CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.Nos.239/98 & 449/98

Wednesday this the 26th day of August,1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

In O.A.No.239/98

K.P.Krishnankutty Nair,
Extra Departmental Delivery Agent,
Mudikkal Sub Office,
Aluva. ..Applicant

(By Advocate Mr.O.V.Radhakrishnan)

vs.

1. Senior Superintendent of Post Offices,
Aluva Division, Aluva.

2. Director General of Posts,
Department of Posts, New Delhi. ..Respondents

(By Advocate Mr.Sunil Jose, ACGSC)

In O.A.No.449/98

1. All India Postal Extra Departmental
Employees Union,
Kerala Circle, P&T House,
Thiruvananthapuram -695001,
represented by its President
Shri N.Chandrasekharan Pillai,
Lakshmi Vihar,
Mukathala, Kollam.

2. G.S.Sreedharan Nair,
Extra Departmental Mail Man,
RMS Post Office,Trivandrum.,
Meapramuth Veedu,
Chempazhanthy P.O.,Trivandrum. ..Applicants

(By Advocate Mr.T.C.G Swamy)

vs.

1. Union of India represented by
The Secretary to the
Government of India,
Ministry of Communications,
(Department of Posts)
"Dak Bhavan" Sansad Marg,
New Delhi.

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2. The Director General of Posts,
Ministry of Communications,
Department of Posts,
New Delhi.

3. The Chief Post Master General,
Kerala Circle,
Vikhas Bhavan Post,
Trivandrum-33. ..Respondents

(By Advocate Mr. P.R.R.Menon,ACGSC)

The Application having been heard on 26.8.98, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

As the facts, circumstances and question of law involved in both these cases are almost identical, these two cases are being disposed of by this common order.

2. The applicant in O.A.No.239/98 is one of the senior Extra Departmental Delivery Agents aspiring for promotion to a Group D post in the department. The first applicant in O.A.449/98 is the All India Postal Extra Departmental Employees Union, Kerala Circle, P&T House, Thiruvananthapuram, represented by its President. The second applicant therein is an Extra Departmental Mail Man, RMS Post Office, Trivandrum.

3. The applicants are aggrieved by the inaction on the part of the respondents in filling up the vacancies in Group-D in the Postal Department of the Kerala Circle on the ground that as the Tribunal had struck down the conditions relating to the age restriction in the Group-D Recruitment Rules, unless the Recruitment Rules are modified suitably, recruitment to fill up the vacant Group D posts cannot be made. According to the Recruitment Rules, called the Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules,1970, notified on 20.10.1970, the

extra-departmental staff were to be considered against the vacancies for direct recruitment in subordinate offices subject to such conditions and in such manner as may be decided by the DG P&T from time to time. This Recruitment Rule was amended in the year 1982 and the age limit for recruitment from among Extra Departmental Agents to Group D posts in the Postal Department , was fixed as 42 for the general category and 47 for SC/ST in the case of Extra Departmental Agents who had been recruited earlier to the date of notification of the amended Rules and 35 and 40 in case of those who were appointed as Extra Departmental Agents after the issue of the amended Recruitment Rules. This upper age limit was struck down by this Bench of the Tribunal in O.A.K. 557/88 reported in 1990 14 ATC 227. After this decision of the Tribunal in the said case, the Director General, Posts issued an order dated 28.8.90 (Annexure A2) prescribing upper age limit of 50 years for general category and 55 years for SC/ST. The prescription of upper age limit of 50 and 55 years for general category and SC/ST respectively was again challenged in O.A. 155/95. The Tribunal set aside the prescription of upper age limit introduced by the order of the D.G,P&T dated 28.8.90 on the ground that the D.G, P&T was not competent to prescribe the age limit, according to the amended Recruitment Rules. Now, in the absence of a valid prescription regarding the age limit, the department is not taking any action for filling up of the vacancies in Group-D in the Postal Department, with the result that the eligible E.D. Agents are losing their chances for appointment to Group-D posts. It is under these circumstances that the applicants have filed these applications. In O.A. No.239/98 , the

applicant seeks a direction to the 1st respondent to make recruitment to Group 'D' posts which are lying vacant in Aluva Division and to promote the applicant to any one of the existing vacancies in Group 'D' in Aluva Division on the basis of his running seniority from the date of his entitlement with all consequential benefits. The prayers of the applicants in O.A. No.449/98 are that it may be declared that the non-feasance on the part of the respondents in not filling up the Group 'D' vacancies in the Postal Department of Kerala Circle, is arbitrary, discriminatory and unconstitutional and for a direction to the respondents to fill up the existing vacancies of Group 'D' posts in the Postal Department of Kerala Circle in accordance with law forthwith.

4. The only contention raised by the respondents in their reply statement is that as the age limit for recruitment has been struck down by the Tribunal , it is not possible to make appointment to Group 'D' posts and that instructions are awaited on amendment to the Recruitment Rules and filling up of the vacancies. The applicants in O.A. No.449/98 have in their rejoinder contended that pursuant to the order of the Tribunal in O.A. Nos.155/95 and 1432/95, the applicants therein were granted consequential benefits of consideration for promotion and that, therefore, the respondents could have filled the vacancies in Group 'D' even in the absence of a provision regarding the upper age limit in the Recruitment Rules.Reliance has been placed by the applicants on the observation of the Director General,Posts in its letter to the Director of Postal Services , Kerala Circle, Trivandrum

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dated 5th June, 1997 to the effect :

> "As soon as the Recruitment Rules are amended, the same will be sent to you. You may continue to make recruitment of Group 'D' as per the existing Recruitment Rules as no such instructions have ever been issued by the Directorate to ban the recruitment in the Group 'D' cadre."

On a careful scrutiny of the entire material placed on record and on hearing the arguments of the learned counsel for the parties, we find that there is no justification at all for the respondents, in these cases, to delay the recruitment to Group 'D' posts in the Postal Department to the detriment of the applicants, who were E.D.Agents and members of the 1st applicant Association in O.A.No.449/98. Learned counsel of the respondents argued that in the absence of an age limit, it would be necessary to consider for appointment on a Group 'D' post, even an E.D.Agent who would have reached the age of superannuation and therefore, it is practically impossible to make the recruitment to Group 'D' unless a provision regarding the age limit is incorporated in the Recruitment Rules. We do not find any merit in this argument.The argument that in the absence of a limit of upper age, even E.D.Agents who have crossed age of superannuation may to be considered for appointment to Group D is meaningless, because no recruitment can ever be made to a post of a person whose age is beyond the age of superannuation prescribed for the post. It is possible for the respondents to make recruitment to the Group-D posts by considering E.D.Agents who have not crossed the age of 60 years,i.e., the age of superannuation in Group-D posts.

5. The respondents themselves have considered the applicants in O.A.Nos.155/95 and 1432/95 for such appointment, though they had crossed the age limit, which was struck down in O.A.155/95. Further, in the Director General,Posts letter dated 5th June 1997(Annexure-R(3)) , the Director of Postal Services, Kerala Circle had been informed that he could continue to make recruitment to Group-D as per the existing Recruitment Rules, as no such restriction had been issued by the Directorate to ban the recruitment in the cadre. Inaction on the part of the respondents to make recruitment even after this clarification by the Director General, Posts, is, in the most modest tone, callous and culpable.

6. In the light of what is stated above, we are of the considered view that the respondents have to be directed to make recruitment to the existing vacancies in Group-D in the Kerala Circle, including the Aluva Division, without any further delay and without waiting for the amendment to the Recruitment Rules.

7. In O.A.No.239/98, the applicant has prayed that a direction may be issued to the 1st respondent to promote the applicant to any of the existing or arising vacancies in Group 'D' in Aluva Division on the basis of his running seniority from the date of his entitlement with all consequential benefits. Learned counsel of the applicant argued that the delay in filling up the vacancy and considering the applicant for appointment on Group D, had resulted in irreparable injury to the applicant inasmuch as he would lose the length of service required for being eligible for pension and for that reason, it is necessary in the interest of justice to direct the respondents to appoint the applicant, if he is otherwise eligible on Group-D with

effect from the date on which the vacancy arose. We are of the view that this aspect also should receive the attention of the respondents. If for the mere reason of inaction on the part of the respondents in filling up the vacancies, any E.D.Agent like the applicant has suffered any prejudice in the matter of length of service or eligibility for pension, the respondents have to take remedial steps in that behalf. In the result, we dispose of both these applications, directing the respondents to fill up the existing vacancies in Group-D in the Kerala Circle including the Aluva Division without any delay and without waiting for the amendment of the Recruitment Rules, treating that any E.D.Agent who is below the age of 60 years is entitled to be considered for appointment in the absence of prescribed maximum age limit. We also direct that the respondents shall take remedial steps if any of the E.D.Agents in the Kerala Circle has suffered any loss by reason of the lapse on the part of the respondents in filling up the post of Group-D in the Kerala Circle.There is no order as to costs.

Dated the 26th August,1998.

P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

A.V.HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

OA-449/98

1. Annexure R3: True copy of the letter No.66-82/87-SPB.I(Pt.) dt. 5.6.97 issued from the 3rd respondent's office.

OA-239/98

1. Annexure A2: True copy of the letter No.44-31/87-SPB.I dated 28.8.90 of the 2nd respondent.

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