A

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.212/06, 193/06 and 290/06

Tuesday, this the 23rd day of January, 2007

CORAM :

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. OA 212/2006 :

1. Shinu.V.A
Gramin Dak Sevak Sub Postmaster,
Aluva Ashokapuram PO,
Aluva Division
Residing at : Vadakkan House
Okkal PO, Vallom Junction
Ernakulam District

2. Ashique Rehman
Gramin Dak Sevak Mail Packer,
Civil Station PO, Kozhikode.
Residing at : Cherikkal House, Vellayil Road,
Kozhikode - 32

3. Roy.C.J
Gramin Dak Sevak Mail Deliverer,
Avanur, Trichur.
Residing at : Chirayath House, Viyooor PO
Pudukad, Trichur : Applicants

(By Advocate Mr.Shafik M.A.)

Vs.

1. Union of India represented by Director General
Department of Posts, New Delhi.

2. The Chief Post Master General
Kerala Circle, Trivandrum.

3.. The Assistant Director (Welfare & Sports)
O/o Chief Post Master General,
Kerala Circle, Trivandrum : Respondents

(By Advocate Mr. Sunil Jose, ACGSC)

2. OA 193/06 :

Boben K.George
Gramin Dak Sevak Mail Deliverer,
Kumplampoika Post Office, Pathanamthitta
Residign at : Kunnumpurathu House

Punnakkad PO, Kozhenchery
Pathanamthitta District : Applicant

(By Advocate Mr.Shafik M.A.)

Vs.

1. Union of India represented by Director General
Department of Posts, New Delhi.

2. The Chief Post Master General
Kerala Circle, Trivandrum.

3. The Assistant Director (Welfare & Sports)
O/o Chief Post Master General,
Kerala Circle, Trivandrum : Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC

3. OA 290/06 :

1. S. Sreekumar
Gramin Dak Sevak Branch Post Master,
Parakunnau BO, Navikulam,
Trivandrum North Division
Residing at KGS Nivas, Venkulam
Edava PO, Trivandrum

2. D. Anilkumar.
Gramin Dak Sevak Mail Deliverer,
Mylakkad PO, Kollam South Division
.Residing at: Anil Nivas, Chirakkarathazham PO, Kollam

3. V. Vinodkumar.V
Gramin Dak Sevak Mail Deliverer,
Perumpazhuthoor SO, TVM South Division
Residing at : Sree Vihar, Thalayal
Balaramapuram PO, Trivandrum

4. B.S. Sabumon
Gramin Dak Sevak Mail Deliverer,
Kalluvathukal PO, Kollam South Division
Residing at : Chail Veedu
Chirakkarathazham PO, Kollam : Applicants

(By Advocate Mr.Shafik M.A.)

1. Union Of India represented by Director General,
Department of Posts
New Delhi.

2. The Chief Post Master General
Kerala Circle, Trivandrum-33.

3. The Assistant Director(Welfare & Sports)
O/o the Chief Post Master General
Kerala Circle, Trivandrum. : Respondents

(By Advocate Ms.Mini R Menon)

The application having been heard on 12.01.2007, the Tribunal on 23-1-2007 delivered the following :

ORDER

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

As common question of law is involved in these three OAs, this common order in respect of these OAs is passed.

2. The respondents vide Annexure A-2 (OA 212/06) published a notification dated 27.03.1998 inviting applications from meritorious sportsmen in various disciplines for appointment as Extra Departmental Agents in the Department of Posts. The applicants were aspirants for these posts and by virtue of their merit in sports, they were given appointment as Extra Departmental officials in 1998 On the strength of proper appointment orders these applicants had joined their respective posts. Later on these applicants had become permanent members of the Kerala Postal Circle Football Team and have been representing the Department of Posts and by virtue of their proficiency in the respective field brought in laurels to the respondents.

3. After the applicants were selected under the sports quota in 1998 there appears to be no further induction on the basis of efficiency in sports to any posts in the Extra Departmental services.

4. Persons who have inducted as EDs prior to the applicant's induction, periodically such EDAs under the sports quota were considered for appointment in Group 'C' or 'D' posts, as per example, vide Annexure A-10 order dated 07.02.1999 and Annexure A-11 order dated 29.02.2000 a number of ED employees recruited under sports quota have been, in relaxation of normal recruitment rules, appointed to various Group 'C'/'D' posts. The Appointing authorities in such cases derived their power from order dated 19.06.1995 passed by the Ministry of Communication, Department of Posts vide Annexure A-9.

5. In the years 2001-2003 more than 400 posts of Postal Assistants were filled up by direct recruitment but unfortunately no promotions/appointments were made under the sports quota to which the applicants would have normally been considered. Vide order dated 28.01.2003 (Annexure A-12) the Chief Post Master General addressed a communication to the Post Master General, Kochi and Kozhikode requesting them to intimate the particulars of GDs who had participated in the All India Postal Meet/National Meetings, if any, in their region and forward the details thereof in the proforma designed by the Post Master General. Though presumably the details were made available no further action had been taken in this regard. The applicants had preferred certain representations vide Annexures A-13, A-14 and A-15. Yet no action was taken. The request made in such representations requesting for consideration of the applicants for issue of suitable orders for special promotion as departmental

employees, keeping in view the meritorious service as sportsmen rendered by the applicant. Absence of any reply for substantial period amounted to deemed rejection.

6. The respondents have published a notification (Annexure A-1) in respect of annual recruitment of Postal Assistants/Sorting Assistants in Kerala Postal Circle there has been no stipulation in this notification in respect of sports quota.

7. The applicants have filed this OA inter-alia claiming the following reliefs:-

(a) To declare that the applicants are entitled to be promoted to Group 'C' departmental posts like Postal Assistant in the 5% quota reserved for sportsmen on the same lines as per Annexures A -7, A-8 and A-9 orders.

(b) To quash Annexure A-1 to the extent it includes the 5% vacancies earmarked for sports quota.

8. The respondents have contested the OA. Their main contention as contained in Para 13,15,16 & 17 are as under :-

> **13.** The Postal Directorate in a communication dated 26.02.2002 had made it clear that there is no provision for using proficiency in sports as a basis for appointment as GDS. A copy of communication No.16-245/2001-GDS dated 26.02.2002 issued from Postal Directorate is produced as Annexure R-8. The erroneously selected candidates, including the applicants were, however, allowed to continue in GDS posts as some time had elapsed after their appointment by the time the error was noticed. This permission was only on a humanitarian consideration. The applicants are working as GD

Sevaks on the basis of a faulty selection. They are now claiming further preferential treatment in Group C recruitment. under sports quota. As held by the Hon'ble Supreme Court, two wrongs can never make a right. The averments in para 4.2 of the OA, is therefore denied. The applicants recruitment to GDS posts itself was wrong and now they are claiming preferential treatment in appointment to Group C.

15. It is however submitted that if the performance of the sports persons recruited as GDS continues to be good, as mentioned in the notification, then he/she should have no problem in competing with similarly placed sports persons for a departmental post, as is the requirement as per DOPT guidelines. The approach is also in consonance with the spirit of equal opportunity enshrined in the provisions of the Constitution. The fact is that these sportsmen recruited as GDS have already gained some advantage as a result of being recruited in the GDS category, without following the usual method of selection, even though the GDS rules did not provide for such selection. As a result of this selection they are assured of a departmental post, in due course, since recruitment to Group D and postman categories is being under taken from the GDS pool.

16. However, if they wish to be considered on the basis of their merit as sports persons, then they will have to allow themselves to be considered, along with other eligible, outsider sportsmen, to avail the concession that the department provides for sports persons by earmarking a certain percentage only for this category and undertaking the recruitment through a separate selection process. In this context if the GDS has continued to perform well, or has improved his sporting performance during the stint as GDS, this will be evaluated along with the performance of other outsiders and the selection made based on comparative merit. If he/she fails in this consideration, they will still be considered in due turn for departmental posts based on seniority-cum-merit of their performance as a regular GDS, In brief, no out of turn consideration can be given to them under the sports category except on the basis of their comparative merit as a sportsman in an open competition. This is as per DOP &T's guidelines.

17. As far as the averment in Para 4.4 is concerned, it is submitted that the same are not correct and therefore denied. For the purpose of making recruitment of sports persons, the instructions issued from time to time in the matter by the Department of Personnel and Training, the nodal ministry has to be followed. The postal directorate has clarified this position in their order No.51-2/2003-SPB-I (Vol-II) dated 9.3.2006 which is produced as Annexure R-9. A-7, A-8 and A-9 etc. were issued from Welfare/Sports sections. In the light of R-1 and R-2 instructions, the selections made vide A-10 and A-11, exclusively from GD Sevaks were wrong. In a nutshell, the GD Sevaks who are sportsmen and fulfill the conditions for GD Sevaks who are sportsman and fulfill the conditions for recruitment to Group C and Group D have to compete with outsiders. In the light of these facts, selections, if any, made in the past from GDS to Group C or D posts, were faulty and therefore the procedure cannot b e repeated now in the case of the applicants. Even the A-8(2) order says that the respondent No.2 is competent to make sports quota recruitment upto 5% of direct recruitment vacancy subject to total 50% of ceiling on reservation. It is not mandatory on the part of the respondents to keep apart 5% vacancies in all its Direct Recruitment for sports quota. Respondents may and can appoint sports persons if a need is felt. Unlike in the case of SC/ST/OBC reservation, sports quota reservation is not mandatory.

9. The applicants have filed rejoinder reiterating their stand that their appointment is valid as the same is in accordance with the long prevailing practice which is evident from Annexure A-7 order dated 21.11.1989, A-8 order dated 18.12.1989 and also A-9 order dated 19.06.1995.

10. In the additional reply statement and the affidavit filed on 08.12.2006 it has been admitted by the respondents that

there have been in all eight vacancies now available if 3% quota is to go for sportsmen.

11. The learned counsel for applicant submitted that admittedly all the applicants in these OAs have shown their mettle in their respective field of sport and the respondent department has been thoroughly satisfied with their excellent performance in sports. The long experience of such sportsmen who have brought in enviable credit to the department from 1998 onwards, if not considered for appointment to Group 'C' posts under the sports quota as done in the past vide Annexures A-10 and A-11, would be subjected to hostile discrimination. It has also been stated by the learned counsel for applicant that after 1998 there having been no recruitment under sports quota in ED Post Offices, it is only these applicants who could be considered and promoted in Group 'C' posts under sports quota as done in the past. Since this is a sports quota it may not affect any other persons as such. If at all, it might affect anybody it could be that some sports persons in the open market may not be considered. In view of the fact that in the past Circle Relaxation Committee has consciously considered only departmental sportsmen, it would be only appropriate that the applicants who are probably the only leftovers are also given the same concession as their colleagues in the past. As such, the counsel for applicant submitted that without compelling any of the applicants to compete with any other open market

sportsmen, these applicants should be considered as in the past for promotion under sports quota in Group 'C' posts.

12. Counsel for respondents on the basis of records stated that in the past Circle Relaxation Committee considered only the sports persons within the Department to fill up the vacancies under sports quota for the post of Group 'C' / 'D' posts. It was only as per Annexure R-8 (D.O letter dated 26.02.2002) the Department felt that the initial appointment of the applicants was erroneous.

13. Arguments were heard and documents perused. Admittedly, the initial appointment of the applicants was by way of a proper advertisement inviting application from sportsmen and selection was accordingly made from among those who had responded to the advertisement. Thus, the applicants have given appointment by a duly conducted selection. Though, there is no specific sportsmen quota for GD Service, admittedly such recruitment was taking place for quite sometime since 1989 atleast as could be evidenced from Annexures A-7 and A-8 orders. The rules do not specifically prohibits sports quota and in the absence of rules the long practice could be taken as legal. In this connection, the following decisions of the Apex Court are appropriate to be cited :-

(a) In *Bimlesh Tanwar v. State of Haryana,(2003) 5 SCC 604* the Apex Court has stated:

In this case also, although there does not exist any

statutory rule but **the practice of** determining inter se seniority on the basis of the merit list has been evolved on interpretation of the rules.

(b) In *State of W.B. v. Manas Kumar Chakraborty,(2003) 2 SCC 604*, the Apex Court has observed:

As to whether a person not holding the substantive rank of DGP could be posted as DG&IGP, the question appears to have been admitted, **either as a matter of rule or practice**, that in the Karnataka cadre an officer not holding the substantive post was ineligible to the post as DG&IGP.

(c) *Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644*, the Apex Court stated:

This Court in the case of *Tribhovandas Purshottamdas Thakkar* v. *Ratilal Motilal Patel*[2] while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai case*[3] and of Macleod, C.J., in *Haridas case*[4] did not lay down **the correct law or rule of practice**, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in *Bhagwan* v. *Ram Chand*[5]: (Emphasis supplied)

(2 AIR 1968 SC 372 : (1968) 1 SCR 455 : 3 Pinjare Karimbhai v. Sukla Hariprasad, (1962) 3 Guj LR 529: 4 Haridas v. Ratansey, AIR 1922 Bom 149(2) : 23 Bom LR 802 5 AIR 1965 SC 1767)

14. Thus, the initial appointment of the applicants cannot be faulted as erroneous appointment. There is a deemed relaxation of the rules in view of the fact that appointment of sportsmen in GD Service has been made by way of a sound practice.

15. The question now for consideration is as to whether

the applicants are entitled to be considered under sports quota for appointment to Group 'C' posts. They have cited earlier appointments in relaxation of the rules vide Annexures A-9 and A-10 orders. It has also been stated that since after 1998 there have been no further induction in GDS of sportsmen, the GDS sportsmen awaiting their turn for appointment under sports quota will not be any one other than the applicants. There are in all eight such applicants and coincidently vacancies are also eight in number. Subject to ensuring fulfillment of requisite educational qualifications the applicants on the basis of past practice could well be considered for appointment against existing eight vacancies under sports quota. It is for the Department to relax any other condition in case, if any, of these applicants does not fulfill any condition of recruitment. Considering the applicants for accommodation against existing quota would be in conformity with the equality clause as, earlier, sportsmen of GDS recruited in the same fashion as the applicants were all considered for appointment against direct recruitment vacancies under sports quota as per Annexures A-10 and A-11 and there may not be any more similarly circumstanced as the applicant for appointment.

16. In view of the above, **OA is allowed.** Respondents are directed to consider the case of the applicants to fulfill other qualifications for appointment under the sports quota against the eight vacancies and if found suitable have to be

deficient of any educational qualification, it is for the respondents to consider the power to relax under the existing rules and act accordingly. This order be complied with, within a period of three months from the date of communication of this order.

17. No costs.

Dated, the 23rd January, 2007.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.B.S.RAJAN
JUDICIAL MEMBER

vs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P(C) 24 of 2009 IN O.A. NO. 290 OF 2006

Monday, this the 25th day of May, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. S.Sreekumar
Gramin Dak Sevak Branch Postmaster
Parakunnu P.O., Navaikulam
Trivandrum
Residing at "KGS Nivas", Venkulam, Edava PO
Trivandrum

2. D.Anilkumar
Gramin Dak Sevak Mail Deliverer
Mylakkad P.O, Kollam South Division
Residing at " Anil Nivas"
Chirakkathazham P.O, Kollam

3. V.Vinodkumar
Gramin Dak Sevak Mail Deliverer
Perumpazhathoor, SO, Trivandrum South Division
Residing at " Sreevihar"
Thalayal, Balaramapuram P.O
Trivandrum

4. B.S.Sabumon
Gramin Dak Sevak Mail Deliverer
Kalluvathukal PO, Kollam
Residing at "Chalil Veedu"
Chirakkarathazham P.O
Kollam ... Petitioners

(By Advocate Mr.Shafik M.A.)

versus

1. Smt.Radhika Doraiswamy
Director General of Posts
Department of Posts
New Delhi

2. Sri Uday Balakrishnan
Chief Postmaster General
Kerala Circle
Trivandrum ... Respondents

(By Advocate Mrs. Mini R Menon)

ORDER

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

As the order of the Tribunal has been set aside by the Hon'ble High Court in W.P.(C) 14575 of 2007 and connected cases, the C.P.(C) is dismissed as having become infructuous.

Dated, the 25th May, 2009.

K.NOORJEHAN
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS