

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.150/2013

Friday..... this the *22nd* day of January 2016

C O R A M :

HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

B.Thrivikramon Pillai,
S/o.K.Balakrishnan Nair,
GDS MD, Alumpeedika,
Kollam Postal Division.
Residing at Poovangal House,
Prayar South, Alumpeedika P.O.,
Prayar – 690 547.

...Applicant

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. Union of India represented by the Secretary to the Government,
Department of the Post, Ministry of Communications,
Government of India, New Delhi – 110 001.
 2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 101.
 3. The Senior Superintendent of Posts,
Kollam Postal Division, Kollam – 691 001.
 4. P.Krishnan Kutty, Group D, Chanappara,
Kollam Postal Division, Kollam – 691 001.
 5. K.Sasi, Group D, Mantrothuruth,
Kollam Postal Division, Kollam – 691 001.
 6. T.Shaji, Group D, Velichikkala,
Kollam Postal Division, Kollam – 691 001.
- ...Respondents

(By Advocates Mr.C.P.Ravikumar [R1-3]
& Mr.Vishnu S Chempazhanthiyil [R4-6])

This application having been heard on 3rd December 2015 this
Tribunal on *22nd* January 2016 delivered the following :



ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant working as GDS under the 3rd respondent is aggrieved by the orders effecting promotion from the post of GDS to Group D based on seniority as per the direction in O.A.No.312/2008 and connected cases, where in the party respondents 4 to 6 were appointed in violation of rules governing reservation in appointment. In case, reservation was followed in accordance with rules applicant would have got appointment based on seniority. As per the Recruitment Rules during the relevant period, two modes of promotions are prescribed for appointment as Group D from the GDS. As per the rules governing preparation of reservation roster, separate rosters are required to be maintained for different type of recruitment. In this case, appointment of GDS to the post of MTS/Group D is by way of promotion against 75% of vacancies. Appointment of casual mazdoors against MTS/Group D is against the remaining 25% of the vacancies. Since appointments are treated as promotion, the roster applicable for promotion is to be applied. In this case, if roster for promotion is applied against 13 vacancies, the appointment of respondents 4 to 6 is outside the scope of reservation permissible by rule and orders. The appointment of respondents 4 to 6 is in violation of orders governing reservation and exceeded the permissible limits. Relief sought by applicant is to declare that appointment of respondents 4 to 6 overlooking his merit and seniority in excess of permissible reservation is illegal and unconstitutional.



2. Respondents in reply statement submits that the applicant is working as GDSMD, Alumpeedika with effect from 21.9.1982. In compliance with the order of the Tribunal in O.A.No.312/2008 and other connected cases, the respondent appointed seventeen MTS/Group D in Kollam Division. As per Annexure R-1 the percentage of reservation to be given to SC/ST category will be 15 and 7.5 respectively and there will be no reservation for OBC category as it was promotion. Since these appointments were being made in compliance with the orders of the Tribunal referred above as a one time measure, a new reservation roster was prepared reflecting this changed procedure of reservation. The private respondents in this O.A were appointed against the reserved vacancies for the SC/ST communities. The applicant in this O.A has now approached the Tribunal with the claim that while selecting the Group D/MTS in Kollam Division, excessive allocations were given to the reserved communities and as such he was denied his chance for selection as MTS/Group D. It is submitted that the applicant approached this Tribunal against the orders of the 3rd respondent issued on 16.7.2010 in connection with the selection of MTS/Group D in compliance with the orders of the Hon'ble Tribunal in O.A.No.312/2008 and similar connected cases. The instant O.A is time barred as per the limitation rules of the CAT Rules. The applicant belongs to UR category and the party respondents were selected under the reserved SC/ST quota. The respondent selected the Group D/MTS following the principles of reservation as ordered by the Tribunal and for this selection, a special representation roster was maintained with 15% reservation for SC and 7.5% reservation for ST



.4.

and Nil for OBC as prescribed for promotion. The applicant has misinterpreted the communal break up of the vacancies already filled up as there is no excessive reservation as averred by the applicant. It is submitted that the applicant approached the Tribunal through O.A.No.442/2010 for considering him against the MTS vacancies to be filled up in Kollam Division in compliance with the orders in O.A.No.312/2008 and other connected cases. After hearing the contentions of the applicant and the respondents the Tribunal had dismissed the O.A. The contention of the applicant that he had not challenged the excessive reservation or appointment of the party respondents in O.A.No.442/2010 is misleading. As such, it is evident that the applicant had enough opportunity to point out the irregularity, if any, committed by the respondents and this was not done by the applicant for the reasons best known only to him.

3. The departmental vigilance enquiry was ordered by the 2nd respondent to review the selection of Postman officials for the years 2006 to 2009 and selection of some Branch Post Masters. Based on the observations of the vigilance team, certain corrective steps have already been initiated by the respondents. Group D/MTS selections did not come under the purview of the vigilance enquiry at any time and respondent avers that the applicant is now again misleading the Tribunal. Annexure A-8 is the information provided under RTI and it is the copy of the representation roster maintained by the respondents for the selection of Group D/MTS based on the orders of the second respondent to comply with the orders of the



.5.

Tribunal in O.A.No.312/2008. Appointment to the posts of Group D/MTS was made during 2010 and the applicant had every chance and right to challenge the reservation to SC/ST candidates at that time. The applicant's contention that information relating to the selection of Group D/MTS during 2010 was received by him only recently is not true. The applicant has therefore come before the Tribunal with several misrepresentation. The selection during 2010 was carried out following a special representation roster other than the usual roster maintained in the Division. The representation of the SC/ST communities for this particular selection was 15% for SC, 7.5 for ST and none for OBC in compliance with the orders of the Tribunal in O.A.No.312/2008 wherein the selection from GDS to Group D/MTS was treated as promotion and not direct recruitment. Further 25% of the vacancies were also reserved for casual labourers.

4. It is submitted that the cadre strength of Group D at the relevant point of time was 36 and as per the Post Based Representation Roster, under promotional quota, the share of entitlement for SC and ST for a cadre strength of 36 is 5 and 3 respectively. The communal representation was made taking into consideration the 36 sanctioned Group D/MTS posts filled up in the division. The respondents 5 and 6 were selected under the quota reserved for the SC/ST communities and the applicant belongs to UR category. The selection of the respondents 4 to 6 was made taking into account the special representation ordered to be maintained for this particular selection by the Tribunal.



5. Respondents 4 to 6 state that the O.A has been filed on 15.2.2013, thus there is a delay of 580 days in challenging Annexure A-1. The applicant was aware of the fact that appointments had been effected on 16.7.2010 as these facts were brought to the notice of the applicant, who had filed O.A.No.442/2010. The Tribunal in para 6 of the Annexure A-3 judgment took note of the fact that 12 vacancies allotted to Kollam Division for the years 2006, 2007 and 2008 had been filled up and that the names of the 1st and 2nd applicants did not come as per their seniority. Incidentally the 1st applicant in Annexure A-3 judgment is the applicant in the present case. Thus, the applicant herein was fully aware of the appointments effected on 16.7.2010 but has choosen not to challenge the same within one year and has also not given explanation for the delay of 580 days in filing the O.A. The applicant approached the Hon'ble Tribunal through O.A.No.442/2010 for considering him against the MTS vacancies to be filled up in Kollam Division in compliance with the orders in O.A.No.312/2008 and other connected case. After hearing the contentions of the applicant and the respondents, the Tribunal had dismissed the O.A. The contention of the applicant that he had not challenged the excessive reservation or appointment of the party respondents in O.A.No.442/2010 is misleading. The principles of constructive resjudicata apply to the facts of the case. The respondent appointed the Group D/MTS candidates vide Annexure A-1 memo dated 16.7.2010 and O.A.No.442/2010 was dismissed by the Tribunal on 24.2.2011. As such, it is evident that the applicant had enough opportunity to point out the irregularity, if any, committed by the



respondents and this was not done by the applicant. The applicant herein is the 1st applicant in O.A.No.442/2010 which resulted in Annexure A-3 judgment. The claim in the above O.A was to appoint the applicant as a Group D in respect of vacancies that have arisen in 2006, 2007 and 2008. O.A.No.442/2010 was dismissed on the ground that the applicant's turn did not arise. The judgment at Annexure A-3 has thus become final and binding. The applicant cannot and is not entitled to turn back and claim appointment as against vacancies reserved for SC/ST community. Thus, the claim of the applicant is barred by estoppels and resjudicata.

6. The applicant had filed O.A.No.442/2010 wherein he had raised similar contention that despite availability of adequate number of vacancies the respondents had not considered his claim for promotion. The Tribunal passed the following order :

“6.The applicants are, therefore, entitled only to 25% of vacancies arising in any year under the seniority cum fitness quota. Postman is in Group C cadre and for the 50% to be filled up by direct recruitment, the annual direct recruitment plan has to be subjected to screening committee's review. As per the Vth CPC recommendation, a 10% cut has to be effected though a five year period in the sanctioned strength in every cadre and this is possible only in the direct recruitment quota. There is a further restriction from DOPT to fill up, not more than 1% of sanctioned strength every year. Therefore, all the vacancies which arise in an year may not be filled up as a few vacancies in DR quota will be abolished every year. This naturally, gives an impression to the applicant that there is curtailment in the number of promotion being effected for GDS. However, as part of the implementation of the common order of the Tribunal, an elaborate mechanism was put in place to ascertain the number of vacancies in the Group D cadre in all the 27 divisions across the Circle. The number of vacancies projected in the Annual Direct Recruitment Plans for Postman cadre were cross checked vis-a-vis the number of vacancies cleared by the Government for filling up. A Committee was set up at Regional level and also at Circle level to scrutinise and monitor all related documents and facts and cross tally the number of vacancies from the date of their occurrence, vacancies approved for filling/abolishing, the actual number in position and the



.8.

total sanctioned strength in each Division. After tallying these figures from 2002 to 2008, revised rosters were prepared and list of eligible persons identified in each division and given appointment notionally from the date of occurrence of each vacancy according to seniority as a one time measure. After the above exercise, a total 327 posts for the period from 2002-2008 were identified to be filled up in all the Divisions out of which 12 vacancies were allotted to Kollam Division for filling up. The first and second applicants' turn did not come as per their seniority while the 3rd applicant declined the promotion to Group D. The respondents have filed the additional reply statement on 12.11.2010 but the applicants have not refuted the same. Therefore, we are of the opinion that the facts and figures in their statement are correct.

7. In this view of the matter we do not find any merit in the O.A. It is accordingly dismissed. No costs."

7. Counsel for the party respondents contend that the O.A is hit by constructive resjudicata as Annexure A-1 was available when the above judgment in O.A.No.442/2010 was passed and hence any attempt to resurrect the same issue under another guise be discouraged. It is also pointed out that cause of action arose in 2011 and O.A was filed on 15.2.2013 with a delay of over 500 days. W.P.(C) No.17399/2011 is quoted in support of the case. It is seen on a perusal that the applicant had raised the issue of reservation a second time but on the ground that party respondents had committed a fraud in claiming the reservation seat. We do not see any similarity of the said W.P with this O.A.

8. Party respondents would claim that there is no excess reservation as alleged in the O.A. The selection in 2010 which resulted in Annexure A-1 order of appointment was based upon direction in O.A.No.312/2008 and connected cases. In the above cases, it was held that appointment of a GDS to Group D is not by direct recruitment. In such circumstances, instructions were issued by the Office of the CPMG, to fill up vacancies by preparing a



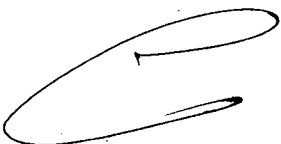
new roster. A new roster was necessitated, as the Department had been following the roster prescribed for direct recruitment, whereas what was required was the roster prescribed for promotion. The representation for SC/ST communities prescribed is 15% for SC and 7.5% for ST and Nil for OBC. The cadre strength of Group D at the relevant point of time was 36, which would mandate that the share of entitlement for SC and ST is 5 and 3 respectively. The applicant is trying to prove that there was excess reservation, by raising a flawed argument, that when 11 appointments are made, SC/ST communities would not get 6 appointments out of such 11 appointments. This is because, reservation is to be applied not to the arising vacancies, but to the cadre strength. This position is well settled. In the instant case, a perusal of the roster produced before the Tribunal would clearly show that the reservation has been applied to cadre strength on the basis of reservation roster. Viewed in this angle, there is no excess reservation and the applicant is re-agitating the issue which has already been settled in Annexure A-3 judgment. There is a clear finding in Annexure A-3 judgment that the applicant's turn for consideration for appointment as a Group D/MTS had not arisen. A perusal of the DPC proceedings, produced before the Tribunal would clearly show that the applicant was not even considered, in the selection process in the year 2010, as he was not senior enough. The applicant cannot get away from the finding already rendered in Annexure A-3 judgment that the applicant's turn for appointment in turn of seniority did not arise.



9. The applicant not having achieved his stated goal is tunnelling various paths to achieve the same. The 3rd respondent states that he has followed the points in the prescribed roster and the other SC/ST candidates appointed were because of their seniority in the list. This was a contention made and accepted by the Bench in O.A.No.442/2010 and any attempt to resuscitate the same by another set of similar related contentions is not tenable.

10. The Apex Court in **M.L.Cecil D'Souza vs. Union of India AIR 1975 SC 1269** held that *"It is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore appear to be in the interest of smoothness and efficiency of service that such matter should be given a quietus after lapse of sometime...."*. In the case of **P.S.Sadasivaswamy Vs. State of Tamil Nadu**, the Apex Court held that *"in promotion matters the petitioners should approach the court at least within six months or at the most a year after promotion of his junior, because to unsettle things settled long back is unjust and improper."*

11. Repeated representations or litigations cannot change the facts presented in the case but only reflects the litigious nature of applicant. Further the vigilance investigation referred by applicant in sustaining his



delay in filing the case was in respect of Postman cadre in April 2012 whereas applicants appointment is to MTS cadre wherein no vigilance enquiry was instituted. The private respondents were appointed as MTS based on directions given to respondents by the Tribunal in O.A.No.312/2008 and as per vacancy set apart for SC/ST. The respondents in the reply statement of 10.12.2013 have filed details of the place of vacancy and date of arising of vacancy where the respondents were adjusted on appointment. The order passed in O.A.No.442/2010 attained finality. The applicant is attempting to resurrect a case which has already been addressed by this Tribunal. The Original Application is, therefore, dismissed on the ground of delay and on merits as well.

(Dated this the 22nd day of January 2016)



P.GOPINATH
ADMINISTRATIVE MEMBER



N.K.BALAKRISHNAN
JUDICIAL MEMBER

asp