

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.247 OF 2009

FRIDAY... this the 5th day of FEBRUARY, 2010

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

K.M.Balan
Part Time Casual Labourer
Quilandy Head Post Office
Vadakara
Residing at Kaviledath, Meethal
Panthalayini, Quilandy ... Applicant


(By Advocate Mr. M.R.Hariraj)

versus

1. Union of India represented by the
Secretary to Government of India
Department of Posts
New Delhi
2. Chief Postmaster General
Kerala Circle
Trivandrum
3. Postmaster General
Northern Region, Calicut
4. Superintendent of Post Offices
Vadakara Division
Vadakara
5. Radha M.K.
Casual Labourer
Edakulam Post Office
Vadakara Division, Vadakara
6. Kamala N
Casual Labourer
Meppayur Post Office
Vadakara Division, Vadakara ... Respondents

(By Advocate Mr.S.Abhilash, ACGSC (R1-4))

The application having been heard on 25.01.2010, the
Tribunal on 5.2.2010 delivered the following:



ORDER**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant in this case commenced his service as a Part Time Casual Water Carrier on 01.04.1996. Provision exists for appointment in Group 'D' post from 25% quota set apart for casual labour, under the Recruitment Rules, 2002. The applicant could not get his appointment under this category on the grounds of non availability of vacancies, he moved OA 115/04 which was disposed of by the Tribunal with a direction to the respondents to ascertain actual number of vacancies and fill them in accordance with rules. Writ Petition No. 22818/06 filed by the respondents was unsuccessful. When the applicant moved a Miscellaneous Application for execution, it was stated that due to lack of educational qualifications casual employees are not appointed as Group 'D'. This contention was rejected as the qualification prescribed pertains to Direct Recruitment and is not applicable to 25% quota. Review Application filed by the respondents against the said order was rejected. In February, 2008 one Sathi, senior to the applicant was appointed. Next to the said individual are the following:-

Name	Date of Engagement
(a) M.K.Radha	01.06.1985
(b) N.Kamala	02.09.1985
(c) K.M.Balan	01.04.1986

2. The applicant obtained under the Right to Information Act the vacancy position and vide Annexure A-9 the total number of vacancies that arose in Vadakara Division from 01.01.2002 to 31.12.2007 was 16 of which 7, could not be filled up for want of

Screening Committee's approval consequent to which these vacancies were stated to have lapsed. The number of vacancies remaining to be filled up after appointment of Smt. Sathi is said to be 5.

3. The case of the applicant is that the two seniors to the applicant have now crossed 60 years of age as could be seen from Annexure A-10 abstract of admission register in respect of P.Radha and as per Annexure A-11 (para 3) in respect of N.Kamala (the name of Kamala was stated to be Kamalakshy).

4. According to the respondents the dates of birth of the above two individuals as reflected vide Annexure A-7 are 04.06.1952 and 30.06.1952 respectively. It has been stated in the counter that the dates of birth of the individuals concerned as recorded vide Annexure A-7 were based on information from the respective Sub Post Masters obtained. It has been stated in the counter that they have not been appointed against any Group 'D'.

5. The applicant, through this OA has requested for consideration for appointment as Group 'D' against one of the existing vacancies.

6. Respondents have contested the OA on the ground of non availability of vacancies.

7. Counsel for applicant submitted that respondents are not right in calculating the vacancies ear-marked under the 25% quota on

yearly basis. When total number of vacancies as obtained through RTI Act is 5, obviously one vacancy must go for casual labourers. In view of the fact that Radha and Kamala, seniors to the applicant have crossed 60 years as per their actual date of birth, this one vacancy should go to the applicant. It has also been suggested by the counsel assuming without accepting that the two seniors to the applicant could well be considered for appointment on the basis of their declared date of birth in 1952; the High Court has recently held that Screening Committee's approval is not a ~~sine for~~ sine qua non for working out vacancies under the 25% quota, the 7 vacancies stated to have been abolished can spring back alive to fill up vacancies of 5, make up the total vacancies to 12 in which event 25% thereof would amount to 3 and all the 3 could be considered.

8. Counsel for respondents submitted that the dates of birth were not based on verification of records but on oral information furnished by the respective Sub Post Masters.

9. Arguments were heard and documents perused. In a number of cases this Tribunal has consistently held that for filling up of posts of Group 'D' under the 25% quota Screening Committee's approval is not essential. This legal position has been affirmed in a very recent decision by the Kerala High Court when it considered as many as 35 Writ Petitions in a Single judgment. As such, all the 12 vacancies must be available for being filled up. Even assuming that only 5 vacancies are available of whom one could go to casual labourer, the same should go to the applicant as the other two individuals (Radha and Kamala) must have by now crossed 60 years.

10. In view of the above, **OA is allowed.** Respondents are directed to consider the case of the applicant against the vacant Group 'D' post under the 25% quota. This is subject to the condition that the applicant is the senior most hand. The two seniors to the applicant are above 60 years of age. The Department may also consider to re-allot the 7 vacancies stated to have been abolished on account of non filling, in which event the number of vacancies would become 12. This drill be performed within three months from the date of communication of a copy of this order. No costs.

Dated, the 5th February, 2010.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS