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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 300 / 2005

Thursday this the 20th day of July, 2006

CORAM :

**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

S.Sunilkumar
Part Time Employee
Chirayinkeezhu Post Office
Residing at : Asanvilakom
Pandakasala, Chirayinkeezhu : **Applicant**

(By Advocate Mr. Sasidharan Chempazhanthiyil)

Versus

1. Senior Superintendent of Post Offices
North Division, Thiruvananthapuram
2. Chief Post Master General, Postal Circle
Thiruvananthapuram
3. Union of India represented by its Secretary
Ministry of Communications,
New Delhi : **Respondents**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

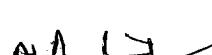
ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

It is the second time that the applicant is absent during the second call. Therefore, the Original Application is dismissed for want of prosecution. No costs.

Dated, the 20th July, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

vs

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 300 of 2005

Friday, this the 27th day of July, 2007

C O R A M :

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

S. Sunilkumar,
S/o. K. Sreenivasan,
Part-time Employee,
Chirayinkeezhu Post Office,
Resding at Asanvilakom,
Pandakasala, Chirayinkeezhu ... Applicant.

(By Advocate Mr. Sasidharan Chempazhanthiyil)

v e r s u s

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

(By Mr. TPM Ibrahim Khan, SCGSC)

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

Let the legal issue and the decision thereof by the Apex Court be dealt with first.

2. The applicant's claim is that by virtue of his having worked as part time sweeper with the respondents' organization, in accordance with the provisions of order dated 06.06.1988 he has pre-emptory rights for appointment as ED in the post office where he has been functioning as part time sweeper. Certain decided cases have been cited by the applicant in support of his contention. Respondent's contention is that he could compete with any other general candidate.

3. The question is what is this "preferential right" available to such part time employees. Para 4 of the order dated 06-06-1988 reads as under:-

"4. 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 fulfill all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 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 from ED vacancies have initially been sponsored by Employment Exchange."

4. In so far as reference to SC and ST in appointments in ED posts, the D.G. P & T by letter dated 8th March, 1978 decided as under:-

"It is hereby clarified that candidates belonging to the Scheduled Castes/Scheduled Tribes with the minimum educational qualifications prescribed should be given preference over the candidates belonging to other communities, even if the latter is educationally better qualified, provided that the candidates belonging to Scheduled Castes/Scheduled Tribes are otherwise eligible for the post."

5. In yet another order dated 26th May, 1995, as regards SC/ST, the respondents have decided that if adequate representation of SC/ST be not available, then such a candidate has to be given preference over candidates irrespective of the percentage of marks secured subject only to the condition that the SC candidate satisfies all the other prescribed eligibility criteria.

6. The common thread that could be discerned from the above is that preference is given to a particular category. This preference is not en-boc preference and others are also to apply. However, selection of others would be only when the individual in the preferential category does not satisfy all the conditions for appointment. With the above legal position the case in

hand has to be discussed.

7. The facts as contained in the OA are as under:-

(a) The applicant has been working as a Part-time Sweeper / Scavenger / Water Carrier and Gardner in Chirayinkeezhu Post Office from 18.6.1984. Based on the work hours fixed by the 2nd respondent the applicant is paid every allowance for the sweeping/scavenging and water carrying work under ACG 17 system. The applicant has not been issued with formal appointment as Sweeper, Scavenger, Water Carrier and Gardner, though his employment from 18.6.1984 onwards is continuous and without interruption.

(b) A post of EDDA, Altharamoodu P.O. Under Alamcode S.O. under the 1st respondent is now vacant. The applicant satisfies all the conditions for appointment to the post of EDDA. Hence the applicant sent a representation to the 2nd respondent to consider his claim for appointment as EDDA. The part-time contingent employees are entitled to preference in the matter of appointment to ED post as per Annexure A5 letter No. 17-141/88/EDC & Training dated 6.6.1988.

(c) Applicant approached this Tribunal in O.A. No. 24.2005 claiming benefit of Annexure A5 letter. The said O.A was disposed of vide order (Annexure A/6) dated 11.1.2005, directing the 1st respondent to consider and pass orders on the applicant's representation. The 1st respondent in purported compliance of the directions contained in Annexure A/6, issued Annexure A/7 proceedings No. CC/2/02 dated 4.2.2005. The 1st respondent directed the applicant to submit an application to the post of EDDA, Altharamoodu as and when applications are called for. Annexure A/7 is erroneous in as much as the 1st respondent contemplates consideration of applicant's claim along with outside candidate whenever notification is published to fill up the vacancy of Altharamoodu. This is opposed to various decisions of this Tribunal wherein it has been categorically held that the

recruitment to the post of ED vacancies through open market should be resorted to only if the casual labourers (part-time / full time) are found unsuitable for such appointment (order in O.A. No. 571/2001 refers).

(d) Similar issue arose in O.A. No. 534/2003 where the applicant was a part-time Sweeper and she questioned the action of the departmental respondents in calling the 4th respondent therein for interview to the post of GDS MD, Vellayapally, without considering applicant's preferential claim in terms of D.G. Posts letter dated 6.6.1988. It was made clear in the decision (Annexure A/9) that only if part-time employees are found otherwise ineligible or unsuitable, recruitment from open market should be resorted to.

(e) The 1st respondent has now initiated action to fill up the post of EDDA, Altharamoodu P.O. And has taken steps to notify the vacancies to outside candidates. This is illegal and arbitrary and opposed to the decisions of this Tribunal in O.A. No. 534/2003. Therefore, the applicant has filed this O.A. seeking following reliefs:

(i) Call for the records leading to Annexure A/7 and set aside the same to the extent it directs the applicant to submit an application along with outside candidates.

(ii) Declare that the applicant is entitled to preference over outside candidates and direct the respondents to take action accordingly.

(iii) Direct the 1st respondent to resort to open market only after the claim of the applicant under Annexure A5 is considered.

8. Respondents have contested the OA and their version is as under:

(a) The post of Gramin Dak Sevak Mail Career (GDSMC, for short) became vacant with effect from 25.4.2001. The process of nominations from Employment Exchange and through open

notification was initiated in June, 2002. From among the 7 applicants who appeared along with the connected documents, Smt. B.S. Anusha Raj, who secured the highest marks in SSLC (409/600) was selected and given appointment with effect from 30.7.2002. The applicant herein had also submitted an application. He was also asked to report before SDI, Attingal Sub Division along with the documents but he did not turn up on that day or on any subsequent days. Aggrieved by this, the applicant alleged to be a Part-time Sweeper filed O.A. no. 582/2002 claiming preferential appointment to Part-time Casual Labourer as per DG Posts letter No. 17-141/88-EDC & Trg. Dated 6.6.1988. The said application was dismissed by this Tribunal vide order dated 2.12.2004 stating that the applicant had miserably failed to establish that he had acquired the eligibility for preference in terms of the above DG Posts letter.

(b) The applicant again filed O.A. No. 24 of 2005 requesting appointment as GDS MD, Altharamoodu. The said OA was disposed of by this Tribunal by order dated 11.5.2005 directing the 2nd respondent to consider his representation dated 1.9.2004 requesting posting as GDS MD, Altharamoodu with special reference to the rules governing the subject and pass appropriate orders thereon within a period of one month from the date of receipt of the copy of the order. The respondent issued a speaking order in this regard by Memo No. CC12/02 dated 4.2.2005 directing the applicant to submit the application for the post of GDS MD, Altharamoodu along with others when the applications are called for to fill the vacancy of GDS MD, Altharamoodu and also informing him that preference over others may be given to the applicant after considering all aspects of rule provisions in force at that time by the appointing authority.

(c) Applicant's claim that he had been paid every allowance for sweeping / scavenging / water carrying / gardening work from 1984 is without any material evidence and hence cannot be accepted.



(d) As per DG Posts letter dated 6.6.1988, nominations should be called for from the 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. In this case, no such formalities were completed and no formal orders were issued by the competent authority. This Tribunal in paragraph 5 of the order dated 2.12.2004 in O.A. No. 582/2002 observed that "the applicant has not been able to bring on record any document to support his claim that he had been continuously working from 1984 onwards or for 240 days continuously in any year.

9. Rejoinder/additional rejoinder and additional replies have been filed by the respective sides reiterating their stand taken.

10. Original attendance register had been called for which corroborate with the statement of the applicant that he has been continuously working at least from 01.04.2001.

11. Counsel for the applicant argued that the applicant has been functioning as a part time sweeper from 1984 and as such, while considering appointment of EDS in the post office where he is functioning or nearby, he should first of all be considered. He had relied upon the following two decisions viz Order dated 04-09-2001 in OA 571/2001 and (b) order dated 27-8-2003 in OA 534/2003 (Annexure A8 and A-9 respectively).

12. Counsel for the respondents however, submitted that there is no scope of avoiding calling for applications and the applicant can be one of the aspirants in which event, the provisions of order dated 6-6-1988 shall be given due consideration.



13. Arguments were heard and documents perused. The applicant's contention is that he has been functioning since 1984, though, no formal appointment order had been issued to him. There is no evidence, according to the respondents, furnished by the applicant. In fact, it is not possible for the applicant to show any such evidence as he was not favoured with any such appointment order. But one thing is clear. The office would not have been without a sweeper be it part time or full time and in case the averment of the applicant was to be contested by the respondents, they could have easily proved that the applicant was nowhere in the pay roll of the respondents. They have not done so. That the applicant has been working since 01-04-2001 is duly evidenced by the original attendance register. Hence, it can be safely presumed that the submission of the applicant cannot be untrue. And if at any time in future it is found otherwise, the department could easily take action against the applicant. In any event, the requirement for availing the benefit of order dated 6-6-1988 is only continuous service of one year. But then, the reason why this much exercise is undertaken is that the respondents have contended that the applicant was not employed through Employment Exchange and as per the applicant, lack of employment exchange sponsorship is not an impediment for being considered to vacant posts of GDS. The order dated 6th June, 1988 provides for such a sponsorship through employment exchange as for a casual labour etc., for being considered for appointment as GDS. This requirement may not be fulfilled in case of the applicant. Here exactly is the reason to deal with the case as to whether the applicant was in service as far back as in 1984. For, at that time, the requirement was not sponsorship through employment exchange for such appointments as has been held by the Apex Court in the case of *Union of India v. N. Hargopal*, (1987) 3 SCC

308 wherein the Apex Court has held as under:-

"4. It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency of the Employment Exchanges. Far from it, Section 4(4) of the Act, on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because that vacancy has been notified under Section 4(1) or Section 4(2)."

* * * * *

6. It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges."

14. Thus, there is no impediment in that the applicant was not through employment exchange at the time of his initial engagement as part-time sweeper. To insist upon the same after a score plus years would be inappropriate, especially when the law as on that date did not make it mandatory.

15. The respondents have only advised the applicant to apply for the post along with others. The apprehension of the applicant, understandably, is that he may be overlooked notwithstanding the fact that there is a provision for preference. But his understanding of the provisions seems to be that once preference is to be given, that is an en-bloc preference. Taking the queue from the orders in respect of preference to SC/ST candidates (which here are not with a view to fulfilling the constitutional commitment, but only for preference as in the case of full time/part time casual labourers), it is to be held that there is no impediment in the respondents' calling for applications from general public, with a rider that preference shall be given to the serving part time/full time casual labourers, who satisfy all the requirements for such appointment and applications from part time casual labourers serving within the same sub-division could be invited and the best

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among them may be selected. In case none of the part time employees is found fulfilling the requirements, then the selection may be from outside. This would be in conformity with the decision by the Tribunal referred to above.

16. Thus, the OA is **disposed** of with the direction to the respondents to consider the application, if filed by the applicant within a month from the date of communication of this order, in the light of the provisions of the order dated 6-6-1988 and in the light of the above discussion/observation and act accordingly.

17. Under the circumstances, there shall be no order as to costs.

(Dated, the 27th July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.