for notional promotion in the vacancies starting from 2002 to 2009. This aspect has not been controverted by the applicants.

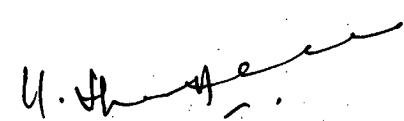
14. As stated above, applicants are currently working in vacancies of Group D on extra cost basis. It is a practice in the Postal Department to temporarily post the employees in the lower scale to work in the vacancies of higher posts on extra cost basis which will not confer them any right to be considered for regularisation. Such engagements are purely on temporary basis only till the regular hands turn up for duty. It was now been satisfactorily established by the respondents that applicants have not reached the zone of consideration for regularisation as Group "D" for the vacancies arose from 2002 to 2009 on account of their inadequate seniority position. Annexure A2 order for filling up of the vacancies was applicable to the entire Postal Circle of Kerala. Respondents have earmarked 15 vacancies to be filled up in the Thiruvananthapuram South Postal Division in terms of the above common order of this Tribunal. As the applicants obviously do not have the sufficient seniority to be considered for the posts identified in the Thiruvananthapuram South Postal Division, we find no merit in the case of the applicants.

15. In the result, we dismiss the O.A. and direct the parties to suffer their own cost.

(Dated, this the 31st day of May, 2016)


(P.K. PRADHAN)
ADMINISTRATIVE MEMBER

sj*


(U. SARATHCHANDRAN)
JUDICIAL MEMBER