

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.171/2010**

Dated this the 5th day of August, 2011

CORAM

HON'BLE Dr.K.B.S.Rajan, Judicial Member
HON'BLE Mrs.K. Noorjehan, Administrative Member

A.Vijayan, S/o late Madhavan Nair
GDSMD, Kannamkara B.O.
R/o Puliakkunnummal House, Kanamkara P.O,
Kozhikode - 673616.

By Advocate Mr. P.C.Sebastian,
Vs

- 1 The Senior Superintendent of Post Offices
 Kozhikode Division, Kozhikode.
- 2 The Chief Postmaster General
 Kerala Circle, Thiruvananthapuram.
- 3 The Union of India, represented by Secretary
 to Govt of India, Ministry of Communication
 Department of Posts, New Delhi.
- 4 Smt.K.V.Jayasree, GDSBPM, Palath, Working as
 Postman, Calicut Head Post Office, Kozhikode.

Respondents

By Advocate Ms Deepthi Mary Varghese, ACGSC for R1-3
Mr.O.V.Radhakrishnan for R-4

The Applications having been heard on 29.7.2011 the Tribunal delivered the following:

ORDER

HON'BLE MRS.K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant working as GDS under the official respondents is aggrieved by the non-consideration of his candidature for appointment as

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Postman under Physically Handicapped quota in preference to respondent No.4.

2 The applicant a physically handicapped person is appointed as GDSMD Kannamkara Post Office on 21.2.1980. He is orthopaedically handicapped with more than 40% disability and is eligible for reservation under P.H quota. He is placed at Sl.No.37 in the seniority list prepared by the respondents as on 1.1.2005. Vide notification dated 29.7.2009, the respondents invited applications from eligible GDS, to conduct special examination for recruitment to the cadre of Postman under Physically Handicapped quota for filling up the shortfall vacancies for the period from 1996 to 2005 in Calicut Division. The applicant applied for the same. He was neither allowed to appear the examination nor was informed about the rejection of his candidature. Under the Right to Information he was informed that his candidature was rejected for the reason that he was over aged as per rules. The result of the examination was published vide letter dated 25.9.2009 and the 4th respondents was selected for appointment as Postman against the vacancy of 1996-2005 under P.H merit quota. He averred that in OA 858/2006 this Tribunal held that recruitment of GDS to the cadre of Postman is by way of promotion only and not by direct recruitment. He further averred that as per the statutory recruitment rules age limit and educational qualification are applicable only to the direct recruits and not to the promotees. He has taken up the ground that since vacancies related to the years from 1996 to 2005, the age limit should have been fixed with reference to the date of occurrence of vacancies from 1996 onwards. The respondents, fixed 1.7.2009 as the cut off date for reckoning the age as the examination was conducted on 6.9.2009. herefore, he avers that non-consideration of his candidature for promotion to the cadre of Postman is unjust and illegal.

4 Separate replies have been filed by the official respondents, R1-3 and respondent No.4. The official respondents submit that the applicant

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does not satisfy the eligibility condition of age prescribed in Annx.A2 notification as he has crossed 50 years as on 1.7.2009. They further stated that nowhere in the recruitment rules it is mentioned that the recruitment to the cadre of Postman from GDS is by way of promotion (Annx.R1). On the contrary promotion to Postman in Group-C cadre is only from Group-D cadre where there is no age limit. They further submitted that the directions in OA 858/2006 cannot be relied upon in the instant case as the Tribunal has not quashed Annx.A7 recruitment rules which prescribe the upper age limit as 50 years for promotion of GDS to Postman. It is also stated that the order of the Tribunal is under challenge before the High Court of Kerala. They further submitted that the respondents have acted only on the statutory recruitment rules and the selection of 4th respondent was done strictly in accordance with the rules. The applicant has never raised any objection with regard to the upper age limit and had submitted his application in response to Annx.A2 notification. It is further submitted that the recruitment rules stipulate that the selection under 25% merit quota from GDS to Postman is by way of direct recruitment and not by promotion which is the reason to prescribe upper age limit. It is submitted that Annx.A2 notification was issued in compliance with the order of the Tribunal in OA 713/07. As such vacancies reserved for physically handicapped were assessed for Kerala Circle as a whole and distributed to different Divisions. Therefore the contention of the applicant that the vacancy pertaining to Calicut Division might have occurred in the year during which he was within the upper age limit of 50 years is not tenable. The respondents also produced Annx.R2 which is a directive from the Hon'ble High Court to the respondents to complete the selection process as if it is a direct recruitment and to make provision for reservation. This order dated 1.4.2008 was issued in WP(C) No.36443/2007 arising out of OA 858/2006, which is pending disposal. The official respondents have challenged the order of the Tribunal in OA 858/2006.

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5 In the reply the 4th respondent has taken the stand of the official respondents and further contended that the method of recruitment against the vacancy reserved for physically handicapped persons from GDS to Postman is direct recruitment, therefore the order in OA 858/06 is inapplicable in this case.

Moreover, the learned counsel for the 4th respondent argued that year of occurrence of vacancy is irrelevant, when the method of recruitment is by a competitive departmental examination, when only those who score the highest marks are selected. The applicant can have an accrued right for vacancy of a particular year only when the mode of recruitment is through promotion. In this case a special examination was held, in pursuance of the order dated 3.11.2008 of this Tribunal in OA 713/07. The 3% vacancies under Physically Handicapped quota in Postman cadre has to be calculated, taking the total number of Postman in the Circle as a whole, as seldom a vacancy in PH quota gets available in any division. Therefore, it cannot be contended by the applicant that the vacancy arose in Calicut Division.

6 We have heard the counsel for the parties and perused the record.

7 As per the amended Recruitment Rules, 1994, for Postman vide R-4(c) the upper age limit shall be 50 years for the GDS on 1st July of the year in which the examination is to be held and he should have completed 5 years of satisfactory service as on 1st January of the year in which the examination is held. This is for 25% merit quota. While for 25% seniority quota, the GDS should have a minimum/5 years of service, again with an upper age limit of 50 years. Therefore, the Hon'ble High Court permitted the official respondents to finalise the selection as if it is a direct recruitment. The applicant may get a chance under the 25% seniority quota as Physically Handicapped reservation is introduced in promotion also. Therefore, his contention that he lost his chance to respondent No.4, his junior is not tenable since it was a competitive examination and service

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eligibility is only five years. Due to limited number of vacancies arising in Group-D or Postman in Group-C cadre, in any Division, the vacancies for Physically Handicapped reservation can be identified only at Circle level. These vacancies are further allotted to divisions. All Divisions will not be recruiting Physically Handicapped candidates, due to the cap of 3%. Therefore, the applicant cannot contend that the vacancy arose in Calicut Division in a particular year. To ensure availability of candidates, it is logical to conduct the recruitment in those divisions where physically challenged GDS are available. Calicut happened to be one such Division.

8 Moreover, it is submitted that the GDS who work for a maximum of 5 hours a day are outside regular civil service. So when they enter the Department, they need a minimum of 10 years service to become eligible for pension. This apparently is the rationale behind fixing the upper age as 50 years. In WP(C) No. 36443/2007, the Hon'ble High Court of Kerala has permitted the respondents to conduct the special examination for Physically Handicapped recruitment, as a direct recruitment selection where the upper age is prescribed as 50 years.

9 We, therefore, are of the considered opinion that the applicant has failed to make out a case in his favour. The OA is devoid of merits and is accordingly dismissed.

Dated 5th August, 2011


K. NOORJEHAN
ADMINISTRATIVE MEMBER
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Dr.K.B.S RAJAN
JUDICIAL MEMBER