

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.151/2002

Tuesday this the 28th day of September, 2004

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**HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

1. S.Ashok Kumar, aged 39 years
S/o Sivasankaran Nair,
Adhoc Postman,
General Post Office,
Trivandrum,
residing at TC 36/1824,
Subhash Nagar,
Trivandrum.8.
2. K.Rajendran Pillai,
aged 42 years,
S/o N.Krishna Pillai
Adhoc Postman, Attingal Sub Division,
residing at Melemadathil Veedu,
Ukkambalamoodu, Vembayam,
Trivandrum District.
3. K.Bhuvanendran Nair,
Aged 40 years, S/o Kuttan Pillai
Adhoc Postman,
Trivandrum North Sub Division,
residing at Kizhapannumdola Veedu
Konchira PO, Vembayam,
Trivandrum.Applicants

(By Advocate Mr.T.C.Govindaswamy)

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1. The Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Senior Superintendent of Post
Offices, Trivandrum North Division,
Trivandrum.
3. Union of India, represented by the
Secretary to the Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi.
4. Director (Staff)
Ministry of Communication,
Department of Posts,
New Delhi.Respondents

(By Advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 5.8.2004, the Tribunal on 28. 9.2004 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicants who are E.D.Agents, presently officiating as adhoc Postmen in Thiruvananthapuram Division on the basis of Annexure.A19 order in implementation of the interim order dated 21.12.1999 in MA No.1284/99 in OA 734/99 have filed this application seeking to set aside Annexures.A7, A8, A.16 and A22 and for a direction to the respondents to consider the applicants for appointment against the existing vacancies of Postmen in the Thiruvananthapuram Division taking into account the rank obtained by them in the examination held on 26.4.1998. Leaving aside facts which are not material the averments in the application relevant for understanding the dispute can be stated thus.

2. The Chief Postmaster General, Kerala Circle issued Annexure A.2 notification dated 10.2.98 for filling up vacancies in the cadre of Postmen/Mail Guards. Prior to this notification the Superintendent of Post Offices, Thiruvananthapuram North Division had issued Annexure A3 notification, identifying the vacancies of Postmen as 24 ie., 12 appointment quota, 6 EDAs length of service quota and 6 EDAs merit quota. The applicants who were qualified EDAs applied and participated in the examination which was held on 26.4.1998. As the result was not announced basing in some information that the number of vacancies was being

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reduced, All India Postal Extra Departmental Employees, Kerala Circle sent Annexure.A.4 letter to the Ist respondent requesting that the number of vacancies announced should not be reduced. Finding no response, applicant No.1 and two others filed OA 1233/98 before this Bench of the Tribunal which was disposed of by order dated 26.8.98 permitting the applicants therein to represent to the Ist respondent and directing the Ist respondent to consider and dispose of the representation. In response to the representation Annexure.A.6(a) submitted, they were given Annexure A.7 order rejecting their claim on the ground that on account of enhancement of retirement age of Central Government Employees from 58 to 60 years w.e.f. 1.5.1998 the vacancies anticipated on account of expected retirement did not arise and therefore it was necessary to reduce the number of vacancies. The respondents had issued an order recasting the vacancies reducing the total vacancies to 10, out of which 5 were for departmental candidates and 5 for E.D.As. They further published Annexure.A.9 list of eligible candidates against these vacancies on the basis of examination held on 26.4.1998. In fact two more vacancies of Postmen on account of promotion of two Postmen, and two posts were created by Annexure A10 order and these vacancies were available to be filled. Further one more vacancy arose in May, 1999 on account of death of M.Sukumaran. In terms of the instructions contained in Annexure A.1 the respondents should have prepared and published the result of the examination and filled up the vacancies considering

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those placed in the panel. The applicants' names were not placed in Annexur.A9 panel. The applicants were given statement of their marks in the examination. Annexures.A.11, A12 and A13 are the statement of marks according to which the first applicant got 139, second applicant 130 and the third applicant got 137 out of 150. The applicants came to understand that the last man in the select list of unreserved category got only 139 marks. Alleging that the applicants should have been placed in the panel, the applicants submitted Annexure.A14 representation requesting that they be considered for appointment. The representation was rejected by Annexure.A.16 order. Although the selection is to be made to the number of vacancies, the names of successful but not appointed EDAs are to be considered to the nearby Division, and this having not been done the applicants have suffered loss of opportunity for being appointed. In Thiruvananthapuram South Division there was no reduction of vacancies after the examination and all those who were selected were appointed. As there was five vacancies of Postmen the applicants should have been appointed. The applicants aggrieved by non-inclusion of their names in the panel filed OA 734/99. In MA 1284/99 in OA 734/99 the Tribunal issued an interim order directing respondents to consider the applicants for officiating appointment as Postmen in preference to outsiders till the disposal of that OA. The applicants are on the basis of that order appointed on officiating basis as Postmen. The OA 734/99 was disposed of permitting the

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applicants to make representation to the third respondent and directing the third respondent to dispose of the representation. The joint representation made by the applicants Annexure A.21 was ultimately replied by Annexure.A22 order rejecting their claim without application of mind. Hence this application.

3. The respondents in their reply statement contend that on account of enhancement of retirement age from 58 to 60 the vacancy position was revised in June, 1998, as Departmental 5, EDA Seniority 3 and EDA merit 2, that this was notified by Annexure.A8, that two vacancies on account of promotion as Postal Assistant and two vacancies sanctioned by A.10 were also included in the ten vacancies, that the select list is to be prepared only to the number of vacancies notified the examination in question by a competitive one, that in Thiruvananthapuram South Division there was no reduction of vacancies because the retirement vacancies had not been taken into account even when vacancies were originally assessed and notified, that the contention of the applicant that they were persons who had obtained highest marks among those participated in the examination, but not included in A.9 is not correct, as there are five others who had secured similar marks as the applicants, that as there was no shortfall of EDAs in any Division the contention that the applicants lost opportunity has no merit and that the application is devoid of merit.

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4. In the rejoinder the applicants have stated that it would be evident from Annexures.A.24, A.25 and A.26 that in the Thiruvananthapuram South Division 12 EDAs were selected were immediately appointed, that one remaining appointed against further retirement vacancies, that there are 38 vacancies now and the applicants should have been appointed against these vacancies and the inaction of the respondents in not appointing the applicants is unjustified.

5. The respondents have filed additional reply statement justifying the revision of vacancies on the basis of Annexure.R.4 letter consequent on enhancement of retirement age. They also contend that vacancies which have arisen subsequently in 1999 etc. are to be filled after fresh notification and examination and that the same is being held on account of steps for amendment of Recruitment Rules.

6. We have very carefully perused the entire pleadings and all the materials available on record and have heard at length the argument of Shri TCG Swamy the learned counsel of the applicants and Shri C.Rajendran, the Senior Central Government Standing Counsel appearing for the respondents. We find that the enhancement of retirement age of Central Government Officials resulted in there being no retirement for next two years after 1.5.1998, and therefore the revision and recalculation of the vacancies became

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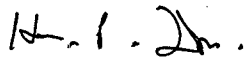
inevitable and that therefore the reduction of vacancies to ten as made in Annexure.A8 was unexceptionable. We also find that the ten vacancies re-notified included the two vacancies caused by promotion as Postal Assistants and two vacancies released by Annexure.A.10. Hence we are convinced that there has not been any error in calculation and renotification of vacancies. One vacancy which arose in May, 1999 and subsequent vacancies can be filled only on the basis of fresh selection according to the Recruitment Rules. The examination for selection of EDAs for appointment of EDAs on merit quota being competitive, select list can be drawn up only to the number of announced vacancies and therefore the applicants who were not included in the select list are not entitled to any relief. The mere fact that the applicants participated in a competitive examination does not confer on them any right to be appointed once they did not come on merit in the select list for notified vacancies. The applicants have not established that they got the highest marks among those who participated in the examination but not included in Annexure.A.9. We do not find that there had been any violation of the Rules in regard to recruitment or any other facts or circumstances which would vitiate the impugned orders. Clear and cogent reasons have been stated in the impugned orders Annexure.A16 and A.22.



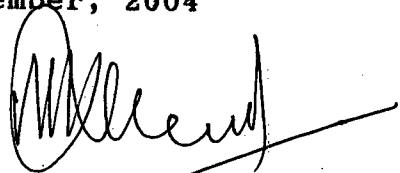
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7. In the conspectus of facts and circumstances, we find no merit in this application which is dismissed leaving the parties to suffer their costs.

Dated this the 28th day of September, 2004



H.P.DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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