

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 347/2010

Dated this the 7th day of July, 2010

C O R A M

**HON'BLE MR.JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

**K. Ravi S/o Kutty
GDSMP, Mavelikkara Cutcheri
presently working as Group-D Chowkidar
Head Post Office, Mavelikkara
residing at Harijan Colony, Block-V
Thekkekara Village, Mavelikara
Alappuzha**

Applicant

By Advocate Mr. M.R. Hariraj

Vs

**1 Union of India represented by the Secretary
to Government of India
Department of Posts
New Delhi.**

**2 Chief Post Master General
Kerala Circle, Trivandrum**

**3 Superintendent of Post Offices,
Alappuzha Division
Mvelikara**

**4 Post Master,
Mavelikara Head Post Office
Mavelikara.**

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The Application having been heard on 23.6.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant commenced service as Gramin Dak Sevak in 1979 and is presently working as Chowkidar, Head Post Office, Mavelikkara. The grievance of the applicant is that, out of the 16 sanctioned posts of Group-D, only 6 vacancies were filled up, he has not been promoted on regular basis. He is at Sl. NO. 36 in the Gradation List of GDS of the Mavelikara Division as on 1.7.2007 (A-1). Many of the juniors are working as Group-D on regular basis. He is entitled to be considered for regular appointment by promotion to the post of Group-D based on his seniority in preference to the juniors/outsideers. Aggrieved by the inaction of the respondents to promote him despite availability of vacancy, he filed this O.A for a direction to regularly promote him as Group-D from the date of occurrence of vacancy in preference to juniors and outsiders.

2 The respondents in their reply statement submitted that Group-D posts in the Department are filled up in accordance with the Recruitment Rules 2002 (Annexure R-1). Promotion of GDS to Group-D post is based on the total number of Group-D vacancies in a Division. Approval of the Screening Committee is mandatory for appointment of GDSs to Group-D posts. They further submitted that when senior GDS are not available, juniors are also considered for adhoc arrangements to man Gr. D posts. The persons shown at Sl. Nos. 100, 108, 178, 203 and 242 in A-1 Gradation list are working as Group-D on a temporary basis only, similar to the applicant. The promotion of GDS to Group-D are

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under active consideration of the department in the light of judgment of the High Court in WP(C) 32491/2009. They denied any deliberate inaction on their part.

3 We have learned counsel for the parties and gone through the pleadings.

4 The respondents have relied on the judgment of the Apex Court in P.U. Joshi and Others Vs. AG, Ahmedabad and Others (Civil Appeal Nos. 4679-80 of 1996 with Union of India and Others Vs. Basudeba Dora and Others (Civil Appeal No. 10983/96) (2003 SCC (L&S) 191) to the effect that the Tribunal cannot direct them to fill up a post before a policy decision is formulated.

5 The grievance of the applicant is that he is not regularly promoted to Group-D despite occurrence of vacancy. The contention of the respondents is that the recruitment to Group-D is made as per the Recruitment Rules in force and that all juniors pointed out by the applicant are appointed on temporary basis like the applicant. Therefore, the applicant could not say that his juniors are appointed on regular basis ahead of him. However, we notice that the applicant who entered service as GDS in 1979 has not been promoted to a Group-D post on regular basis and that he is engaged as a Group-D Chowkidar by order dated 18.3.2009. He is now aged 54. The contention of the applicant is that if the temporary engagement is regularised, he would be able to get increment, the salary of Group-D, leave etc. There is force in the contention of the applicant. It is settled law that no Court can direct promotion of an employee. But, when there is vacancy and an



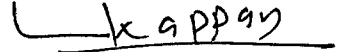
employee is working on the post, he is entitled to be considered for the post on regular basis. The respondents cannot keep the post manned indefinitely on temporary basis. If the regular recruitment is delayed, prejudice is caused to the employee working on temporary basis. As long as the Recruitment Rules 2002 are in force, and there is a regular vacancy, there is no reason to deny consideration of the applicant for regular appointment.

6 In this view of the matter, we hold that the applicant is entitled to be considered for regular appointment to the post of Group-D, as per the rules in force and that the inaction on the part of the respondents will prejudicially affect the career prospects of the applicant. Therefore, it would be just and proper if the O.A is disposed of directing the respondents to consider the applicant for regular appointment to Group-D post as per the rules in force, in his turn. It is ordered accordingly. No costs.

Dated 7th July, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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JUSTICE K. THANKAPPAN
JUDICIAL MEMBER