

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A Nos. 263 of 2006Wednesday, this the 16th day of July, 2008.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

C.Ramachandran Nair,
GDSMD, Thekkepara,
(Presently working as Group D,
Vallarada Sub Office,
Trivandrum).

Applicant

(By Advocate Mr MR Hariraj)

v.

1. The Union of India represented by
the Secretary to Government,
Department of Posts,
Ministry of Communication,
New Delhi.
2. Senior Superintendent of Post Offices,
Thiruvananthapuram Division,
Thiruvananthapuram.
3. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.Respondents

(By Advocate Mr. P Parameswaran Nair, ACGSC)

This application having been finally heard on 29.5.2008, the Tribunal on 16.7.2008 delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The grievance of the applicant who is a Gramin Dak Sevak Mail Deliverer

(GDSMD for short) is that the respondents are not appointing him as Group 'D' employee on regular basis inspite of the fact that vacancies are available and he himself is working against a Group'D' post with effect from 1.10.2001 on "Extra Expenditure System".

2. The applicant commenced service as GDSMD with effect from 30.6.1979. In the seniority list of GDS in Thiruvananthapuram South Division as on 1.7.2002 circulated vide Annexure A1 letter dated 28.1.2004, his position is at Sl.No.60. Those GDSs upto Sl.No.34 who are within the age limit of 50 years have already been promoted as Group'D'. According to the applicant, between Sl.No.35 to 60, there are only 6 GDSs who are within the age limit of 50 years and eligible for promotion to the post of Group'D' and he is the 7th eligible GDS. He further submitted that he was permitted to work as Group'D' on daily wage against a regular vacancy of Group'D' at Vallarada Sub Office with effect from 1.10.2001. Again vide Annexure A-2 letter dated 14.2.2005 he was permitted to work as outsider in the vacant post of Group'D' Vallarada provisionally for the period from 1.2.2005 to 31.7.2005 or till a regular appointment is made whichever is earlier. He has submitted that he is still working against a Group'D' post after having taken leave from the GDS post held by him. He was initially paid Rs.137/- per day which was increased to Rs.149/- and paid accordingly for six months and again it was reduced to Rs.137/-. According to him, the minimum basic pay of the Group'D' employee as on date is Rs.3825/- with the DA of 25%. Thus, the monthly pay of a Group'D' comes to Rs.4743/- and 1/30th of it would come to Rs.158/-. Besides a Group D employee would get many other benefits like HRA etc. He has been denied all those facilities.

3. The applicant has made Annexure A-3 representation dated 7.2.2006 to the Superintendent of Post Offices, Trivandrum South Division pointing out that



from 1.10.2001 he has been working on daily wages at Vellarada SO as a Group'D' and requested to fill up the existing Group'D' vacancies forthwith and to appoint him in one of those posts. However, vide Annexure A-4 impugned letter dated 13.2.2006 the Superintendent of Post Offices has informed him that he would be considered for appointment to Group'D' post in his turn. Applicant has further contended that for several years Group'D' posts are lying vacant and they are manned by daily wage/provisional hands on "Extra Expenditure System" and consequently the eligible GDSs are made to work as Group'D' on provisional basis. It has also pointed out that as per the provisions of Department of Posts (Group D Post) Recruitment Rules of 2002 (Annexure A-5) (hereinafter called "the Recruitment rules"), Group'D' post of Category-II in the Post Offices and some Sub ordinate offices are to be filled up by means of interview from GDS. 75% of the unfilled vacancies in Category-I are to be filled based on seniority from among the eligible GDSs. He has submitted out that there were vacancies available at Vellarada, Amaravila, Neyyattinkara, Aryanadu, Kattakada and Thycaud. Inspite of availability of those vacancies, respondents are filling up them by GDSs on daily wage basis under the on "Extra Expenditure System", without conducting regular selection. The applicant has pointed out that there are no rules or instructions which enable the respondents to engage GDSs on daily wage basis or on "Extra Expenditure System" in Group D post. According to him, the present arrangement has been designed only to refuse genuine benefits to the employees.

4. In the reply statement the respondents have submitted that the applicant was appointed as GDSMD, Thekkupara with effect from 30.6.1979. When the regular Group'D' post of Vellarada Post Office became vacant since 1.10.2001, he was engaged with his consent to work as Group'D' on temporary basis on "Extra Expenditure System" with effect from 4.3.2002. They have also



submitted that filling up the regular vacancies is strictly as per the instructions contained in the Government of India DOP letter No.60/29/98/(SP) B/1(Pt) dated 4.7.2001 according to which, clearance from the Screening Committee is a must for regular appointment. However, the screening committee had cleared only one post of Group'D' during 2003 for direct recruitment under Group'D' for Thiruvananthapuram South Postal Division and no post has been approved for during 2004. They have also submitted that the post of Group'D' Vellarada PO has since been abolished with effect from 5.6.2006 and the applicant has to work in his original post of GDSMD, Thekkupura from the above date. They have also submitted that the claim of the applicant to appoint him in any of the post lying vacant in Thiruvananthapuram South Postal Division and to fix his pay under the provisions of FR 22 (1)(a)(I) and to grant him arrears and other consequential benefits has no legal validity. According to them, since the applicant is permanently holding the post of a GD Sevak and his temporary placement in an unapproved Group D vacancy is not in the nature of a permanent appointment in Group D cadre (governed by Group D rectt. Rules), he has no claim for any benefits in the cadre of Group D, of which he is not a member yet and his remunerations are governed by the Directorate General, Department of Posts, New Delhi letter No.1-3/97-PAP dated 17.7.1998 (Annexure R-2) according to which the substitutes are paid @ 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance as on date for one full day's work. They have relied upon the judgment dated 8.7.2004 of the High Court of Delhi in W.P.(C) No.8615/2004 and 9282/2004 – Ms Kamala Devi & Ms Kamlesh v. Union of India & others (Annexure R-3) in which it was held that provisionally appointed Gramin Dak Sevaks, unless they are recruited as per the recruitment rules against sanctioned posts and possess the required qualification, do not have any right whatsoever for claiming regularisation for their long period of employment as provisional appointee. They have also filed a



copy of the Ministry of Communication & IT, Department of Posts letter dated 12.12.2005 (Annexure R-4) issued to all Heads of Circles holding that provisionally appointed GDSs have no claim for regularisation. In the said letter, the Department of Posts have relied upon the order of the Principal Bench of the Tribunal dated 14.11.2005 in R.A.231/2005 in O.A.3080/2004 -Ved Prakash, Ex-GDSMC v. Union of India C.W.P.(C) 8615/2004 and CWP 9282/2004 (Supra) and the judgment of the Apex Court in Union of India & others v. Devika Guha & others [2003(3) SC SLJ 132].

5. Counsel for the applicant, along with his rejoinder, has produced a common order of this Tribunal dated 7.10.2005 in O.A.977/2003 and O.A.277/2004. The applicants in those two OAs were Full Time Casual Labourers and have also worked against Group D posts intermittently. They were aggrieved by the fact that they have not been selected for the posts in Group D cadre. They have relied upon the Department of Posts (Group D Posts) Recruitment Rules, 2002 notified on 23.1.2002. The applicants therein averred that in terms of the provisions contained in Column 11 of the Schedule relating to method of recruitment, they were fully eligible to be promoted against the existing vacancies which fell under the quota for Casual Labourers and the inaction on the part of the respondents 1&2 to initiate steps for promotion of Casual Labourers in accordance with the Recruitment Rules was illegal, unreasonable and arbitrary. The contention of the respondents that the request of the applicant could not be considered for posting as Group D because only three vacancies have been approved for appointment in the Kollam Postal Division for the last three years and in 2000 and 2001 only one vacancy was approved by the screening committee and those vacancies have filled by the seniormost GDS who were entitled to be appointed against 75% of the vacancies. This Tribunal considered the question whether the screening

committee's approval was mandatory or not for filling up the vacancies. The respondents have not produced any rules or instructions or documents to show that the screening committee has the mandate to clear the vacancies for promotion. However, the contention of the respondents was that the method of recruitment as envisaged in column No.11 of the Recruitment Rules is direct recruitment and therefore the screening committee's prior approval was required for filling up the vacancies of Group D post. This Tribunal held that from a reading of the rules, the filling up of Group'D' post by the method prescribed in Column 11 cannot be construed as the method of direct recruitment as direct recruitment has been prescribed as an alternative method only if the other procedures failed and the method of recruitment followed was in the nature of promotion and, therefore, the approval of screening committee was not necessary. This Tribunal, further held that the omission on the part of the respondents in filling the substantive vacancies in Group D which arose in Kollam Division in accordance with Recruitment Rules was not sustainable. Accordingly, the respondents were directed to take steps for computing the Group D vacancies available against 25% quota for Casual Labourers in accordance with the Recruitment Rules 2002 and to appoint the applicants to those posts from the date the vacancies were available with all consequential benefits.

6. The applicant's counsel has also produced a copy of the order in O.A.115/2004 decided on 23.12.2005 in which also, the aforesaid recruitment rules was considered. It was noticed that according to the said rules, the method to be followed is by a test to determine the eligibility of the candidates holding the post specified in the rules and in case suitable candidates are not found, the remaining posts shall be filled up 75% by GDS of the Recruiting Division or Unit failing which by GDS of the neighbouring Division or Unit by selection-cum-seniority and 25% from casual labours under four sub categories



namely, 1) temporary status, 2) full time labours of the recruiting division, 3) full time casual labour of the neighbouring division or unit failing which by 4) part time casual labour in that order. In the said order also, this Tribunal directed the respondents 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.

7. On the direction of this Tribunal, the respondents have filed an additional affidavit showing the year wise vacancies from 2001 onwards and the action taken for approaching the Screening Committee for getting those vacancies filled up. The respondents have submitted that in the case of Vellarada SO, a vacancy of Group D has occurred on 1.10.2001 consequent to the retirement of the incumbent but this post was later abolished on 5.6.2006 by creation of a post of GDSMP and hence there is no vacancy of Group D at the said post office at present. At Amaravila Sub Post Office, the vacancy of Group D occurred with effect from 18.1.2006 consequent to the death of the incumbent working in that post and that post was filled on 16.6.2006 by transfer of an official from Vizhinjam SO and later on the said post was also abolished on 2.6.2006. At Neyyattinkara HO, there were 5 vacancies out of which two vacancies became available on 1.7.2002 and another vacancy on 1.1.2004. Other two vacancies have occurred on 19.2.2004 and 12.6.2004 respectively. The two vacancies which arose on 1.7.2004 were abolished on 10.3.2003 and 14.7.2004 and the vacancy which arose on 1.1.2004 was filled up on 30.9.2005. The remaining two vacancies are unfilled and work is managed under "extra cost arrangement". In respect of Aryanad SO a Group D vacancy arose on 1.11.2005 but the same was abolished on 2.6.2006. At Kattakkada SO, a vacancy arose on 23.8.2001 and it was filled by transfer on 15.2.2003. At Thycaud HO a total of five vacancies have occurred on 1.2.2002, 1.5.2002, 1.9.2005, 1.7.2007 and

1.1.2008 respectively. Of these five posts, 2 posts have been abolished, one on 10.3.2003 and other on 14.7.2004. All the three remaining posts are yet to be filled up. Thus altogether there are 5 vacancies available.

8. The respondents have also given details regarding the status of vacancies and the number of posts filled up/abolished from 2001 to 2008. A total of 25 vacancies have occurred, out of which 3 vacancies have been filled up, 9 vacancies have been abolished, and the balance 14 vacancies are remaining to be filled up.

9. We have heard Shri M.R.Hariraj, counsel for applicant and Shri P Parameswaran Nair, ACGSC for respondents. Admittedly, the applicant is a Gramin Dak Sevak who is entitled to be considered for appointment as Group D on regular basis in his turn in terms of the Department of Posts (Group D posts) Recruitment Rules, 2002. The method prescribed for recruitment as specified in column No.11 of the said Recruitment Rules is as under:

"A test shall be held to determine the working eligibility of the candidates holding the post specified against Sl.No.2 for filling up the posts. In case the suitable candidates are not found to fill up the posts by such test, the remaining posts shall be filled up by the method as specified below:

- (i) 75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl.No.2 shall be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak Sevaks of the neighbouring Division or Unit by selection-cum-seniority.
- (ii) 25% of the vacancies remaining unfilled after recruitment of employees mentioned at Sl.No.2, such vacancies shall be filled up by selection-cum-seniority in the following order:
 - (a) by casual labourers with temporary status of the recruiting division or unit failing which,
 - (b) by full time casual labourers of the recruiting division or unit failing which,
 - © by full time casual labourers of the neighbouring division or unit failing which,
 - (d) by part time Casual Labourers of the recruiting division or unit failing which,
- (iii) by direct recruitment.

Explanation: 1. For Postal Division or Unit, the neighbouring

Division or Unit, as the case may be, shall be the Railway Mail service sub Division and vice versa.

2. The afore-mentioned test shall be governed by the instructions issued by the Central Government from time to time."

10. From the above position, it is seen that 75% of the unfilled vacancies, after exhausting the first method, are to be filled up by seniormost GDSs. According to the respondents themselves, there are at least 5 vacancies of Group 'D' are available in Neyyattinkara HO and Thycade HO under the Trivandrum Sub Division as on 24.1.2008 (i.e. the date of filing the additional affidavit). They have also stated that for 2001 to 2008 (upto 24.1.2008) 26 Group D vacancies have arisen, out of which only 3 have been filled up. After 9 posts are abolished still there were 14 vacancies remaining to be filled up out of them 7 vacancies have occurred after "the Recruitment Rules" have been notified. These posts are now manned by substitutes/outsiders on provisional basis "on extra expenditure system".

11. The only reason given by the respondents in not filling the posts on regular basis is that the clearance for the "Screening Committee" is pre-requisite for such regular appointments and therefore, the applicant and similarly placed persons have not been considered and promoted. This issue was already considered by this Tribunal in common dated 7.10.2005 in O.A.Nos.977/2003 & 277/2004 and it was held as under:

"The question that arises therefore for consideration is whether the Screening Committee's approval is mandatory for filling up the posts with reference to the Recruitment rules. No documentary proof has been produced by the respondents to show what is the mandate of the Screening Committee referred to by them. It has been stated that Screening Committee's approval is required for filling up the vacancies by direct recruitment. From the reading of the rules it appears that the filling up of Group D posts by the method prescribed in Column 11 cannot be construed as the method for direct recruitment as direct recruitment has been prescribed as an alternative method only if the above procedure failed. Thus the



method of recruitment followed appears to be in the nature of promotion only. If that be so, the policy followed by the respondents for appointment of Group D only with the approval of the Screening Committee is incorrect. It has resulted in filling up only limited vacancies on regular basis and filling up the remaining vacancies on ad hoc basis from the GDS and has created a situation where all the vacancies got to be manned by GDS only leaving out the other 25% category of Casual Labourers from consideration. This is certainly discriminatory and in violation of the prescription in the Recruitment rules.

10. Coming to the applicants in these OAs, it is admitted by the respondents themselves that the applicant in OA No.277/2004 belongs to the first preferential category and is the seniormost and eligible to be appointed. It is also admitted by the respondents that the applicant in O.A.977/2003 is second in the list. Therefore both the applicants are eligible to be considered against the 25% quota for Casual Labourers and belonged to the first preferential category among the Casual Labourers i.e full time casual labourers with temporary status. Since the vacancy position has not been clearly stated by the respondents we are not in a position to compute the actual number of vacancies which fell within the 25% quota to which the applicants belong. However, the clear position that has emerged is that there are posts which the respondents had not filled up on regular basis but which are being manned by making short term appointments from the GDS. In our view this action of the respondents is contrary to the Recruitment Rules and therefore illegal and discriminatory and that the applicants should have been considered against the 25% quota available to them. However, we are not in a position to accept the argument of the learned counsel for the applicants that the O.As are covered by the decision of this Tribunal in O.A. 901/2003 which was pertaining to the applicability of upper age limit of 50 years for appointment to the Group-D posts in the Recruitment Rules and not to the question of filling up the quota earmarked for casual labourers.

11. Though the applicants have prayed for certain other reliefs like increment, bonus, GPF contribution and other consequential benefits these are not pressed during the arguments and therefore have not been considered.

12. In view of the above, we hold that the omission of the respondents in filling up the substantive vacancies in Group-D which arose in Kollam Division in accordance with Annexure A4 Recruitment Rules is not sustainable and direct the respondents to take immediate steps for computing the Group-D vacancies available (year-wise) against 25% quota for Casual Labourers in accordance with the Recruitment Rules 2002 and to appoint the applicants to these posts from the date of available vacancies with all consequential benefits within a period of three months from the date of receipt of a copy of this order."

The aforesaid order has been upheld by the Hon'ble High Court of Kerala in the

in W.P.(C) No.3618 and 4956 of 2006 by judgment dated 22.3.2007. The said judgment is reproduced as under:

"The petitioners herein are challenging the common judgment of the Central Administrative Tribunal in O.A.Nos.977/2003 & 277/2004. Short facts leading to the case are the following:

2. The respondents in the writ petitions are working as Casual Labourers and they approached the Tribunal to issue appropriate directions to take immediate steps to appoint them as Group D against 25% quota set apart for casual labourers under the relevant recruitment rules 2002. The respondent in writ petition No.36118/2006 who is the applicant in O.A.977/2003, has been doing sweeping work in the office of the Senior Superintendent of Post Offices, Kollam Postal division, Kollam. She was appointed as a full time casual labourer with effect from 1.1.1997 and is continuing as such. The Department has conferred temporary status to him in implementation of an earlier order passed by the Tribunal. The respondent in Writ Petition No.4956/2006 who is the applicant in O.A.277/2004 was conferred with temporary status with effect from 2.5.1999. In both cases the respondents claim their right for appointment against 25% vacancies of Group D posts.

3. The Tribunal in paragraphs 9 and 10 of the order, after considering the contentions of the parties, found that the method of recruitment provided in claims like these, is in the nature of promotion and it is not by way of any direct recruitment. It was also found that the contention raised by the petitioners that approval of the Screening Committee is mandatory for filling up of the posts, is not correct. The Tribunal, on an analysis of the relevant column of the recruitment rules, clearly found that the casual labourers who are entitled to be considered for promotion was left out from being promoted, resulting in discriminatory treatment. The Tribunal clearly found that there were sufficient vacancies which would definitely fall under the 25% category set apart for casual labourers. This being a finding of fact, it cannot be interfered with in proceedings under Article 227 of the Constitution of India and the petitioners could not point out that the said finding is perverse.

4. As far as the claim of the respondents for promotion is concerned, the petitioners clearly admitted in the pleadings that the applicant in O.A.277/2004, the respondent in Writ Petition No.4956/2006 is the seniormost eligible to be appointed and the respondent in writ Petition No.3618/2006 is the second in the list. They being casual labourers with temporary status, they are clearly covered by the method of recruitment. Accordingly, the Tribunal directed the petitioners to fill up the substantive vacancies in Group D which arose in Kollam Division in accordance with the relevant recruitment rules and to appoint the respondents to those posts from the date of vacancies.

5. The main contention raised by the petitioners is that prior approval of the Screening Committee is a must for filling up of the vacancies and also that the method of recruitment is only by way of direct recruitment. A reading of the recruitment rules will show that



the contention raised by the petitioners that only direct recruitment is the method, is not correct. Apart from that, they are not justified in contending that prior approval of the Screening Committee is required, as the same is not provided under the recruitment rules. The finding rendered by the Tribunal that the respondents who are applicants before it are entitled for promotion, is therefore perfectly in order. At any rate, the view taken by the Tribunal is not so perverse warranting interference by this court under Article 227 of the Constitution of India.

Hence, the writ petitions are dismissed upholding the order of the Central Administrative Tribunal."

12. Reaffirming the above position, the Tribunal in order dated 23.12.2005 in O.A.115/2004 (Annexure A-7) also held as under:

"6. Nowhere it is mentioned in the above rules that the method of recruitment is by way of direct recruitment. According to the rules, the first method to be followed is by a test to determine the eligibility of the candidates holding the post specified in the rules and in case suitable candidates are not found, the remaining posts shall be filled up 75% by GDS of the Recruiting Division or Unit failing which by GDS of the neighbouring Division or Unit by selection cum seniority and 25% from casual labourers under four sub categories namely, (1) temporary status, (2) full time labourers of the recruiting division, (3) full time casual labour of the neighbouring division or unit failing which by (4) part time casual labour in that order."

Again the Hon'ble High Court in W.P.22818/2006 dated 22.3.2007 confirmed the aforesaid order as under:

"Therefore, the Tribunal was right in holding the Casual Labourers have got a claim in respect of 25% of the vacancies remaining unfilled after recruitment of employees mentioned at serial No.2 and such vacancies shall be filled up by selection cum seniority in the order mentioned in that column itself. The contention raised by the petitioners therefore falls to the ground.

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 R2. 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 view taken by the Tribunal is not

perverse warranting interference under Article 227 of the Constitution of India.

7. Therefore, the writ petition is dismissed."

13. This issue was again considered extensively in O.A.346/2005 – **K.Sasidharan & others v. Senior Superintendent RMS EK Division, Ernakulam & others** decided on 2.11.2007. The operative part of the said order is worth reproducing here as under:

"11 On a wholesome reading of the columns pertaining to the selection and mode of recruitment as provided in the schedule to Part 1 of these rules it can be reasonably concluded that the scheme of recruitment envisaged only "promotion" by "selection-cum-seniority" initially from the categories as mentioned in the category 2 in schedule 2 and in case such categories are not available by the same method of "selection cum seniority" from the categories as mentioned in col. 11 of the Recruitment Rules in accordance with the percentages as stipulated. Only if any of the above methods fail the provision had been made in for "direct recruitment." Since the term "direct recruitment" is specifically referred to in the Recruitment Rules with reference to failing which clause as a last resort, it would be a natural corollary that the rest of the procedure should be construed as promotion. This view is further fortified by the provision of the Recruitment Rules relating to the consideration of the DPC and also by the method of selection prescribed as "selection cum seniority". In a case of direct recruitment there is no scope for seniority. Even if there is any ambiguity in the Recruitment Rules, a harmonious interpretation of the various provisions in the rules has to be undertaken and on that basis we had come to the conclusion that the selection of GDS under the 75% quota and also the selection of Casual Labourers under the 25% quota would fall under the category of promotion only. The orders in the OAs referred to supra and as confirmed by the Hon'ble High Court relate to part-time and full time Casual Labourers under the same rules who qualified under the 25% quota. However, the principle whether the method of selection was direct recruitment or promotion would remain the same for both the categories. We therefore reiterate our earlier view. In this context, advertiring to Annexures R-4 and R-5 orders of the Full Bench of this Tribunal referred to by the respondents, it is seen that Annexure R-4 order that the points referred to the Full Bench were whether the appointment of GDS as Postman in the 25% seniority quota is by way of direct recruitment or promotion. The rules of promotion to the post of Postman are entirely different from the rules in question in this O.A. Therefore, any reliance of this has no basis. Similarly

Annexure R-5 order on the Full Bench the point of reference were as follows:

(i) Whether the post of Extra Departmental Branch Postmaster being a feeder post for further promotion to group-D is a public post?

(ii) Whether the service rendered as EDBPM followed by promotion as Group-D employee which is a pensionable post can be taken into consideration for the purpose of determining as qualifying service for the purpose of pension and other benefits?

(iii) Whether the view taken by a Division Bench of this tribunal in O.A. NO. 283/HP/2003 (Rattan Singh Vs. Union of India and others)decided on 4.4.2003 is correct view?

Hence the legal question referred to the Full Bench was whether the service rendered as an EDA can be considered as qualifying service for purpose of pension on the ground that it is a public post. It is also an entirely unrelated issue and the Recruitment rules for the post of Group-D which is under consideration in this case were not covered by the above judgment. Hence we do not find that as far as this issue is concerned the stand of the respondents is legally defensible and the matter has already been settled by other earlier decisions as confirmed by the Hon'ble High Court.

12 The second aspect is whether for filling up the existing vacancies the approval of the Screening Committee is required or not. The answer to this question flows directly from the decision above whether the posts are to be filled up by direct recruitment or by promotion. It is clear that Annexure R-2 memorandum of the Department of Personnel and the instructions contained therein was limited to direct recruitment vacancies. Para 3 thereof is specific in this regard and this was already dealt with by us elaborately in our order in O.A. 115/2004. Therefore the reliance of the respondents on the Memorandum again has no basis and only shows the reluctance on the part of the respondents to accept the settled legal position. It is no doubt, true that it is the prerogative of the Department to take a conscious decision whether at any point of time the vacancies arising should be filled up or not. They can take a conscious decision not to fill up a post on the existence of a situation. While accepting their reliance on such a ratio in the judgment of the Hon'ble Supreme Court in AIR 1991 SSC 1612. It is also true that the court further observed therein:

"....However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as reflected at the



recruitment test, and no discrimination can be permitted....."

There is no such stand taken by the respondents that they had taken any such decision not to fill up the posts.

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."

14. The Apex Court in **Nirmal Chandra Bhattacharjee & others v. Union of India & others** [1991 Supp (2) SCC 363] has held as under:

"The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants."

15. In **Rajappan Nair v. State of Kerala** [1984 KLT 141], the Hon'ble High Court of Kerala considered the question whether a Government servant not

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promoted in time for no fault of his and later promoted with retrospective effect is entitled to restoration of his all benefits due to him or not and held as under:

"It is quite often happens that a Government servant does not get his due promotion on the date he ought to have got it, but later it is given to him with retrospective effect from an earlier date. If for no fault of his, promotion to a Government servant is delayed was due, the Government servant is naturally entitled to restoration of the benefits which he has lost not on account of his conduct or laches. It is only proper that the Government should restore to him all that is lost by way of salary or other emoluments. This is a principle stated by our learned brother Khalad J. in *Narayana Menon v. State of Kerala*, 1978 KLT 29, a principle concerning which we could not see how any exception could be taken. Since the question has been elaborately considered by our learned brother with which we are in respectful agreement we do not think we should go into this any further."

16. In **Nelson Edward v. KSRTC** [ILR 1991 (3) Kerala 98] the Hon'ble High court of Kerala has held as under:

"This attitude cannot be approved, since this court has repeatedly said that when on a particular day or for a promotion with effect from a particular date and for no fault of his, the same was denied, he is entitled to all the benefits, as if he has been appointed on the day on which he has been appointed."

17. In **Soman v. State of Kerala** [1992(1) KLT 83] also the High Court of Kerala has had the same view and observed that it was only proper that Government should restore all that is lost by way of salary or other emoluments for no fault of the employee. The operative part of that judgment reads as under:

"5. The essential principle to be borne in mind is that a Government Officer cannot be penalised for no fault attributed to him. It is against all legal principles and fair pay for any Government to take the stand that a mistake committed by the Government should remain eternally detrimental to the interests of the Government servant. It is indeed difficult to hold that a Government servant has forfeited his claim for arrears of salary when he did not get his due promotion for no fault attributable to him. In *Narayana Menon v. State of Kerala* (1978KLT 29) this Court held that a Government servant does not forfeit his claim for arrears of salary when he did not get his due promotion by a mistake of the

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Government. The above decision was approved by a Division Bench of this Court in *Rajappan Nair v. State of Kerala* (1984 KLT 141). This Court held that it is only proper that the Government should restore to the officer all that was lost by way of salary or other emoluments."

18. In **Somakuttan Nair v. State of Kerala** [1997 (1) KLT 601] the High Court held that when an individual is entitled to get promotion from an earlier date and such a promotion was unjustly denied to him, such mere retrospective promotion will stand an entirely different footing and he shall be declared entitled to get monetary benefits also. The operative part of the judgment reads as follows:

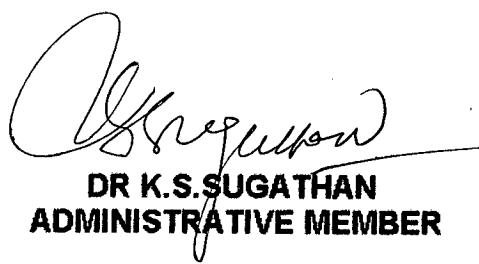
"When a Court declares that a particular individual is entitled to get earlier date of promotion and such a promotion was unjustly denied to him, such retrospective promotion will definitely stand on an entirely different footing."

19. 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.

20. We, therefore, allow this Original Application and quash and set aside the impugned Annexure A-4 letter dated 13.2.2006 to the extent it refuses to consider the applicant for regular appointment to Group'D' posts lying vacant. We hold that the non-filling of the available vacancies in Group D under the Trivandrum Postal Division in accordance with Department of Posts (Group D posts) Recruitment Rules, 2002 notified on 23.1.2002 is arbitrary and illegal. We, therefore, direct the respondents to take necessary steps as per "the



Recruitment Rules" expeditiously and consider the applicant for appointment as Group D in his turn. If he is found suitable, he shall be appointed from the date his turn has come with all consequential benefits including seniority, arrears of pay and allowances within a period of two months from the date of receipt of this order. There shall be no order as to costs.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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