

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 219/92
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DATE OF DECISION 02.9.1992.

Km KK Nirmala

Applicant (s)

Mr MR Rajendran Nair

Advocate for the Applicant (s)

Versus

Chief Post Master General,
Kerala and 2 others

Respondent (s)

Mr KA Cherian, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, Km KK Nirmala, is the daughter of late Shri MA Kochukunhu who died while serving as Sub Post Master, Konny. The representation made by the applicant for employment assistance on compassionate grounds was considered by the Circle Relaxation Committee and her appointment as a Postal Assistant in relaxation of the Recruitment Rules was sanctioned. Pursuant to that, the Post Master General, Kerala, on 18.7.1985 issued an order (Annexure II) directing appointment of the applicant.

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It was directed in the order that the appointment must be made after the surplus and supernumerary posts are adjusted and that till such time a regular appointment was made, the applicant should be brought to the top of RTP list next below earlier unabsorbed 'relaxation recruitment' candidates, if any, and given short duty engagement. Pursuant to the above orders, the applicant was sent for training and on completion of training she was engaged as a short duty Postal Assistant like the other RTP candidates in the waiting list. She was appointed as a regular Postal Assistant with effect from 19.8.88 by order dated 16.8.88 against the first regular vacancy that arose after 5.10.84. The applicant made a representation on 17.10.91 (Annexure VI) to the Chief PMG requesting that she may be regularised in service from the date of her initial engagement as short duty Postal Assistant. This representation was turned down and the decision was communicated to the applicant by the impugned communication dated 30.11.91. It has been averred in the application that as her appointment was on compassionate grounds, it should have been made immediately and want of vacancy should not have stood in the way. It has also been averred that as she has been working as a short duty Postal Assistant though on an hourly basis on the principle of equal pay for equal work, she should have been paid wages and other benefits of a regular employee from the date of her initial engagement. The applicant prays that the

impugned order at Annexure I may be quashed and that it may be declared that she is entitled to be appointed as Postal Assistant on regular basis from the date of her initial engagement as RTP Postal Assistant or at least from the date on which she has successfully completed the prescribed course of training and that the respondents may be directed to grant her retrospective appointment with consequential benefits.

2. The respondents contend that since the applicant has been given employment assistance immediately on the decision of the Circle Relaxation Committee, she does not have any legitimate grievance. They contend that as the applicant has been appointed on a regular basis as a Postal Assistant in the scale of Rs.975-1660 with effect from 19.8.88 in the first vacancy which arose after 5.10.84 and as no person junior to the applicant has been appointed earlier, there is absolutely no basis for the claim that she should have been regularly appointed with effect from the date of her initial engagement as RTP especially when she has not challenged the Annexure II order which specifically directed that she might be appointed on regular basis after adjustment of all surplus and supernumerary posts and that till such time she should be engaged for short duties.

3. The learned counsel for the applicant argued that in Smt. Sushma Gosain and others v Union of India and others (AIR 1989 SC 1976), the Hon'ble Supreme Court has observed that compassionate appointment should not be delayed and

should be made forthwith, if necessary, by creating a supernumerary post, and that want of vacancy should not stand blocking the compassionate appointment and that the above principle is applicable on all account to the facts of this case. We are not prepared to agree. What was observed by the Hon'ble Supreme Court was that as employment assistance on compassionate grounds is intended to relieve the distressed family from acute economic distress, to delay appointment on ground of want of vacancy is unjustified and that in such cases appointment should be made without delay, if necessary, even by creating a supernumerary post. In the case before us, admittedly, the applicant was engaged immediately after training as short duty PA and she was paid remuneration for the work done by her though on an hourly rate. The family was by such engagement, to a considerable extent, saved from extreme indigence. Since it was possible to extend employment assistance to the applicant even without creating a supernumerary post by keeping her well above in the list of RTP, we are of the view that the respondents have acted justifiably and bonafide. The applicant was not immediately posted on completion of her training as a regular Postal Assistant only because of non-availability of a post and was appointed regularly at the earliest when a vacancy became available. During the interregnum, the family did not suffer because she was engaged continuously as short duty Postal Assistant. The scheme of compassionate appointment was envisaged to render economic assistance to the indigent family and not with a view to offer career advancement to a member of the

deceased Government servant's family. Therefore, we are convinced that there is no basis for the grievance of the applicant that compassionate appointment was not extended to her immediately. The applicant has not challenged the order at Annexure II ^{dated 18.7.85} which specifically stated that till such time all supernumerary and surplus posts are adjusted and the applicant could be accommodated in the regular post, she should be engaged as short duty Postal Assistant. She cannot, therefore, now ^{seven years later} claim that she should be appointed with retrospective effect from the date of completion of her training.

4. The learned counsel for the applicant argued that on the basis of the principle of equal pay for equal work, the applicant ^{should} have been paid the wages at the rate applicable to a regular employee for the period during which she had worked as short duty Postal Assistant discharging the same duties as a PA and that, therefore, she should be given all the benefits of her short duty service for fixation of pay etc. The benefits which should be made available to short duty Postal Assistants for their services rendered by ^{as RTPs} them have been the subject matter of litigation in earlier cases before this Bench ^{in cases} like OA 814/90 ^{612/89} and other connected cases. In those cases, we had directed that the short duty Postal Assistants who had rendered service for 8-hours a day continuously, on completion of one year of such service, they should be deemed to have attained temporary status and half the period of 8-hours a day service after attaining

temporary status should be reckoned for the purpose of qualifying service for pension, that all the benefits available to casual mazdoors after attaining temporary status and subsequent regularisation under the scheme evolved in the Postal Department should be extended to them and that productivity linked bonus should be paid to them if like casual labourers they had put in 240 days of service each year for 3 years or more as on 31st March of each bonus year after their recruitment as RTP candidates. We are of the view that the applicant in this case is also entitled to the same benefits.

5. In the result, the application is disposed of with the following declaration and direction:-

- (a) The claim of the applicant for regularisation with effect from the date of her initial engagement or from the date of completion of her training is not granted.
- (b) If the applicant had, after recruitment as RTP Postal Assistant, been rendering service for eight-hours-a-day continuously, on completion of one year of such service, she should be deemed to have attained temporary status and half the period of eight-hours-a-day service after attaining temporary status should be reckoned for the purpose of qualifying service for pension.
- (c) All the benefits available to the casual mazdoors after attaining temporary status and subsequent

regularisation under the scheme should also be extended to the applicant, if she satisfies the above conditions; and

- (d) The applicant should be paid productivity linked bonus if like casual mazdoors she had put in 240 days of service each year for 3 years or more as on 31st March of each bonus year after her recruitment as RTP candidate, i.e. the benefit of the judgement in OA 612/89 and OA 171/89 should be extended to the applicant also.

6. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


2.9.92
(SP MUKERJI)
VICE CHAIRMAN

02.9.1992

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