

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.3/05

Friday, this the 10th day of June, 2005.

C O R A M :

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Lathakumari K.,
W/o.Madhusoodanan Nair,
Part time Contingent Employee,
Vellayani P.O., Thiruvananthapuram.
Residing at Edayil Vila Veedu, Keezhoor,
Vellayani P.O.

...Applicant

(By Advocate Mr.Sasidharan Chempazhanthiyil)

Versus

1. Assistant Superintendent of Post Offices,
Thiruvananthapuram East Sub Division,
Thiruvananthapuram – 5.
2. Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram – 14.
3. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is working as permanent part time contingent employee in Vellayani Post Office. She is entitled to preference in the matter of appointment to GDS posts. She applied to consider her to the vacant post of GDS BPM Ambalathara which was not considered. Therefore she has filed this application seeking the following reliefs :-

1. Direct the 1st and 2nd respondents to consider the applicant for an appointment to the post of GDS BPM Ambalathara.

2. Declare that the applicant is entitled to the benefit of Annexure A-3 and direct the respondents to take action accordingly.

3. Direct the 2nd respondent to consider and pass orders on Annexure A-1 and Annexure A-2 representations in the light of Annexure A-3.

2. The averment of the applicant is that she was working as a part time contingent employee in Vellayani Post Office since 5.4.1997 continuously and is continuing as such even now. Further she is fully qualified for appointment to GDS Posts. The post of BPM Ambalathara under the 2nd respondent fell vacant consequent on the transfer of the incumbent to another BPM post. On coming to know that the vacancy would arise the applicant made representations claiming appointment on 11.8.2004 and 15.10.2004 but the same was not considered. Again the applicant sent another representation on 17.12.2004 to the 2nd respondent. However the respondents have not taken any action. It is submitted that vide Annexure A-3 letter of Director General, Department of Posts, New Delhi the part time contingent employees are entitled to preference in the matter of ED Posts. Since the applicant satisfies all the conditions prescribed in Annexure A-3 she is entitled to the benefit of Annexure A-3.

3. Respondents have filed a detailed reply statement contending that as per DG Posts letter dated 17.2.2004 it is the prerogative of the Chief Postmaster General/Postmaster General to fill up any vacant post of GDS keeping in view the justification in terms of workload of the concerned post office. Accordingly the workload of the Branch Postmaster, Ambalathara was examined and a proposal for filling up the post was forwarded to the Chief Postmaster General, Kerala Circle. Permission to fill up the post is still awaited. Pending approval for filling up the post on regular basis, it



was decided to make provisional appointment to the post. Accordingly requisition was placed on the Employment Exchange for nomination of suitable candidates. Learned counsel for the respondents submitted that though the applicant was engaged as a part time contingent employee at Vellayani Post Office with effect from 5.4.1997 she is not a properly selected candidate as she was engaged without any formal process of selection. As per DG Posts letter dated 6.6.88 (Annexure A-3) casual labourers who are willing to be appointed to ED (now GDS) vacancies may be given preference in the matter of recruitment to GDS posts provided they fulfil all the conditions and have put in a minimum service of one year. It has also been stipulated that such casual labourers who are considered for GDS vacancies should have, initially, been sponsored by Employment Exchange. The applicant was not a candidate sponsored by the Employment Exchange. The post in question cannot be filled on regular basis without the approval of the Chief Postmaster General, Kerala Circle.

4. When the matter came up for hearing Shri.Sasidharan Chempazhanthiyil appeared for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC appeared for the respondents. Learned counsel for the applicant argued that as per the letter of Director General of Posts dated 6.6.1988 and 31.3.1992 open market recruitment could be resorted only if the applicant is found unsuitable for such appointment. Learned counsel for the respondents, on the other hand, persuasively argued that the applicant was only a part time contingent employee, she is not a properly selected candidate and also not a candidate sponsored by the Employment Exchange and therefore her case cannot be considered.

5. We have given due consideration to the arguments advanced by the



counsel and material placed on record. The short question for consideration is that whether the applicant who is a part time contingent employee has to be considered in preference to the open market candidate. Learned counsel for the applicant has brought to our notice Annexure A-3 letter dated 6.6.1988 which is reproduced as under :-

"DG Posts Letter No.17-141/88-EDC & Trg., dated the 6th June, 1988.

Sub : Preference to casual labourers in the matter of appointment as ED Agents.

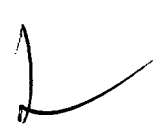
According to the prevalent Recruitment Rules governing the cadre of Group 'D', the order of preference among various segments of eligible employees is as under :-

- (a) Non test category
- (b) ED 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 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 one 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."



6. On going through the said letter it is clear that preference should be given to casual labourers for recruitment as ED Agents. It is also brought to our notice that this Tribunal had occasion to consider an identical case (O.A.818/2000) wherein this Tribunal observed that :-

The part-time contingent employee who had been working from December 1993 onwards was denied the benefit of preference in the matter of appointment to ED post for the reason that the applicant was not sponsored by the Employment Exchange. The Tribunal held that as the applicant had worked as Part time casual labourer for a long period, this benefit should not be denied to him solely for the reason that he was not engaged as casual labour through the intervention of the agency of Employment Exchange.

7. Therefore the contention of the respondents that the applicant had not been sponsored by Employment Exchange cannot hold good. Further, in (1996) 6 SCC 216, Excise Syuperintendent, Malkapatnam, Krishna District, A.P., the Apex Court has held that, restricting the selection only to the candidates sponsored by the Employment Exchange, was not proper. In the circumstances, the applicant has made out a case and therefore we are of the view that the relief has to be granted to the applicant. The contention of the applicant that vide Annexure A-5 notification the respondents are attempting to fill up the said vacancy on provisional basis, on going through the said notification, we find that though appointment is on provisional basis it is likely to be regularised. In the circumstances, we are of the view that it is a fit case where direction be given to the respondents to consider the applicant for an appointment to the post of GDS BPM Ambalathara.

8. In the light of the above submissions, the application is allowed.



Respondents are directed to consider the applicant for an appointment to the post of GDS BPM Ambalathara and give her the benefit contained in the letter of Director General of Posts. It is made clear that selection through open market could only be resorted to, if the applicant is found unsuitable for such appointment. With above direction the O.A is allowed. In the circumstances, no order as to costs.

.Dated the 10th June, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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