

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00408/2014

Wednesday, this the 7th day of March, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Hariharan Thampi S.,
Outsider, Pulluvila SO,
Neyyattinkara,
Thiruvananthapuram – 695 526,
Residing at Krishnavilasom,
Karimkulam, Pulluvila PO,
Thiruvananthapuram – 695 526. **Applicant**

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Inspector Posts,
Neyyattinkara Sub Division,
Neyyattinkara – 695 121.
2. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthapuram – 695 036.
3. Union of India, represented by the
Chief Postmaster General, Kerala Circle,
Thiruvananthapuram – 695 033. **Respondents**

(By Advocate : Mr. P.R. Sreejith, ACGSC)

This application having been heard on 15.02.2018, the Tribunal on 07.03.2018 delivered the following:

O R D E R

Per Hon'ble Mr. U. Sarathchandran, Judicial Member –

Applicant, working as an outsider in Pulluvila SO, Neyyattinkara, Trivandrum is aggrieved by non-consideration of his claim for preference

for appointment as GDS. According to him he satisfies Annexure A1 administrative instructions of the Director General of Department of Posts issued on 6.6.1988 which provides for preference for casual labourers in the matter of appointment as ED. He relies on Annexure A2 clarification dated 17.5.1989 issued by the Assistant Director General (SPN), Department of Posts, New Delhi which directs that all daily wagers working in the post office or RMS offices or in offices under different designations such as Mazdoor, casual labourer and outsider are to be treated as casual labourers and that a casual labour who are engaged for a period less than 8 hours a day should be described as part-time casual labourers. Applicant further states that in the light of the clarification contained in Annexure A2, when the post of GDSMD, Payyattuvila and GDSMP, Ooruttambalam were notified for selection he applied for consideration. A copy of the application he submitted is marked as Annexure A3. He has also submitted Annexure A4 representation dated 12.5.2014 for granting the benefits of preference as provided for in Annexure A1 instructions of the Director General of Posts. As no action was taken he sent another representation, copy of which is marked as Annexure A5 on 31.5.2014. However, on receipt of Annexure A5, respondent No. 1 passed Annexure A6 order dated 5.6.2014 to the Sub Postmaster, Pulluvila SO to disengage the applicant immediately. The post of GDSMD, Payyattuvila was filled up even before considering the claim raised by the applicant in Annexures A3, A4 and A5. Applicant challenges Annexure A6 order of disengaging him, as an arbitrary exercise of power by respondent No. 1. He relies on Annexures A7, A8, A9 and A10 orders and judgments of this Tribunal and High Court of Kerala respectively, wherein

the issue of preference to casual labourers for engagement as GDS had been considered and approved. Applicant contends that he has completed 240 days of work in the year 2013 and hence he is entitled to be considered for preference in the matter of appointment to the post of GDS. He seeks relief as under:

- “1. Declare that the applicant is entitled to the benefit of Annexure A1 and direct the respondents to take action accordingly.
- 2. Direct the 2nd respondent to consider and pass orders on Annexure A4 and A5 representation in the light of Annexure A7 to A10 judgments.
- 3. Call for the records leading to the issue of Annexure A6 and set aside Annexure A6.
- 4. Direct the respondents to continue with the engagement of the applicant as Outsider in Pulluvila SO till consideration of his claim at Annexure A4 and A5.
- 5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- 6. Award the cost of these proceedings.”

2. The respondents resist the OA contending that applicant is trying for a back door entry into the Department and is trying to project himself as a casual labour. According to respondents when the post of Post man at Pulluvila post office became vacant on 22.7.2012 consequent on the transfer of the incumbent, the delivery work of the office was managed by the Sub Postmaster by arranging outsiders who were paid on hourly basis. Applicant is only one of such outsiders engaged purely on temporary basis and therefore cannot claim the status of casual labour engaged by the Department. Relying on the Constitution Bench judgment of the apex court in *Secretary, State of Karnataka v. Umadevi* – (2006) 4 SCC 1 respondents contend that applicant is not entitled to get appointment in the Department merely because he continued as a temporary or casual employee worked for

a time beyond his term of appointment. Respondents further rely on Annexure R1 letter dated 7.6.1988 which stipulates that persons on daily wages should not be given work of regular nature and that recruitment of daily wagers may be made only for the work which is casual or seasonal or intermittent in nature or for work which is not of full time nature, for which regular posts cannot be created. When the vacant posts of GDS occurred, the applicant applied for two posts viz. GDSMD, Payyattuvila and GDSMP, Ooruttambalam. However, applicant could not be considered for the post of GDSMD Ooruttambalam as it was reserved for OBC and as he does not belong to OBC. His application was duly considered for the post of GDSMD, Payyattuvila. But the selection to the GDS post was based on the marks obtained in SSLC examination and subject to qualifying in the cycling test. Applicant had secured only 42.83% in the SSLC examination and hence he did not come under the zone of consideration. The post was offered to Kum. Jiji Rajappan who secured 87.5% in the SSLC examination and accordingly, the above two vacancies were filled up. Respondents contend that applicant has no right to be considered in preference to the open market candidate for the post of GDS in the light of Annexures A1 and A2 as he is not a casual labour.

3. We have heard Shri Vishnu S. Chempazhanthiyil, learned counsel appearing for the applicant and Shri P.R. Sreejith, learned ACGSC appearing for the respondents. Perused the record.

4. The thrust of the argument of Shri Vishnu S. Chempazhanthiyil was that applicant, as outsider, is not seeking regularisation but his intention is only to get preference in the matter of engagement as GDS for which he has applied. In this context he refers to Annexures A7 and A8 orders of this Tribunal in OA Nos. 785/2010 dated 12.1.2012 and Annexure A8 order dated 11.6.2013 in OA No. 545/2012. He submitted that Annexure A8 order of this Tribunal was affirmed by the High Court in Annexure A9 judgment dated 27.1.2014 in OP (CAT) No. 4501/2013. The learned counsel relied on yet another judgment of the High Court of Kerala in OP (CAT) No. 1710/2012 (marked as Annexure A10) approving the decision of this Tribunal to give preferential treatment to persons in terms of Annexure A1 instructions of the Director General of Posts.

5. It was submitted by Shri P.R. Sreejith, ACGSC that the relief sought by the applicant is contrary to the Constitution Bench decision of the Supreme court of India in *Umadevi* judgment (*supra*). According to him applicant is seeking regularisation of his engagement as daily wager on temporary basis which is impermissible in law in terms of the *Umadevi* judgment (*supra*).

6. Referring to Annexure A2 clarification Shri Vishnu S. Chempazhanthiyil learned counsel for the applicant pointed out that even daily wagers/ outsiders also are to be treated as casual labourers in terms of Annexure A2 clarification. He argued that the judgment of the apex court in *Umadevi* (*supra*) is not applicable in the case of the applicant because he is

seeking only preferential treatment in the matter of appointment and not for regularisation. In this connection he has brought to our attention a decision dated 19.9.2016 of the Kerala High Court in *S. Nakulan v. The Postmaster & Ors.* WP(C) No. 30871/2009 , wherein the High Court had made it clear that in such cases persons seeking only preferential treatment in the regular appointment is only justifiable as such persons have earned past experience in the Department by working as casual labour. He further submitted that the contention of the respondents that the applicant does not satisfy the requirement in Annexures A1 and A2 letters, as he was not a candidate sponsored by the Employment Exchange, will not stand in the way of the applicant in the light of the judgment in *Nakulan's* case (*supra*) by the High Court of Kerala. In *Nakulan's* judgment (*supra*) the High Court held:

“21.All that he has sought is that the authorities should consider his preferential claim for appointment in a vacancy notified through Annexure A7 in terms of Annexure A2. Recruitment as in this case and regularisation as in Umadevi have nothing in common.....”

In that judgment the High Court has considered the continuance of casual employee without being sponsored by the Employment Exchange. The High Court observed in *Nakulan's* judgment (*supra*) as under:

“19. The employee has put in many years of service. He has not sought regularisation, but just preferential treatment; to be preferred vis-a-vis new candidates and to be considered on merits among similar candidates. We would have no hesitation to non-suit the employee had he sought regularisation of his service. He did not. He has undeniably earned vast experience in the department with a decade and half service and is eminently suited to be considered for the post notified in the lowest rungs of the organisation. His not getting initially sponsored by the Employment Exchange, in our view, is a lapse, if at all, committed by the employer. So, at this length of time, the employee's continuation – which is definitely not at his behest – cannot be to his prejudice.”

We feel that the above observations by the High Court in *Nakulan's* judgment (*supra*) squarely come to the support of the applicant in his claim for preferential treatment for being considered for engagement as GDS.

7. We note that the two posts of GDSs applicant had applied for one at Payyattuvila and Ooruttambalam have already been filed up. Nevertheless so long as Annexures A1 and A2 remain as administrative instructions in the Postal Department, the respondents are bound to give preferential treatment to the applicant especially in the light of the observations and the legal position explained by the High Court in *Nakulan's* judgment (*supra*) .

8. Applicant has brought to our attention of Annexure A12 document whereby respondent No. 1 has sought explanation from the officer concerned in the Pulluvila Post Office for permitting the applicant to continue the work in the vacancy of Postman, Pulluvila from 1.1.2013 to 31.12.2013. It is quite obvious that Annexure A12 was issued sheerly out of the discomfiture the organisation has felt when the applicant has approached this Tribunal with this OA.

9. In the above circumstances Annexure A6 order dis-entitling the applicant as 'outsider' from being considered for preferential treatment in engaging as GDS is hereby quashed and set aside. In the light of the experience he has gained as postman and in view of Annexure A1 and A2 directions we direct the respondents to allow the applicant to be engaged as outsider in any of the post offices under respondent No. 2 subject to availability of work and to give him preferential treatment for engagement as GDS in any of the post offices in the Postal division whenever a vacancy of GDS is notified for engagement. It is made clear that such preferential

treatment would be available to the applicant only when he is found matching equally with a candidate from the open market in terms of the qualifications notified.

10. The Original Application is disposed of with the above directions. Parties shall suffer their own costs. MA 591/2017 is closed.

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U. SARATHCHANDRAN)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00408/2014

APPLICANT'S ANNEXURES

Annexure A1 – True copy of the letter No. 17-141/88/EDC & Training dated 6.6.1988 issued by the Director General, Department of Posts, New Delhi.

Annexure A2 – True copy of the letter No. 45-24/88SPB-1 dated 17.5.1989 issued by the Director General, Posts.

Annexure A3 – True copy of the application dated 2.1.2014 submitted by the applicant.

Annexure A4 – True copy of the representation dated 12.5.2014 to the 2nd respondent.

Annexure A5 – True copy of the representation dated 31.5.2014 to the 2nd respondent.

Annexure A6 – True copy of the order No. Postman/Dig dated 5.6.2014 issued by the 1st respondent.

Annexure A7 – True copy of the common order in OA NO. 785/2010 and OA No. 733/2011 of this Hon'ble Tribunal.

Annexure A8 – True copy of the order dated 11.6.2013 in OA No. 545/2012 of this Hon'ble Tribunal.

Annexure A9 – True copy of the judgment dated 27.1.2014 in OP (CAT) No. 4501/2013 of the Hon'ble High Court of Kerala.

Annexure A10 – True copy of the judgment dated 18.2.2014 in OP (CAT) No. 1710/2012 of the Hon'ble High Court of Kerala.

Annexure A11 – True copy of the application dated 26.9.2014 submitted by the applicant.

Annexure A12 – True copy of the communication No. TV(South)/OA/408/2014 dated 6.2.2017 issued by the 2nd respondent.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of DOPT n letter No. 49014/2/86Estt/07.06.1988

Annexure R2 – True copy of the letter No. 382/PA-I/TVM/NPC Bills dated 8.2.2017 of the Accounts Officer PA-I, Office of the Director of Accounts (Postal), Thiruvananthapuram.