

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 155/99

Wednesday, this the 18th day of July, 2001.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

R. Somasekharan Nair,
Extra Departmental Sub Post Master,
Kollad Extra Departmental Sub Office,
Kottayam, Pin-686 029

Applicant

[By Advocate Mr O.V. Radhakrishnan]

Versus

1. Senior Superintendent of Post Offices,
Kottayam Division,
Kottayam.
2. Union of India,
Represented by its Secretary,
Ministry of Communications,
New Delhi.

Respondents

[By Advocate Mr K.R. Rajkumar, Addl. CGSC]

The application having been heard on 12.6.2001,
the Tribunal delivered the following on 18.7.2001.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to direct the first respondent to make recruitment to Group D posts which are lying vacant in Kottayam Division and to promote him to any of the existing or arising vacancies in Group D in Kottayam Division on the basis of his running seniority from the date of his entitlement with reference to the date of occurrence of vacancy with all consequential benefits.

2. Applicant is an Extra Departmental Sub Post Master. He has been assigned at Sl.No.152 in the combined seniority list of Extra Departmental Agents in Kottayam Division as on 1.1.95. There arose four Group D vacancies during January/February, 1998. Those vacancies were not filled up by promoting E.D.

Agents in the order of seniority and eligibility. He submitted a representation dated 1.12.98 to the first respondent requesting to promote and appoint him as Group D against one of the existing vacancies on the basis of his seniority and eligibility. The conduct of the first respondent in postponing the recruitment to the Group D posts to an undated future on the ground that this Tribunal has struck down the conditions of age restriction in the Group D recruitment rules is illegal. The first respondent cannot wait for amendment or modification of the rules.

3. Respondents resist the O.A. contending that one Mr M. Ravindran Nair had approached this Bench of the Tribunal by filing O.A.155/95 in which this Bench of the Tribunal quashed the condition regarding prescribing of upper age limit for E.D. Agents for appointment as Group D. So, the recruitment to the cadre of Group D was kept in abeyance pending amendment of the relevant recruitment rules. Though in O.As 239/98 and 449/98 this Bench of the Tribunal directed to fill up the vacancies in Group D cadre in Kerala Circle without waiting for amendment to the recruitment rules, the Department has filed O.P. No.25172/98 before the High Court of Kerala. The High Court has granted stay.

4. The main question for consideration is whether the applicant is entitled to get a direction to the first respondent to make recruitment to the vacant posts of Group D in Kottayam Division.

5. In Shankarsan Dash Vs. Union of India, [(1991) 3 SCC 47] it has been held thus:

"Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State

has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons."

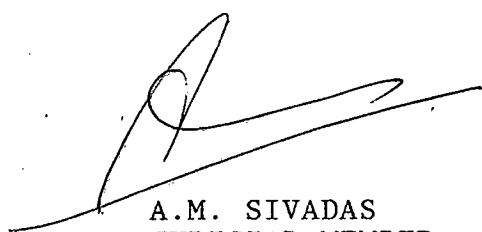
6. Applicant has no case that the recruitment rules indicate that the State is under legal duty to fill up the existing Group D posts. Then the only question is whether non-filling of the vacancies is bona fide. Respondents have categorically stated that since the upper age limit prescribed for ED Agents for appointment to Group D posts has been quashed by this Bench of the Tribunal, the recruitment to the cadre of Group D was kept in abeyance pending amendment of the relevant recruitment rules and the direction by this Bench of the Tribunal in O.As 239/98 and 449/98 to fill the vacancies in Group D cadre in Kerala Circle without waiting for the amendment of the recruitment rules has been stayed by the High Court of Kerala. From R-1 it is seen that against the orders passed in O.As 239/98 and 449/98 an interim stay was granted by the High Court of Kerala. That being the position, non-filling of the vacancies cannot be said to be lacking bona fides. Non-filling is for appropriate reason. That being the position, the O.A. is only to be dismissed.

6. Accordingly, the Original Application is dismissed. No costs.

Dated the 18th of July, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

List of Annexure referred to in this order.

A-6: True copy of the Judgement in O.A. No.239/98 & 449/98 of the CAT, Ernakulam Bench.

R-1: True copy of the order dated 21.12.98 in O.P.No. 25172 in CMP No.44265 of 1998 before High Court of Kerala.

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