

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00056/2015

Thursday, the 29th day of November, 2018.

CORAM:

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

G.Chacko, s/o, George, aged 55 years, GDS MD, Meeyannur, Kollam Division, residing at Kavavil, Meeyanur P.O., Pooyapalli, Kollam Takuk, Kollam District 691537. **Applicant**

(By Advocate – Mr. V.Sajithkumar)

V e r s u s

1. Union of India represented by the
Secretary to Government, Department of Posts,
Ministry of Communications, Government of India,
New Delhi 110 001.
2. The Chief Post Master General, Kerala Circle, Trivandrum 695 033.
3. The Senior Superintendent of Post Offices, Kollam Postal Division,
Kollam 691 001. **Respondents**
(By Advocate – Mr.Sinu G. Nath, ACGSC)

This Original Application having been heard on 22.11.2018, the Tribunal on delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member:

Applicant seeks the following reliefs in this O.A.

- (i) To quash Annexure A3 and Annexure A9.
- (ii) To direct the Respondents to consider the Applicant for appointment as Group D/ MTS as per the 2002 Recruitment Rules and to grant him appointment from the date of eligibility with all consequential benefits.
- (iii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and

(iv) Grant the cost of this Original Application.

2. The applicant had entered into service as GDS MD with the 3rd respondent with effect from 16/06/1982. As per the seniority list Applicant is the next person to be considered for Group D/MTS based on seniority. As per the Annexure A1 Retirement Rules of 2002, the vacancies in MTS/Group D mostly have to be filled from GDS based on seniority. 75% of vacancies were filled from GDS based on seniority and other 25% were offered for casual Mazdoors. The respondents had revised Annexure A1 Recruitment Rules by bringing in an amendment in the year 2010 and as per the Gazette Notification, the amended rules are applicable with effect from 12.12.2010. It is further submitted that rules are not given prospective effect. However, the respondent had admitted to conduct direct recruitment against 25% of MTS vacancies by issuing a Notification dated 04.12.2012. As per clause 2, the respondents are attempting to fill the vacancies for the year 2010. The applicant has submitted that as he is the next person senior most in the list of employees of Kollam Division as on 01.07.2010. Applicant submitted a representation to the 3rd respondents stating that as per the Seniority List, he is the next person to be considered on the basis of seniority and in compliance with 2002 Recruitment Rules. The persons just above the applicant, Mr.N. Prabhakaran Pillai and Mr. B.Vijayan Pillai already got appointment as Postmen. He has also pointed out that there was excess reservation for SC/ST in recruitment against the vacancies of the year 2006 to 2009. The applicant has further submitted that an identical matter viz. O.A. 993/2010 of this Tribunal had directed the respondents to consider the claim of a GDS under the then existing Recruitment Rules. The applicant has also filed O.A. 85/2013 before this Tribunal which was disposed directing the 2nd respondent to ascertain whether there is any conscious policy decision, not to fill up the vacancies of 2010 till operation of the new Recruitment Rules. Paragraph 18 of the order dated 9th December, 2014 reads as under:

“18. In the instant case, neither side has been able to place before the Court any material to indicate whether the action to fill up the vacancies for the year 2010 for MTS has been taken up in terms of the revised Recruitment Rules in all the Divisions under the Kerala Circle. The notification dated 04.12.2012 at Annexure A3 is by the Kollam Division only. In case, in all the Divisions under Kerala Circle, the recruitment for the vacancies for the year 2010 has been taken up only in terms of the revised Recruitment Rules which came into force in December 2010, then it can be

construed that it was a conscious decision on the part of the authority not to fill up vacancies of 2010 till the revised Recruitment Rules of MTS were framed and brought into force. However, if only in the case of Kollam Division the action to fill up 2010 vacancy in MTS category has been initiated in terms of the revised Recruitment Rules, then that reasoning cannot hold good. In that event, the vacancies arising in the year 2010 December, 2010 should be filled up in terms of the earlier Recruitment Rules. This fact can be ascertained only by the Chief Postmaster General from the file records as was rightly observed by this Tribunal in OA No. 32/2012 where similar issue cropped up.

19. Therefore, after careful consideration of the matter, we direct the Chief Postmaster General, to ascertain from the records as to whether there was a conscious decision by the authorities not to fill up the vacancies for 2010 in all the Divisions under his circle till the framing of the new Recruitment Rules. If this is not the case and this has been done only by the Kollam Division, then no further action should be taken in terms of the notification at Annexure A3 and the respondents shall fill up the vacancy mentioned in annexure A3 notification in terms of the Recruitment Rules which was prevailing prior to the revision in December, 2010. The decision by the Chief Postmaster General shall be communicated within a period of three months from the date of receipt of a copy of this order by way of a speaking order. “

3. Judgement of C.A.T. was forwarded through Annexure A8 representation to the respondents. But the same has been rejected vide Annexure A9 order dated 20.01.2015. Feeling aggrieved by this the applicant has approached this Tribunal for redressal of his grievances.

4. Notices were issued. Respondents put their appearance and filed detailed reply statement denying the claim of the applicant.

5. It is submitted by the respondents in their reply statement that as per the new Recruitment Rules 2010, vacancies in the cadre of MTS are to be filled up in the following manner.

- (i) 50% of the vacancies by Gramin Dak Sevaks on the basis of selection cum seniority.
- (ii) 25% of the vacancies by holding competitive examination restricted to Gramin Dak Sevaks.
- (iii) 25% by appointment of casual labourers.

6. It is further submitted that for the year 2010, there were two vacancies of MTS in Kollam Division and the 2nd respondent took action to fill up the 50% of the said two vacancies under GDS seniority quota and Sri B. Vijayan Pillai, GDSMD, Alumoodu, the senior most GDS was appointed against the lone vacancy of 2020 under GDS seniority quota. The applicant completed 50 years of age as on 01.01.2010, he was not considered against the MTS vacancies of 2010, reserved for GDS seniority quota. It is further

submitted that the applicant had completed 50 years of age as on 01.01.2010, he was not considered against the MTS vacancies of 2010, reserved for GDS seniority quota. To fill up the remaining 1 vacancy under GDS merit quota through examination, Annexure A3 notification was issued. The applicant approached this Tribunal by filing O.A. No. 83/2013 challenging the said notification contending that he will be the next senior GDS of the division and the respondents are denying his chance for selection as MTS in Kollam Dn. The respondents submitted that the applicant averred in the said O.A. that since the new recruitment rules were introduced w.e.f. 12.12.2010 only, the vacancies arose upto 31.12.2012 were to be filled up as per the 2002 Recruitment Rules. This Tribunal was pleased to dispose of the said OA. Vide Annexure A7 order dated 09.12.2014 directing the 2^d respondent to ascertain from the records as to whether there was a conscious decision by the authority is not to fill up the vacancies for 2020 in all the Divisions under his circle till the framing of the new Recruitment Rules and communicate the decision of the 2nd respondent by way of a speaking order. This was intimated to the applicant by a well speaking order by Annexure A9 clearly explaining that all the Circles were instructed to fill up the MTS vacancies of 2010 as per the provisions contained in Recruitment Rules, 2010 and accordingly, action was taken for filling up of the vacancies of MTS 2010 in all the divisions uniformly including Kollam Division in Kerala Circle. The respondents prays for dismissal of the Original Application.

7. We have heard the learned counsel for the parties, Mr. V. Sajithkumar, learned counsel for the applicant and Mr. Sinu G. Nath, learned ACGSC for the respondents and perused the records and pleadings.

8. The applicant has approached this Tribunal once again seeking the compliance of the order passed by this Tribunal in O.A. 85/2013 vide Annexure A7 order dated 9th December, 2014.

“18. In the instant case, neither side has been able to place before the Court any material to indicate whether the action to fill up the vacancies for the year 2010 for MTS has been taken up in terms of the revised Recruitment Rules in all the Divisions under the Kerala Circle. The notification dated 04.12.2012 at Annexure A3 is by the Kollam Division only. In case, in all the Divisions under Kerala Circle, the recruitment for the vacancies for the year 2010 has been taken up only in terms of the revised Recruitment Rules which came into force in December 2010, then

it can be construed that it was a conscious decision on the part of the authority not to fill up vacancies of 2010 till the revised Recruitment Rules of MTS were framed and brought into force. However, if only in the case of Kollam Division the action to fill up 2010 vacancy in MTS category has been initiated in terms of the revised Recruitment Rules, then that reasoning cannot hold good. In that event, the vacancies arising in the year 2010 December, 2010 should be filled up in terms of the earlier Recruitment Rules. This fact can be ascertained only by the Chief Postmaster General from the file records as was rightly observed by this Tribunal in OA No. 32/2012 where similar issue cropped up.

Therefore, after careful consideration of the matter, we direct the Chief Postmaster General, to ascertain from the records as to whether there was a conscious decision by the authorities not to fill up the vacancies for 2010 in all the Divisions under his circle till the framing of the new Recruitment Rules.”

Pursuant to this direction, the Chief Postmaster General, Kerala Circle, Thiruvananthapuram passed the Annexure order dated 20.01.2015 as under:

As per the orders of the Hon'ble CAT I have ascertained from records that the examination for the MTS vacancies for the year 2010 was held on 27/01/2013 as per the common notification issued by the Office of the Chief Postmaster General, Kerala Circle vide letter No. Rectt/13-2/Exam/2010 dated 03/12/2012 based on the instructions contained in Directorate letter No. 45-2/2011-SPB-I dated 18/10/2012 which instructs all the Circles in India to fill up the MTS vacancies of 2010 as per the provisions contained in Recruitment Rules, 2010. Accordingly, action was taken for filling up of the vacancies of MTS 2010 in all the divisions uniformly including Kollam Division in Kerala Circle. Thus the claim of the applicant is base less and therefore rejected. “

9. Having considered the rival submissions and perusing the pleadings and the Annexure A7 order of this Tribunal (supra), in our view, the decision of this Tribunal has fully been complied with by the respondents. The applicant has not got appointment for the two reasons. Firstly, he has crossed the age limit 50 years which is the eligibility criteria for getting appointment on the said post. Secondly, the new rules made applicable as per the law.

10. Thus, in our view the present applicant has duly been considered in accordance with rules that and he was not found eligible as per the Recruitment Rules and also in view of the judgement held by the Hon'ble Apex Court in *K. Ramulu v.S. Suryaprakash Rao* (1997) 3 SCC 59 as under:

“If the non-filling up of the vacancies of 2011 was on account of a conscious decision taken to defer filling up of the vacancies pending revision of recruitment rules, then the vacancies can be filled up by the revised recruitment rules as held by the Apex Court in K. Ramulu vs. S. Suryaprakash Rao (1997) 3 SCC 59. “

In view of the above applicant cannot claim that the old Recruitment Rules should be applied and he should be considered for appointment.

11. Thus, we find no merit in the O.A. and the same is liable to be dismissed. We order accordingly. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

List of Annexures of the Applicant in O.A. No. 180/00056/2015

- Annexure A-1** - A true copy of th3 2002 Recruitment Rules issued as per Circular dated 23/01/2002 issued on behalf of the 1st Respondent.
- Annexure A-2** - A true copy of the revised Recruitment Rules of MTS/Group D issued as per notification dated 12/12/2020 issued on behalf of the 1st respondent.
- Annexure A-3 :** A true copy of the Notification dated BB/44/Exam/202 dated 4/12/2012 issued by the 3rd respondent.
- Annexure A-4** - A true copy of the relevant pages of the seniority list of GDS employees, Kollam Division as on 01.07.2010.
- Annexure A-5** - A true copy of the representation dated 02/01/2013 is submitted by the Applicant before the 3rd respondent.
- Annexure -A6 -** A true copy of the Order dted 13/09/2011 in OA 993/2010 of the Central Administrative Tribunal, Ernakulam Bench.
- Annexure A7 .** A true copy of the judgement dated 09.12.2014 in OA 85/2013 of the Central Administrative Tribunal, Ernakulam Bench.
- Annexure A8.** A true copy of the representation dated Nil submitted b y the applicant to the 2nd respondent.

1. List of Annexures of the Respondents in O.A.No.180/00095/2015

Annexure R1... True copy of th 03 respondent letter No. BB/44/2010 dated 29.07.2011.

Annexure R2. True copy of the order dated 02.11.2012 of the Hon'ble Tribunal in OA No. 320/2012.

Annexure R3. True copy of the OM No. 1-20/2008-PCc dated 24.09.2018 pof the Ist respondent.

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