

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 266 / 2006

Wednesday, this the 16th day of July, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

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

B.Babukuttan Nair,
GDS MD, Panavoor,
Residing at Parayahnkavu
Thadatharikathu Veedu,
Irinchayam P.O. Negumangad. - Applicant

(By Advocate Mr Sasidharan Chempazhanthiyil)

4

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

(By Advocate Mrs K Girija, ACGSC)

This application having been finally heard on 27.5.2008, the Tribunal on 16.7.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is a Gramin Dak Sevak Mail Deliverer (GDSMD for short).

According to him, at the time of filing this O.A in April, 2006, there were 21

vacancies of Group D staff under the first respondent, viz, the Superintendent of Post Offices, Trivandrum south Division. He has also submitted that he would be completing 50 years age on 13.5.2006 and if he is not given the appointment as Group D before that date he would become ineligible to be considered for appointment as per the Department of Posts (Group D Posts) Recruitment Rules, 2002. He has therefore, sought the following reliefs in the O.A.

- i) Direct the respondents to consider the applicant as Group D on a regular basis with effect from the date of occurrence of vacancy.
- ii) Declare that the applicant is entitled to be considered for appointment as Group D in the existing vacancies.
- iii) Direct the respondents to convene the DPC proceedings for appointment to the post of Group D forthwith and consider the applicant.

He has also sought the interim relief to direct the respondents to consider him for appointment on ad hoc basis in a Group D vacancy under the 1st respondent before 13.5.2006.

2. Considering the submissions made by the counsel for the parties at the time of admission of this Original Application, this Tribunal passed an interim order on 28.4.2006 that on determination of the vacancies for the year 2005 later, the applicant shall not be prejudiced for having crossed the age barrier and the DPC shall not deny him the consideration merely on the basis of age barrier.

3. The brief facts of the case are that the applicant was initially engaged as GDSMD, Panavoor on 24.2.1978. In the Annexure A-3 seniority list of GDS in Trivandrum South Division as on 1.1.2002, his position is at Sl.No.36. According to him, the persons at Sl.No.1 to 34 are no longer in service and he is the

second seniormost GDS eligible to be appointed as Group D. He has therefore, made the Annexure A-4 representation dated 9.4.2006 requesting the 1st respondent to consider him for appointment against any of the 21 Group D vacancies available in Trivandrum South Division under the seniority quota. He has also pointed out that he would be attaining the age of 55 on 30.5.2006 and he should be appointed as Group D at least on provisional basis as he would lose the chance of being appointed as Group D in future. He invited the attention of the respondents to the instructions contained in the Annexure A-5 letter of the DG, Posts No.47-11/93/SPB-1 dated 25.8.1993 according to which DPC for promotion of EDAs to Group D should be as per the prescribed schedule particularly keeping in view of those cases where some of the ED Agents are due for promotion are nearing the age of 50 years prescribed in the recruitment rules. It reads as under:

"DG Posts, letter No.47-11/93 SPB.I dated the 25th August, 1993
(V.3) DPC for appointment to Group D:

It has been reported to the Directorate that in number of circles, the Departmental promotion committee for ED Agents to Group D is not being held in time. As the maximum age prescribed for promotion of ED Agents to Group D is 50 years, some of the ED Agents lost their chance to get promoted as Group D. It is, therefore, requested that the DPCs for promotion of ED Agents to Group D should be held as per the prescribed schedule, particularly keeping in view those cases where some of the ED Agents due for promotion are nearing the age of 50 years as prescribed in the recruitment rules."

Again, in the DG Posts letter of even No. dated 31.3.1994, (Annexure A-5) instructions were issued to hold DPC in the beginning of the year itself and to complete the process by March. It reads as under:

"DG Posts, letter No.47-11/93 SPB.I dated the 31st March, 1994
(V.4) Constitution of DPC for appointment to Group D:

For appointment of ED Agents as Group D as per the revised procedure, necessary action to hold DPC may be initiated in the beginning of the year itself and the process of selection completed by March. The following shall be the composition of DPC for this purpose:

✓

(i) Divisional Head/Group A Postmaster as	Chairman
(ii) Another Group A or Group B Postal/RMS officer as the station or in the region as	Member
(iii) A Group B Officer from Telecom Department at the station or in the Region as	Member
The composition of DPC in PTCs shall be as follows:	
(i) Vice Principal as	Chairman
(ii) Administration Officer as	Member
(iii) A Group B Officer of Department of Telecom at the station/District as	Member

He has further submitted that inspite of the aforesaid directions of the DG, Posts, the recruitment for the post of Group D had been kept in abeyance for the years 1998 to 2000 in view of the dispute regarding upper age limit of EDAs. Thereafter, necessary amendments have been carried out in the recruitment rules. However, for the last 2 years, no recruitments have been done by the respondents to fill the Group D posts under the first respondent. Consequently, all those who are eligible to be considered like the applicant are loosing their chance for ever for being appointed as Group D. The applicant has submitted that the inaction on the part of the respondents to comply with the aforesaid directions are nothing but illegal and arbitrary.

5. In the reply statement the respondents have submitted that his Annexure A-4 representation requesting the respondents to appoint him as Group D was duly considered and vide Annexure R2 letter dated 27.4.2006 he was informed that at present and there is only one approved vacancy for the year 2003 as Postman and that post will have to be filled up from the seniormost GDS as per the recruitment rules. As per the Annexure R-4 and R-5 communications dated 7.1.2005 and 18.1.2005 respectively from the office of the Chief PMG, Kerala Circle, Trivandrum, the last vacancy approved for 2003 was filled up by appointing the seniormost person at Sl.No.33 (Shri K.O/Samuel). According to



them, all the physical vacancies cannot be filled up unless cleared by the Screening Committee and the remaining vacancies are liable to be abolished eventually. A vacant post can be treated as a clear vacancy only when it is approved for filling by the screening committee. Hence no provisional appointment can be made until it is declared a clear vacancy by the screening committee. They have also submitted that there was no question of holding any DPC as there were no vacancies cleared by the screening committee. In the case of the lone vacancy of 2003 approved in January 2005, DPC was conducted promptly and appointment was made on 30.9.2005 itself. Since no vacancy has been approved for 2004 or 2005 so far, there is no question of delay in holding of DPC. There is also no question of making any provisional appointment until the Screening Committee declares any clear vacancies.

6. Applicant filed a rejoinder stating that in the meanwhile one vacancy of Group D was sanctioned by the screening committee and he has made an application to consider him to that post as he is the seniormost GDS in Trivandrum South Division. The respondents, however, submitted that for the year 2005 one Group D post for the Trivandrum South Postal Division was approved by the screening committee and the same has been earmarked for candidates waiting for compassionate appointment and the applicant would not be considered for that post.

7. During the pendency of this O.A the applicant filed M.A. 409/2006 on 3.5.2006 stating that he was going to complete 50 years of age on 30.5.2006 and despite existence of vacancies he was not being considered for appointment to any Group post. He had pointed out 7 vacancies which were occurred during the year on account of superannuation/death/promotion of incumbents in Group D officials. Apart from that, another 5 more vacancies are also existing and the

L

respondents are getting work of these posts done by engaging outsiders. He has therefore submitted that it was just and proper that he be considered for a provisional appointment in any of the above vacancies. On the submission made by the respondents that they have no objection in considering the applicant for appointment on provisional basis, this Tribunal directed them to consider him for appointment on provisional basis on or before 30.5.2006. On the basis of the aforesaid direction, the applicant was posted as Group D employee in Nedumangad Post Office on 12.6.2006.

8. We have heard Shri Vishnu Chempazhanthiyil counsel for applicant and Mrs K Girija, ACGSC for respondents. The issue involved in this O.A is already a settled one. The Anenxure R-1 OM dated 16.5.2001 relied upon by the respondents was considered by this Tribunal earlier also and it was held that it related to only the direct recruitment and it has no application in the case of promotion to GDS to Group D posts. Therefore, approval of the Screening Committee is not required for filling up those posts as already held by this Tribunal in O.A.901/2003, O.A.977/2003, O.A.277/2004 and O.A.115/2004. In the common order in O.A.977/2003 and 277/2004 dated 7.10.2005, the Tribunal has 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."

9. The Hon'ble High court of Kerala has upheld the aforesaid order dated 7.10.2005 in W.P.(C) No.3618 and 4956 of 2006 by judgment dated 22.3.2007 has held 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."

10. Similarly, the order of this Tribunal in O.A.115/2004 dated 23.12.2005

also, it was 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."

11. 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."

12. 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:

"8 The learned counsel for the applicant produced the order of the Hon'ble High Court in WEP(C) 3618/2006 confirming the order of this Tribunal in O.A. 977/2003 and order in WP 2218/2006 confirming the order of this Tribunal in O.A. 115/2004 and submitted that since the declaration of this Tribunal that the consideration of the GDS against

75% of Group-D posts is not by way of direct recruitment and the prior approval of the Screening Committee is therefore not required has been upheld by the Hon'ble High Court. Hence, the stand of the respondents is legally unsustainable. Also it was pointed out that Annexures R-3 and R-4 orders now enclosed by the respondents do not deal with the issue on hand.

9 The learned counsel for the respondents maintained the respondents' stand taken in the reply and additional reply statements and also placed reliance on the judgment of the Hon'ble Supreme Court in Shankarsan Dash Vs. Union of India (AIR 1991SC 1612) in which it has been observed that

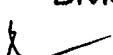
"....Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies...."

10 We have carefully considered the pleadings and the arguments advanced by the learned counsel on either side. As is evident, this issue has come up time and again before this Tribunal and we have given considerable thought on the position as reflected in the Recruitment Rules. For facility of reference the relevant provisions of the Schedule,Part-II – Post of Subordinate offices in Recruitment Rules are extracted as below:-

Col. 11 Method of recruitment shall be in the manner specified below, namely-

A test shall be held to determine the working eligibility of the candidates holding the post of 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

(c) 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.

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, advertizing 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

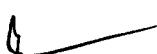
lying vacant of which 8 Group-D posts are to be abolished. This is a decision within the authority of the department and we cannot find fault with the same. However, it is not clear whether this recommendation for abolishing the 8 posts was accepted by the competent authority. In any case, the respondents 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."



13. We have heard Shri Sasidharan Chempazhanthiyil, counsel for applicant and Smt K Girija, ACGSC for respondents 1 to 3.

14. Admittedly, between the years 2002 and 2005, 10 vacancies of Group D have arisen in Kottayam Division. Out of them, only 4 vacancies have been filled up. The only reason given by the respondents in not filling all the vacancies in accordance with the provisions contained in the Department of Posts Group 'D' posts) Recruitment Rules, 2002 and the instructions contained in the DG, Posts letter No.47/11/93-SPB.I dated 25.5.1993 and of even number dated 31.3.1994 (supra) is that the Screening Committee have not cleared those vacancies. Since this Tribunal vide common order dated 7.10.2005 in O.A.977/2003 and 277/2004 (supra) has categorically held that the Screening Committee's approval was not mandatory in filling up the posts with reference to the Recruitment Rules and the Hon'ble High Court of Kerala has upheld the aforesaid order vide judgment dated 22.3.2007 in W.P.(C) No.3618 and 4956 of 2006 (supra) the aforesaid reason of the respondents is no more valid. The order of this Tribunal in O.A.115/2004 dated 23.12.2005 and the judgment of the High Court of Kerala in C.M.P.No.22818/2006 dated 22.3.2007 (supra) are also an identical lines. Again, this Tribunal has passed similar orders in O.A.346/2005 (supra) on 2.11.2007. We also, therefore, reiterate that the clearance from the Screening Committee cannot be validly held as a pre- condition for promoting the GDSs or the Casual Labourers in accordance with the Recruitment rules. It is a well accepted principle that when a field is already occupied by statutory provisions, no policy order contrary to it can be followed unless the rules are amended correspondingly to implement the order. It was because the respondents have not considered the applicant for promotion to Group'D' in time in accordance with the Recruitment Rules that he could not be appointed as Group'D' before he has



crossed the maximum age limit prescribed by the respondents for such appointment.

15. 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."

The respondents shall, therefore, hold a review DPC for promotion to the post of Group D and consider the applicant for promotion on the basis of his seniority and appoint him as Group D with retrospective effect from the date he became due for that post on the availability of vacancy. In the facts and circumstances of this case, the principle of "no pay for no work" during the period of notional promotion will not applicable in the present case.

16. 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 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 *Khakad 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."



17. 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."

18. 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 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."

19. 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:

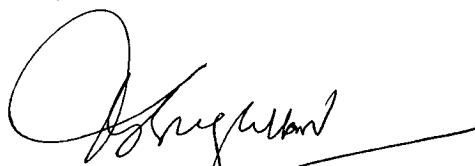
"When a Court declares that a particular individual is entitled to get earlier date of promotion and such a promotion was unjustly denied



to him, such retrospective promotion will definitely stand on an entirely different footing."

20. 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.

21. We, therefore, declare that the applicant was entitled to be considered for appointment as Group 'D' in his turn when the vacancy was available in accordance with the provisions contained in the Department of Posts (Group D Posts) Recruitment rules, 2002 and the instructions No.47-11/93-SPB.I dated 25.8.1993 and of even No. dated 31.3.1994. The respondents shall hold review DPC and consider the applicant with reference to the vacancy against which he should have ordinarily been appointed in his turn in accordance with the Recruitment Rules and if he is found suitable, he shall be appointed retrospectively from that date as a Group 'D' with all consequential benefits including seniority, arrears of pay and allowances etc. The aforesaid direction shall be complied with within a period of two months and necessary order shall be issued. There shall be no order as to costs.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER