

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 145 of 2010

Wednesday, this the 28th day of September, 2011.

CORAM :

HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

C.Ramachandran Nair,
S/o. Chellappan Pillai,
Group-D, Mukhya Dak Ghar,
Balaramapuram,
Residing at Rajesh Bhavan,
Thekkumpara : 695505

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Applicant.

(By Advocate Mr M.R. Hariraj)

versus

1. Union of India, represented by
The Secretary to Government of India,
Department of Posts,
Ministry of Communications,
New Delhi.

2. The Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.

3. Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram : 695036

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Respondents

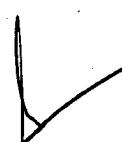
(By Advocate Mr. Millu Dandapani, ACGSC)

This application having been heard on 21.09.2011, the Tribunal
on 28.09.11, delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A has been filed by the applicant for the following reliefs:



(i) To quash Annexure A5 to the extent it refuses promotion as Group-D to the applicant from the date of his turn;

(ii) To declare that applicant is entitled to be appointed as Group-D from 2005;

(iii) To direct the respondent to grant promotion to the applicant from 2005 with all consequential benefits including arrears of pay and allowances with interest at 18% per annum;

(iv) To grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(v) Grant the costs of this Original Application.

2. The applicant while working as Gramin Dak Sevak Mail Deliverer (GDSMD), Thekkupara, was given appointment as Group-D in compliance of the order of this Tribunal in O.A. No. 263/2006. This appointment was given with effect from 25.09.2008 with all consequential benefits as per his turn. M.A. No.745/08 seeking a direction to implement the order passed in O.A. No. 263/2006, was closed as the respondents had already appointed the applicant as Group-D with effect from 25.09.2008, with liberty to agitate his date of appointment in case he has got any objection thereto. Claiming promotion from 2005, the applicant made a representation to the respondent No. 3 on 01.11.2009. As no action is taken so far on the representation, this O.A. has been filed.

3. The applicant contended that the respondents ought to have filled up the vacancies of Group-D irrespective of the clearance from the Screening Committee as per the judgement dated 23.12.2009 in W.P.(C) No. 33971/2009 and connected cases, of the Hon'ble High Court of Kerala. If the vacancies were filled up at the right time, as per the calculation of the applicant, he would have been appointed as Group-D in the year 2005.

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Therefore, he contends that is entitled to get promotion with effect from 2005 with all consequential benefits.

4. The respondents contested the O.A. In their reply statement, they submitted that they have fully complied with the direction of this Tribunal in O.A. No. 263/2006 by giving him appointment with effect from 25.09.2008 with all consequential benefits as per his turn. There was no direction to give appointment to the applicant retrospectively. It is settled law that promotion need not be given retrospectively. Abolition of the vacancies and the requirement of clearance from the Screening Committee were the reasons for the delay in filling up the vacancies of Group-D. The instructions and the rules relating to the Screening Committee and also the method of recruitment followed by the department at the relevant time prevented the respondents from filling up the available vacancies in the Group-D cadre. Because, the role of the Screening Committee was nullified and the mode of appointment was drastically changed, by the Court judgements, the applicant cannot say that he should be appointed retrospectively in a vacancy which arose in the year 2005. The applicant has no legally sustainable ground to stake claim for appointment from 2005. All the Group-D vacancies which arose from 2001 onwards were filled up by the eligible senior GD Sevaks and the turn of the applicant came only in 2008 and he was appointed on 29.05.2008 against a vacancy caused due to the death of the incumbent. There was no direction from this Tribunal to give retrospective promotion to the applicant from the date of occurrence of the vacancy. There are many other eligible seniors above the applicant still waiting in the wings for appointment. One such G.D. Sevak, Shri Murugan, had filed O.A. No. 372/2008 before this Tribunal

and obtained an order in his favour. The respondents are in the process of implementing the said order also. As there are senior eligible candidates above the applicant, his claim for retrospective promotion cannot be accepted. The turn of the applicant who is at serial No. 40 in the gradation list as on 01.07.2008 (Annexure A-4) comes only in the year 2008. For the above reason, the O.A is liable to be dismissed.

5. In the rejoinder statement filed by the applicant, it was submitted that the Annexure R-4 seniority list is not applicable to the vacancies for the year 2002 to 2005.

6. We have heard Mr. Hariraj, learned counsel for the applicant and Mr. Millu Dandapani, learned ACGSC appearing for the respondents and perused the records.

7. The contention of the applicant is that if the vacancies were filled up irrespective of the clearance from the Screening Committee, he could have been appointed as Group-D employee in the year 2005. The respondents' stand is that they have complied with the order of this Tribunal dated 16.07.2008 in O.A. No. 263/2006. The operative part of the said order is reproduced as under:

"20. We, therefore, allow this Original Application and quash and set aside the impugned Annexure A-4 letter dated 13.2.2006 to the extent it refuses to consider the applicant for regular appointment to Group 'D' posts lying vacant. We hold that the non-filling of the available vacancies in Group D under the Trivandrum Postal Division in accordance with Department of Posts (Group D posts) Recruitment Rules, 2002 notified on 23.1.2002 is arbitrary and illegal. We, therefore, direct the respondents to take necessary steps as per "the Recruitment Rules" expeditiously and consider the

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applicant for appointment as Group D in his turn. If he is found suitable, he shall be appointed from the date his turn has come with all consequential benefits including seniority, arrears of pay and allowances within a period of two months from the date of receipt of this order. There shall be no order as to costs."

The Misc. Application No. 745/08 filed by the applicant in OA No. 263/2006 was closed as under :

"2. In this case, the applicant is mainly seeking a direction to the respondents to implement the orders passed in OA 263 of 2006. The respondents have already implemented the order by appointing the applicant as Group-D with effect from 25.09.2008.

3. In view of the above position, the Miscellaneous Application is closed. If the applicant has got any objection regarding his date of appointment, he is at liberty to agitate the same in separate proceedings."

8. This Tribunal found that the respondents had already implemented the order of this Tribunal in O.A. No. 263/2006 by appointing the applicant as Group-D with effect from 25.07.2008 vide Annexure A-5 order dated 14.10.2009. The respondents were bound by the instructions relating to the clearance from the Screening Committee till the Hon'ble High Court in its judgement dated 22.03.2007 in W.P.(C) No. 22818/2006 ordered that no clearance from the Screening Committee is required for filling up the posts by promotion in the Group-D cadre. Likewise, till the judgement dated 23.12.2009 of the Hon'ble High Court in W.P.(C) No. 33971/2009 and connected cases, the respondents were under the bonafide belief that the Office Memorandum dated 16.05.2001 on abolition of the posts which remained vacant for one year pertains to promotion posts also and not restricted to the post to be filled up by direct recruitment. Therefore, we are of the view that there was no deliberate delay or negligence on the part of the respondents in not filling up the Group-D posts from 2002 onwards. It is



settled law that the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts. We are unable to agree with the contention that the settled law as reiterated by the Apex Court in *Nirmal Chandra Sinha vs. Union of India and Others*, (2009) 1 SCC 671, is not applicable to the present case. An employee does not have an indefeasible right to promotion. His right is for consideration of promotion only. From the facts and circumstances of the case, it is quite clear that there are many eligible seniors to the applicant who are waiting in the wings to get promotions to the cadre of Group-D. Until and unless a junior is promoted with effective date earlier than the effective date of promotion of the applicant, he cannot have a legitimate grievance. The seniority list of GDS Trivandrum South Division as on 01.07.2002 shows the applicant at serial No. 60. The seniority list of GDS as on 01.07.2008 shows the applicant at serial No. 40. The latter seniority list of GDS is only the updated version of the former excluding the names of the GDSs who are no longer in service. The applicant has not challenged the seniority lists nor has he controverted the submission of the respondents that there are seniors to him who are yet to be given appointment as Group-D. In the circumstances, we do not find any merit in the contention of the applicant.

9. The O.A is dismissed with no order as to costs.

(Dated, 28th September, 2011)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

CVR.


JUSTICE P.R. RAMAN
JUDICIAL MEMBER