

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 219 OF 2008

Monday, this the 15th day of September, 2008.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

P.Sreevalsalan Thampy
GDS MM, HRO
RMS TV Division
Thiruvananthapuram - 1 : Applicant

(By Advocate Mr. Vishnu G Chempazhanthiyil)

v.

1. The Senior Superintendent
RMS 'TV' Division, Trivandrum - 1
2. Union of India represented by the
Chief Post Master General
Office of the CPMG, Kerala Circle
Trivandrum - 695 033 : Respondents

(By Advocate Mr. George Joseph, ACGSC)

The application having been heard on 15.09.2008, the Tribunal on the same day delivered the following:

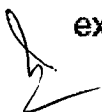
ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER.

This is the second round of litigation by the applicant seeking consideration for promotion to the Group 'D' post on regular basis. He had earlier made the Annexure A-5 representation dated 31.08.2005 to the Respondent Department in this regard. When the respondents did not respond to the said representation he had approached this Tribunal vide O.A No.734/05. It was disposed of vide order dated 18.10.2005 (Annexure A-6) with the direction to the 3rd respondent to consider and dispose of the aforesaid representation dated 31.08.2005 and give appropriate reply to the

Applicant within a time frame of two months. Accordingly the 3rd respondent has issued the Annexure A-7 letter dated 23.12.2005 to the applicant stating that he would be considered by the competent authority in his turn in the gradation list at the time of filling up of regular vacancies.

2. Thereafter the applicant have been waiting for consideration of his name for promotion to the Group 'D' post. Since no further action was taken by the respondents, he sought information from the respondents under the Right to Information Act regarding number of vacancies available in the Group 'D' post in RMS 'TV' Division. According to Annexure A-2 information dated 18.02.2008 made available to him by the respondents, presently there were 19 vacancies in Group 'D' category, 7 belongs to the year 2006 and 12 belongs to the year 2007. None of the vacancies have been filled up on the ground that clearance from the Screening Committee has not been received. The applicant has produced the Annexure A-1 seniority list of GDS MM as on 01.07.2007 in which his name appears at Sl.No.22 in the unreserved category. According to Department of Posts (Group 'D' Posts) Recruitment Rules 2002, 75% of the 19 available vacancies, are to be filled up by way of promotion from amongst the eligible Gramin Dak Sevaks. According to him, there are no Gramin Dak Sevaks above him in the seniority list who fulfills the eligibility condition regarding age limit prescribed in the Recruitment Rules. He has, therefore, sought a direction from this Tribunal to the respondents to take immediate steps for promoting him to a Group D post in RMS TV Division on the basis of the running seniority of the Gramin Dak Sevaks against the existing vacancies under the 75% quota set apart for Gramin Dak




Sevaks under the recruitment Rules from the date of his entitlement with all consequential benefits.

3. The Respondents have not denied the availability of the aforesaid vacancies. Their only contention is that in terms of Annexure R-1 letter dated 04.07.2001 there are restriction on appointment of direct recruitment and only 1/3rd vacancies occurring each year are to be filled up. They have also submitted that in terms of Annexure R1(a) letter dated 16.05.2001 issued by the Ministry of Personnel, Public Grievances & Pensions regarding optimisation of direct recruitment to civilian posts, the Annual Recruitment Plan has to be cleared by the Screening Committee before any vacancies are filled up.

4. We heard Mr.Vishnu G Chempazhanthiyil, learned counsel for applicant and Mr.George Joseph, ACGSC , learned counsel for respondents.

5. It is an undisputed fact that there are 19 vacancies available in Group 'D' post in RMS 'TV' Division for the year 2006-07. It is also a fact that respondents have not taken any action to fill up these vacancies so far, in accordance with the relevant recruitment rules in spite of the assurance given to him vide Annexure A-7 letter dated 23.12.2005. The reason given by the Respondents for not filling up the available vacancies is that the Screening Committee has not cleared those vacancies. This Tribunal has already held that such a procedure being adopted by the respondents is unconstitutional and the appointment to the Group 'D' post, being a promotional one, should be filled up strictly in accordance with the



relevant Recruitment Rules. The aforesaid O.M. dated 16.05.2001 has been specifically considered by this Tribunal in its previous orders. In OA 115/04 decided on 23.12.2005 (Annexure A-3), we have clearly held that the clearance of the Screening Committee cannot be accepted as a pre-condition for filling up the vacancies in Group 'D' posts on regular basis and held as under :-

" 7. Regarding the claim of the applicant to the 25% of the vacancies under the promotion quota no doubt he has a claim as stated above, in the order of preference provided in the Recruitment Rules. The contention of the applicant that he is the seniormost and that there are no other persons who are eligible to be considered under the other categories have to be verified with regard to factual position and there are no pleadings in this regard. Therefore any direction to promote the applicant straight away to the vacancy stated to be existing in the year 2002 cannot be given. In the light of our holding that annexure R-2 memorandum is not applicable to filling up of Group D vacancies under the second respondent the only direction that can be given to the respondents is to assess the actual number of vacancies and fill them up according to the Recruitment Rules and consider the applicant in his turn in accordance with the preference provided for in the said Rules. The respondents shall do so accordingly within a period of four months from the date of receipt of a copy of this order."

6. The aforesaid order was carried by the respondents before the Hon'ble High Court in W.P.C.No.22818 of 2006 (S) and vide judgment dated 22.03.2007 (Annexure A-4), the Hon'ble High Court upheld the orders of this Tribunal holding as under :-

"6. The Tribunal was right in holding that Annexure R2 relied upon by the petitioners cannot have the effect of modifying the recruitment rules. The relevant recruitment rules do not provide for any clearance from the Departmental Screening Committee. If at all there was a ban, it was limited to direct recruitment vacancies going by paragraph 3 of Annexure R-2. Hence, the argument raised by the petitioners in that regard was also rejected rightly by the Tribunal. The Tribunal has only directed the petitioners to assess the actual number of vacancies and fill them up according to the recruitment rules and consider the applicant in his turn in accordance with the preference



provided for in the said rules. We find that the views taken by the Tribunal is not perverse warranting interference under Article 227 of the Constitution of India. Therefore, the writ petition is dismissed."

7. Again this issue was considered by this Tribunal in OA 346/05 (Annexure A-5). After detailed consideration of the issue this Tribunal allowed the said OA and the operative portion of the order is as under :-

" 13. The applicants have claimed that there are 27 vacancies, the respondents have now stated that from the year 2005, 29 posts are lying vacant of which 8 Group-D posts are to be abolished. This is a decision within the authority of the department and we cannot find fault with the same. However, it is not clear whether this recommendation for abolishing the 8 posts was accepted by the competent authority. In any case, the respondents have admitted that there are three posts vacant at present but they are unable to fill up those posts since the clearance of the Screening Committee is awaited. We have already held that the approval of the Screening Committee is not mandatory for filling up the vacant posts by promotion in accordance with the Recruitment Rules. A decision for abolishing the posts has to be distinguished from a decision for getting the clearance for filling up. While abolishing is a permanent measure, obtaining clearance is a temporary restriction imposed by certain instructions. In this case it has been found that the restriction would operate only in the case of direct recruitment. Therefore, it is to be reiterated that such a clearance from the Screening Committee is not required to go ahead with the filling up of the three vacant posts admittedly available in the Division and the Screening Committee can be apprised of the position.

14. In the result, the respondents are directed to consider the case of the applicants excluding applicants 1 & 3 in accordance with their rank and seniority under the 75% quota set apart for Gramin Dak Sevaks under the Recruitment Rules 2002 without waiting for clearance of the Screening Committee and to promote them according to their eligibility and seniority against the available vacancies. It shall be done within two months from the date of receipt of this order. The OA is disposed of as above. No costs."

8. Recently this Tribunal has considered the very same issue in OA 352/2007 - P.R.Lohidakshan vs. The Postmaster General & Ors and

passed the following orders on 16.07.2008 :-

"18. It is a well settled law that valid rules made under the proviso to Article 309 of the Constitution of India operates so long as the said rules are not repealed or replaced. The respondents, therefore, cannot make the provisions of Department of Posts (Group D Posts) Recruitment Rules 2002 inoperative partially or fully holding that an extraneous authority, viz, Screening Committee should clear the vacancies and then only the selection committee can fill up the available vacancies.

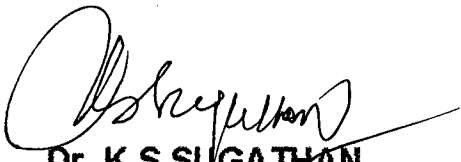
19. We, therefore, declare that the applicant was entitled to be considered for appointment as Group 'D' in his turn when the vacancy was available in accordance with the provisions contained in the Department of Posts (Group D Posts) Recruitment rules, 2002 and the instructions of DG Posts letter No.47-11/93-SPB.I dated 25.8.1993 and of even No. dated 31.3.1994. The respondents shall hold review DPC and consider the applicant for promotion as Group 'D' with reference to the vacancy against which he should have ordinarily been considered in his turn in accordance with the Recruitment Rules and if he is found suitable, he shall be appointed retrospectively from that date as a Group 'D' with all consequential benefits including seniority, arrears of pay and allowances etc. The aforesaid direction shall be complied with within a period of two months and necessary order shall be issued. There shall be no order as to costs."

9. In the face of the aforesaid orders, the respondents themselves should have initiated appropriate action to promote the eligible GDS employees including the applicant in RMS 'TV' Division. There is no justification on their part to withhold the promotion to eligible Gramin Dak Sevaks to the post of Group 'D' to which they are otherwise entitled under the existing Recruitment Rules. In the above facts and circumstance, we allow this OA and direct the respondents to consider the case of the applicant in accordance with his rank and seniority under the 75% quota set apart for Gramin Dak Sevaks under the Department of Posts (Group 'D' Posts) Recruitment Rules, 2002 without waiting for clearance of the Screening Committee and to promote him to Group 'D' post if he is found suitable retrospectively from the date of entitlement of such promotion with all consequential benefits including seniority, arrears of pay and allowances



etc. The above direction shall be complied with, within two months from the date of receipt of this order. There shall be no order as to costs.

Dated, the 15th September, 2008.



Dr. K.S.SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN,
JUDICIAL MEMBER

VS