

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.360/99

Tuesday, this the 14th day of September, 1999.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

C.G.Sylaja Devi,
Part Time Casual Labourer,
(Sweeper),
ISRO Post Office,
Trivandrum.

- Applicant

By Advocate Mr Thomas Mathew

Vs

1. Assistant Superintendent of Post Offices, Trivandrum North Sub Division, Trivandrum-33.
2. Chief Post Master General, Kerala Circle, Trivandrum.
3. Director General, Department of Posts, New Delhi.

- Respondents

By Advocate Mr M.Rajendra Kumar, ACGSC

The application having been heard on 17.9.99, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant is employed as a part time Casual Labourer at ISRO Post Office since 11.12.93 and she has completed 5 years, 3 months and 21 days of part time service as on 22.3.99. She is being paid wages on a daily rate of 1/30th of wages of a regular employee on a pro-rata basis. The grievance of the applicant is that inspite of the instruction of the DG, Posts in its letter

dated 6.6.88(A-1) that casual labourers part time or full time who have put in a minimum service of one year should be given preference in the matter of recruitment to ED post and inspite of the reiteration of this instruction in DG's letter dated 31.3.92(A-2), though the applicant is eligible and qualified to be appointed as Extra Departmental Mail Carrier(EDMC for short), the respondents are taking steps to fill up the vacancy of EDMC that has arisen in the ISRO Post Office, by making recruitment vide notification dated 8.3.99(A-6). Alleging that the chances of the applicant for appointment to an ED post on the basis of the preference available under the DG's instructions stated supra, the applicant has filed this application seeking to have the A-6 notification set aside declaring that she is entitled to be appointed as EDMC, ISRO Post Office in view of the preferential right accrued by her in terms of the DG's instructions and for an appropriate direction to the respondents.

2. The respondents in their reply statement contend that the applicant does not have any statutory right to get preference in the appointment to ED post, that the applicant not being sponsored by the Employment Exchange in accordance with the directions contained in DG, Posts letter dated 17.9.90(R1-(a)) that casual labourers who were sponsored by the Employment Exchange and who fulfilled the conditions and qualification required for ED post alone would be considered for appointment to ED post, that in the letter dated 27.1.92(R1-(b)), the exemption from the Employment Registration has been given to casual labourers recruited before 7.6.88 and that as the applicant was not recruited as a casual labourer before 7.6.88 she has no right to claim any preference under the instructions issued by the DG, Posts in the matter of appointment to ED posts.

3. The applicant has filed a rejoinder in which the applicant contend that the requirement of sponsorship by Employment Exchange is no more relevant in view of the decision of the Hon'ble Supreme Court in Excise Superintendent, Malkapatnam Vs KBN Visweshwara Rao & others, (1996(6) SCC, 216) and as the applicant has been working as part time casual labourer from 1993 onwards, she is entitled for preference in the matter of appointment to ED post.

4. We have gone through the pleadings and the documents on record and have heard the learned counsel on either side. The appointment to ED posts are made on the basis of instructions issued by the DG, Posts. The instruction governing the method of recruitment to ED posts has been consolidated and published in the Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department at Section(iii). Instruction No.25 issued by the DG, Posts in his letter No.17-141/88-EDC & Trg. dated 6.6.88 reads as follows:

"According to the prevalent recruitment rules governing the cadre of Group'D', the order of preference among various segments of eligible employees is as under:

- (a) Non-test category
- (b) ED Employees
- (c) Casual Labourers
- (d) Part-time casual labourers.

2. Since the number of vacancies of Group'D' is limited and the number of ED employees eligible for recruitment as Group'D' is comparatively large, the casual labourers and part-time casual labourers hardly get any chance of their being absorbed as Group'D'. Thus majority of casual labourers with long service are left out without any prospect of their getting absorbed in Group'D' cadre.

3. Keeping the above in view, a suggestion has been put forth that casual labourers, both full and part-time should be given preference for recruitment as Extra Departmental Agents, in case they are willing, with a view to afford the casual labourers a chance for ultimate absorption as Group 'D'.

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

It is evident from the above quoted instruction that a conscious decision was taken that casual labourers whether full time or part time, who are willing to be appointed in ED vacancies should be given preference in the matter of recruitment to ED post provided they fulfil all the conditions of eligibility and have a minimum service of one year. It is also stipulated that 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 for ED vacancies have been initially sponsored from Employment Exchange. In the letter of the DG dated 17.9.90(R1(a)), it has been reiterated that only those casual labourers who are sponsored by the Employment Exchange and who fulfil conditions and qualification required for ED post should be considered for appointment to ED post. However, the

respondents have continuously engaged the applicant as a part time employee from 11.12.93 onwards. Having retained the applicant for more than 5 years as a part time employee, it is absolutely uncharitable and illegal to deny to her the benefit of preference in appointment to the ED post according to the instructions given by the DG, Posts on 6.6.88. After the judgement of the Supreme Court in Excise Superintendent, Malkapatnam Vs KBN Visweshwara Rao & others, the consideration of a person not sponsored by the Employment Exchange cannot be considered as irregular or illegal. Further, the applicant holds an Employment Registration. If her initial recruitment as part time casual labourer was not through Employment Exchange, it was not her fault, but the fault of the authority who engaged her as a part time casual labourer and of the department which permitted her to continue for a period as long as six years. After having retained the applicant as part time casual labourer for six years, the respondents cannot be now permitted to turn down and say she would not be entitled for the benefits which other part time casual labourers would have, for the reason that her engagement was not through Employment Exchange. Since the applicant is willing to work as EDMC at the ISRO Post Office, the respondents have to consider her case giving her preference for appointment to the post and appointment from open market should be resorted to only if she is found otherwise not eligible or suitable for appointment as EDMC.

5. In the light of what is stated above, we dispose of this application permitting the applicant to make an application pursuant to A-6 within ten days from today and directing the 1st respondent to consider the eligibility and suitability of the applicant for appointment to the post of EDMC, ISRO Post Office in the light of the rules and instructions on the subject and to appoint the applicant if she is not found otherwise not eligible or suitable

and that appointment from open market should be resorted to only in case of the applicant being found ineligible or unsuitable. The direction as aforesaid should be complied with and an appropriate order passed by the respondents within one month from the date of receipt of the application of the applicant. No costs.

Dated, the 14th of September, 1999.

JL Negi
(J.L.NEGI)

ADMINISTRATIVE MEMBER

A. V. Haridasan
(A.V.HARIDASAN)
VICE CHAIRMAN

trs/17999

List of Annexures referred to in the order:

Annexure A-1: A true copy of para 25 of ED Recruitment Rules/instructions.

Annexure A-2: A true copy of letter No. Rectt/27/1/IV dated, 31.3.92 issued by Assistant Director, Recruitment, Office of the second respondent.

Annexure A-6: A true copy of notice dated 8.3.99 bearing No. EDMC/ISRO.

Annexure R-1(a) : Copy of the letter of D.G.(P) letter No. 17-141/88-ED & Trg. dated 17/9/90.

Annexure R-1(b) : Copy of the letter No. 45/66/91-SPB-1 dated 27.1.92 from Director.