

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

Date of decision

11.2.1991

O.A 196/89 &

O.A 867/90

In O.A 196/89

P.V.Vijayan and another

Applicants

M/s.M.Ramachandran & P.Ramakrishnan Advocates of the Applicants

v.

Director of Postal Services,  
Calicut Dn, Calicut-2 and 3 others

Respondents

Mr. G. Kochunni Nair, ACGSC  
(for R1-3)

M/s. O.V. Radhakrishnan,  
K. Radhamani Amma &  
Raju K. Mathew (for R4)

Advocate for the Respondents

In O.A 867/90

M.R. Ramdas

Applicant

M/s. O.V. Radhakrishnan &  
N. Nagareth

Advocate for the Applicant

v.

Senior Superintendent of Post Offices,  
Trichur Postal Division, Trichur-2 and 5 others

Respondents

Mr. T.P.M. Ibrahim Khan (for R1-4)  
Mr. M. Ramachandran (for R5-6)

Advocate for the Respondents

CORAM

The Hon'ble Shri S.P. Mukerji, Vice Chairman

&

The Hon'ble Shri A.V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the judgment? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGMENT

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

Since common questions of facts and law are involved in the aforesaid two cross cases, they are being disposed of by a common judgment as follows:-

2. In the first application (O.A 196/89) dated 8th March 1989 the two applicants who have been working as Extra Departmental Delivery Agent and Extra Departmental Packer under the Superintendent of Post Offices,

Trichur have challenged the appointment of respondent 4 who has been working as Mazdoor, MMS to the post of Cleaner. The ground taken by them is that the 3rd respondent, i.e, the Supervisor, Mail Motor Service Trichur is not competent to issue the impugned appointment letter at Annexure 1 therein. Their further contention is that the post of Cleaner being a Grade D post, the applicants as Extra Departmental employees have superior claims over respondent 4 for appointment to that post and that the willingness of the applicants for exercising their superior claims for appointment to the post of Cleaner as per Annexures 2 and 4 was not taken. The second application (O.A 867/90) has been filed by Shri Ramdas who is respondent No.4 in the first application and whose appointment as Cleaner was challenged by the two applicants in that application who are impleaded as respondents 5 and 6 in the second application. In the second application the applicant has challenged a demi-official letter dated 23.10.1989 written by the Assistant Director General to the Assistant Post Master General, Kerala Circle clarifying that the Mail Motor Service, Trichur is not a separate recruiting unit and that Extra Departmental Agents of Postal Division being a part of the same unit as the MMS are also eligible for consideration for the post of Cleaner in the MMS unit under the administrative control of Superintendent of Post Offices, Trichur. He has also prayed that respondents 1 to 4 be directed not to take the EDAs of Postal Division as part of the Mail Motor Service, Trichur for the purpose of recruitment to the post of Cleaner in the MMS, Trichur. His further prayer is that the respondents be directed to regularise the applicant as Cleaner against the regular vacancy which arose from 1.1.89.

The applicant in the second case has been working as a full time casual Mazdoor under <sup>the</sup> Mail Motor Service (MMS), Trichur continuously since 1983 and has been discharging the duties of Driver, Mechanic, Cleaner and Chowkidar from time to time. From 1.2.1989 he has been working as Cleaner against a regular vacancy which arose on 1.1.89. He has a heavy vehicle driving licence and possesses a trade certificate in auto mechanism.

According to him he satisfies all the qualifications for regular appointment as a Cleaner. He was posted as casual Mazdoor in the post of Cleaner by the order dated 31.1.89 which has been challenged in the first application by respondents 5 and 6 in the second application who are the applicants in the first one. The applicant in the second application has relied upon the statement filed by the Government counsel in the first application in which it has been stated that previously the four Mail Motor Service units in Kerala Circle were under the Manager, MMS, Ernakulam who was a Divisional head. These units were function<sup>ing</sup>~~ed~~ at Kozhikode, Trichur, Ernakulam and Trivandrum. Later another unit of MMS was established at Quilon. Later, due to decentralisation, these units have been attached to the respective Postal Divisions under the Superintendent/Senior Superintendent of Post Offices who were made the controlling authority of the MMS unit. The Manager, MMS at Ernakulam functioned in supervisory capacity. This arrangement took place on 1.10.81 vide Annexure A-3 in which it has been stated that the Senior Superintendent of Post Offices of the concerned Division will exercise financial powers while the Manager, MMS, Ernakulam will continue to exercise his technical jurisdiction over the various MMS units. According to the applicant in the second case each MMS unit continued to retain its separate identity as a recruiting unit though under the administrative control of the respective Senior Superintendent of Post Offices. He has relied upon the clarification given by the Post Master General in his letter dated 16.2.88 at Ext A-4 in which it has been clearly stated that only those working in a particular MMS unit will be eligible for competing against departmental quota in the cadre of Drivers in that unit and that Trivandrum, Trichur and Calicut units will be independent recruiting units. He has also referred to the communication from the Directorate General at Ext A-5 in which directions were given to take immediate action to fill up the vacant post of Drivers, Mechanics and Cleaners in various MMS units and absorb the casual workers if any working in the unit against these posts. The applicant has taken the stand that the post of Cleaner falls in the category of Tradesman Semi-skilled and the Group D Recruitment Rules of Posts and Telegraphs are not applicable to Group D posts in MMS. The applicant has challenged the D.O letter at Ext A-6 issued by the Assistant Director General as

Without any authority and <sup>-the same</sup> cannot supersede the clarificatory letters issued by the department. The respondent-department in the first application have stated that only two Group D posts exist in Trichur MMS unit and the services of respondent 4 in that application and the applicant in the second application were being utilised occasionally as Chowkidar, Cleaner and Driver. When the post of Cleaner in Trichur fell vacant on the promotion of its incumbent Shri Poulse as driver respondent 4 represented for posting as Cleaner and the 4th respondent was posted to discharge the duties of a Cleaner while being engaged as a casual Mazdoor at the rate of Rs.30/- per day. The filling up of the post of Cleaner had been stayed by the Tribunal. They have clarified that the impugned order at Annexure-1 in the first case is not a posting order but an internal correspondence showing that respondent 4 in the first application who is the applicant in the second application has been engaged to work as Mazdoor in the post of Cleaner. The applicants in the first application had not applied for a posting in the MMS unit so far. The respondents-department in the first application have stated that the post of Cleaner in the MMS unit at Trichur "is not a post to be posted from the ED Agents according to their seniority in the ED cadre". The candidates for the post have to possess certain technical qualifications such as trade certificates and valid licence to drive heavy vehicles and the question of overlooking the claims of the two applicants in the first application does not arise. The respondents have further stated that Annexures II and IV are instructions relevant for filling up the vacancies of Postmen and Group D posts in Post Offices. These instructions are addressed to the Postmasters and not to the third respondent, i.e., Supervisor, Mail Motor Service. The instructions at Annexures II, III and IV cannot be made applicable to MMS unit since the work in the MMS unit and Post Offices are qualitatively different. Respondent 4 in the first application who is applicant in the second application has reiterated that Annexures II to IV in the first application are not applicable to MMS but to Post Offices. A statement has been filed by the Additional Central Govt. Standing Counsel on 26th June, 1990 stating that the MMS unit at Trichur <sup>was formerly</sup> ~~is~~ under the Manager, Mail Motor Service, Ernakulam. The applicants in the first case

in the rejoinder have stated that the MMS unit at Trichur has not anywhere been indicated as an independent recruiting unit and since the MMS unit at Trichur is under the Senior Superintendent of Post Offices, Trichur Division, the EDAs under that Division have prior claim over casual Mazdoors for the post of Cleaner in the MMS unit.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully in both the two applications. The main question to be decided in these two cases is whether the Mail Motor Service units after decentralisation on 1.10.81 when they were placed under the administrative control of the Senior Superintendent of Post Offices of Trichur, Calicut and Trivandrum etc. retained their ~~distinct~~ identity as a separate recruiting unit independent of the Postal Division of the Senior Superintendent of Post Offices or whether these MMS units completely merged with the respective Postal Divisions. This question assumes importance because <sup>if MMS units merged with Postal Divisions</sup> in accordance with the Recruitment Rules for Group D posts in the Postal Division as given in Annexure-R1 in the first case and clarified at Annexure-II in that case, ED employees of the Postal Division are to be preferred to casual labourers and part-time casual labourers. Accordingly the applicants in the first case who are ED employees would have prior claim for the Group D post of Cleaner in the MMS unit over respondent 4 in that case who was a casual labourer in the MMS unit. If, however the MMS units retained their identity as separate recruiting unit then the applicants in the first case who are respondents 5 and 6 in the second case would have no claim over the post of Cleaner as they belong to the Postal Division which is a separate recruiting unit.

4. The key to the <sup>resolution</sup> of the aforesaid controversy lies in the clarification given on 16.2.88 by the Post Master General, Kerala Circle at Ext.A-4 in the second case and Ext.R4(a) in the first case. These clarifications were given under the following sub heads and reference:-

"Sub:- Reorganisation of MMS- Staff Matters.  
Ref:- Your letter No.MMS/Decentralisation/102 dated 28.1.1982"

The relevant points of clarification and the clarification against each point in that letter are quoted below:-

"1. Whether the vacancies of any cadre in a year occurring through out the four MMS units as well as in Postal Dns. having jeeps, will be counted as a whole for the purpose of calculating 80% reservation quota to the Deptl. candidates especially in Drivers cadres, or each individual recruiting unit will work out their vacancies separately.

Since Trivandrum, Trichur and Calicut would be independent recruiting units, vacancies for each unit are to be worked out independently and separately and divided between departmental and outside quota. Departmental candidates of one unit will not be eligible for selection in another unit.

3. In the case of staff of MMS, the officials working in lower grades in MMS Ernakulam alone can appear for the test etc, for appointment against deptl. quota of vacancies of drivers arising in the postal divisions, all such eligible officials in the whole division and not the eligible officials actually working in MMS units only there, will be allowed to take the test etc.

Each MMS unit will be a separate recruiting unit and as such only those working in a particular MMS unit will be eligible for competing against deptl. quota in the cadre of drivers, etc. in that unit.

5.a) It is presumed that each recruiting unit viz, SDI or SP or Manager, MMS will have a individual gradation list for the staff working in MMS under them.

Each individual MMS unit should maintain its own gradation list as well as special rosters."

(emphasis added)

From the above quotation it is crystal clear that each MMS unit, decentralised to Trivandrum, Trichur and Calicut would be independent recruiting units and will have nothing to do with the Postal Division to which they are attached. Each individual MMS unit would maintain its own gradation lists. It may be noted that from 1.10.81 the composite MMS unit under the Manager at Ernakulam was decentralised and placed under the administrative control of the Senior Supdt. of Post Offices of respective Postal Division but were not 'merged' or 'amalgamated' with the Postal Division. This conclusion is further buttressed by the direction of the DDG dated 2.6.87 at Ext.R-4(b) in the first case and Ext.A-5 in the second

case. The relevant part of the DDG's letter of 26.8.87 is quoted below:-

" The General Secretary of All India RMS and MMS Employees Union Class III under item 4(c) of the Charger of Demands has requested for absorption of casual workers in MMS and further brought to the notice of this office that there are hundreds of drivers, mechanics, cleaners working in various MMS units in the country for several years on daily wages and desired that they should be absorbed to kindly take immediate action to fill these vacant posts of MMS except Carpenter under your control, if not already done, and absorb the casual workers, if any working in the unit against the post lying vacant arising out of promotion, retirement, death, resignation, dismissal/removal or deputation provided those daily wages workers have come through Employment Exchange and duly selected by the Recruitment Board of the respective cadre and also after observing pre-appointment formalities and result intimated within two months time."

From the above it is evident that even after decentralisation the MMS units were distinct from the Postal Division and the vacancies of Drivers, Cleaners etc. were to be filled up by the casual workers in the MMS units and not by the EDAs of the Postal Divisions . If the MMS units were part of the Postal Division, in accordance with the Recruitment Rules of the Postal Divisions , the casual workers could not have been directed to be absorbed against the vacancies of Drivers, Cleaners etc. without first absorbing the 'Non-test category' and <sup>the</sup> Extra Departmental Agents. The respondents-department in the counter affidavit in the first case have stated that the instructions at Annexure-II regarding priority to be given to Extra Departmental Agents over casual labourers are applicable to the vacancies of Postmen and not to the posts in the MMS units which are qualitatively different and require technical qualifications. They have also stated that the instructions at Annexures II , III and IV are not addressed to the MMS units but to the Post Masters, to show that they are not applicable to the MMS units. However, in the counter affidavit in the second application the learned counsel for the Senior Superintendent of Post Offices has challenged the instructions of the PMG at Ext A-4 merely on the ground that the PMG has not been impleaded as a respondent. It ill behoves the Senior Superintendent of Post Offices who is the only respondent in the second application not to file any counter affidavit but to get a statement of the learned counsel filed in which the clarification given by the PMG, an officer far superior to the Senior Superintendent of Post Offices is disowned on the technical ground that

he has not been made a party. Reading both the cases together the stand of the department can be said to be more validly reflected in the counter affidavit filed by the departmental officer in the first application on 30th January 1990 in which the department has clearly stated that the Recruitment Rules applicable to Postmen are not applicable to the post of Cleaner in the MMS units.

5. Even if it is accepted that after 1.10.1981 the MMS staff at Trichur, Calicut etc. except Ernakulam merged with the Postal Divisions, it cannot be said that Group D post of Cleaners are governed by the Recruitment Rules applicable to Postmen. In accordance with the Circle Office letter dated 19.11.1981 a copy of which has been annexed at R-5(a) by the respondents 5 and 6 themselves in the second case, who are applicants in the first case, the following clarification has been given.

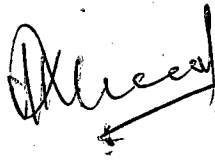
"2. In further, recruitment and appointment to the cadre of MMS Drivers, Mechanics, Cleaners and other skilled and semi-skilled Tradesman will be made by the respective SSPs. The MMS Manager will make the recruitment and appointment to these cadres only in respect of the MMS unit at Ernakulam. Transfers from one unit to another will be regulated under Rule 30 of P&T Manual Vol.IV. As in the case of Time Scale PAs and Sorting Assistants, a Circle Gradation List in respect of these cadres will be maintained by the Circle office and confirmation, promotion etc. will be regulated as per this list."

The above will support the stand taken by the department in the first case that the post of Cleaners fall in the category of Skilled/Semi-skilled Tradesman and belong to a cadre entirely different from that of ED Agents. Accordingly the instructions at Annexures II to IV in the first application applicable to the Group D posts of Postmen etc. in the Postal Division and giving priority to ED employees over casual labourers are not applicable to the post of Cleaner in the MMS units.

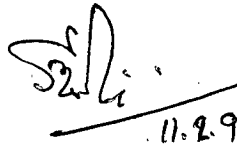
6. In the facts and circumstances we dismiss the first application O.A 196/89 and allow the second application, i.e, O.A. 867/90 in part setting aside the impugned order dated 23.10.89 at Ext.A6 being ambivalent, demi-official and passed during the pendency of the first application and direct the respondents 1 to <sup>4</sup> ~~2~~ therein to fill up the post of Cleaner



in the MMS unit in accordance with the Recruitment Rules applicable to that post but without any preferential treatment ~~to be given~~ to the Extra Departmental Agents of the Postal Division . This will be without prejudice to the right of the applicant in the second case to get regularised against the post of Cleaner in accordance with any scheme of regularisation of casual employees and in accordance with law. There will be no order as to costs. A copy of this order shall be placed in both the files.

  
11/2/91

(A.V. Haridasan)  
Judicial Member

  
11.2.91

(S.P. Mukerji)  
Vice Chairman

n.j.j