CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA Nos.310/12, 155/12, 249/12, 461/12 & 671/12

Friday, this the 12th day of April, 2013.

CORAM

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mrs. K.NOORJEHAN, ADMINISTRATIVE MEMBER

OA No.310/12

Shibu K,
S/o N. Krishna Pillai,
Shibu Nivas, Vayakkal P. O,
Valakom – 691532, KJA Taluk,
Kollam District.
Presently working as SEP/PO 8377086A,
APS Centre, Kamptee, 746 FPC
C/o 56 APO, Pin- 900746. Applicant

[By Advocate: Mr.V.Sajith Kumar]

Versus

1. Union of India, represented by the Secretary to the Government, Department of the post, Ministry of Communications, Government of India, New Delhi - 110001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum- 695011.

3. Senior Superintendent of Post Office, Kollam Postal Division, 691001.

4. Senior Record Officer/ Officer in Charge of Records, Sena Dak Seva Abhilekh Karyalaya, Army Postal Service Records, Pin 900746, C/O 56 APO.

5. Additional Director General Army Postal service,
Additional Directorate General,
APS Pin – 908700, C/O 56 APO. Respondents

[By Advocate: Mr.Sunil Jacob Jose, SCGSC]

OA No.155/12

Biju.M,
S/o Madhvankutty Nair,
presenetly working as SEP/PO 8376712M,
APS Centre Kampetee, 746 FPO
C/o 56 APO, Pin – 900746,
Permanent residence at Bindhu Bhavananm,
Peruvellikkara P.O, West Kallada,
Kollam District- 691500. Applicant

[By Advocate: Mr.V.Sajith Kumar]

Versus

1. Union of India, represented by the Secretary
to the Government, Department of the post,
Ministry of Communications,
Government of India, New Delhi - 110001.

2. The Chief Postmaster General,
Kerala Circle, Trivandrum- 695011

3. The Superintendent of Post Office,
Pathanamthitta Postal Division,
Pathanamthitta.

4. Senior Record Officer/
Officer in Charge of Records,
Sena Dak Seva Abhilekh Karyalaya,
Army Postal Service Records,
Pin 900746, C/O 56 APO.

5. Additional Director General Army Postal Service,
Additional Directorate General,
APS Pin – 908700, C/O 56 APO. Respondents

[By Advocate: Mr.Thomas Mathew Nellimoottil]

OA No.249/12

S. Sunilkumar,
S/o C. Sasidharan, aged 30 years,
Presently working as SEP/PO 8376717 L,
1-Central Base, Post Office,
C/o 56 APO, Pin 9000056
Permanent Residence at Sunilnivas,
Njakkanal P.O., Krishnapuram,
Alappuzha District, Pin- 690533. Applicant

[By Advocate: Mr. V.Sajith Kumar]

Versus

1. Union of India, represented by the Secretary to the Government, Department of the post, Ministry of Communications, Government of India, New Delhi - 110001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum- 695011

3. The Superintendent of Post Office, Mavelikkara, Alappuzha District, Pin- 680101.

4. Senior Record Officer/ Officer in Charge of Records, Sena Dak Seva Abhilekh Karyalaya, Army Postal Service Records, Pin 900746, C/O 56 APO.

5. Additional Director General Army Postal Service, Additional Directorate General, APS Pin – 908700, C/O 56 APO. Respondents

[By Advocate: Mr.Pradeep Krishna]

OA No.461/12

S. Praveen, aged 30 years,
S/o G. Surendran (late),
GDS on deputation to APS, 8376720-SEP/
PO 24 DIV, Postal Unit,
Permanent residence at Nalparathalakkal,

Puthen Veddu, Vandannur,
Perumpazhathur P. O, 695126. Applicant

[By Advocate: Mr.V.Sajith Kumar]

Versus

1. Union of India, represented by the Secretary to the Department of the Post, Ministry of Communications, Government of India, New Delhi - 110001.

2. The Chief Postmaster General, Kerala Circle, Trivandrum- 695011

3. Senior Superintendent of Post Offices, Trivandrum South Division, Trivandrum 33

4. Senior Record Officer/ Officer in Charge of Records, Sena Dak Seva Abhilekh Karyalaya, Army Postal Service Records, Pin 900746, C/O 56 APO.

5. Additional Director General army Postal service, Additional Directorate General, APS Pin – 908700, C/O 56 APO. Respondents

OA No. 671/12

Suresh Kumar. P
S/o Raman
Thazhathayil Veedu
Azhijilam, Vazhayoor
Eranad Taluk
Malappuram District
Kerala State.
Presently working as No.8376734 L, SEP/PO
PIN 900056 Applicant

[By Advocate: Ms.R.Viaya Kumari]

Versus

1. Union of India, represented by the Secretary to the Department of the Post,

Ministry of Communications,
Government of India, New Delhi - 110001.

2. The Chief Postmaster General,
Kerala Circle, Trivandrum- 695011

3. Senior Superintendent of Post Offices,
Calicut Postal Division-673003

4. Senior Record Officer/
Officer in Charge of Records,
Sena Dak Seva Abhilekh Karyalaya,
Army Postal Service Records, Pin 900746, C/O 56 APO.

5. Additional Director General Army Postal Service,
Additional Directorate General, APS Pin – 908700,
C/O 56 APO. Respondents

[By Advocate: Mr.Sunil Jacob Jose, SCGSC]

These applications having been heard together on 4th April, 2013, this Tribunal on 12th April 2013 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

As the legal issue involved in all the above five cases is one and the same, all these O.As are considered together and a common order passed. For purpose of reference, OA No. 310 of 2012 has been taken as the pilot case.

2. Briefly stated, all the applicants in the aforesaid O.As were initially functioning as GDS in the Civil Post Offices since 2001 or in and around that period. . In November, 2006 Annexure A-2 notification was issued by the respondents which relates to deputation of Group-D (including postman) employees of the Post Offices to APS. The notification, at a conspicuous place, contained the following:-

> *"Male Gr.D officials below the age of 40 may prefer their applications in the form enclosed which should be accompanied by a Medical Certificate in the enclosed proforma.*
>
> *In the event of not getting sufficient volunteers from the Gr.D category it is suggested that volunteers may also be called for from among male GDS who satisfy the age criterion. Willing male GDS officials may apply in the form enclosed accompanied by a medical certificate."*

3. In so far as repatriation of the deputationists is concerned, the notification also stipulated as under:-

> *"Selected candidates will have a liability to serve in the Army Postal Service for as long as their services are required by APS. Repatriation to civil appointment can be done only with the consent of both parties viz. civil appointing authorities and Army Postal Service."*

4. The applicants on the basis of the above notification, applied and were notionally appointed as Group D in the Post Offices and their services lent to the APS on deputation basis. A specimen of the terms of deputation as contained in Annexure A-3 contains inter alia an undertaking to be given by the individuals so appointed and the same is as under:-

> *"The promotion is as per the undertakings given by them for the recruitment subject to the following conditions:-*
>
> *1. They will not seek repatriation to the civil before their appointment as Group-D cadre in their turn.*
>
> *2. In case of reversion to civil post for any unforeseen reasons before their turn for appointment for Group-D comes they are liable to be accommodated in any post of GDS, if the present post is not available and if no post of GDS would be available in their recruitment unit. They will wait for appointment as much without claiming remuneration till a vacancy arises.*
>
> *3. After their promotion to Group-D cadre in civil they will be entitled for the service benefits at par with their next junior in the civil."*

5. The applicants took up their post in APS and were conferred with the Army Designations and were continuing as such in their respective posts. Provision exists for taking up examination for appointment as postman under GDS Category. Thus, the applicants had taken up their examination and had qualified. Their pay has also been fixed accordingly. Annexures A-4 and A-5 refer. (It is not exactly known whether in some cases, such a pay fixation had been issued, as the documents furnished do not reflect as such).

5. Provision exists for the deputationists to seek repatriation on their selection to the regular Group D posts. Thus, all the applicants had applied for the same and accordingly, the respondents had passed orders, vide Annexure A-6, for their repatriation from a specific date. Reasons for repatriation have also been duly reflected in the order of discharge.

6. However, since the training centre of the APS needed certain clarification, the same was sought for from the Headquarters i.e. Addl D.G. APS, vide letter dated 7th June, 2010. The said letter inter alia reads as under:-

"2. Presently following categories of Sep/Pos (Non Reg) from various circles are held in APS:-

(a) Group 'D' volunteers from Dept of Post as Sep/PO, can be permitted to go on discharge after completion of initial engagement term in APS;

(b) one time regularized GDS (847 only) as Group 'D' in APS in terms of Dept of Post letter No.47-1/2003-SPB-1 dated 13 Jun 07. These GDS pers are expected to retire from APS only and may not be permitted to go on discharge.

(c) Specially recruited GDSs pers as Group-D and deputed to APS as sepoy POs Existing rulings are not clear about their engagement in APS, however, since they were recruited against APS vacancies allotted to civil circles, it is presumed that terms and conditions applicable to special recruit WO will also be applicable to these Group D pers.

3. *However, there is confusion about the status and eligibility conditions of Sep/PO for appearing for Deptl exams and their discharge from APS. As per DG posts directions vide letter No.47-1/2003-SPB-1 dated 23-7-03 addressed to all circles, no GDS persons can be dispatched to APS by giving technical appointment in the cadre of Group D. Which means all the Sepoys joined after these instructions are properly recruited for Group D and deputed to APS Corps. If it is so such Sepoys are not eligible for appearing in postman exam unless they complete minimum three years of service in Group D cadre.*
4. *In cases of GDS officials specially recruited against APS vacancies and deputed to APS as group D, after joining APS, they ceased to be GDS employees and their previous service as GDS will not be counted for any departmental examination.*
5. *It is also very clear as per the DG Posts directions that after regularization of 847 GDS pers as Group D cadre, there is no concept of GDS in APS corps. All deputionists comes under category of group D and above only.*
6. .....
7. .....

8. *In the light of above, detailed instructions needs to be issued to APS units as well as civil postal circles.*

(a) APS units may be instructed to not to process Sep/PO cases for postman/mail guard examination unless they complete prescribed period of three years service in group D cadre in APS.

(b) Instructions may be issued to P&T Adm cell and APS records about the terms and conditions of specially recruited Sep/Pos and minimum tenure they should serve in APS. In case, they refuse to undergo PRC course, what would be the status such Sepoys in APS. It is felt that terms and conditions applicable

to specially recruited WOs will be applicable to specially recruited Group D pers also 10 years service in APS clause applicable to these Sepys also.

(c) Civil postal circles may be informed that in cases of GDS officials appointed and deputed to APS against APS vacancies, such pers past service as GDS should not be counted for permitting postman exam. Service rendered after appointment as group D only be counted.

(d) After qualification of postman or LGO examinations, instead of permitting them to join civil postal units, SSPs may be instructed to issue NBR certificate to facilitate such pers to enjoy promotional benefits while in APS itself.

(9) it is therefore requested to issue explicit clarifications to civil circles and suitable directions to APS Units at earliest. In the meanwhile, this office will not permit any Sep/PO for Deptl exams who have not completed minimum three years of service in APS and will not process discharge cases with civil units in case of unwilling to undergo PRC course."

7. The Addl. DG APS, in response to the above has clarified the position vide his letter dated 17th June, 2010 (Annexure A-7) which inter alia stipulates as under:-

"2. Clarification on the points raised vide your letter under ref are given as under:-
(a) The first category of Group 'D' (847 GDs regularized as Group 'D' on 13 Jun 07) may appear for departmental examination and pass the LGO's examination but they will not be permitted to revert back to civil division as mentioned vide DoP letter No.47-1/2003-SPB-I dated 07 Apr 10.
(b) The second category are regular Group 'D' and they can appear for departmental examination as per eligibility condition. They can continue to serve in APS or revert back to parent divisions based on their willingness or otherwise.
(c) The third category are newly recruited Group 'D'. These are Group 'D' from the date they join in APS as the provision of recruitment of GDS as Group 'D' has been withdrawn vide DG Posts letter No.47-I/2003-SPB-I dated 23 Jul 2003. These Group 'D' are eligible for appearing in departmental examination only on completion of three years from the date of joining APS. After fulfilling the conditions of eligibility, if they pass the examination and want to revert back to civil divisions they may do so based on mutual consent of parent division and APS through P&T Adm Cell.
(d) Since newly recruited Group 'd' are appointed against our vacancies for a particular Circle/Division they cannot be equated with specially recruited WO as no direction/rule has been given by DoP on this till date. Hence no revised terms and conditions are required to be issued by us. The existing terms and conditions will continue to apply.

3. In connection with para 8(d), the civil divisions are supposed to issue NBR certificate of a candidate who continues to remain in APS after passing departmental examination and here also no fresh instructions are required to be issued."

8. On the basis of the above communication, the respondents have rescinded their order of discharge and this is the cause for filing the above O.As, where the relief sought for is for quashing the impugned order whereby the discharge order has been cancelled and for a direction to the respondents to relieve the applicants from the APS so as to enable them to join the civil posts.

9. Respondents have contested the O.A. They have stated that the applicants cannot be repatriated in view of the fact that it is only when both the departments (civil as well as the APS) mutually agree to repatriate them that such discharge could take place. This was one of the conditions contained in the notification.

10. In their rejoinder, the applicants have contended that vide Annexure A13, even after the clarification, some of the individuals have been discharged from APS and thus, there is no rationale in discriminating the applicants.

11. Counsel for the applicant succinctly brought out the facts of the case and submitted that in so far as GDS are concerned, initially, in view of acute shortage of personnel in APS, GDS were also inducted on deputation, vide order dated 28th May, 1997 at Annexure R-1. However, later on, vide Annexure R-2 dated 23rd July, 2003, the said order has been withdrawn. In respect of Kerala Circle, notwithstanding the above said order of July, 2003, there has been a relaxation and the earlier provisions of 28th May, 1997 were applied and accordingly, the notification dated November, 2006 on the strength of which the applicants had applied, invited applications from eligible GDS also. The counsel also submitted that it would be seen on a comparison of the initial order dated 28th May, 1997 (Annexure R-1) and the terms of deputation as contained in Annexure A 3, that the terms and conditions of deputation are exactly one and the same. In other words, the order of 23rd July, 2003 by which the earlier order of 28th May, 1997 was withdrawn was eclipsed in so far as Kerala Region is concerned. And, since the terms of deputation did not contain any other condition, the applicants are entitled to be got discharged.

The counsel emphasized that once specific conditions have been prescribed in the order of deputation, and the condition that mutual consent is essential for repatriation has not been incorporated in the order of deputation, the condition relating to mutual consent cannot be applied for them, and it may be applicable to the other set of candidates (i.e. Regualr Group D). Had such a condition of mutual consent been prescribed in the terms and conditions, perhaps, the applicants would not have chosen to go on deputation.

12. The counsel for the respondents argued that the notification clearly stipulated that the discharge could be permissible only when the same is mutually concurred in by both the departments. Since the clarification provided by the Addl DG, APS does not permit discharge by the APS, the applicants cannot seek repatriation.

13. Counsel for the applicant in his rejoinder argument submitted that the notification is common for regular Group D employees as also the GDS. The conditions attached for GDS are specifically contained in order dated 28th May, 1997. It is the said specific conditions alone that could be pressed in service and not the one stipulated in the notification. Again, the fact that vide Annexure A-13, the respondents have permitted discharge of certain other GDS employees, confirms that there is no complete prohibition for such discharge. Whatever good grounds are available in respect of candidates mentioned in Annexure A-13 for such discharge are all available with the applicants as well. Thus, discrimination is writ large in the action of the respondents.

14. Arguments were heard and documents perused. Admittedly, initially, both the departments have concurred in for such repatriation. Otherwise, the order at Annexure A-6 would not have been issued by the APS. It is only on receipt of clarification vide Annexure A-7 that the said order at Annexure A-6 had been cancelled.

15. Now, as to the scope of clarification issued vide Annexure A-7, it talks of a few categories. The first category talks of 847 candidates, and the applicants not belonging to this group, they are not covered under the same. The second category talks of regular Group D who could appear for departmental examination as per eligibility condition. They can continue to service in APS or revert back to parent divisions based on their willingness or otherwise. Counsel for the applicant submits that the case of the applicants falls under this category as the applicants are now regular Group D employees. This aspect has to be examined.

16. In so far as the third category is concerned, the said category is one of newly recruited Group D and the said Group D status is available only from the date they join the APS. Their repatriation would be on the basis of mutual consent of the two departments. The fourth category is one where the newly recruited Group D are appointed against the APS vacancies for a particular Circle/Division and they cannot be equated with specifically recruited WO. The existing terms and conditions would thus apply to them.

17. So far as the fourth category is concerned, the same would not apply in respect of this case. It is thus, only either second or third category that could apply. In so far as second is concerned, the same talks of regular Group D which the applicant did not have at the time of deputation. Conferment on them of Group D was purely notional. Thus, they fall under Category 3.

18. In category C, the condition is that they could be permitted to participate in the examination only on completion of three years eligibility. It appears that the applicant's qualifying in the examination was not on the basis of their being regular Group D but on the basis of their entitlement as a GDS as they have competed under the GDS Quota. As such, the order dated 23 July, 2003 is not applicable to them and the earlier order dated 28th May, 1997 alone

would apply. And, it was for the same reason that the very same conditions as contained in the aforesaid letter had been incorporated in the order of their deputation, vide Annexure A-3. The notification at Annexure A-1 is one issued in respect of both regular Group D as well as GDS employees. It is doubtful that the same terms and conditions as specified in the deputation order for GDS would have been provided for regular Group D as well. If so, no other conditions than those as specified in the Deputation letter could apply. The contention of the counsel for the applicant on the above lines thus, has substance.

19. Again, vide Annexure A-13, even after the issue of the said clarification (Annexure A-7), certain GDS employees sent on deputation to APS had been repatriated. The counsel contends that refusing to afford the same treatment to the applicant is blatant discrimination which cannot be permitted. Here again, there is substance in the contention of the counsel for the applicant.

20. It is as if the applicants seek repatriation immediately on their taking over the deputaion post. By now they have put in more than five years of service. The applicants have not derived any unintended benefit by way of their deputation. Their seeking repatriation is on the basis of the terms and conditions stipulated in the order of deputation. Their request is only after their appointment in Group D. Again, the respondents cannot adopt different norms for the same set of persons, as the same would lead to arbitrariness which is anathema to doctrine of equality.

21. Thus, taking into account the entire conspectus of the case, the Tribunal is of the considered view that the applicants have certainly made out a case in their favour. Hence, **all the O.As are allowed**. The impugned order cancelling Annexure A-6 order (as well as like orders in other O.As) is hereby quashed and set aside. Consequently, the order of discharge vide Annexure A-6 is restored. Respondents shall honour their own letter of discharge vide

Annexure A-6. The applicants shall be discharged by the APS within a period of three months from the date of communication of this order.

22. No order as to costs.

(K.Noorjehan)
Administrative Member

(Dr.K.B.S.Rajan)
Judicial Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Contempt Petition No.180/00014/2014
in Original Application No.155/2012

Thursday this the 17th day of April 2014

C O R A M :

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER
HON'BLE Ms.MINNIE MATHEW, ADMINISTRATIVE MEMBER

Biju.M.,
S/o.Madhavankutty Nair,
Presently working as SEP/PO 8376712M,
APS Centre Kampetee,
746 FPO C/o.56 APO PIN – 900 746.
Permanent residence at Bindhu Bhavanam,
Peruvelikkara P.O., West Kallada, Kollam – 691 500. ...Applicant

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. Smt.Shanti S Nair,
The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 003.

2. Sivadasan Pillai,
The Superintendent of Post Office,
Pathanamthitta Postal Division,
Pathanamthitta – 689 645.

3. N.W.Godra,
The Senior Record Officer/
Officer in charge of Records,
Sena Dak Seva Abhilekh Karyalaya,
Army Postal Service Records – 900 746, C/o.56 APO.

4. Major General Amil Kumar (I.P.S.),
Additional Director General Army Postal Service,
Additional Directorate General,
APS PIN – 900 746, C/o.56 APO. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 17th April 2014 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

When this petition is taken up for consideration, it is brought to our notice that Respondent No.2 has filed an affidavit explaining the steps taken in implementation of the order passed by this Tribunal in the above Original Application. Annexure R-3 order dated April 7, 2014 issued in this regard has also been produced along with the affidavit, by which, approval has been accorded for repatriation of the petitioner to "Civil" Section in implementation of the order of the Tribunal. Annexure R-4 further shows that the petitioner has been ordered to be accommodated at Adur on repatriation.

2. In view of the above subsequent development, the petition for contempt has become infructuous. Accordingly, it is closed.

(Dated this the 17th day of April 2014)

MINNIE MATHEW
ADMINISTRATIVE MEMBER

JUSTICE A.K.BASHEER
JUDICIAL MEMBER

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