

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 228 of 2008

Wednesday, this the 30th day of July, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER

Prakasan A,
GDS BPM, Puthukulangara,
Thiruvananthapuram. ... **Applicant.**

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

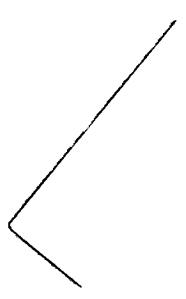
1. Superintendent of Post Offices,
Trivandrum South Division,
Trivandrum – 14
2. Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
3. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi. ... **Respondents**

(By Advocate Mr. A.D. Raveendra Prasad, ACGSC)

The Original Application having been heard on 18.07.08, this Tribunal
on 30.7.08 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, who belongs to OBC group and who entered the service
as EDDA on 22-11-1982, is at present working as G.D.S.B.P.M. at
Puthukulangara (in Trivandrum Division).



2. According to the applicant, Provision exists for appointment in Group D posts, of GDS officials and one of the conditions thereof is that such GDS officials should be within fifty years of age. The applicant completed his 50th year on 26-05-2008. The grievance of the applicant is that despite there being vacancies for appointment in the Group D posts, and despite there is inadequate representations of OBC category in the said posts, respondents have not cared to fill up the vacancies and the reasons given by them that the screening committee has not given its green signal for filling up of the post is thoroughly wrong as by a catena of decisions of this Tribunal, also upheld by the Hon'ble High Court, such a clearance from the Screening Committee is not a sine-qua-non for filling up the post. The applicant, therefore, approached the Tribunal, before he completed 50 years of age claiming *inter alia* the following relief(s):-

- (a) for a direction to the respondents to consider the applicant for Group D post on a regular basis with effect from the date of occurrence of vacancy.
- (b) To declare that the applicant is entitled to be considered for appointment as Group D in the existing vacancies.
- (c) To direct the respondents to convene the DPC proceedings for appointment to the post of Group D forthwith and consider the applicant.

3. Respondents have filed their reply. They have stated as under:-

- (a) Vacancies as and when declared by the Screening Committee are filled by the Division. No post has been cleared

by the Screening Committee for 2006-07 so far. There are 18 vacancies lying vacant in this Division.

(b) It is true that the position as hitherto prevailed with regard to recruitment to Group D posts from GD Sevaks has undergone a change after the pronouncement of the judgments referred to by the applicant. The Department had taken a decision to implement these judgments on a case-to-case basis. No policy decision has so far been taken by the Directorate in this regard. Matter stands referred to Directorate and further instructions in this regard are awaited.

(c) It is true that there is a short fall of representations of 9 OBC hands in Group D cadre in the Division. The Division is having 18 group D vacancies existing as on date. It is also true that if all the OBC vacancies are filled up on or before 26-05-2008 to fill up the back log, the official who is in the 6th position after elimination of those OBC who have crossed 50 years is likely to get appointment as Group D.

4. Counsel for the applicant submitted that the respondents have been fair to admit most of the facts especially with reference to the total number of vacancies, vacancies to be filled in by OBC and the probability of applicant being appointed, if persons over 50 years are eliminated from the seniority list and the case of the applicant as of 26-05-2008 is considered for one of the OBC vacancies. The counsel has further submitted that such vacancies ought to have been filled up by holding DPC in the month of March of every year as stipulated in Annexure A-2 order of the respondents in which event,



the applicant would be well within 50 years. He has also submitted that by virtue of order dated 27-05-2008, the applicant's crossing 50 years would not come in the way of his being considered for appointment to Group D post when the DPC meets.

5. Counsel for the respondents submitted that in so far as screening committee's recommendations are concerned, the Tribunal had passed orders stating that there was no need for such recommendations of screening committee in respect of total number of vacancies, which order has also been upheld by the Hon'ble High Court. However, this was followed only in those cases where such orders were passed. At the same time, the matter has been referred to the Board for taking a policy decision, which is still awaited. As regards the OBC vacancies and the probability of applicant being appointed against one such vacancy, submissions made in the reply hold good.

6. Arguments were heard and documents perused. It needs no reiteration that in so far as screening committee's recommendation, the same is not at all required as held in various decisions. Such order passed in individual cases is also a judgment in rem, as the decision is on a law point and not confined to the facts of such cases only. Hence, the same ruling would apply to this case and in other similar cases too. Respondents shall consider respective vacancies in Group D posts for being filled up by appointment of GD Sevaks.

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7. In so far as age limit is concerned, the same has been prescribed as 50 years. The question is as to what should be the cut-off-date for this purpose. The following are a few options:-

- (a) 50 years as on the date of availability of vacancy.
- (b) 50 years as on the date of DPC
- (c) 50 years as on the date of joining the post.
- (d) 50 years as on any other particular date of the DPC year.

8. Of the above, date of availability of vacancy would be inconvenient. Likewise, (c) above would also not be correct ^{as} delay in issuing appointment order after DPC would result in denial of the appointment due to over age. Both (b) and (d) could well be combined. Already, Annexure A-2 provides for DPC to be held in March of the year when vacancies arise. This could be combined with (d) above and 31st March, would be the crucial date to work out the age of the individual to be considered for appointment. This is so decided since, neither the Recruitment Rules nor any administrative instructions have been brought to our knowledge in respect of the above aspect. Vacancies, as confirmed by the respondents belong to 2006-2007, vide para 6 of the reply. Thus, vacancies as of date should first be bifurcated as (a) those belonging to the year 2006 – 07 and those which belong to the year 2007-2008. Those who were within 50 years as on 31st March, 2007 (whose date of birth is not anterior to 01-04-1957) should be considered for the vacancies upto March, 2007. After finalizing the same, out of the remaining individuals, those who were within 50 years as on 31st March, 2008 (i.e. those whose date of birth is not anterior to 01-04-1958) should be considered for the vacancies for the



year 2007 – 08. This may be followed in respect of OBC vacancies, as also other general vacancies and if the applicant is within the consideration zone in respect of general and/or OBC vacancies, he be also considered in accordance with the provisions of the existing rules. The Original Application is disposed of accordingly.

9. As the drill involved is with reference to 18 vacancies, sufficient time is required to complete the entire procedure. Respondents shall ensure completion of the entire process of appointment within a period of six months from the date of communication of this order.

10. No costs.

(Dated, the 30th July, 2008)



(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.