

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 167 of 2010

....., this the 2nd day of August, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

G.G. Mohana Shenoy,
S/o. Late Shri Gopala Shenoy,
Part Time Sweeper cum Scavenger,
Elamakkara P.O. & AIMS Ponekkara P.O.,
Ernakulam District

Applicant

(By Advocate – Mr. K.S. Bahuleyan)

V e r s u s

1. The Assistant Superintendent of Post Offices,
Ernakulam Sub Division, Edapally, Kochi - 24
2. The Senior Superintendent of Post Offices,
Ernakulam Division, Kochi - 11
3. The Union of India, represented by Secretary to
Govt. of India, Ministry of Communications,
New Delhi.

Respondents

(By Advocate – Mr. Varghese P. Thomas, ACGSC)

The application having been heard on 27.07.2010, the Tribunal on
....., delivered the following:

O R D E R

Hon'ble Mr. K. George Joseph, Administrative Member

This O.A. has been filed by the applicant for a direction to the
respondents to consider the applicant's candidature for the post of Gramin

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Dak Sevak Mail Deliverer (GDSMD), Elamakkara P.O., in preference to outsiders in terms of Director General of Posts letter No. 17-141/88-EDC & Trg. Dated 06.06.1988.

2. The brief facts of the case are that the applicant was engaged for sweeping at Elamakkara P.O. with effect from March, 2002, on daily wage basis on the death of regular sweeper. Subsequently he was also given the work of Part Time Sweeper at AIMS, Ponekkara P.O, from June, 2006. His registration No. 7815/83 with the District Employment Exchange, Ernakulam, was renewed upto November, 2003. He has passed SSLC Examination in March, 1983.

3. The applicant submits that he is continuously working as part time casual labourer for the last about 8 years. Therefore, he is eligible for consideration for appointment to the post of GDSMD at Elamakkara P.O. giving preference to him in terms of D.G. Posts letter dated 06.06.1988. In O.A. No. 77/2004, which is identical to the present O.A., this Tribunal has directed the respondents to consider the applicant therein giving preference in the matter of appointment to the post of GDSBPM, subject to her satisfying other terms and conditions for such appointment in preference to outsiders. Therefore, this O.A. should be allowed.

4. The respondents contested the O.A. They submitted that since the appointment of casual labourer was completely banned with effect from 1990, the applicant was engaged for sweeping on a temporary measure. When the post of GDSMP, Elamakkara, fell vacant on 18.10.2009,



applications were invited for appointment to the post of GDSMD, Elamakkara P.O. As the applicant was not a casual labourer/contingent employee appointed following a due process of selection, his request was not considered favourably for appointment on this post. In compliance of the order of this Tribunal, the selection proceedings to the said post are kept in abeyance. The applicant was temporarily engaged for sweeping work. He is neither sponsored by the Employment Exchange nor appointed as a casual labourer. Therefore, he is not eligible for the preferential right claimed by him. The D.G.'s letter dated 06.06.1988 lays emphasise on the point that it should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by the Employment Exchange. This rule position has not undergone any change. The recruitment of GDS is now done by calling for applications from open market and also from Employment Exchange simultaneously.

5. Arguments were heard and documents perused.

6. The short question to be decided in this O.A. is whether the applicant is eligible to get the preference granted by the letter of Director General Posts dated 06.06.1988 in respect of recruitment as ED Agents. The relevant letter is extracted as under :

"(28) Preference to casual labourers in the matter of appointment as ED Agents.- According to the prevalent Recruitment Rules governing the cadre of Group 'D' the order of preference among various segments of eligible employees is as under-



- (a) Non-test category
- (b) ED employees
- (c) Casual labourers
- (d) Part-time casual labourers.

2. Since the number of vacancies of Group 'D' is limited and the number of ED employees eligible for recruitment as Group 'D' is comparatively large, the casual labourers and part-time casual labourers hardly get any chance of their being absorbed as Group 'D'. Thus majority of casual labourers with long service are left out without any prospect of their getting absorbed in Group 'D' cadre.

3. Keeping the above in view, a suggestion has been put forth that casual labourers, both full and part-time should be given preference for recruitment as Extra-Departmental Agents, in case they are willing, with a view to afford the casual labourers a chance for ultimate absorption as Group 'D'.

4. The suggestion has been examined in detail and it has been decided that casual labourers, whether full-time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts, provided they fulfill all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange."

7. It is quite clear that the casual labourers whether full time or part time who are willing to be appointed to ED vacancies should be given preference in the matter of recruitment to ED posts, if they fulfill all the conditions and have put in a minimum service of 240 days in a year. In a number of O.As, this Tribunal has directed the respondents to the effect that only if a full time or part time casual labourer was found otherwise ineligible or unsuitable for appointment, shall recruitment by open notification be resorted to. In O.A. No.77/2004, this Tribunal held as under :



"5. On a consideration of the facts and contentions, we are of the view that the respondents have not followed the DG (Posts)'s instructions contained in A-7 letter dated 6.5.1988 wherein it has been categorically stated that casual labourers, both full-time and part-time, should be given preference in recruitment as ED Agents, in case they are willing to be appointed with a view to afford such casual labourers a chance for ultimate absorption as group 'D' employees. The respondents herein seem to have forgotten the purpose and object behind the instructions contained in A-7. No doubt, it is made obligatory to have the casual labourers sponsored by the Employment Exchange in order that ultimately the casual labourers who are considered for ED vacancies they might be those who had been initially sponsored by the Employment Exchange. In the instant case, such a condition is unworkable, since the applicant has been continuing as Part-time casual labourers for the last seven years. This is an undisputed fact. That being so, according to us, the applicant ought to have been considered irrespective of the fact that she had not been initially sponsored by the Employment Exchange. Our finding is fortified by the Hon'ble Supreme Court's decision in Malkapatnam case (1996) 6 SCC 216. This is the consistent view taken by this Tribunal in a number of decisions including a recent decision in O.A. 534/03 (A-9). On facts which are substantially identical, this Tribunal in the said case has held that Part-time casual labourer who has been continuously working for several years should receive preferential treatment in the matter of appointment to the GDS post in terms of the DG (Posts)' letter dated 6.6.1988 on the matter. It has also been held that only if the applicant or any other part-time employee like the applicant who has already applied for the post of GDSBPM was found otherwise ineligible or unsuitable for appointment, could recruitment from open market be taken recourse to. We respectfully follow the above finding.

6. In view of the above facts and legal position, we hold that the respondents' action is unsustainable. Applicant's eligible part-time service is not denied. The applicant was allowed to continue in part-time service for a long period of 7 years though she had not been sponsored by the Employment Exchange. In the circumstances, her right of preferential treatment in the matter of recruitment to GDS post as envisaged in A-7 letter cannot be denied to her.

7. In the light of what is stated above, we dispose of this application directing the respondents to consider the applicant giving her preference in the matter of appointment to the post of GDSBPM,

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Meempara subject to her satisfying other terms and conditions for such appointment in preference to outsiders. Only if the applicant or any other eligible full-time or part-time casual labourer who is similarly placed is found otherwise unsuitable or ineligible, shall recruitment by open notification be resorted to. Respondents are directed to take appropriate action as expeditiously as possible. No order as to costs."

8. In O.A. No. 744/2009 also, this Tribunal held that the applicant, a part time sweeper at Ayyanthole P.O., who was continuously working from September, 1993, should be given preference as envisaged in D.G. Posts letter dated 06.06.1988. The operative part of the said order is reproduced as under :

"7. In view of the above position, we allow this OA and declare that the applicant is eligible and entitled to be considered for appointment as GDS Mail Packer, Ayyanthole in preference to outsiders in terms of Annexure A-3 letter dated 6.6.1988. Consequently, the respondents are directed to consider the applicant for appointment to the post of GDS Mail Packer Ayyanthole giving her the benefit contained in the letter of Director General of Posts (Annexure A-3). It is made clear that selection through open market could only be resorted to, if the applicant is found unsuitable for such appointment. The aforesaid direction shall be carried out by the respondents within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

9. The decision of this Tribunal dated 10.06.2005 in O.A. No. 03/2005 (**Lathakumari K. vs. Assistant Superintendent of Post Offices & Ors.**) allowing the O.A., was challenged before Hon'ble High Court of Kerala in Writ Petition No.33732/2005. The Hon'ble High Court upheld the order of this Tribunal vide its judgement dated 05.12.2005, as under:

" The challenge is on Ext. P4 order passed by the Central Administrative Tribunal, Ernakulam Bench. The issue pertains to the request made by the applicant for permitting her to participate in

the selection and appointment to the post of Gramin Dak Sevak Branch Postmaster, Ambalathara. The main contention of the writ petitioner is that the appointment of the applicant is not through employment exchange. But the fact remains that she has gained sufficient experience, working for long on a casual basis. Going by the departmental instruction, such casual labourers are to be given preference in the matter of recruitment. It is for the department to ensure that the appointments even on casual basis are not made through the back door. Having appointed people like the applicant and such applicants having gained experience as casual labourers they cannot be prevented from participating in the selection and appointment. It is seen that the Tribunal as well as this court has consistently taken the stand as above, and the directions have been implemented also. We do not find any merit in this writ petition and it is accordingly dismissed."

Further, in (1996) 6 SCC 216, *Excise Superintendent, Malkapatnam, Krishna District, A.P.*, the Apex Court has held that, restricting the selection only to the candidates sponsored by the Employment Exchange, was not proper. If the department has appointed the applicant through the back door, he cannot be faulted for it.

10. It is relevant here to quote the letter of Director General of Posts No. 45-24/88 SPB-I dated 17.5.1989:

"Copy of DG Dept. of Posts, New Delhi letter No. 45-24/88 SPB-I, dated 17.5.1989

Sub:- As above.

Sir,

I am directed to pay that reference have been received seeking clarification as to which class of workers should be treated as full time or part time casual labourers.

2. It is hereby clarified that all daily wagers working in post offices or in RMS offices or in administrative officers under different designations (mazdoor, casual labourer outsider) are to be treated as casual labourers. These casual labourers who are engaged for a

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period of less than 8 hours a day should be described as part time casual labourers. All other designations should be discontinued.

3. Substitutes engaged against absentee should not be designated as casual labourers, for purposes of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank list in priority, but will be above outsiders. In other words, the following priority should be observed.

- i. NIC Group D officials
- ii. EDAs of the same division
- iii. Casual labourers (full time or part time)

For purpose of computation of eligible service, half of the service rendered as part time casual labourers should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years he will be treated, for the purpose of recruitment to have completed one year as of service as full time casual labourers.

- iv. EDAs of other division in the same region.
- v. Substitutes (not working in metropolitan cities).
- vi. Direct recruits through employment exchange.

Note: Substitutes working in metropolitan cities will however, rank above No. (iv) in the list.

4. Please acknowledge receipt immediately.

Sd/-
Dr. Sarjaram
Asst. Director General (SPN)"

As per the above letter, the applicant who is working less than 8 hours per day should be described as part time casual labourer.

11. There is no reason not to give the benefit of the letter of DG Posts dated 06.06.1988 to the applicant who is a part time casual labourer working for about 8 years, although not sponsored by the Employment Exchange and not given a formal appointment letter in the light of judicial pronouncements in those matters.. The applicant is similarly placed as the applicants in the aforementioned O.As allowed by this Tribunal.

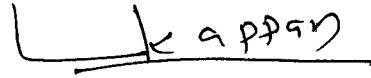


12. In view of the above position, we allow this O.A. and declare that the applicant is eligible and entitled to be considered for appointment as GDSMD, Elamakkara P.O., in preference to outsiders in terms of the Director General of Posts letter No. 17-141/88-EDC & Trg. dated 06.06.1988. The respondents are directed to consider the applicant for appointment to the post of GDSMD, Elamakkara P.O. giving him the benefit of preference as envisaged in the aforesaid letter of 06.06.1988. Only if the applicant is found unsuitable for such appointment, selection through open market can be resorted to. The respondents should consider the applicant for appointment to the post of GDSMD, Elamakkara P.O., within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated, the 2nd August, 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

cvr.