

Central Administrative Tribunal
Ernakulam Bench

OA No.1186/2012 & 203/2013

*Mond*ay, this the 7th day of December, 2015

CORAM

HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P.GOPINATH, ADMINISTRATIVE MEMBER

OA 1186/2012

1. All India Postal Employees Union
GDS (NFPE), represented by its Circle Secretary
M.S.Sabu, age 53, S/o Sukumaran Pillai
GDS MD, Yeandyar P.O.
Kottayam District
Residing at Koottickal
Kottayam 686 514.
2. All India Postal Employees Union
Postmen & MSE/Group-D
Kerala Circle, Thiruvananthapuram
Represented by its Circle Secretary
A.B.Lalkumar, S/o Bhaskaran Kartha
Postman, Kottayam H.P.O.-686 001.
3. M.S.Sabu, GDS MD
Yeandyar P.O., Kottayam District
Residing at Koottickal, Kottayam-686 514
4. A.B.Lalkumar
Postman, Kottayam H.P.O-686 001.
Residing at Amayannoor, Kottayam-686 019.

Applicants

By Advocate: Mr. Vishnu S.Cempazhanthiyil)

Versus

1. The Chief Postmaster General
Kerala Circle
Thiruvananthapuram-695 033
2. The Assistant Director General (Estt.I)
Office of the Director General
Department of Posts
Dak Bhavan, New Delhi.

3. Union of India
 Represented by its Secretary & Director General
 Department of Posts
 Dak Bhavan, New Delhi. Respondents

By Advocate: Mr.N.Anil Kumar, Sr.PCGC

OA 203/2013

1. All India RMS & MMS Employees Union
 represented by its President
 R.S.Suresh Kumar
 MTS, Head Record Office, RMS TV Division
 Thiruvananthapuram
 Residing at B25, Postal Staff Quarters
 Paruthipara, Nalanchira P.O.
 Thiruvananthapuram-695 015.

2. K.R.Manoj Kumar
 GDS MM, RMS EK Division
 Head Record Office, Kochi-682 011.
 Residing at Kallupurakkal House
 Thekkumuri Lane, Mahilasamajam Road
 Vennala P.O., Kochi-682 028. Applicants

By Advocate: Mr. Vishnu S.Chempazhanthiyil

Versus

1. The Chief Postmaster General
 Kerala Circle
 Thiruvananthapuram-695 033

2. The Assistant Director General (Estt.I)
 Office of the Director General
 Department of Posts
 Dak Bhavan, New Delhi.

3. Union of India
 Represented by its Secretary & Director General
 Department of Posts
 Dak Bhavan, New Delhi. Respondents

By Advocate: Mrs. P.K.Latha, ACGSC



The Original Applications having been heard together on 9th November, 2015, the Tribunal delivered the following common order on 7th December 2015.

ORDER

By P. Gopinath, Administrative Member

The Government of India had issued O.M. Dated 16.5.2001 providing for a Scheme of Optimization of Direct Recruitment Vacancies wherein it was provided that each Ministry/Department shall formulate Annual Direct Recruitment Plans, by which vacancies to be filled are to be screened by Screening Committees and to take decision to abolish the balance vacancies. The Scheme itself made it clear that the Annual Direct Recruitment Plans were for direct recruitment vacancies and that vacancies to be filled up by other modes of recruitment like promotion is excluded (Para 3 of the O.M.). While so, it was categorically held in various litigations before the Tribunal that appointment of GDS as Group-D is not by direct recruitment (OA 312/2008 and connected cases as confirmed in W.P.(C) No. 28574 of 2009). Further, in Contempt case No.95/2009 in OA No.352/2008, there was a specific direction to revive the abolished posts of Group-D and fill up the same within 6 months, and the Chief PMG is to monitor the progress in this regard. The Tribunal also had occasion to consider the method of appointment of GDS to Postman and held that same is by promotion (OA No.608/2010 as confirmed in O.P.(CAT) No. 1228/2011). However, contrary to the Scheme issued by the Government of India and against the findings of the Tribunal, which has been confirmed by the Hon'ble High Court of Kerala, vacancies of Group-D and Postman were subjected to scrutiny by Screening Committee in the Annual Direct Recruitment Plans for the year 2005 to 2008 and it was ordered to abolish apart from other posts, posts in the cadre of Group-D as well as Postman. Therefore the action taken to abolish nearly 211 posts of Postman and 284 posts of Group-D is opposed to Govt of India's O.M. Dated 16.5.2001 itself and

against the findings of the Tribunal in various judicial pronouncements. Hence the direction to abolish posts in Group-D and Postman Cadre warrants interference, contend the applicants.

2. The reliefs sought in both the Original Applications are similar and are being dealt with in one order.

Respondents resisted the claim contending that Annexure A5 order which is under challenge is pertaining to direct recruitment only.

3. Heard the counsel for applicant and respondents and perused written submissions made. The first prayer of applicants is to set aside Annexure A5 order in both OAs, which directs the abolition of Group-D and Postman vacancies under Annual Direct Recruitment Plan for the years 2005 to 2008 under the scheme of optimization of Direct Recruitment vacancies and to fill up all available Group-D and Postman vacancies from among eligible Gramin Dak Sevaks in terms of recruitment rules in force in the said years. Applicants also point out that the reliefs sought in above two OAs are similar to reliefs given in OA 321/2012 and 1035/2012 with OA 659/2013.

4. The impugned order in these OAs is Annexure A5 which directs abolition of **direct recruitment (DR) vacancies**. A reading of Annexure A5(3) reveals that the DR vacancies proposed to be abolished are in the cadre of Inspector of Post Offices, Postal Assistants, Sorting Assistants, Junior Accountant, Junior Engineer, Works Clerk (Engineering Wing), Postman, Mail Guard/Mailman, Driver, Group-D, Electrician, Mechanic, Lab Technician, Pharmacists etc in 22 States (referred to as Postal Circles) across the country. Thus the abolition has been directed across the board to cover

several categories of Group-B, C & D and across 22 States.

5. The abolition has been ordered as a consequence of Ministry of Finance, Department of Expenditure Office Memo No.7 (7)-E(Coord) 93 dated 3rd May 1993. The subject of the OM is "Economy in administrative expenditure of the Government – Ban on creation of posts/filling up vacancies", which has not only been issued to the respondents/Ministry in the OA but to all Ministries/Departments of the Govt of India etc. It is observed that the Ministry of Finance (Dept of Expenditure) has not been impleaded as a party. The order, therefore, is not applicable to this respondent and applicant alone and is applicable to all departments of the Govt of India and the applicant has not been discriminated or singled out for the ban on filling up DR vacancies. The order has been issued for containing government expenditure in the economic scenario.

6. Annexue R2 is another Office Memorandum dated 22 July, 2006 on the subject of Expenditure Management – Economy Measures, Rationalization of Expenditure & Measures for Augmentation of Revenues". Extract of the background note to the OM states that:

"1.1. With a view to containing non-developmental expenditure and thereby releasing additional resources for meeting the objectives of priority schemes, particularly under the NCMP, Ministry of Finance has been issuing guidelines on austerity measures in the Government from time to time. Such measures are intended at promoting fiscal discipline, without restricting operational efficiency of the Government". Last such instructions were issued vide OM No.7(2)/E.Coord/2005 on November 23, 2005.

2.1. 5% mandatory cut on non-Plan expenditure – For the year 2006-07, every Ministry/Department shall make a mandatory 5% cut on non-Plan expenditure excluding interest payment, repayment of debt, Defence capital, salaries, pension and the Finance Commission grants to the States. No re-appropriation of funds to augment the non-Plan heads of expenditure shall be allowed during the current

financial year. Financial Advisers shall review implementation of this cut on quarterly basis and report to the administrative Secretary and the Minister and the Department of Expenditure.

2.6.2. Every Ministry/Department shall undertake a review of all the posts in the Ministry/Department and in the attached and subordinate offices and make available the outcome of such review and full details of vacant posts to the Department of Expenditure in a time bound manner. The posts that have remained vacant for more than a year shall not be revived except under very rare circumstances after seeking clearance of the Department of Expenditure."

7. The Ministry of Personnel OM 2/8/2000-PIL dated 16.5.2001 which has been issued to all departments of the Government of India states that the Finance Minister while presenting the Budget for 2001-2002 had stated that "all requirements of recruitment will be scrutinized to ensure that fresh recruitment is limited to 1 per cent of total civilian staff strength. As about 3% of staff retire every year, this will reduce manpower by 2% per annum achieving a reduction of 10% in five years as announced by the Prime Minister".

The above OM further goes on to add that the above translates into 1/3rd of the direct recruitment vacancies occurring in each year being filled up. Accordingly, direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. While examining the vacancies to be filled up, the functional needs of the organization would be critically examined so that there is flexibility in filling up vacancies in various cadres depending on their relative functional need. To amplify, in case an organization needs certain posts to be filled up for safety/security/operational considerations, a corresponding reduction in direct recruitment in other cadres of the organization may be made so that the overall direct recruitment is restricted to 1/3rd of the vacancies. The other modes of recruitment

including that of promotion prescribed in the recruitment rules would be adhered to. The Annexure A6 CAT Kochi order in OA 346/2005 cited by applicants is applicable to recruitment by promotion which is not affected by the decision of the respondent. The provision of the OM would be applicable to all Central Government Ministries/Departments/Organizations including Ministry of Railways, Department of Posts, Department of Telecom, autonomous bodies – wholly or partly financed by the Government, statutory corporations/bodies, civilians in Defence and non-combative posts in Para Military Forces.

8. The Expenditure Reforms Commission has also considered the issue and had recommended that each Ministry/Department may formulate Annual Direct Recruitment Plans through the mechanism of Screening Committees.

9. Hence the impugned A5 order was not unilaterally issued by the respondents but is part of a larger plan of the Government of India and is based on a direction of the Prime Minister of the country, announced by the Finance Minister in the Budget of 2001-2002 and made uniformly applicable by the Department of Personnel, Govt of India to all Ministries/Departments of the Govt of India.

10. Respondent calls attention to *Dr.N.C.Shingal Vs. UOI (1980) 3 SC 2641* and *M.Ramanatha Pillai Vs. State of Kerala AIR 1973 SC 2641* wherein the Apex Court has held that:-

"Creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration. The creation and abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the government in the interest of administration and general public....."

11. The respondent also draws our attention that this GOI order for abolition of posts is not only applicable to the first respondent but to similarly placed respondents in the respondent department in all the States in the country. As such the applicants would have no case that they alone are being targeted for discrimination in the matter. The Apex Court in *State of Jammu & Kashmir Vs. Triloki Nath Khosa AIR 1974 SC 1* had held that the "constitutional code of equality and equal opportunity is a charter for equals". So long as employees similarly circumstanced in the same class of service are treated alike, the question of hostile discrimination does not arise as held by Apex Court in *General Manager S.C. Rly Vs. A.V.R. Sidharti AIR 1974 SC 1755*.

12. The respondent also brings out that since these posts have not been operated for years together, administrative procedures for their formal revival or bypassing the said orders requires approval of competent authority i.e, Ministry of Finance and Ministry of Personnel who are the authors of the OM calling for the 2% cut, and who are not arrayed as parties. If the reliefs sought by the applicants are allowed, the immediate and direct impact will be on Postman belonging to the direct recruit OBC category, as the benefits of reservation enjoyed by them in direct recruitment would no more be available and OBC promotees are likely to be reverted in a scenario of promotion. Hence the reversion projected by the applicants for GDS would happen to OBC Postman whose interests the federation claims to represent and the OA is bad for non-jointer of parties. Respondent brings to the notice of the Bench that OBC, who lose the benefit of reservation on promotion and are likely to be reverted have approached the Apex Court challenging Annexure A-3 order of Kerala High Court in WP(C) 28574 of 2009 by filing two SLPs. Hence Annexure A3 order has not attained finality and in a strict sense cannot be projected as a covered matter.

13. Traditionally the services in the respondent's post offices were provided at manually operated counters. Considering the vital need to provide the benefits of technology to customers, the savings bank, insurance counters are progressively computerized to provide single window and error free services. Respondent avers that there has been a time honored practice of reviewing the work and establishment of Head Post Offices, Sub Post Offices, GDS Post Offices, Mail Offices etc., at a fixed periodicity to ensure that manpower is available commensurate with the amount of work handled in each unit as per time factor fixed for each item of work. There has been a general slow down of mail. The mail traffic has gone down from 916.33 crores in 2002-03 to 605.53 crores in 2012-13. Further, welfare payments through money orders is undergoing a downward trend in view of government's decision to shift the payments from money order to through bank accounts. Periodic review of work of the Post Office and Mail Offices has been part and parcel of the Respondent department for years much before the "Scheme of Optimization of Direct Recruitment" challenged by applicants was introduced. Respondent brings out that the operation of the Screening Committee has cased from 2008 onwards but the periodic review of establishment at regular intervals prescribed in Postal Manuals which has been in operation for over half a century or more continues even today. Citing an example the respondent bring out that periodic review was undertaken in two major Divisions in the Southern Region and a total of thirty Postmen posts and 20 MTS post were found to be surplus in different Post offices. Hence periodic establishment reviews have been used by the respondent to right size the department for many years, prior to the issue of the impugned orders.

14. The formal A5 order of abolition challenged by applicants has become inconsequential as the posts mentioned thereon have been deemed abolished as per GOI instructions since 2005 on account of being vacant for one year. A5 merely formalizes a *fait accompli*. Establishment reviews mentioned above were undertaken without taking them as part of sanctioned establishment and manpower enhanced/reduced according to need.

15. Respondent avers that the process of filling up posts of Group-D and Postman cadre from 2005 to 2011 has been completed and selected officials are already in position. Any attempt to unsettle the settled position, would open a Pandora's box and lead to various administrative problems including that of seniority, fixation of pay etc. Hence such belated claims are liable to be rejected on the ground of delay also.

16. Since there was flexibility to choose the posts to be abolished based on operational needs, those posts found to be not justified based on work load were abolished and not posts from which incumbents had retired as averred thus reducing the impact on the cadre of postman.

17. The recruitment rules subjected to scrutiny by the Hon'ble Court has, post 6th CPC, been superseded by revised recruitment rules (RR) viz., Department of Posts. Multi Tasking Staff Recruitment Rules 2012 and the said judicial pronouncements do not extend to the new RRs.

18. It is noted that 269 postmen, 348 posts of Postal assistant, 49 Posts of Sorting Assistant, 13 Group-D and 5 Mailman (OA 203/13), 177 Group D Postal, 17 Group D PSD/CSD, 1 Group-D MMS, 12 Group-D DAP, 80 Group-D RMS have been

approved by Screening Committee and filled up by first respondent in the period 2002-2008 thereby negating the averment that Postman and Group D vacancies were not filled by GDS. In the period 2010-2012 as against 14 posts abolished, 19 posts of Postman and GDS were created. Applicants have not challenged R1 and R2 OMs nor impleaded the issuing Ministry/Department who authored the original order, which the respondent has merely circulated in the said department, as a marked down document.

19. It is inconceivable what is the legal right of the third applicant who is a GDS MD and of the 4th applicant who is a Postman that is being infringed by Annexure A5 order which directs abolition of direct recruitment vacancies or imposes restriction on the direct recruitment. Imposing restriction on direct recruitment is not going to affect GDS MD the third applicant or the Postman who is the 4th applicant. They have not stated as to what is the right or legal claim that would be affected consequent to Annexure A5 order. In order to sustain the claim, there must be a legal right which is likely to be infringed by the impugned order. It is also incomprehensible what is the legal right that is infringed so far as applicants 1 & 2 are concerned. It is actually a policy decision as can be borne out from Annexure R2 Office Memorandum which also refers to the budget speech made by the then Finance Minister presenting the budget for 2001-2002. It also refers that the directions were issued to all departments of government informing the necessity to abolish posts etc. By filing an application of this nature, the applicants 1 & 2 wanted this Tribunal to entertain the matter, as if it is a public interest litigation and to issue a mandamus against the department not to abolish posts and to create posts and then to make direct recruitment to those posts. The claim is not legitimate. There is no legal peg to have this claim hang on. The application is totally misconceived and ill-advised.

20. The prayer of the applicants to fill up the abolished posts of Group-D is not tenable in view of the fact that the scheme for optimization of direct recruitment to Civilian posts circulated vide OM of 16.5.2000 is uniformly applicable to all the departments of the Govt of India across the country to effect economy in administrative expenditure of the government. The order passed by a public authority exercising administrative/executive powers must be judged by the reasons stated in the order, whether there is any malafide or discrimination, and has a rational relation to the object sought to be achieved. The order has been issued for adopting austerity measures for containing government expenditure. The order has not been applied to promotion posts of existing employees but only been effected on direct recruitment posts. We find the order does not exhibit any malafide or discrimination nor is restricted to a few and is uniformly applicable to all departments of the Govt of India. The order has a rational nexus to the object of austerity measure for containing governmental expenditure which is a bona fide motive of the Government of India in the direction of expenditure & fiscal control. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, bias and malafide. The applicants have received the same treatment as similarly placed in all departments of the Govt of India and hence no injustice has been done by isolating them from implementation of the impugned order.

21. OAs are dismissed.

scd —
(Mrs. P. Gopinath)
Administrative Member

scd —
(N. K. Balakrishnan)
Judicial Member

aa.

CERTIFIED TRUE COPY

Date:

Deputy Registrar