

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 19 OF 2010

Thursday, this the 3rd day of November, 2011

CORAM:

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

Mr.K.T Das, S/o K Devan
Aged 52 years
GDS MD Puramattom
Kuntharayil House
Puramattom P.O
Thiruvalla

Applicant

(By Advocate Mr.V Sajith Kumar)

Versus

1. The Union of India, represented by the Secretary to Government
Ministry of Communications, Govt. of India, New Delhi
2. The Chief Post Master General, Kerala Circle,
Thiruvananthapuram
3. The Superintendent of Post Office,
Thiruvalla
4. C.K Gopi, Postman
Vennikulam Post Office, Thiruvalla

- Respondents

(By Advocate Mr.M.V.S Nampoothiry)

The application having been heard on 31.10.2011, the Tribunal
on 3.11.11. delivered the following:

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

1. The case relates to the selection to the post of Postman from among the GDS employees. Recruitment rules for appointment as Postman provide as under:-

" 1. 50% of the vacancies by promotion, failing which by Extra Departmental Agents on the basis of their merit in the Examination.

2. 50% by Extra Departmental Agents of the recruiting Division or unit in the following manner, namely:- "

2. Age limit for direct recruits has also been fixed, according to which, for the Gramin Dak Sevaks the upper age limit shall be 50 years with 5 years relaxation for SC/ST candidates as on 01st July of the year in which the examination is held and the individual should have completed 5 years of satisfactory service as on 01st January of the year in which the examination is held.

3. The applicant entered the services of the respondents as a GDS on 06-12-1978. He had also officiated as postman for 7 years. He belongs to SC community and his date of birth is 30-04-1957. The third respondent invited willingness from the applicant and other GDS officials working under the Thiruvalla Postal Division for being considered against the post of Postman under seniority quota, vide Annexure A-1 and the applicant zealously gave his willingness by Annexure A-2 communication. However, the respondents have, vide Annexure A-3 letter dated 13-09-2009, appointed the respondent No.4 to the said post, though the said respondent is junior to the applicant, vide serial No. 37 and 38 of the seniority list at Annexure A-6. The applicant had moved a representation vide Annexure A-6 ventilating his grievance in this regard. However, according to the

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applicant, the respondents have not considered the objection in the proper perspective and rejected the same vide Annexure A-5 order dated 04-11-2009. Hence this application, seeking the following reliefs:-

- (a) To quash Annexure A-3 and A-5.
- (b) To declare that the appointment of the 4th respondent as postman overlooking seniority and eligibility of the applicant is highly illegal and unjust.
- (c) To direct the respondents to consider the applicant for appointment as postman under the seniority quota in preference over the 4th respondent and appoint him with effect from the occurrence of the vacancy and consequential benefits including seniority.

4. Notices were issued; however, the fourth respondent did not respond. Hence, the said respondent has to be set ex-parte.

5. Official respondents have filed their reply. They have stated that two vacancies were allotted to Tiruvalla Division, for Direct Recruitment Quota for the year 2006, of which one was to be filled up under the merit quota of GDS while the other was earmarked under seniority quota which was allotted to Unreserved Category. The applicant, although senior to the fourth respondent, had exceeded 50 years of age as on 01-07-2007 and as such, the next in the seniority list i.e. the fourth respondent was appointed to the post of Postman under the seniority quota.

6. The applicant has furnished his rejoinder to the reply filed on behalf of the respondents. He had annexed an extract of the Reservation Roster, to highlight that the roster was not duly followed. He has also contended that the vacancy occurred under the seniority quota in Thiruvalla Postal Division would have been offered under SC/ST quota. Instead of reserving the vacancy as per the reservation turn, the respondents wrongfully offered the same in the open quota. It

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was never notified in the open quota. The reservation roster maintained by the Thiruvalla division reflects that the respondents have converted recruitment of every candidate belonging to SC community on merit basis into reservation turn.

7. The applicant has also relied upon the decision by the Apex Court in the case of Jitendrakumar Singh (2010) (3) SCC 119 wherein the Hon'ble Apex Court has held that age relaxation will not amount to reservation.

8. In their additional reply the respondents have stated that in Thiruvalla Division, on switching over to the post based roster and preparing the same, the name of the officials who belonged to the concerned category was written against the category for which the post was earmarked irrespective of their seniority. Officials were arranged category wise according to the roster points first and then remaining points adjusted against promoted/retired officials in the existing list. So instead of preparing separate work sheet, the name of retired/promoted official was either rounded off or corrected and the name of new incumbent substituted according to the roster point of the category. Year wise closing of roster was not done during that period. This would account for the corrections seen in the register as averred by the applicant and this cannot be construed as manipulations made in the register. During the inspection of the Chief PMG, this method of preparation of both work sheet and subsequent roster was pointed out to be wrong and directions were given to the respondent to recast and make a fresh roster according to the order in gradation list mentioning the category of the official to which he belonged and against which category he was adjusted. The same was meticulously done, even without any over writings or corrections. As regards age concession, respondents have stated that the averment of the applicant concession in ~~the~~ upper age limit for seniority quota is not sustainable before law.

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9. Counsel for the applicant submitted that when the vacancies pertained to 2006, fixation of the cut off date for working out the age limit, as 01-07-2007 is wrong. If the date for working out the age limit is fixed as first July, 2006, the applicant is within the age limit. The counsel for the applicant also relied upon the decision of the Apex Court in 2010(3) SCC 119 but had conceded that in a recent case, this Tribunal has distinguished the same which relates to age limit under competitive examination quota from the case of age relaxation in promotion or appointment on the basis of seniority.

10. Counsel for the respondents reiterated his version as contained in the reply and additional reply.

11. Arguments were heard and documents perused. The Rule position in regard to fixation of cut off date for appointment by way of seniority, the same is first of July and in this regard, the respondents have clearly explained as to how the same had been duly considered. The said paragraph reads as under:-

4. It is submitted that during the past few years, the examinations for direct recruitment could not be conducted on the very same year of occurrence of vacancies, as these vacancies are to be first projected in the Annual Direct Recruitment Plan and thereafter subjected to the scrutiny/clearance of the Screening committee constituted under the Ministry of Finance. The approval for the Annual Direct Recruitment Plans for the years 2006, 2007 and 2008 was received only during the year 2009. In the interest of natural justice, so as not to adversely affect the opportunities of these Gramin Dak Sewaks who would otherwise be denied the chances of appearing for the examinations in 2006, 2007 and 2008, it was decided to hold the examinations separately for each year, instead of a combined examination, fixing separate cut off dates as detailed below:-

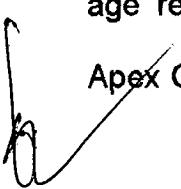
Year of Vacancies	Cut-off date fixed
For 2006 vacancies	07/01/07
For 2007 vacancies	07/01/08
For 2008 vacancies	07/01/09

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12. The above decision had been uniformly applied to all the three years. Applicant has stated in his rejoinder in reply to the above, "As a matter of fact, the recruitment rules relied on by the respondents do not empower them to fix any cut off date for filling vacancies under the seniority quota. A vacancy under the seniority quota is to be filled with effect from the date of occurrence of vacancy. There is no rationale in fixing a cut off date against a vacancy under vacancy quota. Therefore, averments in that respect made by the respondents are unsustainable in law."

13. The contention of the applicant that a vacancy under the seniority quota is to be filled with effect from the date of occurrence of vacancies cannot be accepted. Uniformly, the cut off date has been prescribed by the respondents for all the employees. If the literal words contained in the rules were to be interpreted, the year of examination being 2010, the same would have caused injustice to many and it is for this reason that the respondents have prescribed the cut off date as contained in the statement above. Had the applicant been within 50 years, he too would have been considered. As he had crossed fifty years, he was not considered. Thus, there is no illegality in the action on the part of the respondents in considering the fourth respondent for the post of Postman.

14. The applicant has relied upon the decision of the Apex Court in the case of Jitendra Kumar Singh (*supra*). An identical issue had been dealt with in OA No. 1114 of 2010 (V.P. Appu vs Senior Superintendent of Post Office, Irinjalakuda and others). Referring to the said decision of the Apex Court, the Tribunal has held that, though the subject matter in the case of Jitendra Kumar Singh relates to age relaxation for reserved candidates in respect of unreserved vacancies, the Apex Court was specifically dealing with interpretation of Section 3 and 8 of the UP



Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (Act 4 of 1994). And a specific mention as to the scope of the discussion has also been mentioned in para 65 (".. we are concerned with the interpretation of the 1994 Act, the Instructions dated 25-02-1994 and G.O. Dated 26-02-1999"). Again, in so far as the case of the applicant is concerned, the same relates to seniority quota and not of merit quota. As such, there is no question of application of the decision in the case of Jitendra Kumar Singh (supra) to the case of the applicant. That was a case involving "level playing field" as stated in para 75 of the judgment. Thus, the decision in the case of Jitendra Kumar Singh does not assist the applicant. This point has also been fairly conceded by the counsel for the applicant.

15. In view of the above, no illegality could be discerned in the action on the part of the respondent in appointing the fourth respondent as post man. The applicant having been over aged as on 01-07-2007, had been rightly not considered for the vacancy of 2006. Hence, the OA is dismissed. Under the circumstances, there shall be no orders as to costs.

(Dated, this the 3rd day of November, 2011.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR. K. B. S. RAJAN
JUDICIAL MEMBER

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