

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

O.A. No.  
~~XXXXXX~~

382/90

499

DATE OF DECISION 30.8.1990.

N. Appukuttan Nadar Applicant (x)

Mr. G. Sasidharan Chempazhan- Advocate for the Applicant (s)  
thiyil.

Versus

The Supdt. Postal Stores Deptt Respondent (s)  
Trivandrum and 4 others.

Mr. TPM Ibrahim Khan, Advocate for the Respondent (s) 1 to 3.  
M/s GP Mohanachandran & -do- 4 and 5  
KR Haridas

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. To be circulated to all Benches of the Tribunal? ✗

JUDGEMENT

(Shri N.V. Krishnan, Administrative Member)

The grievance of the applicant in this case is that though clear vacancies of mazdoors are available, the applicant has not been regularised despite his previous length of service. He had earlier approached this Tribunal in O.A. 426/89/ by an order dated 2.8.89 he was permitted to file a representation for regularisation to Group 'D' post which the respondents were directed to dispose of within a specified time. A Group 'D' post was also directed to be kept vacant in case his representation was allowed. Accordingly, the applicant filed Annexure-VII representation dated 14.8.89 to the Post Master General, Kerala Circle, Trivandrum, and he was informed by Annexure-VIII letter dated

15.9.89 that the Supdt. PSD, Trivandrum, has been instructed to include his name in the panel of approved Mazdoors and that his request for appointment to Group 'D' post will be considered by him at the appropriate time, subject to his eligibility.

2. However, when two vacancies arose <sup>and</sup> the fourth respondent was appointed on compassionate ground against one vacancy and the fifth respondent has been selected for compassionate appointment vide Annexure-IX and Annexure-XII orders, the applicant approached this Tribunal for a direction that the Respondents 1 and 2 should take steps to regularise his service in group 'D' non test category in PSD, Postal Department.

3. When the matter came up for hearing today, we noticed that the controversy really centred round only one issue. For, the Respondents 1 to 3 vehemently aver that the applicant is over aged for regularisation. It was also clear from some of the statements filed by them that they were confusing the age of the applicant with the age of another person, <sup>the</sup> ~~Mazdoor~~ with a similar name, i.e., K. Appukuttan. Nevertheless, in the final statement made by Respondents 1 to 3 on 27.8.90 they produced a photostat copy of the letter dated 2.3.81 (Annexure R-1) sent by the Supdt., Postal Stores Depot, Trivandrum, to the Sr. Supdt.

of Post Offices, Trivandrum North Division showing in a tabulated statement <sup>u</sup>~~that~~ the date of birth of the applicant as being 28.9.1104 according to the Malayalam Era, corresponding to 14.5.1929 in the Christian Era, and that his date of appointment is 7.3.1972.

4. In this connection, it is <sup>u</sup>~~exam~~<sup>sub</sup>mitted in the statement that "No reliable records are available in the office of the respondents regarding the real date of birth of the applicant, except a tabulated form prepared on the basis of an application submitted by the applicant." The counsel for Respondents 1 to 3 admitted that the original application said to be submitted by the applicant is not available in the Govt. records. We also wanted to ascertain from him the relevance of the date 7.3.72 shown as the date of appointment of the applicant in the tabulated statement. He could only hazard a guess that it appears to be the date of his confirmation. We are not satisfied with this reply because it is admitted that the applicant entered service as a part-time Gardener in 1965, and he became a full time mazdoor on 27.8.1980. Therefore, the only relevant years are 1965 and 1980 and the year 1972 has no relevance so far as the applicant is concerned.

5. In the circumstances, we are clearly of the view that the respondents have no evidence to support their contention that the applicant is overaged.


6. As against this, the applicant submits that he gave a statement about his age to the Department when he entered service in 1965 which, as stated above, is not available. He was directed by the Supdt. of Postal Store Department on 2.3.88 (Annexure-XII) to produce a certificate showing his date of birth. In response to this, he produced before the authorities his horoscope showing his date of birth as 12th Chingam 1114 corresponding to 2.9.1938 (Annexure XIII and XVI). Accordingly, he would have been around 50 years in 1988. This is corroborated by the medical certificate given to him by the Civil Surgeon, PH Centre, Malayankil (Annexure-XIV) as well as the entries in the Electoral Roll of 1988 and 1987 (Annexure XV and XVIII). It is seen that in the electoral roll, the age of applicant's mother is shown as 70 years as on 1.1.88. If the applicant is treated to have been borne <sup>u</sup> in 1929 as claimed by the Respondents 1 to 3, he ~~xx~~ would have been 59 years in 1988 which would imply that his mother had delivered him when she was only 11 years old, which is highly improbable.

7. In the above circumstances, we ~~xxx~~ are satisfied that the applicant has established that the date of his birth is as shown in his horoscope, viz, 12th=Chingam, 1114 corresponding to 2.9.1938 and we ~~are~~ are unable to accept the contention of the respondents to the contrary.


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We, therefore, allow this application and direct the Respondents 1 to 3 to accept the age of the applicant as 12th Chingam, 1114 Malayalam Era corresponding to 2.9.1938 and take necessary steps to regularise him in the Group 'D' post in accordance with law, for which purpose a post has been directed to be kept vacant by an interim order. This order shall be implemented within a period of two months from the date of ~~the~~ receipt of this judgment or its copy. 1/2

8. The application is allowed as above. There will be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

30.8.90.

  
(N.V. Krishnan)  
Administrative Member

30-8-90