

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.26/99

THURSDAY, THIS THE 2nd DAY OF DECEMBER, 1999.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.Remani Amma
W/o G.Appukuttan Pillai
Presently working as ED Packer
Kollam Civil Station P.O.
Kollam District.

...Applicant.

(By advocate Mr M.R.Rajendran Nair)

Versus

1. The Sub Divisional Inspector of Post Offices
Kollam North Sub Division
Kundara.
2. The Senior Supdt. of Post Offices
Kollam Division, Kollam. ...Respondents.

(By advocate Mr Govind K. Bharathan, SCGSC)

Application having been heard on...2.11.1999.....the
Tribunal delivered the following on...2.12.1999.....

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

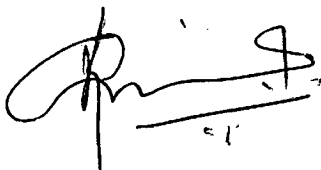
Applicant who is working as ED Packer, Kollam Civil Station P.O. being aggrieved by the inaction on the part of the respondents in considering her for regular appointment and also aggrieved by A-7 notification dated 9.12.98 issued by the first respondent inviting applications for appointment to the post of ED packer has filed this application under section 19 of the Administrative Tribunals Act, 1985.

2. Applicant commenced her service as a part time casual labour under the Department of Posts on 27.2.83 at

..2/-



Kollam Kacheri Post Office in the place of her grant mother who was the regular incumbent. She submitted that since then she had been continuing as a part time casual labourer. She annexed a true copy of her appointment order as Annexure A-1 to the OA. According to the applicant a vacancy of ED Packer arose at Kollam Civil Station Post Office consequent on the retirement of the regular incumbent. The applicant submitted A-2 representation dated 14.1.98 to the second respondent requesting him to consider her in the post of ED Packer. By A-3 memo dated 16.1.98 issued by the first respondent, the applicant was provisionally selected for appointment as ED Packer, Kollam Civil Station P.O. On 17.1.98 by A-4 charge report she took charge as a provisional ED Packer. By A-7 notification dated 9.12.98 the first respondent invited applications for filling up the vacancy of ED Packer with the last date for filing applications as 9.1.99. According to the applicant, this action of the first respondent is without the authority of law, arbitrary, unjust and unreasonable. She submitted that being a part time casual labourer and having put in 15 years service, she was entitled for regular appointment to the post of ED Packer at Kollam Civil Station Post Office, in accordance with the Director General's instructions dated 17.9.90 (Annexure A-5). She also submitted that she having been appointed prior to 7-6-88 was exempted from sponsorship by the employment exchange on the basis of A-6 Director General (Post)'s letter dated 21.5.91. She also submitted



that in pursuance to the judgement reported in 1996 (6) SCC 216, sponsorship by Employment Exchange was not a must at present. She also claimed that she had passed 9th standard whereas the educational qualification for the post of ED Packer was only 8th standard. She submitted that only if she was found ineligible, the vacancy could be notified for filling up from other sources. According to her, she could be considered along with other eligible casual labourers only and if she was considered alongwith open market candidates who would apply in pursuance of the notification, that would amount to unequals being treated equally and would result in gross violation of Articles 14 and 16 of the Constitution of India. She sought the following reliefs through this OA:

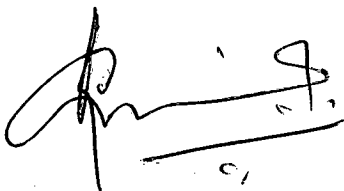
- (i) To quash Annexure A-7.
- (ii) To declare that the applicant is entitled to be considered for regular appointment as ED Packer, Kollam Civil Station in preference to open market candidates and to direct the respondents to consider the applicant for regular appointment as ED Packer, Kollam Civil Station in preference to open market candidates.
- (iii) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and
- (iv) Grant the costs of this original application.

...4/-



3. The second respondent filed reply statement on behalf of both the respondents resisting the claim of the applicant. He submitted that the appointment of the applicant from 27.2.83 in the place of her grandmother one Smt. Karthiyani Amma vide Annexure A-1 by the then Sub Postmaster, Kollam Cutcherry itself could be found to be not according to any norms of recruitment. He specifically denied that the applicant continued to work as part time casual labourer without any break. According to the respondent, the applicant had deserted the post in October 1991 and was absent from duty till July 1996 for about 5 years. The applicant in her R-2(A) statement dated 13.4.98 before Assistant Superintendent of Post Offices, Kollam clearly admitted that she was absent during the said period while working as part time sweeper, Kollam Cutcherry Post Office. According to the respondents, during October 1991, she left the job and went abroad for taking up another job and had not reported for duty till July 1996 and during her absence one Smt.Lalithamma, the applicant's sister in law, had worked in her place. The respondent submitted that the applicant was unauthorisedly absent for about 5 years and hence she was not entitled for any preference in extra departmental appointment as her continuous service could only be counted from July 1996 . It was stated in the reply statement that the first respondent had irregularly given preference to her in the matter of appointment as ED Packer, Kollam Civil Station as a

..5/-



casual labourer without verifying her past service and without taking action against her for prolonged unauthorised absence.

4. It was submitted that since the applicant had been reappointed in July 1996 she could not get the benefit of exemption from sponsorship by the Employment Exchange as per A-5. It was further submitted that since the applicant did not become eligible for a preferential right as a casual labourer she could not be considered for regular appointment giving preferential claim over other applicants and therefore the vacancy was notified by the first respondent for regular appointment to the post vide A-7 and the action of the first respondent was as per the rules and instructions of the Department and that there was nothing arbitrary, illegal or violative of the constitutional right. It was submitted that the case was devoid of merits and the same was sought to be dismissed.

5. Applicant submitted a rejoinder. She submitted that her absence from 1991 to 1996 was not unauthorised. She had the permission of the Postmaster and she had entrusted the work to Smt. Lalitha, her relative, as a substitute. When she came back, and wanted to resume duty Smt. Lalitha vacated the job and the applicant continued to work. She relied on

..6/-

A handwritten signature in black ink, appearing to be 'Ami S.', with a horizontal line drawn underneath it.

A-8 order of this Tribunal delivered on 18.8.99 in OA 1074/98. She submitted that she could not be treated as freshly recruited in 1997. No memo or show cause notice was ever issued against the so-called unauthorised absence nor were her services terminated by any process known to law.

6. The applicant filed an additional rejoinder in which contradicting the statement of the respondents made in the reply statement that she had deserted the post in October 1991 and continued to be absent from duty for about 5 years, she averred that she had oral permission from the incharge of the office, she had absented herself from 1991 to 1996 and as the same was after permission she was under the impression that the period from 1991 to 1996 would not be considered as break in service. She further submitted that her feeling was strengthened by the respondents' action in permitting her to rejoin the duty in 1996. She further submitted that the last sentence in para 4.2 of the OA "ever since she has been continuing as part-time casual labour without any break" may be ignored without prejudice to the arguments she might raise against considering her authorised absence as break.

7. Heard learned counsel for the parties.

8. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the the documents brought on record.



..7/-

9. The facts which are not in dispute are that the applicant had been working under the respondents as part time casual labour from February 1983 to October 1991 and again from July 1996 to January 1998 and that she was appointed provisionally as ED Packer, Kollam Civil Station P.O. in January, 1998. Applicant's challenge against A-7 notification is on the basis of A-5 letter of the Director General (Post) dated 17.9.90. Respondents are resisting the claim stating that the applicant, because of her absence from 1991 to 1996, is not eligible to get the benefit of DG (Post)'s letter quoted above.

10. Director General (Post)'s letter dated 17.9.90 is reproduced below:

"According to the prevalent recruitment rules governing the cadre of Group 'D', the order of preference among various segments of eligible employee is as under:-

- (a) Non-test category
- (b) E.D.employees
- (c) Casual labourers
- (d) Part-time casual labourers

Since the number of vacancies of Group 'D' is limited and the number of ED employees eligible for recruitment as Group 'D' is comparatively large, the casual labourers and



..8/-

part-time casual labourers hardly get any chance of their being absorbed as Group 'D'. Thus, majority of casual labourers with long service are left out without any prospect of their getting absorbed in Group 'D' cadre.

Keeping the above in view, a suggestion has been put forth that casual labourers both full and part-time should be given preference for recruitment as Extra Departmental Agents in case they are willing with a view to afford the casual labourers a chance for ultimate absorption as Group 'D'.

The suggestion has been examined in detail and it has been decided that casual labourers whether full-time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts provided they fulfil all the conditions and have put in a minimum service of 1 year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange.

These instructions take effect from the date of their issue. This also disposes of D.O. letter No. Rectt/27-1/85-II dated 25.9.87 and 6.10.87 received from the Office P.M.G., Trivandrum.

..9/-



It is reiterated that the above instructions may be kept in view while filling up ED Posts. It may be ensured that only those casual labourers who are employment exchanged sponsored and who fulfil the conditions and qualifications required ED posts are considered for appointment to ED posts."

11. It is clear from the above letter that casual labourers both part time and full time should be given preference in recruitment as Extra Departmental Agents so that ultimately they can get absorbed in Group-D cadre of the Postal Department. For the above purpose, 240 days of service in a year would be reckoned as one year of service. The casual labourers should have been sponsored by the Employment Exchange and they should fulfil the qualifications prescribed for the ED posts.

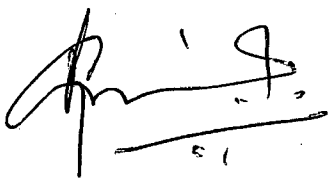
12. Respondents state that as the applicant had unauthorisedly absented herself from 1991 to 1996 and she had been appointed in 1996 as part time casual labour she would not be covered by the Director General (Post)'s A-6 letter dated 25.1.91 according to which casual workers recruited prior to 7.6.88 and who were in service on 7.6.88 would be eligible for regular appointment to Group-D post even if they were recruited otherwise than through the Employment Exchange. Therefore, the first issue to be

..10/-



decided is whether the applicant's absence from 91 to 96 is unauthorised. The facts which are before us are that during the applicant's absence from 1991 her sister-in-law Smt.Lalithamma was engaged as part time casual labour in her place. When she came back to work in July 1996 she was taken back by the Postmaster without any objection and she was re-engaged as part time casual labourer. These actions of the Department give an impression that the applicant's absence from 1991 to 1996 was with the knowledge and tacit permission of the concerned authority. Further if her absence was unauthorised and caused a break in her service, she would not have been taken back to duty in July 1996 by the first respondent, especially when according to Director General(Post)'s A-5 circular letter only employment exchange sponsored candidates could be appointed as casual labourers. Therefore, we are unable to accept the contention of the respondents that the applicant's absence from 1991 to 96 was unauthorised. We are of the view that it is only by virtue of the earlier service from 1983 to 1991 that she had been taken back as part time casual labour in July 1996 by the first respondent. In view of the above she cannot be treated as disqualified for being considered as ED packer on the ground that she is not a employment exchange sponsored part-time casual labourer.

13. Further, it is evident from the Director General (Post)'s letter dated 17.9.90 that the Department's objective



...11/-

was to give a chance to the casual labourers both full time and part time to ultimately get absorbed in Group-D cadre of the Postal Department. When such is the case we are of the view that a part time casual labour like the applicant who had been in the service of the Postal Department from 1983 onwards could not be denied that opportunity on the grounds advanced by the respondents. Moreover, as per the law laid down by the Hon'ble Apex Court, sponsorship by Employment Exchange cannot be made mandatory for recruitment under the Union. This Tribunal in OA 1074/98 had dealt with an OA where the facts of the applicant therein were similar to the ones of the applicant in this OA. We are of the view that the ratio of that order applies to the facts and circumstances of this case also.

14. In view of the foregoing, the applicant is entitled to the reliefs sought for. Accordingly, we quash A-7 notification issued by the department inviting applications for filling up the post of ED packer, Kollam Civil Station P.O. The applicant as a part-time casual labourer is entitled to be considered for filling up the post of ED packer, Kollam Civil Station P.O. in accordance with A-5 circular letter along with other similarly placed persons, if any, and only if none of them is suitable, the respondents can take action for filling up the same from outsiders.

15. OA stands allowed as above with no order as to costs.

Dated the 2nd day of December, 1999.


2/12/99
G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER
aa.


A.V. HARIDASAN
VICE CHAIRMAN

Annexures referred to in this Order:

- A-7: True copy of the Notification dated 9-12-98 No.E.D. Packer, Kollam Civil Stn issued by the first respondent.
- A-1: True copy of the appointment memo dated 27-2-83 issued by the Sub Postmaster, Kollam Cutchery.
- A-2: True copy of the representation dated 14-1-98 submitted by the applicant to the second respondent.
- A-3: True copy of the memo dated 16-1-98 No.EDP/KCS/97-98 issued by the first respondent.
- A-4: True copy of the charge report dated 17-1-98 No.EDP/KCS/97-98 issued by the first respondent.
- A-5: True copy of the letter dated 17.9.90 No.17-141/88/ED & Trg. issued by the Director General of Posts, New Delhi.
- A-6: True copy of the letter dated 21-5-91 No.45-38/91-SPB-I issued by the Director General of Posts, New Delhi.
- R-2(A): Statement given by the applicant before Assistant Supdt. of Post Offices, Kollam Division on 13-4-98.
- A-8: True copy of the final order dated 18.8.99 in OA 1074/98 of this Tribunal.