

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 349 of 2009**

*...Tuesday....., this the 22<sup>nd</sup> day of February, 2011.*

**CORAM:**

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER  
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.M.Padmanabhan,  
S/o.The late Krishnakurup,  
Group-D, Vadakara Head Post Office,  
Vadakara,  
Residing at Sreepadmam, Kurinhalayode,  
Villappilly (via), Vadakara – 673 542.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan, Sr. with Ms. Rekha Vasudevan)

**Versus**

1. Superintendent of Post Offices,  
Vadakara Division, Vadakara.
2. Postmaster General,  
Northern Region, Kozhikode.
3. Departmental Promotion Committee,  
represented by its Chairman,  
Superintendent of Post Offices,  
Vadakara Postal Division, Vadakara
4. Union of India represented by its Secretary,  
Ministry of Communications, New Delhi.
5. N.K. Balachandran,  
Postman, Madappally College Road,  
Vadakara, Kozhikode. .... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1-4 and  
Mr. T.C. Govindaswamy for R-5)

This application having been heard on 11.02.2011, the Tribunal  
on 22/02/2011.. delivered the following :-



ORDER

**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant was initially appointed as Extra Departmental Messenger, Villiappilly B.O. On 11.09.1978. He was transferred and appointed as Extra Departmental Delivery Agent, Kurinhaliyode with effect from 20.01.1995. He was posted to officiate as Postman, Vadakara Post Office, on 29.08.2006.

2. The 1<sup>st</sup> respondent had published the seniority list of Gramin Dak Sevaks (GDS) in Vadakara Postal Division as on 01.07.2004 as per letter dated 19.05.2006. The applicant was ranked at serial No. 69 and the 5<sup>th</sup> respondent was placed at serial No. 74. The 1<sup>st</sup> respondent issued recruitment notification to the cadre of Postman for the vacancies for the year 2004 based on the result of the examination held on 09.04.2006 appointing only one person on the basis of the length of service as per memo dated 04.07.2006. The applicant submitted a representation dated 10.08.2006 requesting him to appoint as Postman. The applicant approached this Tribunal by filing O.A. No. 704/2006 seeking to declare that the approval of the screening committee is not necessary to fill up the vacancies in the cadre of Postman set apart for 25% GDS seniority quota and to issue appropriate direction to the respondents to take immediate steps for promoting the applicant to the post of Postman on the basis of his running seniority against one of the vacancies falling under 25% quota set apart for the GDS and to promote him to the post of Postman from the date of his entitlement with all consequential benefits. The said O.A. was



allowed on 23.04.2007 by directing the respondents to take immediate steps for filling up the promotional vacancies in the cadre of Postman for the year 2004-05 in Vadakara Post Office and to consider the applicant in accordance with his seniority and eligibility in terms of the Recruitment Rules. The review application filed by the respondents was dismissed by this Tribunal vide order dated 28.02.2008. The Writ Petition No. 19182/2008 filed by the respondents challenging the order of this Tribunal dated 23.04.2007 was dismissed by the Hon'ble High Court of Kerala vide its judgement dated 07.07.2008. The applicant filed Contempt Petition No. 55/2008 in O.A. No. 704/2006 for taking appropriate action against the respondents. In the Contempt Petition, an affidavit was filed by the Superintendent of Post Offices, Vadakara Division, stating that the one vacancy falling under 25% seniority quota has already been filled up by appointing Shri N.K. Ramachandran, GDSMD, Moloothara, and hence there was no other vacancy under seniority quota in 2004. It was further stated that in 2005, there were 12 vacancies in the cadre of Postman and if screening committee's cut was not applied, three vacancies were to be offered for filling up under seniority quota. Out of this seniority quota, one vacancy was filled up by appointing Shri N.K. Balachandran, GDSMS, Koroth Road, the 5<sup>th</sup> respondent herein. Therefore, two more vacancies are to be filled up in the year 2005 to comply with the orders of this Tribunal. The Departmental Promotion Committee which met on 25.12.2008 considered the case of the applicant and found that he had crossed 50 years of age as his date of birth is 12.11.1956. Hence the Committee decided to get advise from the 2<sup>nd</sup> respondent regarding the appointment of the applicant. The Superintendent of Post Offices, Vadakara Division, was

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directed to take action according to the rules and instructions and comply with the order of this Tribunal. On the basis of the affidavit filed by the 1<sup>st</sup> respondent as above, the Contempt Petition was dismissed vide order dated 03.04.2009 observing that the respondents had given due priority to the case and action taken was satisfactory.

3. The applicant came to know that his junior, the 5<sup>th</sup> respondent herein, was appointed as Postman overlooking his seniority and eligibility from the affidavit filed by the 1<sup>st</sup> respondent on 02.01.2009. He could get a copy of the order dated 07.08.2007 (Annexure A-14) appointing the 5<sup>th</sup> respondent to the cadre of Postman against 25% quota based on the length of service cum fitness for the vacancy for the year 2005, in the second week of January, 2009.

4. The applicant was served with a memo dated 06.03.2009 calling upon him to express his willingness to accept the post of Group-D. He intimated his willingness on 09.03.2009 to accept the post of Group-D reserving his right to get appointed as Postman in view of the order dated 23.04.2007 in O.A. No. 704/2006. The applicant was served with another memo dated 09.03.2009 intimating that he had been selected for the post of Group-D in Vadakara Division in compliance of the final order of this Tribunal dated 26.04.2007 in O.A. No. 130/2007 based on his letter of willingness. The applicant was appointed as temporary Group-D in Vadakara Head Post Office with immediate effect from 09.03.2009. The applicant is presently working as Group-D in Vadakara Head Post Office. He has filed this O.A. for the following reliefs:



- (i) To call for the records leading to Annexure A-14 memo dated 07.08.2007 appointing the 5<sup>th</sup> respondent to the cadre of Postman and to set aside the same;
- (ii) To issue appropriate direction or order directing the respondents 1 to 3 to promote the applicant to the cadre of Postman against one of the three vacancies found to be falling under 25% seniority quota for the 2005 being the seniormost GDS as on the date of occurrence of the vacancies in the year 2005 with effect from the date of his entitlement with reference to the date of occurrence of vacancy in the year 2005 with all consequential benefits including seniority and arrears of pay and allowances, within a time frame that may be fixed by this Hon'ble Tribunal,
- (iii) To grant such other reliefs this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case, and
- (iv) To award costs to the applicant.

5. The applicant contends that the action of the respondents 1 to 3 in not promoting him to the cadre of Postman inspite of existence of vacancies for the year 2005 and notwithstanding the direction issued by this Tribunal in Annexure A-9 order dated 23.04.2007 as confirmed by the Hon'ble High Court of Kerala in Annexure A-11 judgement is arbitrary, discriminatory and unreasonable. The 5<sup>th</sup> respondent who was appointed to one of three vacancies, is far junior to the applicant. The applicant is ranked at serial No. 69 whereas the 5<sup>th</sup> respondent is at serial No. 74. The method of appointment is seniority cum fitness, no selection is involved and a junior cannot be permitted to supersede a senior. Therefore, the appointment of the 5<sup>th</sup> respondent in supersession of the applicant who is senior to him, is illegal, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India. The respondents have no case that the applicant was considered for the vacancies for 2005 and was not found fit for promotion. The DPC was under a misapprehension that the upper age limit



for promotion to Group-D was fixed as 50, but no upper age limit was prescribed in DG Posts letter dated 06.07.1989 communicated vide letter of Chief Postmaster General, Kerala Circle, dated 19.07.1989. Therefore, denial of promotion to the applicant to the cadre of Postman against the vacancies for the year 2005 while promoting the 5<sup>th</sup> respondent, who is junior to the applicant, is illegal and arbitrary. The denial of promotion to the applicant to the cadre of Postman against the vacancies for the year 2005 ignoring the positive direction issued by this Tribunal in Annexure A-9 order is in defiance to the authority. The applicant was offered appointment to Group-D on the basis of his seniority as per Annexure A-1 memo dated 06.03.2009. He had clearly expressed his willingness reserving his right to get appointed as Postman in implementation of Annexure A-9 order dated 23.04.2007 in O.A. No. 704/2006. Further, he was informed by Annexure A-3 memo that the condition imposed by him is not acceptable and once he is inducted in Group-D cadre, the question of his promotion to the cadre of postman does not arise. This stand of the 1<sup>st</sup> respondent is illegal and untenable for the reason that his claim for promotion to the cadre of Postman related to the year 2005 and his acceptance in the year 2009 cannot constitute waiver of his right to be promoted to the cadre of Postman against the vacancies for the year 2005 and it cannot amount to abandonment of his right to promotion as found and recognized in Annexure A-9 order of this Tribunal. The promotion granted to the 5<sup>th</sup> respondent overlooking the claim of the applicant has no legal justification.

6. The respondents contested the O.A. In their reply statement, they submitted that one vacancy under 25% seniority quota for the year 2004



was filled up by appointing Shri N.K. Ramachandran, GDSMD, Moyillothara., who was at serial No. 62 of Annexure A-5 seniority list and was senior to the applicant. In one of the 3 vacancies under 25% seniority quota of GDS in the year 2005, Shri N.K. Balachandran GDSMD, Koroth Road (respondent No.5) was appointed following the condition stipulated in the Recruitment Rules that the upper age limit of GDS shall be 50 years. The Writ Petition No. 19182/2008 was filed by the respondents before the Hon'ble High Court of Kerala challenging the order of this Tribunal dated 23.04.2007 in O.A. No. 704/2006 that the appointment of Postman from GDS is by way of promotion. The Writ Petition was dismissed vide Annexure A-11 judgement dated 07.07.2008. By that time, the appointment of the respondent No. 5 had already been made as per Annexure A-14 memo dated 07.08.2007. There was no direction either in Annexure A-9 order or in Annexure A-11 order to cancel or review appointments already made prior to that, following the condition that the upper age limit for GDS shall be 50 years. Therefore, the respondents were to fill up the remaining two vacancies for the year 2005 only, taking into account the order of this Tribunal that the appointment of Postman from GDS is by way of promotion and, therefore, the GDS upto the age of 60 years were considered disregarding their educational qualifications. The GDSs senior to the applicant were selected. It was further submitted that the appointment as Group-D was accepted by the applicant after receipt of Annexure A-3 letter dated 09.03.2009 fully knowing that once inducted in the departmental service as Group-D, which is also a promotional post for the GDS, the applicant cannot claim promotion as Postman under the 25% seniority quota of vacancies set apart for the GDS. The respondent No. 5 was



appointed to the cadre of postman following stipulation in the Recruitment Rules that the upper age limit for GDS shall be 50 years. This position has changed consequent to Annexure A-9 order. There was no direction in Annexure A-9 order or in Annexure A-11 order to cancel or review such appointments already made. Annexure A-9 order has been complied with by the respondents in its true spirit as the selection for the remaining 2 vacancies for the year 2005 was made disregarding the age and educational qualifications.

7. In the rejoinder, the applicant submitted that Annexure A-14 order appointing the 5<sup>th</sup> respondent, who is admittedly junior to him, to the cadre of postman against 25% seniority quota based on length of service cum fitness for the vacancies for the year 2005 was issued on 07.08.2007. The said order promoting the 5<sup>th</sup> respondent as Postman was issued in contravention of the positive direction given by this Tribunal in Annexure A-9 order dated 23.04.2007 to consider him for promotion for the vacancies for the year 2004-05 on the basis of seniority and eligibility. The stand of the respondents that the one vacancy was set apart under 25% seniority quota and that the said vacancy had already been filled up by appointing the 5<sup>th</sup> respondent is illegal and in defiance for the obvious reason that the 5<sup>th</sup> respondent came to be appointed to the cadre of Postman subsequent to Annexure A-9 order of this Tribunal. Therefore, the respondents are legally obliged to review the promotion of the 5<sup>th</sup> respondent to the cadre of Postman in obedience to the direction of this Tribunal in Annexure A-9 order dated 23.04.2007. There is no justifiable reason for superseding the applicant herein by his junior when this Tribunal had declared on



23.04.2007 that the method of recruitment to the cadre of Postman is by way of promotion. The age and educational qualifications are not applicable to promotion according to the Recruitment Rules. The Contempt petition No. 55/08 in O.A. No. 704/2006 was dismissed in view of partial compliance of the orders issued by this Tribunal. The failure to consider the applicant for promotion to the Postman cadre by reviewing the selection of the 5<sup>th</sup> respondent is a matter to be challenged in separate O.A. Therefore, the dismissal of the Contempt Petition cannot be taken as an approval of this Tribunal in not considering the applicant for promotion to the cadre of Postman in accordance with the Recruitment Rules. The 5<sup>th</sup> respondent was promoted to the cadre of Postman subsequent to the date of final order in Annexure A-9. Therefore, while passing Annexure A-9 order, the question of directing the respondents to cancel or review the appointment of the 5<sup>th</sup> respondent does not arise. Annexure A-11 judgement passed by the Hon'ble High Court of Kerala dismissing the Writ Petition filed by the respondents, upholding the decision of this Tribunal in O.A. No. 704/2006. The respondents did not disclose the promotion of the 5<sup>th</sup> respondent overlooking the seniority of the applicant in the Writ petition filed by them before Hon'ble High Court of Kerala and therefore, there was no occasion for the Hon'ble High Court to direct the respondents to review or cancel the appointment of the 5<sup>th</sup> respondent made in contravention of the directions issued by the Tribunal. The respondents had misdirected themselves in stating that their stand has been upheld by the Tribunal in Annexure A-13 order dismissing the Contempt Petition. The respondents have given no answer or justification for ignoring the directions of this Tribunal in Annexure A-9 final order in promoting the 5<sup>th</sup> respondent who is

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junior to the applicant, to the cadre of Postman. The 5<sup>th</sup> respondent was promoted against the 2004-05 vacancies. Therefore, while promoting him, the respondents have totally disregarded the order of this Tribunal dated 23.04.2007 ( Annexure A-9). It was further submitted that joining the post of Group-D did not estop the applicant from seeking full implementation of the final order in O.A. No. 704/2006.

8. In the additional reply statement filed by the respondents, it was submitted that even though the appointment of the 5<sup>th</sup> respondent was made subsequent to the issue of Annexure A-9 order, the same was challenged by the respondents before Hon'ble High Court of Kerala in W.P. (C) No. 19182/2008 which was decided only on 07.07.2008. Thus, the appointment of the respondent No.5 made as per Annexure A-14 memo dated 07.08.2007, is fully sustainable. The stand taken by the respondents in this regard is fully upheld while dismissing the Contempt Petition filed by the applicant.

9. We have heard Mr. O.V. Radhakrishnan (Sr.) with Ms. Rekha Vasudevan, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC for official respondents 1 to 4 and Mr. T.C. Govinda Swamy, learned counsel for respondent No.5 and perused the material on record.

10. In the order dated 23.04.2007 allowing the O.A. No. 704/2006, this Tribunal held that when the posts are filled up either by seniority or merit through departmental examination from Group-D officials or GDSs, the

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method is by promotion only. The Hon'ble High Court in W.P.(C) No. 4956/06 has confirmed similar order of this Tribunal in identical case in O.A. No. 277/2004 in the following words:

" A reading of the recruitment rules will show that the contention raised by the petitioners that only direct recruitment is the method, is not correct. Apart from that, they are not justified in contending that prior approval of the Screening Committee is required, as the same is not provided under the recruitment rules. The finding rendered by the Tribunal that the respondents who are applicants before it are entitled for promotion, is therefore perfectly in order. At any rate, the view taken by the Tribunal is not so perverse warranting interference by this Court under Article 227 of the Constitution of India."

Accordingly, this Tribunal had directed the respondents to take immediate steps for filling up the promotional vacancies in the cadre of Postman for the year 2004-05 in Vadakara Post Office and to consider the applicant in accordance with his seniority and his eligibility in terms of the Recruitment Rules, within a period of 4 months from the date of receipt of a copy of that order. The Hon'ble High Court of Kerala upheld the order of this Tribunal on 07.07.2008.

11. The question to be decided in the instant O.A. is whether the respondents were justified in promoting the 5<sup>th</sup> respondent herein to the post of postman overlooking the seniority of the applicant disregarding the direction given by this Tribunal as above. The 5<sup>th</sup> respondent was selected by the D.P.C. held on 07.08.2007 and on the same day the order was issued for appointment of the 5<sup>th</sup> respondent to the cadre of postman against the 25% quota based on length of service cum fitness for the vacancies for the year 2005 under UR quota. The respondents submitted that a Writ Petition was filed challenging the order of this Tribunal dated



23.04.2007 in O.A. No. 704/2006. There was no stay order against implementing the aforesaid order. In the absence of any stay order, the respondents were not justified in promoting the respondent No. 5, who was junior to the applicant, disregarding the order of this Tribunal. The stand taken by the respondents that there was no direction to review such appointment either in Annexure A-9 order or in Annexure A-11 order is illogical and unreasonable. The Annexure A-9 order dated 23.04.2007 cannot give a direction to cancel or review the memo dated 07.08.2007. The Writ Petition No. 19182/2008 which came up for admission on 07.07.2008, was dismissed by the Hon'ble High Court on the same day vide Annexure A-11 order.. It is not the case of the respondents that the promotion of the 5<sup>th</sup> respondent overlooking the seniority of the applicant and disregarding the direction of this Tribunal was projected before the Hon'ble High Court to merit a direction to cancel or review it. Therefore, Annexure A-11 order also cannot give a direction to review or cancel the appointment given to the 5<sup>th</sup> respondent.

12. The applicant in C.P.(C) No. 55/2008 in O.A. 704/2006 did not make any specific reference to his supersession by the 5<sup>th</sup> respondent as he was obviously unaware of his supersession. In the affidavit filed in the C.P.(C) No. 55/2008, the respondents had stated that the one vacancy falling under 25% quota in the year 2005 had already been filled up by appointing Shri N.K. Balachandran, GDSMD, Koroth Road. But it was not stated that he was junior to the applicant and that the order was issued on 07.08.2009, months after the order of this Tribunal on 23.04.2007. The Contempt Petition was dismissed holding that the chronological sequence of events



reflected that the respondents had given due priority to the case and action was satisfactory. This order dated 03.04.2009 (Annexure A-13) in no way can be taken as an approval of this Tribunal in not considering the applicant for promotion to the cadre of postman in accordance with the Recruitment Rules when his junior was promoted. Moreover, the failure to consider the applicant for promotion as Postman reviewing the selection of his junior was a fresh cause of action, which resulted in the instant O.A.

13. The right of the applicant for consideration for promotion against the three vacancies for the year 2005 had crystallized in the order of this Tribunal dated 23.04.2007 (Annexure A-9). Therefore, there was no justification for the non-consideration of the applicant for promotion in the meeting of the D.P.C. held on 07.08.2007 in which his junior was selected for promotion. The Annexure A-14 order dated 07.08.2007 selecting the 5<sup>th</sup> respondent, who is junior to the applicant, is vitiated by the non consideration of the applicant for promotion. The applicant's acceptance of the Group-D post in March, 2009, knowing fully that once he was inducted in the Group-D cadre, the question of his promotion to the cadre of Postman under the GDS quota would not arise, does not constitute a waiver of his right to be considered for promotion for the vacancies for the year 2005 in 2007.

14. In the light of the above, the selection and appointment of the 5<sup>th</sup> respondent to the cadre of Postman overlooking the seniority of the applicant is illegal. Hence it is ordered as under.

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15. Annexure A-14 memo dated 07.08.2007 appointing the 5<sup>th</sup> respondent to the cadre of Postman is hereby quashed and set aside. The respondents are directed to fill up the resultant vacancy in accordance with the direction given in the order dated 23.04.2007 in O.A. No. 704/2006 within a period of 60 days from the date of receipt of a copy of this order.

16. The O.A. is allowed as above. No order as to costs.

(Dated, the 22<sup>nd</sup> February, 2011)

  
**(K. GEORGE JOSEPH)**  
ADMINISTRATIVE MEMBER

  
**(JUSTICE P.R. RAMAN)**  
JUDICIAL MEMBER

cvr.