



CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOs 977/2003 & 277/2004

FRIDAY THIS THE SEVENTH DAY OF OCTOBER, 2005

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

O.A.977/2003

R. Padma W/o Sri N. Damodaran Pillai
Sweeper, office of the Senior Supdt.
Of Post Offices
Kollam Postal Division, Kollam
residing at Pranavam, Ambipoyka PO
Kundara, Kollam District.

..Applicant

By Senior Advocate Mr. O.V. Radhakrishnan

Vs.

- 1 Chief Postmaster General
Kerala Circle
Thiruvananthapuram.
- 2 Senior Superintendent of Post Offices
Kollam Postal Division
Kollam.
- 3 Union of India
represented by its Secretary
Ministry of Communications
New Delhi.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O.A.No. 277/2004

M. Kunjukrishna Pillai S/o late Madhavan Pillai
Temporary Group-D, Head Post Offices Kollam
residing at Vazhavila Veedu
Kunukkannoor, Alumood BO
Mukhathala SO, Kollam-691 001.

Applicant

By Senior Advocate Mr. O.V. Radhakrishnan,

Vs.

- 1 Postmaster
Head Post Offices Kollam.
- 2 Senior Superintendent of Post Offices
Kollam Division, Kollam.

3 Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.

4 Union of India represented by its Secretary
Ministry of Communications
New Delhi.

5 S. Vasukdevan Pillai, GDSMD
Kuzhimathicaud
presently working as Leave Reserve Group-D
Kollam Head Post Offices Kollam.

Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC For R 1-4

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The Applicants in these two OAs who are full-time Casual Labourers and have been working intermittently in Group-D posts, are aggrieved by the fact that they have not been selected for the posts which arose in Group-D cadre. Since the grounds put forth by the applicants and the reliefs asked for are the same and both the applicants are working in the same administrative unit, namely, Kollam Postal Division, these two Original Applications were heard together and are disposed of by a common order. The brief facts of the cases as submitted by the applicants are as follows.

2 The applicant in O.A. 977/2003 had been doing sweeping work in the office of the second respondent. She had approached this Tribunal earlier praying to be considered as full time Casual Labourer which had been allowed by the Tribunal and after the OP filed by the Department was dismissed by the Hon'ble High Court of Kerala, again after approaching the Tribunal in Contempt Petition, the Department implemented the orders by conferring temporary status but she had to submit repeated representations for determination of consequential benefits. Thereafter since 19.5.2003 she had been requesting to be considered against 25% of the vacancies of Group-D posts reserved for full time casual labourers. She had been appointed as full-time casual labourer

w.e.f. 1.1.1997 as per Annexure A1 order and has been continuing as such for over six years.

3 The applicant in O.A. 277/2004 was conferred with temporary status w.e.f. 2.5.1999. He was engaged to work as Temporary Group-D intermittently in the Head Post Office, Kollam and while working as Temporary Group-D, his services were terminated w.e.f. 30.3.2004. He had earlier worked as Casual Driver from 28.3.1984 to 27.3.1988 intermittently but was not considered for appointment as regular driver which is a Group-C post on the ground of crossing the minimum age limit. He contends that though he was conferred with temporary status as per Annexure A1 and is entitled to get first preference for appointment against 25% vacancies of Group-D posts, the respondents have not considered him for appointment.

4 The applicants relied on the rule position as embodied in the Department of Posts(Group-D Posts) Recruitment Rules, 2002 notified on 23.1.2002 (Annexure A1). According to para 2 of the Schedule to the above rules the education qualification prescribed for direct recruitment is not applicable to promotees. Column 11 of the Schedule to the Rules relates to method of recruitment which reads as follows:

"(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 of the recruiting division or unit failing which"

5 In view of the above rule position, the applicants aver that they are 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 is illegal, unreasonable and arbitrary.

6 In the reply statement filed the respondents have admitted that the applicants were provisionally engaged as part-time employees and following the directions of this Tribunal; they were appointed as Full-Time Casual Labourers. The request of the applicants to consider them for posting as Group-D cannot be entertained 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 two vacancies and in the year 2002 only one vacancy was approved. The above vacancies were filled by seniormost GDS who were entitled to be appointed against 75% of the vacancies. According to the respondents even if there was a vacancy earmarked against 25% of the quota it would go to one M. Kunjukrishna Pillai (who is incidentally the applicant in O.A. 277/2004) who is yet to be regularised as Group-D and who is senior to the applicant in O.A. 977/2003. They have also submitted that there are no approved vacancies of Group-D in Kollam Division. It is further averred that the 5th respondent in O.A. 277/2004 was appointed as he is the seniormost GDS belonging to the panel of senior GDS drawn for appointment to Group-D/Postman cadre in Kollam Postal Division and that the vacancy in which he has been appointed was earmarked for 75% quota. The applicant has been engaged in another leave vacancy in Group-D and is still continuing. Therefore there is nothing illegal or discriminatory in appointing the 5th respondent and continuing the applicant in a leave vacancy.

7 We have heard the learned Senior Counsel Shri O.V. Radhakrishnan for the applicant and Shri T.P.M. Ibrahim Khan, SCGSC for the respondents. The learned Senior Counsel submitted that the case is already covered by the judgment of this Tribunal in O.A.901/2003. The main thrust of his argument was

that the applicants have been unjustly denied their rights under the pretext that the Screening Committee has not cleared the vacancies. This position is illegal and indefensible as no material has been produced to prove that the approval of the Screening Committee is necessary and it had already been settled by decisions of this Tribunal that the appointment to the Group-D posts are in the nature of promotion and not direct recruitment. He relied on the judgment of the Hon'ble Supreme Court in AIR 1988 SC 2181 which lays down that if a position is pleaded and the materials based on which the submission is made are not produced to support the same, such pleadings have to be ignored.

8 The learned counsel for the respondents maintained that the vacancy position stated by the applicants is not factually correct and since two vacancies, one in each year had been approved by the Screening Committee it was not possible to split them in the ratio 75:25. It was further argued that the decision to fill up the post is a policy decision of the Government and sanction is to be issued by the Screening Committee for filling up the vacancies under direct recruitment. Hence they have acted within the ambit of the rules.

9 We have heard the learned counsel for both the parties and perused the records. The service particulars of the applicants are undisputed. The dispute arises only with respect to the number of vacancies of Group-D posts in the Division falling in the 25% quota set apart for Casual Labourers, full time and part time. It is seen that the rules that published on 23.1.2002 came into force only from that date. Therefore the above rules will be applicable only to the vacancies which arose on or after 23.1.2002. According to the applicants, 11 GDSs have been selected provisionally to work against Group-D vacancies for Kollam Postal Division on temporary basis from 1999 onwards. According to them at least 16 GDSs are working in the Group-D cadre on purely provisional and temporary basis for over four years. According to the column 11 of the Schedule to the Recruitment Rules there are no eligible candidates belonging to

Sl. No. 2 and therefore all the above vacancies had to be filled in the 75:25 ratio and therefore 4 vacancies would definitely fall under the 25% category set apart for Casual Labourers. The respondents on the other hand contend that there have been only three vacancies one each in 2000, 2001 and 2002 and therefore they could not operate the 25% quota. The difference in the two perceptions is due to the fact that the respondents are taking into account only the vacancies approved by the Screening Committee constituted for filling up the vacancies and not the actual number of vacancies. The fact that there are other vacancies is quite clear from the averments of the respondents in para 5 of their reply statement in OA 277/2004 and para 3 of the reply statement in O.A.977/2003, to the effect that "other vacancies in Group-D post are being manned by senior GDSs on stop gap arrangements for want of sanction of the Screening Committee for filling up of those posts". 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 adhoc 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} ~~principles~~ of the Recruitment Rules.

10 Coming to the applicants in these⁷ 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 GDSs. 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 OAs 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.

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

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