

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.141/2000.

Thursday this the 2nd day of January 2003.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

G.Vincent,
Extra Departmental Delivery Agent,
Azhur Market, Chirayinkil. Applicant

(By Advocate Shri Sasidharan Chempazhanthiyil)

Vs.

1. Assistant Superintendent of Post Offices
North Sub Division, Trivandrum -23.
2. The Senior Superintendent of Post Offices,
North Postal Division, Trivandrum.
3. The Chief Postmaster General,
Kerala Circle, Trivandrum.
4. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi. Respondents

(By Advocate Ms.P.Vani, ACGSC)

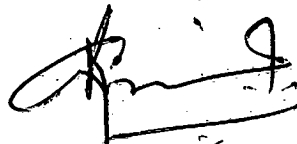
The application having been heard on 2nd January 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant who had been working as Extra Departmental Agent under the respondents from 1.12.1980 aggrieved by A-5 order No.Vig/16-180/98 dated 17.8.1999 of the 3rd respondent by which the respondents have declined to consider the applicant's posting provisionally on a group 'D' post and A-6 Memo No.GL/31 dated the 18th October, 2000 appointing him in the cadre of Group'D' with immediate effect filed this O.A. seeking the following reliefs.

1. Call for the records and quash Annexure A5.
2. Direct the respondents to post the applicant in a Group'D' or Group 'D' post forthwith.



3. Declare that the non-issue of a posting order to the applicant posting him in a vacancy of Postman that arose after his reversion on 24.7.1998 is illegal and direct the respondents to treat the period starting from the date of occurrence of a Postman vacancy in 1999 which the applicant was entitled to occupy as duty for the purpose of pensionary benefits.
4. Call for the records and quash Annexure A6 in as much as it appoints the applicant with effect from 18.10.2000.
5. Declare that the applicant is entitled to be appointed in a vacancy that arose in 1997 in the light of Annexure A7 and direct the respondents to regulate his appointment and qualifying service for pension accordingly.
6. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
7. Award the cost of these proceedings."

2. According to the applicant A5 order which had been issued pursuant to the directions of this Tribunal in O.A.1081/98 dated 15.10.1998 (A3) declining to appoint him against a Group 'D' vacancy on provisional basis was illegal, arbitrary and discriminatory and that several Group 'D' vacancies which were available under the respondents were being occupied by outsiders/substitutes. He claimed that he was the second seniormost Extra Departmental Agent in the Division and he was entitled to have been posted in the vacancies which arose in 1999. Had he been posted in 1999, he would not have fallen short in service for pension and it was due to the negligence of the respondents that he had found himself ineligible for pension when he would eventually retire on attaining the age of sixty years. When he had been eventually posted on regular basis as Group 'D' by A-7 memo No.B4/Rectt/2000 dated 17.10.2000 it had been specified that, he had been considered against a vacancy which has occurred in 1997. A-5 order issued had not considered this aspect and for the said reason also it was liable to be set aside and quashed.



3. The respondents filed the reply statement resisting the claim of the applicant. According to them as per the seniority list of Extra Departmental Agents in Trivandrum division as on 1.1.1997 there were 15 ED Agents senior to the applicant who were awaiting regular appointment in the cadre of Postman/Group D in the department. They admitted that the applicant was provisionally selected and posted for appointment to the cadre of Postman under 'OBC' quota vide Annexure A-1 in which he was selected as the 6th candidate against the 25% quote of vacancies earmarked for the seniormost ED Agents. However, the vacancy of Postman got reduced due to the decision of the Government of India raising the retirement age of Central Government Employees from 58 to 60 years. The applicant had been reverted and he approached this Tribunal in O.A.1081/98. They denied the averment of the applicant that vacancies which existed then were manned by outsiders/substitutes and submitted that the said averments were false and misleading. According to them because of the pendency of O.P.No.251272/98 in the Hon'ble High Court of Kerala, they were unable to make any appointment in Group'D' post either provisionally or on regular nature and hence the applicant's case could not be considered for appointment on provisional basis. They averred that the applicant had worked as an unapproved candidate in a group'D' vacancy at Trivandrum G.P.O. during the period from August '98 to December '98 and that he had the liberty to continue to work as such, if he was willing for the same.

4. In the additional reply statement filed, the respondents also raised the question of limitation regarding the challenge of A-6.

A handwritten signature in black ink, appearing to be 'R. S.', with a horizontal line underneath.

5. Heard the learned counsel for the parties. Learned counsel for the applicant after taking us through the factual aspects as contained in the O.A. and arguing the case for some time submitted that the applicant would be satisfied, in the light of the developments which had taken place in that the order of the respondents prescribing the upper age limit having been finally set aside and quashed by this Tribunal, and the main apprehension of the applicant had been to have the minimum qualifying service for pensionary benefit and in the light of the observations of this Tribunal in A-8 order in O.A.239/98 and 449/98 dated 26.8.1998, if he was permitted to make a detailed representation to the 4th respondent on this specific aspect for being posted with effect from 1997, and a direction was given to the respondents to dispose of the same within a reasonable time.

6. Learned counsel for the respondents submitted that there was no objection in adopting the above course of action.

7. We have considered the above submissions. This Tribunal in A-8 order in O.A.239/98 and 449/98 dated 26.8.1998 held as follows:

"5. The respondents themselves have considered the applicants in O.A.Nos.155/95 and 1432/95 for such appointment, though they had crossed the age limit, which was struck down in O.A.155/95. Further, in the Director General, Posts letter dated 5th June 1997 (Annexure R(3)), the Director of Postal Services, Kerala Circle had been informed that he could continue to make recruitment to Group-D as per the existing Recruitment Rules, as no such restriction had been issued by the Directorate to ban the recruitment in the cadre. Inaction on the part of the respondents to make recruitment even after this clarification by the Director General, Posts, is in the most modest tone, callous and culpable."

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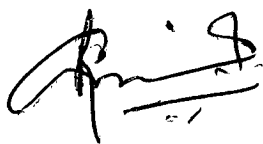
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"7. In O.A. No.239/98, the applicant had prayed that a direction may be issued to the 1st respondent to promote the applicant to any of the existing or arising vacancies in Group 'D' in Aluva division on the basis of his running seniority from the date of his entitlement with all consequential benefits. Learned counsel of the applicant argued that the delay in filling up the vacancy and considering the applicant for appointment on Group D, had resulted in irreparable injury to the applicant in as much as he would lose the length of service required for being eligible for pension and for that reason, it is necessary in the interest of justice to direct the respondents to appoint the applicant if he is otherwise eligible on Group-D with effect from the date on which the vacancy arose. We are of the view that this aspect also should receive the attention of the respondents. If for the mere reason of inaction on the part of the respondents in filling up the vacancies, any E.D.Agent like the applicant has suffered any prejudice in the matter of length of service or eligibility for pension, the respondents have to take remedial steps in that behalf. In the result we dispose of both these applications, directing the respondents to fill up the existing vacancies in Group-D in the Kerala Circle including the Aluva division without any delay and without waiting for the amendment of the Recruitment Rules, treating that any ED Agent who is below the age of 60 years is entitled to be considered for appointment in the absence of prescribed maximum age limit. We also direct that the respondents shall take remedial steps if any of the ED Agents in the Kerala Circle has suffered any loss by reason of the lapse on the part of the respondents in filling up the post of Group -D in the Kerala Circle. There is no order as to costs."

(Underlining by us)

8. In the light of what is held by this Tribunal in the above order as reproduced by us, with which we completely agree and as evident from A-5 impugned order as well as A-7 Memo by which the applicant has been posted on regular basis (from which we find that the applicant had been recruited against the year 1997 and the delay has occasioned for the reasons attributable to the respondents), we permit the applicant to make a representation to the 4th respondent within four weeks from today through proper channel, and if such a representation is made by the applicant the 4th respondent shall consider the same and pass appropriate



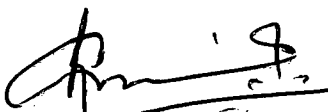
orders keeping in view the observations of this Tribunal as reproduced by us above, within a period of four months from the date of receipt of the representation.

9. O.A. is disposed of as above. There shall be no order as to costs.

Dated the 2nd January, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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