

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 286 OF 2005

Friday this the 23rd day of March, 2007

CORAM :

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Elizabeth Francis
Working as Part Time Sweeper
Thalasserry HPO
Residing at : Naramparambath Mullil House
Coimbatore Saw Mill Road
West Ponniam PO, Erankolli
Thalasserry

: Applicant

(By Advocate M/s K.Radhamani Amma & Mr.Antony Mukkath)

Versus

1. Superintendent of Post Offices
Thalasserry Division,
PO Thalasserry - 670 102
2. Postmaster General
Northern Region, Kozhikode
3. Chief Postmaster General
Kerala Circle, Thiruvananthapuram
4. Director General of Posts
Dak Bhawan, New Delhi
5. Union of India represented by its Secretary
Ministry of Communications
New Delhi

: Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 19.01.2007, the Tribunal on 23.03.2007 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. Smt.Elizabeth Francis, part time sweeper, Thaleserry HPO is aggrieved by the inaction of the respondents in promoting her to a Group 'D' post.



2. The applicant was provisionally appointed as part time sweeper vide A-1 memo dated 06.03.1985 with effect from 02.03.1985. She has been making ever since, representations requesting the authorities to appoint her as full time casual labourer. She secured an order from this Tribunal in OA 346/98, directing the respondents to consider her representation dated 16.12.1997 in the light of instructions on the subject for combining the duties and to give her appropriate order within a period of three months from the date of receipt of a copy of that order. In pursuance of the said order, the respondents passed Annexure A-3 proceedings dated 22.09.1998. Explaining that the benefit of combination of duties could be given only to Smt Mary Joseph, the senior among the casual workers, it was conveyed to the applicant that her request could not be complied with at present. The applicant submitted another representation, this time requesting for an appointment to Group 'D' post. This was responded to by the respondents vide Annexure A-4 letter dated 01.01.1999 that she could not be given such appointment until and unless she was provided with full time work, she being only a part time contingent employee at that time. Another representation was submitted by her dated 04.02.1999 for appointing her against a Group 'D' post. Vide Annexure A-5 letter 16.04.1999, a reply was given to her saying that as per rules for recruitment of Group 'D' in Post Offices, preference was to be given to ED Agents of the Division and hence her request could not be acceded to. The applicant contends that vide Annexure A-6 recruitment rules, she is entitled to be considered for appointment. She made some more representations, requesting to make her a full time casual labourer and to appoint her against a Group 'D' post, with no result and hence this application before the Tribunal.

3. The reliefs requested by her are the following :-

- i) A direction to the respondents to appoint her as full time casual labourer



by combination of duties on and from the date of superannuation of Smt.

Mary Joseph and

- ii) Another direction to take immediate steps for promoting her to Group 'D' post on the basis of her casual labourer seniority

4. The grounds relied on by her are the following :-

- i) The inaction on the part of the respondents to fill in four clear vacancies available at present is unconstitutional

- ii) She is eligible to be so appointed in terms of the RR as in A-6.

5. The respondents oppose the application on the following grounds:-

- i) No additional duty to allot to the applicant is now available at Thalassery HPO.

- ii) Appointment of casual labourers as Group 'D' is not by promotion but by direct recruitment.

- lii) Appointment by direct recruitment is subject to instructions issued by the DOPT regarding the percentage of vacancies and the stipulations in the recruitment rules.

- iv) No appointment was made so far, overlooking the legitimate claims of any casual labourer including the applicant.

- v) It is not possible to remove Smt. Mary Joseph just to accommodate the applicant – as per the existing rules the casual labourer whether full time or part time can continue so long as she is healthy enough to function as such and in any case, she has not been cited as a party

- vi) The applicant has no case that any provisions of the recruitment rules has been violated

- vii) No posts are available under 25% quota.

6. Heard the parties and perused the documents.



7. First question to be answered is whether the appointment to the Group'D' post is by way of direct recruitment or promotion. According to column 11 of the A6 recruitment rules, 75% of the vacancies remaining unfilled after recruitment from employees mentioned at Serial 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 Units by Selection-cum-seniority. 25% of the vacancies remaining unfilled after recruitment of employees mentioned at Serial No.2 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 neighboring Division or Unit failing which,
- (d) by part time casual labourers of the Recruiting Division or Unit failing which,
- (iii) by direct recruitment

8. The respondents' contention is that such appointment is through a process of direct recruitment as evidenced by the answer below Col.12 of Part II of the Schedule attached to A-6. Col.12 and the answer there below read as follows:

Col.12 In case of recruitment by promotion or deputation or absorption, grades from which promotion/deputation/absorption to be made - Not Applicable.

Apparently by implication and by a process of elimination, they hold on to the view that it is a case of direct recruitment. But, it is to be seen that the columnar



heading of 11 as elaborated above leaves us with no doubt that a hierarchy of procedures has been laid down for appointment to Group D posts. It is significant to note that when all the preceding modes of appointment fail, then and only then direct recruitment is shown as the mode of appointment. In fact, as brought out by the learned counsel for the applicant, this matter has been already decided by this Tribunal in O.A.977/2003 and 277/2004 in the judgment delivered on 7th October, 2005(A-10). In that O.A, the applicants were full time Casual Labourers who were working intermittently in Group D posts and who were aggrieved by non-selection to the posts which arose in Group D cadre. The applicants therein had referred to same recruitment rules as herein and the respondents contended that the clearance of Screening Committee was required to fill up the posts. This Tribunal had come to the definite conclusion that the mode of appointment was in the nature of promotion by ruling,

"9.....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 GEDS 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 on the Recruitment Rules."

We are in agreement with the above mentioned ratio and find that the mode of appointment to Group D posts is by way of promotion.

9. The next question to be decided is what is the vacancy position against



which the applicant can stake her claim. The pictures presented by both sides do not lead to any clear conclusion on this issue. According to the applicant, there are four vacancies. The basis for such assertion is not known. Fully disputing this figure, the respondents merely mention that the number of vacancies is as per the clearance given by the Screening Committee in view of their pre-stated position that the mode is only through direct recruitment and not through promotion. It is significant to note that A-6 Part-II Sl.No.1 deals with the question of appointment to a set of posts – Letter Peons/Peons/Porter/Van Orderly/Gatemen/Attendant-cum-Khansama/Cleaner in Mail Motor Pumpmen/Peons/Box Mail Packer/Runner/Peon. Sl.No.2 refers to another set of posts like Chowkidar, Watchmen etc. It is envisaged in col.11 relating to Sl.No.1 posts that, eligible candidates from Sl.No.2 will have to be selected for filling up the posts at Sl.No.1 as mentioned above through a testing process. If, no eligible candidates are available, then only the hierarchical method described above should be followed. It is not known whether the four vacancies referred to by the applicants is before or after assessment of eligibility of Sl.No.2 candidates. If, after such assessment, four vacancies remain, then again the question arises that in terms of the prescriptions under Col.11, 3 posts (75%) shall go to GDS of certain specific categories, only one (25%) going for filling up by selection-cum-seniority. It is still possible that the four vacancies claimed by the applicant may be the 25% but here again, the hierarchy of of four categories is mentioned and going by the status of the applicant as on date, she should be placed in the last category. The respondents have been all along been sticking to the stand that the appointment is only through direct recruitment and the applicant herein is not eligible to be considered for appointment to Group D. In view of the stand, the number of possible contestants available in each one of the four categories under the 25% quota and their relative seniority is a point not seriously asserted by the applicants nor elaborated by the respondents. In view



of the uncertainty clouding the issue, we find that no direction can possibly be given to the authorities concerned to consider the applicant as the seniormost of the Part Time Casual Labourer category. Hence we find that the available pleadings do not lead us to an unequivocal position as regards the exact number of vacancies under the 25% quota.

10. The next point to be considered is whether Smt MaryJoseph should be dislodged from her present position and the applicant installed therein with the result that the latter becomes a full time casual labourer which would enhance her competitive ability against the 25% vacancies. Though arguments have been advanced by both the parties, for and against such dislodgement, the fact remains, as pointed out by the respondents that Smt. Mary Joseph has not been added as a party respondent. The applicant's point is that no relief is sought for from Smt Mary Joseph and hence there is no need to include her in the party array. This may not be a correct argument. The respondents contend that as per certain instructions, Smt. Mary Joseph could continue but the applicant insists that she should be replaced by the applicant once the former attains the age of superannuation. If the applicant's prayer is to succeed that would have civil consequences for Smt. Mary Joseph. For that reason it is only fair that she should have been made party respondent. Hence we find that an adjudication on the point of making the applicant a full time casual labourer is not possible in the absence of inclusion of Smt. Mary Joseph as a party respondent.

11. The question still remains as to what relief, if any, is there to which the applicant is entitled to. Reference has already been made to the decision made by this Tribunal in an identical issue in O.A977/2003 and 277/2004. It was held therein as follows:

"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 (yearwise) 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."

We find that it will be proper to direct that the respondents should take immediate steps on similar lines.

12. In sum, we find that

- i) the mode of appointment to Group D posts after accommodating the Sl.No.2 employees is by way of promotion followed by direct recruitment..
- ii) The available pleadings do not lead us to any unequivocal position as regards to the exact number of vacancies available under the 25% quota.
- iii) an adjudication on the point of making the applicant a full time casual labourer is not justified in the absence of inclusion of the present incumbent as a party respondent and that
- iv) it will be proper to direct that the respondents should take immediate steps for filling the vacancies available ever since the date of effect of A-6 Recruitment Rules in terms of the prescription under column 11 thereof.

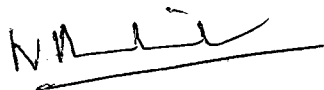
13. In the interest of justice and based upon the findings above, we order that the respondents shall take immediate steps for computing the number of Group D vacancies and proceed to fill them up as provided under Col.11 of A-6, viz, conducting of eligibility test of candidates from Sl.No.2 and filling them up with



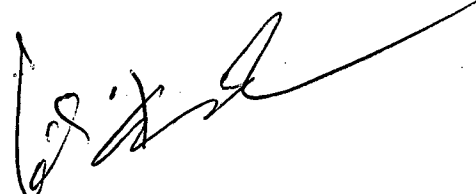
successful candidates and the remaining vacancies if any, to be filled in as provided under sub para (i) & (ii) and direct recruitment should be resorted to if and only if the above measures do not yield the desired result.

14. With this the O.A is disposed of . No costs.

Dated, the 23rd March, 20007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

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