

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 389 of 2004

Wednesday, this the 8th day of November, 2006

C O R A M :

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

G. Vincent,
S/o. George,
Postman, Murukumpuzha,
Residing at Nini Land,
Murukkumpuzha

... Applicant.

(By Advocate Mr. Sasidharan Chempazhanthiyil)

v e r s u s

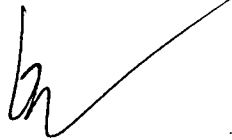
1. Senior Superintendent of Post Offices,
North Sub Division, Thiruvananthapuram : 23
 2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
 3. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.
- ... Respondents.

(By Advocate Mr. Sunil Jose, ACGSC)

The Original Application having been heard on 2.11.06, this
Tribunal on 8.11.06. delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, initially appointed as ED Agent on 1-12-1980, eligible to
be appointed in Group D post on availability of vacancy, was hoping to be

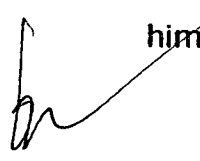


appointed in 1997 when vacancies arose but was appointed only on 18.10.2000. The delay in appointment to the post has telescopically affected the applicant inasmuch as, he would be deprived of his pensionary benefits as by the time he retires in September, 2009, he would not have the minimum of ten years of qualifying service as a Group D employee, a pre-requisite for his entitlement to pension. Claim of the applicant, therefore, is that he should be declared to have been notionally appointed in Group D post from 1997 itself.

2. A few admitted facts of the case are as follows. The applicant, as per the seniority list of Extra Departmental Agents in Trivandrum Division as on 01.01.1997, was one of the 15 senior most ED Agents awaiting regular appointment in the cadre of Postman/Group D in the Department. And, the applicant was provisionally selected as the 6th candidate against the 25% quota of vacancies (6 in number) earmarked for the senior most ED Agents and was imparted Postman Training and was also allowed to work as L.R. Postman. However, this vacancy of Postman got reduced to 3 due to the decision of the Government of India raising the retirement age of Central Government Employees from 58 to 60 years consequent to which the applicant could not be allowed to continue in Group D post for more than about 5 months. The applicant had, therefore, filed OA No. 1081/98 challenging his reversion. The said OA was disposed by order dated 15.10.1998 with a direction to the respondents to consider appointment of



the applicant on a provisional basis in a Group D post till his chance would arise for appointment on a regular basis. The Chief Postmaster General, had expressed his inability to give provisional appointment vide order dated 17.08.1999. Thereafter, the respondents had effected promotion of various ED Agents including the applicant, by Annexure A-1 order dated 17-10-2000, and the applicant was appointed against one of the 1997 vacancies. The applicant filed OA No. 141/2000, challenging the aforesaid order dated 17-8-1999 as well as order dated 17-10-2000 in so far as it appointed the applicant w.e.f. 18-10-2000 only and not from 1997 when the vacancies arose and against one of which he was admittedly appointed. This O.A. was disposed of by Annexure A-2 order dated 02-01-2003, with certain specific observations and giving liberty to the applicant to make a representation to the Secretary, Ministry of Communications, New Delhi and if such a representation is made, the said respondent "shall consider the same and pass appropriate orders keeping in view the observations" made in the said order. Availing of the said liberty, the applicant filed the Annexure A-3 representation dated 27-01-2003 requesting that the case be examined sympathetically for prior notional promotion for the purpose of pension so that when he retires in 2009, he may not be denied pension for want of minimum qualifying service. The impugned Annexure A-4 order dated 21st July, 2003, whereby the respondents had rejected the request of the applicant for grant of notional promotion with retrospective effect to make him eligible for pension is under challenge in this case.



3. In the said impugned order, the respondents have stated as under:-

The Group 'D' recruitment in Kerala Circle had been kept in abeyance due to quashing of the upper age limit for ED Agent for recruitment to Group D posts prescribed in Department's letter dated 28-08-90 as per CAT, Ernakulam Bench Order in O.A. No. 155/95. The issue thereafter got entangled in OA No. 239/98 and 449/98 and further in O.P. No. 25172/98 filed by the Department against the common order in the said Oas. The Circle could not fill Group D vacancies due to the fact that question of fixing of upper age limit for EDAs as subjudice. It was in the month of October 2000 that on disposal of the O.P. Referred to regular recruitment to Group D cadre could be made following the judgment of High Court of Kerala permitting the Department to make recruitment to Group 'D' cadre by framing executive orders relating to upper age limit."

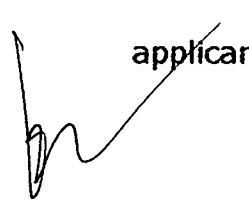
4. It is to be pointed out here that the controversy in the above said O.As and the O.P. revolved round the upper age limit for recruitment of ED Agents to Group D cadre. The ceiling of 50 years of age was quashed by the Tribunal in the aforesaid O.As and when the Respondents took up the matter before the Hon'ble High Court in O.P. No. 25172/98, the High Court disposed of the same on 30-03-2000 permitting the Department to frame executive orders prescribing the upper age limit for appointment of ED Agents to Group-D posts. Accordingly, the Department by order dated 20-07-2000 passed an order fixing the age limit as 50 years. It also took action to make recruitment to Group D cadres for the vacancies pertaining to the years 1997, 1998, 1999 and the applicant has been appointed against one of the 1997 vacancies vide order dated 17-10-2000 (Annexure A-1).



5. Counsel for the applicant had submitted that the action of the respondents clearly shows that there had been delay in appointment purely due to the lapse on their part and the applicant cannot be made to suffer on account of the lapse on the part of the respondents. Their inaction has perpetually affected the benefits by way of pension which would otherwise be available to the applicant, had the respondents effected the promotion of the applicant as early as in 1997. The applicant would have 8 years and 11 months of regular service as a group D employee and his earlier functioning as LR Postman accounted for a further 5 months and as such, the applicant is short of 10 years by 7 months.

6. Counsel for the respondents, on the other hand, submitted that there is absolutely no delay on their part. Explaining the subsistence of the Court case, the respondents have stated that once the court case was over in March, 2000, they had plunged into action and accordingly, by October, 2000 they could effect promotion including that of the applicant.

7. Arguments were heard and documents perused. Admittedly, the applicant was entitled to be considered for promotion to the Group D post from 1997 itself. His promotion as late as 2000 was thus not on account of any of the deficiency on his part. In fact, he was imparted postman training and for some months he was appointed as LR postman as well. Thus, the applicant could have been promoted from 1997 itself on regular basis. Yet,

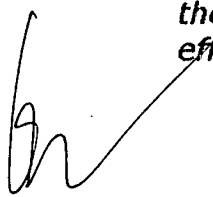


he could not be promoted, and the delay, according to the respondents is inevitable, as court case was going on and the order quashing and setting aside the age limit for appointment of Gram Dak Sevaks for Group D posts was stated to have been stayed by the Hon'ble High Court and the stay was under operation till the final disposal of the O.P. i.e. till 30-03-2000. It was thereafter, under the orders dated 20-07-2000 the age limit was prescribed and simultaneously, action was initiated for appointment of GDS against the 1997-1999 vacancies, which crystallized vide order dated 17-10-2000. The name of the applicant is reflected as item No. 12, and against a 1997 vacancy.

8. Ordinarily, no one claim that he should be appointed from the date of availability of vacancies. In **Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur, (1998) 7 SCC 44**, the Apex Court stated:-

7. In Union of India v. K.K. Vadera (1989) Supp 2 SCC 625 this Court with reference to the Defence Research and Development Service Rules, 1970, held that promotion would be effective from the date of the order and not from the date when promotional posts were created. Rule 8 of those Rules did not specify any date from which the promotion would be effective. This Court said as under: (SCC pp. 626-27, para 5)

5. There is no statutory provision that the promotion to the post of Scientist B should take effect from July 1 of the year in which the promotion is granted. It may be that rightly or wrongly, for some reason or the other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist B should be with effect from the date of the creation of these promotional



posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.

9. In the instant case, however, the applicant was once appointed in 1997 but was reverted for some reason and thereafter, when there was a stipulation of age ceiling and challenge against the same was pending before the Tribunal, appointments to Group D post were kept in abeyance and the cloud could be cleared only as of 30-03-2000, when the Hon'ble High Court rendered judgment on the issue of age ceiling. A very significant observation has been made in the said judgment. The Hon'ble High Court has observed, ***"To avoid inconvenience to all concerned, the employer may consider taking action under the executive power in the matter of appointment. This exercise can be undertaken so long as the rules sought to be amended are not brought into operation."*** (Emphasis supplied). The expression "to avoid inconvenience to all concerned" has a specific purpose to serve. The inconvenience to the prospective appointee, including the applicant is also covered within that term. The respondents have certainly not taken into



account any age ceiling in so far as appointment of the applicant against the 1997 vacancy was concerned. For, had the age ceiling of 50 years been considered, perhaps the applicant would not have been eligible for appointment when the promotion had taken place in October, 2000 and the applicant is to superannuate in September, 2009! Thus, the clock was put back to 1997 and appointment of the applicant was considered. The applicant was appointed. If as of 1997 he could not have been appointed due to the pendency of cases before the Tribunal, certainly there has been no impediment to consider the applicant for promotion from that date when there has been no such impediment and the same is w.e.f. 30-03-2000. For, by that time, the Hon'ble High court had already passed the order. And, no age ceiling was prescribed in the wake of the judgment of the High Court till 20-07-2000. As such, considering the observation of the High Court, "To avoid inconvenience to all concerned", it would be in the interest of justice, if the applicant's appointment is deemed from 01-04-2000 onwards, of course, on notional basis, the same would enable the applicant to derive the benefit of pension as by including this period from April to October, 2000, the applicant would have the deficient period of seven months, making the total qualifying service as 10 years. This kind of notional appointment would not affect any other's seniority etc., Nor the applicant would be entitled to any refixation of pay. The notional appointment from April is purely for the purpose of working out the qualifying service of the applicant.

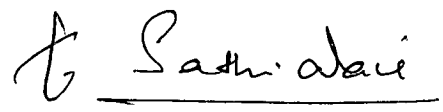


10. The OA is, therefore, partly allowed. It is declared that the applicant's appointment as Group D should be deemed to be w.e.f. 01-04-2000 and his earlier service in the said grade would also be taken into account for the purpose of qualifying service towards pension and other terminal benefits. The respondents are directed to act accordingly at the time of working out the qualifying service of the applicant.

11. No costs.

(Dated, the 8th November, 2006)


Dr. K B S RAJAN
JUDICIAL MEMEBR


SATHI NAIR
VICE CHAIRMAN

cvr.