

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 393 of 2005

Friday..., this the 15th day of December, 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

N. Radhamony,
W/o. Reghunathan,
Gramin Dak Sevak Mail Man,
Sub Record Office,
RMS 'TV' Division, Kollam,
Residing at 'Raghu Bhavan',
Thazam, Chathannur P.O.,
Kollam District.

... Applicant.

(By Advocate Mr. Shafik M.A.)

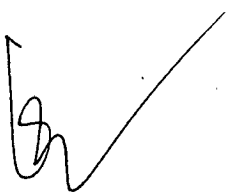
v e r s u s

1. Union of India, represented by its Secretary, Department of Posts, New Delhi.
2. The Chief Postmaster General, Kerala Circle, Trivandrum.
3. The Senior Superintendent, Railway Mail Service 'TV' Division, Trivandrum.
4. The Sub Record Officer, Sub Record Office, Railway Mail Service, 'TV' Division, Kollam.

... Respondents.

(By Advocate Mr. George Joseph)

The Original Application having been heard on 4.12.06, this Tribunal on 15.12.06. delivered the following :



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

The question for consideration in this case is whether the applicant is entitled to be deemed to have been in service from a date anterior to the date when he was actually appointed.

2. Brief facts of the case as per OA:-

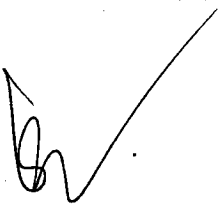
- (a) The applicant (OBC and IX pass) is presently working as Gramin Dak Sevak Mail Woman in Sub Record office at Kollam. She had been working as Part Time Casual Mazdoor from 27.2.1999 on ad hoc basis which was subsequently regularised with effect from 27.2.1999.
- (b) 12 vacancies of GDSMM arose from 11.10.2000 and the applicant submitted a representation for appointment as per DG Posts letter dated 6th June, 1988. The applicant was not, however, considered for appointment for reasons best known to the respondents.
- (c) Thereafter, the 4th respondent issued notification dated 25.9.2001 inviting applications for filling up the vacancies of GDSMM. The applicant has immediately responded to the said notification also and was directed to appear before the first respondent on 29.10.2001 for interview. The applicant appeared, but no advice regarding appointment was received by her. She therefore, submitted representations and finding no response, the applicant



approached this Tribunal in O.A. No. 511/03. The said application was disposed of by directing the second respondent to pass appropriate orders on the representation dated 15.3.2003 in accordance with letter dated 7.6.88, and also having regard to the orders of this Tribunal in various cases like O.A. Nos. 360/99, 1622/98, 648/00, 571/02 and 793/02.

- (d) In compliance of the order of this Tribunal, the fourth respondent issued memo dated 29.7.2003 appointing the applicant as GDS Mail Woman with effect from 30.07.2003 vide Annexure A4. The appointment of the applicant as GDS Mail Woman was delayed only due to the mistake committed by the respondents. The applicant ought to have been appointed as GDS Mail Woman as early as on 11.10.2000, date on which the vacancy arose and the willingness of the applicant was communicated to the respondents or at the latest by 29.10.2001 when the applicant was called for interview.

3. Respondents contest the OA and their version is as under:-

- (a) As per DG Posts letter dated 6.6.1988, preferential treatment can be given to the casual labourers for appointment to GDSMM if they fulfill all the conditions and should have initially been sponsored by Employment Exchange. In the instant case, the applicant is not a candidate sponsored by Employment Exchange initially and hence DG Posts orders referred to above is not applicable to the applicant.
- (b) The respondents could not proceed with the process of appoint-
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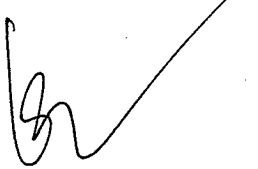
ment as the notification issued for appointment of GDSMM in SRO, Kollam, during the year 2001 had been quashed by this Tribunal in O.A. No. 793/2002.

- (c) It was in pursuance of the orders of this Tribunal in O.A. No. 511/2003, the applicant was appointed as GDS Mail Woman, SRO, Kollam with effect from 29.07.2003.
- (d) The applicant will be eligible for pension only after her regular appointment in the cadre of Group 'D' Mailwoman.

4. The applicant has filed rejoinder contending that the requirement of sponsorship from Employment Exchange, of casual labourers in service prior to 7.5.1985 has been waived by the DG Posts (as per DOPT O.M. dated 7.5.85) vide Annexure A9 D.O. letter dated 27.1.92 of Director (staff) addressed to DPS (HQ), TV, which reads as under:

"Please refer to your D.O. letter No. Rectt/27-2/82-90 dated 28.10.1991 regarding representation from National Postal RMS Mazdoor Union, Kottayam, regarding casual mazdoors forwarded to the Minister(C) by three M.Ps of kerala and the Finance Minister of Kerala.

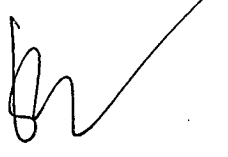
2. The representation has been considered in the light of your report. Since it may so happen that these persons may be engaged only for a few days in a month and hence the payment to them in a month may even be less than a part-time Sweeper, Mali, Water Carrier etc. since they are



engaged every day though for limited hours only, it has been decided that whenever vacancy occurs for such part-time hands, these casual mazdoors may be preferred, just as the casual labourers are given preference in the matter of appointment as EDAs, especially as, as per Deptt. Of Personnel O.M. No. 49014/4/90-Estt(C) dt. 8.4.91 circulated with this office letter No. 45-38/91-SPB.I dt. 29.5.91 one time exemption from the requirement of Employment Exchange registration has been given to those casual workers recruited before 7.6.88"

This stand has been reiterated in a number of cases thereafter also by this Tribunal. The applicant was denied appointment as EDM Woman (now GDSM Woman) in 1995 also by the IVth respondent even though the applicant had given her willingness to be appointed as EDM Woman in accordance with the direction vide Annexure A/10 order dated 18.10.95.

5. Applicant further submitted that the contention of the respondents that she could not be appointed as GDS Mail Woman after the interview / verification of documents conducted on 27.10.2001 as the notification issued on 25.9.2001 was quashed by the Tribunal in O.A. No. 793/02, is not true. In O.A. No. 793/2002, the Tribunal quashed the notification dated 11.3.2002 vide its order dated 10.3.2003. Notification issued on 25.9.2001 is the one according to which the

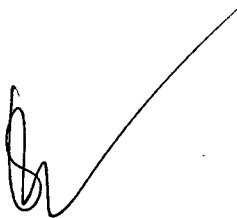


applicant applied for appointment as GDS Mail Woman. This has not been challenged by anybody in any Court of law.

6. Arguments were heard. The counsel for the applicant argued that if there be delay in appointment and the delay is attributable to the respondents then, the applicant should have the notional appointment so that the period from the date the applicant ought to have been appointed and actually appointed would count for certain limited purpose, such as qualifying service for appearing in the test for Group D post etc.

7. Per contra, the counsel for the respondents submit that such a notional appointment is not contemplated in law.

8. Appointment is normally from the date of actual appointment and not a day earlier. This is the general law. From that angle, perhaps, the applicant cannot be said to have crystallized her rights for being appointed from retrospective effect, even for the purpose of counting of service. The claim of the applicant could be justified if the respondents have, in identical cases, after court's orders, considered the representation and given appointment within the time limit prescribed, but in this case alone had taken such a long time, then on the ground of hostile discrimination, the applicant could have certain rights. It is not exactly known from the pleadings and documents whether other applicants such as in OA 360/99, 1622/98, 571/02 and



793/02, the respective applicants could be appointed within the time frame calendared by the Tribunal. This has to be verified first. If so, there is no reason as to why the case of the applicant had been singled out. As the applicant does not claim any wages for such period prior to his actual date of appointment, the respondents should consider his case for deemed appointment for the limited period of counting of services for the purpose of working out the eligibility condition for appearing tests conducted for appointment to Group D posts.

9. The OA, therefore, is disposed of with a direction to the respondents to verify from the records the time taken in offering appointment to various other applicants in the aforesaid OAs i.e., OA 360/99, 1622/98, 571/02 and 793/02 and if such appointments were comparatively within a few months, then the applicant should also be deemed to have been appointed within a month from the date of interview i.e. 29.10.2001 (say from 01-01-2002). Respondents should undertake this exercise of verifying from the records as to the time consumed in considering grant of appointment to the post of GDS in the case of the applicants in the aforesaid OAs within a period of two months from the date of communication of this order, and pass appropriate orders as stated above. If the applicant is as such entitled to have the date of appointment advanced on notional basis (only for the purpose of counting of services for appearing in departmental test), the said benefit shall be available to the applicant.



10. No costs.

(Dated, 15th December, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

Cvr.