

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 376/2005

Monday, the 31st day of July, 2006

C O R A M :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

Madhusoodanan Pillai,
S/o. Kunjattyappan Pillai,
Nellalathu Veedu,
TKMC P.O., Karikode,
Kollam : 5

... Applicant.

(By Advocate Mr. V. Bhaskaran Pillai)

v e r s u s

1. Union of India represented by
The Secretary to Government,
Ministry of Communications,
New Delhi.
2. Superintendent of Post Offices,
Kollam Division,
Kollam – 1
3. Inspector of Post Offices,
Kollam North Sub Division,
Kundara.
4. Post Master,
TKMC P.O., Kollam.
5. Postmaster General,
Kerala Circle, Thiruvananthapuram.
6. Shri Harikumar,
GDSMD/MC, Thattarkonam Sub Post Office,
TKMC Post Office, Kollam

... Respondents.

(By Advocate Mr. Sunil Jose, ACGSC)

This Application having been heard on 20.07.06, the Tribunal on ..31-07-06 delivered the following :

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

When provision exists for giving preference in matters of appointment to some posts, if the same is denied to an individual, though he is eligible for the same, then that person's right to equality gets infringed upon. The question involved in this case is whether the applicant has crystallized any such right for preference to be given in appointment to the post of EDSMC and if so, whether the same has been encroached upon by the respondents.

2. Turning first to the legal position, by a notification dated 6th June, 1988, the Postal Authority has prescribed certain order of priority to be afforded to certain categories of employees for appointment to any Group D posts and the beneficiaries of this preference are (a) Non Test Category; (b) ED Employees, (c) Casual Labourers and (d) Part Time Casual Labourers. As E.D. Employees are more in number, majority of the casual labourers and almost all Part time casual labourers are left with out any prospect of their getting absorbed in Group D cadre. Hence, with a view to mitigating the hardship faced by the Casual and Part Time Casual Labourers, the respondents have decided that such Casual Labourers and Part time Casual Labourers who are willing to be appointed to ED vacancies may be given preference in the matter of recruitments to ED posts,

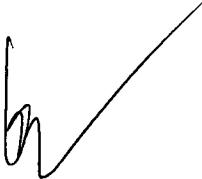


provided they fulfil all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year. It was also directed that nominations are called for from the Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have been initially sponsored by Employment Exchange.

3. Ordinarily, transfer of GDS is not permissible perhaps for the reason that one of the requirements of service of GDS is that he must ~~must~~ have a residence in that area. Exception to the transfer is, of course, when there is an abolition of post of GDS at one place and the serving GDS has to be accommodated elsewhere and in public interest.

4. When a person is appointed on provisional basis as GDS and he continues for three years in the same position, then he would be preferred to others for the post.

5. Now, the facts of the case as contained in the OA. The same are as under:-



- (a) The applicant is a permanent resident within the delivery area of TKMC Post Office, Karikode, Kollam. He is a Matriculate with training in ITI in the trade of Diesel Mechanic.

(b) On 30.11.1994, when E.D. Packer R. Chandramohan Pillai, attached to TKMC Post office went on leave, the applicant was engaged as a Packer in the said Post Office for ten days. As and when a vacancy arises in EDDA or Group 'D' post in TKMC Post Office or Thattarkonam Post Office which is a branch post office of TKMC Post Office, the applicant was assigned that work by posting him against the said post by the competent officer. Thus, the applicant was working in the TKMC Post office right from 30.11.1994. No appointment orders were served on the applicant. From November 1994 to December, 2003, the applicant worked in the TKMC Post Office on different post for more than 300 days as and when vacancy was available.

(c) While the above facts relate to engagement as EDDA, the applicant was working as Scavenger in the TKMC Post Office from January, 1999 onwards without any break till February, 2005.

(d) There are vacancies 'Gramin Dak Sevaks' in Karikode Post Office. The post wherein the applicant is working is a permanent post. In TKMC Post Office, post of E.D. Packer in Uliyakovil Post Office, Civil Station, Edakkadom, Kureepuzha Post offices are lying vacant without either temporary or permanent staff. Vacancies of E.D. BPMs, Edakkadom, Kizhakkanel are also available. The applicant is very much desirous of getting a job of GDS (Gramin Dak Sevaks). He is fully qualified and is eligible to get such an employment and he is having preferential claim for getting such an employment inasmuch as he is having more than five years of continuous service in two categories without break. The authorities have not considered his request for permanent placement and it is learnt that they may terminate service of the applicant at any time.

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(e) The applicant approached this Tribunal by filing O.A. No. 73/2005 since he apprehended termination of employment.

(f) After his filing the O.A. No. 73/2005 on 2.2.2005, the Postal Authorities terminated the applicant's casual employment as Scavenger of the TKMC Post Office. On 10.2.2005, the applicant was relieved as EDDA of Thattarkonam Post Office by transferring another GDS (MM) working in Kilikolloor P.O. As such, O.A. 73/2005 was withdrawn with permission to move a fresh O.A.

(g) The applicant relies upon the decision of this Tribunal dated 27.8.2003 in O.A. No. 534/03 (Annexure A-13).

(h) The grounds for reliefs are as follows:

(i) The applicant's appointment as EDDA from January, 2004 to November, 2004 and intermittently thereafter till February, 2005, since he worked for more than 240 days in one calendar year as Part-time Scavenger in the TKMC Post Office, the authorities ought to have considered his claim. Service though in different categories, since continuous, ought to have been treated as service in the category of EDDA for the purpose of regularization.

(ii) A Scavenger is a casual labourer. A casual labourer whether full time or part-time has a preferential claim to be absorbed in the existing ED vacancies provided they are fully qualified for the post and has a minimum one year service in that post and that one year is reckoned as 240 days.

(iii) This Tribunal had repeatedly held that Part-time casual labourers even though not engaged through Employment

Exchange ought to be preferred for appointment as GDS.

6. Respondents have contested the OA. Their version as per CA are as under:-

- (a) No cause of action to be aggrieved and prefer this O.A. The applicant is not eligible for any preferential claim as averred by him.
- (b) It is true that the casual labourers and Part-time casual labourers are being considered for appointment as GDS on certain conditions. The applicant is not a regularly selected and appointed casual labourer. He happened to work as Part-time Scavenger, TKMC P.O. During the period from 1999 to 2004. A ban on the recruitment of casual labourers was introduced in 1997, which is still continuing. The 4th respondent engaged the applicant irregularly in the post of Part-time Scavenger though he is not competent to do so.
- (c) A leave substitute has no claim for regular appointment in the Department. As submitted above, the applicant worked in the post of GDSMD, Thattarkonam Branch Post Office as a stop gap arrangement. This does not confer him any claim for regular appointment in this post.
- (d) It is also true that the post of GDSMD, Thattarkonam Post Office fell vacant with effect from 2.1.2004 and filled up regularly by a retrenched GDS from 10.2.2005. During the period between 2.1.04 to 10.2.05, the applicant was engaged in this vacancy in three spells of short durations as a stop gap arrangement. In the above

circumstances, the claim of the applicant to be appointed in this vacancy could not be entertained. It is admitted that the applicant has worked as GDSMD, Thattarkonam in temporary stop gap arrangement. There is no dispute over his qualification and employment registration. But as per the existing rules, the claim of the applicant to get him appointed regularly in any GDS post cannot be entertained.

(e) The applicant has placed reliance on Annexure A13 order. The said order has no relevance as far as the applicant is concerned inasmuch as the said case was in relation to a case of a regularly appointed PT Sweeper. The case of the applicant being entirely on a different footing cannot be applicable to this case. Temporary engagement of the applicant was discontinued by November, 2004, but O.A. No. 73/2005, which was withdrawn by the applicant only thereafter.

(f) Hon'ble High Court of Delhi by its judgement dated 8.7.2004 in Civil Writ Petition No. 8615/04 held that E.D. Agents appointed by way of stop gap arrangement on provisional basis has no right to continue or seek regularization. Hon'ble Supreme Court repeatedly and unequivocally held that regularization cannot be a mode of recruitment as the same would be violative of Article 309 of the Constitution. It was also held by the Apex Court that status of an employee cannot be changed in the absence of any statute or statutory rule {V. Sreenivasa Reddy and Ors. vs. Government of A.P. & Ors., AIR 1998 SC 2073; State of M.P. And Anr. vs. Dharam Bir, (1998) 6 SCC 165}. It was also held by the Apex Court that provisional appointees cannot seek regularization by reason of prolonged service. In the case of State of Orissa and Anr. vs. Dr. Pyari Mohan Misra, AIR 1995 SC 974, it was observed by the

Apex Court that mere prolonged service does not result any claim for permanent or substantive status. In the light of the above, the applicant cannot be regularized as GDS.

7. Rejoinder and additional reply have also been exchanged, by and large reiterating the contentions respectively of the O.A. and reply.
8. The question for consideration, as spelt in para 1 above has now to be considered.
9. Admittedly, the applicant was engaged as part time scavenger in 1999 till 2004 when he was engaged as GDSMC in January, 2004, which post he held till Feb. 2005. Replacement of the applicant as GDSMC was necessitated as a post of GDS MC at Kilikolur was abolished and the incumbent to that post was to be accommodated. Though the applicant contended that transfer of a GDS is not permissible, the ban on transfer is not for such a kind of transfer but a routine transfer or transfer on request. In the instant case such a transfer was necessitated on the ground that the post of GDSMC at Kilikolur stood abolished. Obviously the person manning that post there being a permanent hand, he was to be immediately accommodated. There is absolutely no illegality in his appointment by disengaging the applicant. For, the continuance of the applicant as TKMC was purely on a temporary basis and he was to pave way to a regular GDS. Hence, the appointment of respondent No. 6 in the place of the applicant as GDS cannot be questioned.

10. Coming to the legal right of the applicant, as he had already functioned as a part time scavenger for about five years, he has crystallized the right to be considered in preference to outsiders for the post of GDSMC anywhere within the sub division and subject to the applicant fulfilling/undertaking to fulfill (residence requirement) the requisite eligible conditions of appointment. This is one such right. Again, as a GDS itself, as the applicant has served for over 240 days in a year, he has to be considered for regular appointment in preference to others in any vacancy. Regularization in the same post he holds is not contemplated.

11. The respondents have relied upon the judgment of the Hon'ble High Court in the case of Ms. Kamla Devi vs Union of India and others (CWP 8665/2004 decided on 08-07-2004). This is a case where the petitioner therein sought for regularization. A more appropriate case which goes in support of the applicant to some extent is *Union of India v. Debika Guha, (2000) 9 SCC 416*, at page 417 wherein the Apex Court has held as under:-

When similar matters came up before this Court in Writ Petition No. 1624 of 1986 and connected matters, this Court held that the claim on behalf of substitutes ordinarily is not entertainable but made it clear, however, that if they have worked for long periods continuously, their cases could be appropriately considered by the Department for absorption. (Emphasis supplied).

Thus, taking necessary queue from the above dictum of the Apex Court, it can be easily held that the Department cannot completely ignore the services

rendered by the applicant as EDMC for more than 240 days and it is only appropriate that the Department takes into consideration the same while considering filling of any post of EDMC.

12. Again, the respondents have contended that the applicant's appointment as a scavenger was not properly done. This contention has to be rejected for more than one reason. First, the applicant continued to work as scavenger for years together and it cannot be that any procedural lacuna in the engagement of the applicant would not have been located. If the deficiency is only non-sponsorship of the applicant through employment exchange, in some cases, this requirement has been thoroughly waived, especially in such cases where the individual had served for a substantial period. In this regard, order dated 5.12.2005 in W.P. (C) No. 33732 of 2005, Assistant Superintendent of Post Offices and 2 Others vs. Lathakumari K., of the Hon'ble High Court of Kerala is relevant. In that case, the Hon'ble Court has held as under:-

"..... The main contention of the writ petitioner is that the appointment of the applicant is not through Employment Exchange. But the fact remains that she has gained sufficient experience working for long on casual basis. Going by the departmental instruction, such casual labourers are to be given preference in the matter of recruitment. It is for the department to ensure that the appointments even on casual basis are not made through the back door. Having appointed people like the applicant and such applicants having gained experience as casual labourers they cannot be prevented from participating in the selection and appointment....."

13. Taking support of the above verdict of our High Court, it has to be held

that as the applicant has been in part time Scavenger service for over five years and as the same appears to have been duly recognized by the respondents (which is evident from the fact that he had been asked to carry out the functions of EDMC for more than 240 days), he has a right crystallized on the basis of his having put in more than 5 years as a part time scavenger, and on the basis of his having been engaged for period of 240 days/more as GDSMC, and the department could consider his absorption as held by the Apex Court in the case of Debika Guha (*supra*), the applicant is entitled to preferential appointment over the outsiders and hence, the O.A. is partly allowed. Respondents are directed to consider the case of the applicant for appointment as GDS in the next available vacancy in or around TKMC post office. Again, in case there is any requirement of part time Scavenger in such post offices, the services of the applicant be utilized for the same till such time vacancy as GDSMC arises.

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



K B S RAJAN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

CVR.