

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 219/2003

Dated Friday this the 27th day of June 2003.

C O R A M

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

V.V.Sobha
D/o T.V.Kunhambu
Part Time Sweeper
Sub Post Office, Karivallur
Residing at Ayathravayal
Karivallur Post
Kannur District.

Applicant.

(By advocate Mr.M.Sasindran)

Versus

1. Union of India represented by
Secretary to Government
Department of Posts
New Delhi.
2. The Sub Divisional Inspector of Post Offices
Payyannur Sub Division
Payyannur.
3. The Sub Post Master
Sub Post Office, Karivallur
Kannur District.

Respondents

(By advocate Mr.M.Rajeev, ACGSC)

The application having been heard on 27th June, 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Applicant in this case had been originally appointed as a part time sweeper at Karivallur Sub Office on provisional basis, vide A-1 order dated 25.4.2001. The applicant joined duty there on 1.5.2001. While continuing so, by A-II order of the second respondent dated 2.8.2001, the applicant's service was terminated on the ground that as per instructions from the higher authorities, no fresh appointment of part time sweeper was permitted. Meanwhile, by A-V notice dated 11.2.2003, the second respondent called for applications for appointment to the post of Gramin Dak Sevak, Mail Packer, Karivallur Sub Office. The

applicant responded to the same by A-VI application dated 19.2.2003 along with A-VII representation, bringing out the relevant facts regarding her engagement as part time sweeper. The second respondent is seen to have issued the impugned A-8 order in response thereto, rejecting her application and the claim for preferential treatment in the matter of appointment to the post of GDS Mail Packer, on the ground that her earlier engagement could not be considered as part time casual labour. According to the second respondent, though the applicant was performing sweeping work at Karivallur Sub Office, after the termination as a mazdoor, on paying mazdoor charges, such engagement was not acceptable as a part time contingent labour. Being aggrieved, the applicant has come up with this application seeking the following reliefs:

- (i) To set aside the Annexure A8 communication issued by the second respondent to the applicant.
- (ii) To direct the respondents 2 & 3 to appoint the applicant to the post of GDS Mail packer in Sub Post Office, Karivallur.
- (iii) To declare that the applicant is entitled to get the benefit of A-4 order i.e. preference in the matter of appointment to the post of GDS Mail Packer.

2. The applicant's case is that the nature and content of her work have not changed even after A-II since she was virtually continuing as part time sweeper and doing the same work even after issue of A-II. According to her, by an arbitrary classification, she is attempted to be taken out of the category of part time casual labourer meriting preferential treatment in the matter of appointment to the post of GDS Mail Packer as per the existing instructions thereon contained in Director General (Post) letter dated 6.6.88 (A-IV).

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3. Respondents have resisted the claim of the applicant by filing reply statement on the ground that the applicant's original appointment as part time sweeper itself was incorrect in view of the standing instructions which contained a ban on appointment to the post of part time sweeper. It was to correct the administrative error that A-II was issued. The applicant could, therefore, have no claim to be considered as part time casual labourer for the purpose of getting preferential treatment in the matter of appointment to the GDS post.

4. We have considered the pleadings on record and the contentions put forth by the learned counsel on either side. Shri M.Sasindran the learned counsel of the applicant, has pointed out that the applicant's case was squarely covered by Director General (Post)'s letter dated 6.6.88 and further clarifications by the Post Master General of Kerala Circle with regard to the implementation of the instructions contained in the said letter dated 6.6.88. As per A-1, the applicant was originally appointed as part time casual labourer. In spite of A-2 apparently changing the nature of the applicant's engagement, there was no real change either in the nature of engagement or in the nature of work. The legal position, according to the learned counsel, is that whether a worker is called a casual labourer or a mazdoor or a part time casual labourer or part time mazdoor, he should be considered falling within the category of casual labourer for the purpose of conferment of benefits like temporary status, preferential treatment in the matter of appointment to GDS post etc. Shri M.Rajeev, the learned ACGSC has relied on the

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pleadings in the reply statement and maintained that with the issue of A-II, the character of the applicant's engagement changed and the applicant could no longer be considered as a part time sweeper.

5. On a consideration of the facts, we are of the firm view that the applicant's engagement as part time sweeper did not undergo any substantial change with the issue of a simple communication like A-II. It is not denied that the applicant has put in the qualifying service otherwise for being accorded preferential treatment. The only objection is that the applicant has ceased to be a part time casual labourer with effect from the date of A-II. We do not see any substance in this. The applicant continues to do the same work with the same wages. By A-II order, an attempt is seen to have been made to stultify the effect of Director General (Post)'s letter dated 6.6.88. It is recognized by the department that whatever be the nomenclature, if a worker is engaged as a casual labourer, mazdoor, coolie or a part time casual labourer, the effect would be same for the purpose of conferment of benefits, which otherwise is applicable to casual labourer or mazdoor and all would be treated alike. We, therefore, hold that the applicant who is admitted to have put in the qualifying service as a part time sweeper even after the issue of A-II should be treated as a casual labourer for the purpose of appointment to the post of GDS Mail Packer at Karivallur Sub Office, if other criteria regarding the appointment are fulfilled. We set aside the impugned A-8 order and direct the respondents to consider the applicant for the post of GDS Mail Packer, Karivallur Sub Office on the basis of her

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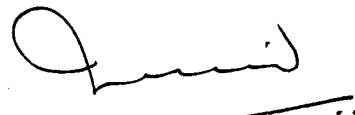
application dated 19.2.03 and having regard to the fact that she would be entitled to preferential treatment in the matter of such appointment, subject to her fulfilling the other eligibility criteria.

6. Application is allowed as above. No order as to costs.

Dated 27th June 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

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