

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00492/2015

Wednesday, this the 31st day of October, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

K.G. Girish Kumar, aged 45 years, S/o. C. Krishnan Nair,
 Driver, Inspection Vehicle, O/o. the Sr. Superintendent of Post Offices,
 Trivandrum North Division, Trivandrum, 695 001, residing at
 Anjaneya, TC 9/989/6, Panicker's Lane, Sasthamangalam,
 Trivandrum – 695 010. **Applicant**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by the Secretary,
 Department of Posts/Director General, Posts,
 Ministry of Communications & IT, New Delhi – 110 011.
2. The Chief Postmaster General, Kerala Circle,
 Trivandrum – 695 033.
3. The Senior Superintendent of Post Offices,
 Trivandrum North Division, Trivandrum-695 001. **Respondents**

(By Advocate : Mr. K. Kesavankutty, ACGSC)

This application having been heard on 04.10.2018 the Tribunal on
 31.10.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“(i) To call for the records relating to Annexure A-1 to A-9 and to quash
 A-1 being illegal & arbitrary;

(ii) To declare that the applicant is entitled to be granted full pay and
 allowances and seniority as Driver with effect from the date of arisal of the
 vacancy notified as per 7.11.2007 notification and to direct the respondents

to refix the pay and allowances and draw arrears of the salary with 18% penal interest immediately;

(iii) To pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case;

And

(iv) To award costs of this proceedings."

2. The applicant is aggrieved by Annexure A1 order by which the 3rd respondent has rejected his claim for appointment as Driver with effect from the date of arisal of the vacancy notified on 7.11.2007 by the respondents.

3. Applicant a GDS has commenced his service as a Driver in August, 2006. In November, 2007 one vacancy of Jeep Driver was notified in departmental quota. As his candidature was rejected he had approached this Tribunal by filing OA No. 709 of 2007 which was allowed by this Tribunal vide order dated 24.2.2009. The respondents did not comply with the order. When the applicant filed a contempt petition the respondents filed a Review Application with 687 days of delay. This Tribunal dismissed the RA vide order dated 20.7.2011. Immediately the respondents challenged the order before the Hon'ble High Court. The Hon'ble High Court also dismissed the same vide judgment dated 10.8.2011. The applicant was appointed only with effect from 5.12.2011. He requested for ante-dating his appointment and pay him arrears of salary as he was doing the same work prior to his appointment also. The respondents rejected the claim of the applicant stating that there is no delay in complying the order of this Tribunal.

4. Notices were issued to the respondents. They have entered appearance and filed reply statement. It is contended by the respondents that the applicant was engaged as a GDS Mail Deliverer in Trivandrum South Division. The applicant was engaged as a Driver of the inspection vehicle attached to the office of respondent No. 3 purely on stop gap arrangement on daily wage basis in a vacancy that had arisen in the unit. The wages so paid were charged under contingent expenses. While so the respondent NO. 3 issued notification to fill up the vacant post under departmental quota from among the eligible Group D officials having 3 years regular service in the cadre possessing valid driving license for light and heavy motor vehicles and whose scale of pay is lower than that of the Driver. As the applicant was a GDS he was not found eligible to apply for the post. The applicant filed OA No. 709/2007 before this Tribunal praying for considering his candidature for appointment as Driver. This Tribunal disposed of the OA vide order dated 24.3.2009 with directions to proceed with the selection and in the event of not finding a suitable Group-D employee, consider appointment of the applicant to the post of Driver under the direct recruitment quota by granting age relaxation. The respondents further submitted that implementation of Annexure A2 order of the Tribunal involved conversion of departmental quota vacancy to direct recruitment quota as the applicant was only a GDS at that time. This was a policy issue and was referred to the 1st respondent on 6.5.2009. The Directorate on 25.8.2010 intimated that the Ministry of Finance, Department of Expenditure clarified vide note dated 21.8.2010 that the ban on recruitment of Drivers was still in existence and directed the Circle to examine the issue

keeping in view of the same. A detailed affidavit was filed by the Circle in CP(C) No. 71 of 2010 filed by the applicant wherein it was submitted that with the receipt of the aforesaid letter reiterating the position that ban on any fresh appointment of Drivers continued to be in existence, the very notification issued by the 3rd respondent had become irregular and the respondents were not in a position to comply with the direction of the Tribunal to proceed with the impugned notification. However, this Tribunal passed an order on 17.1.2011 observing that when there is an inter party judgment and also a ban order, the department cannot choose to abide by the ban order in preference to the court order. The matter went up to the Hon'ble High Court in OP (CAT) No. 2528/2011 challenging the order of this Tribunal. The Hon'ble High Court on 10.8.2011 held as under:

"4. We have heard Sri.P.Parameswaran Nair, Assistant Solicitor General of India and perused the impugned order as well as the documents produced. It is not in dispute that vacancy notified is to be filled up by departmental candidate. It is also not disputed that though the respondent is a GDS, for the last more than 5 years, he has been officiating as a casual driver under the 4th respondent. If the stand of the petitioners is given regard, the respondent cannot be posted as a Casual Driver, but he was ordered to work as a Casual Driver for the last more than five years in contravention of the rule. By the same time, the petitioners are opposing his claim for regular appointment. We find no logic. As per Column No.11 of the recruitment rules, the persons holding Group-C and Group-D posts having 3 years regular service in the eligible cadre in the unit of recruitment with scale of pay lower than that of the Driver possessing valid driving licence for light and heavy motor vehicles are entitled to be considered on the basis of driving test to assess their competency. Note 2 stipulates that if no suitable persons are available in the unit of recruitment eligible persons working in other unit of the recruitment but within the same telephone district or telecommunication/electrical circle/civil circle shall be considered for recruitment by transfer failing which by direct recruitment. For easy reference we quote Col.11 with Note 2.

"11. By transfer of persons holding Group-C and Group-D posts having 3 years regular service in the eligible cadre in the unit of recruitment and whose scale of pay is lower than that of Driver and possessing valid driving licence for light and heavy motor vehicles selection shall be made from amongst candidates possessing the above qualifications and licence on the basis of driving test to assess their competency to drive light and heavy vehicles.

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Note-2: If no suitable persons are available in the unit of recruitment eligible persons working in other unit of recruitment but within the same telephone district or telecommunication/electrical circle/civil circle shall be considered for recruitment by transfer failing which by direct recruitment."

Note 2 in Column No.11 quoted above would show that the respondent, though a GDS, who was working as Driver on casual basis for the last five year, is entitled to be considered for recruitment by transfer. The Tribunal below had meticulously considered the rival contentions and found that Note 2 would cover the respondent also. We fail to find any error, illegality, perversity or arbitrariness in the order impugned. In fact, we are at dark why the department has come up with this petition expressing reluctance to consider the application of the respondent to the post of Driver despite the fact that the respondent had been working as a casual Driver for the last five years. We find no merit in the petition. Accordingly, it is dismissed."

5. Heard Shri Shafik M.A., learned counsel appearing for the applicant and Shri K. Kesavankutty, ACGSC learned counsel appearing for the respondents. Perused the record.

6. This Tribunal is of the view that the stand taken by the applicant is quite true that the ban will not be applicable in the present case as the matter was sub judice and has been decided by the Tribunal. His pre-existed rights were considered by this Tribunal in OA No. 709 of 2007 which was disposed of by this Tribunal. The Hon'ble High Court also upheld the order passed by this Tribunal and it was categorically observed that the applicant though a GDS who was working as Driver on casual basis for the last five years is entitled to be considered for recruitment by transfer. Therefore, nothing remains left to be decided by this Tribunal. We are of the considered view that the applicant herein is entitled to full pay and allowances and seniority as a Driver with effect from the date of decision of

this Tribunal i.e. from 24.2.2009. We order accordingly. The respondents are directed to comply with the order of this Tribunal within two months from the date of receipt of a copy of this order.

7. With the above directions the Original Application succeeds and it is allowed. Parties shall bear their own costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 180/00492/2015**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the order No. B1E/PF/K.G. dated 23.6.2014 issued by the 3rd respondent.

Annexure A2 - True copy of the order dated 24.3.2009 of this Hon'ble Tribunal in OA No. 709/2007.

Annexure A3 - True copy of the order dated 20.7.2011 of this Hon'ble Tribunal in RA No. 10/2011 in OA No. 709/2007.

Annexure A4 - True copy of the circle gradation list of staff/drivers as on 1.7.2008 issued by the respondents.

Annexure A5 - True copy of the judgment dated 10.8.2011 of the Hon'ble High Court in OP (CAT) No. 2528/2011.

Annexure A6 - True copy of the order dated 12.9.2011 in CP(C) No. 71/2011 in OA NO. 709/2007 of this Hon'ble Tribunal.

Annexure A7 - True copy of the memo No. B5/Rectt-D/2007 dated 5.12.2011 issued by the 3rd respondent.

Annexure A8 - True copy of the order dated 7.12.2011 of this Hon'ble Tribunal in CPC No. 71/2010.

Annexure A9 - True copy of the representation dated 31.1.2014 submitted before the 3rd respondent.

RESPONDENTS' ANNEXURES

Nil

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