

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01107/2014

Thursday, this the 1st day of November, 2018

CORAM:

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

T. Babu, aged 45 years, S/o. Thankavelu, GDSMD,
Speedpost Centre, Palakkad Head Post Office, Palakkad Division,
residing at 12/740, HPO Road, Sultanpet,
Palakkad – 678 001. **Applicant**

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

V e r s u s

1. Union of India, represented by the Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
2. The Senior Superintendent of Post Offices,
Palakkad Division, Palakkad – 678 001. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 05.10.2018 the Tribunal on
01.11.2018 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-8 and to declare that the applicant is entitled to be considered for appointment as time scale Driver in the vacancy which is available with effect from 12.3.2007 in Palakkad Division and to appoint him if he is otherwise eligible;
- (ii) To declare that the vacancy of Driver which is existing since 12.3.2007 in Palakkad Division is to be filled up by a selection and to direct the 1st respondent to fill up the same by way of selection and not otherwise like transfer etc;
- (iii) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

And

(iv) To grant the costs of this Original Application.”

2. The applicant is working in the respondent Department since 1989 as a casual Driver. He has been regularly appointed as a GDS in December, 1995. Ever since he joined as a GDS also his services are utilized as Driver only. From 12.3.2007 onwards he is driving the vehicle of the 2nd respondent continuously. While so notification was issued by the 2nd respondent inviting applications from eligible Departmental candidates for a vacancy of TS Driver in the departmental quota. Though he submitted an application, it was rejected as he is not considered as a departmental candidate. In a similar circumstances another official has approached this Tribunal and this Tribunal directed the respondents to consider his candidature if no other departmental candidate is available. The said order has been confirmed by the Hon'ble High Court as well. When the respondents were about to convert the departmental vacancy as no other eligible departmental official has applied for the same, the applicant filed OA No. 1097 of 2012. This Tribunal while disposing the OA directed reconsideration of the applicant also. The respondents rejected the candidature of the applicant as over-aged as his service from 2007 alone is reckoned for age relaxation. However, the applicant challenged the action of the respondents in OA No. 1095/2013.

3. 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 at Speed Post Centre, Palakkad HPO. He commenced service as GDS Mail Packer at Sekharipuram PO with effect from 19.12.1995. Thereafter up to 12.3.2007 the service of the applicant was utilized as a Driver whenever incumbent to the post of Driver availed leave. Annexure R1(a) imposes a restriction in filling up of the posts of Driver other than of operational vehicles. The applicant has no right to claim regular selection to the vacancy which has not been notified for regular selection in view of Annexure R1(a) order. The applicant cannot claim appointment without going through the prescribed selection process. The applicant still hold the post of GDSMD, Vadakkanthara PO and is availing leave without allowance in that post with approval from competent authority in order to work as Driver. OA No. 1095/2013 filed by the applicant was dismissed by this Tribunal.

4. Heard Shri Shafik M.A., learned counsel appearing for the applicant and learned Sr. Central Government Standing counsel appearing for the respondents. Perused the record.

5. In OA No. 1095 of 2013 the applicant claimed the relief as under:

“(i) To call for the records relating to Annexure A-1 to A-7 and to declare that the applicant is entitled to be considered for appointment as time scale Driver as per A-3 notification and appoint him if he is otherwise eligible;

(ii) To issue appropriate direction or order to consider the applicant in the departmental vacancy reckoning the GDS also as departmental candidates if he is otherwise eligible and fit and to appoint the applicant as time scale driver against the vacancy notified in A-3 in MMS Trivandrum and to grant him all consequential benefits;

(iii) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

And

(iv) To grant the costs of this Original Application.”

This Tribunal after hearing the matter in detail has passed the following order:

“19. The judgment of this Tribunal is categorically clear that the applicant therein who was a GDS can be considered to the post of Driver under Direct Recruitment Quota by granting age relaxation. Likewise, in O.A.No.1097/2012, this Tribunal has passed a similar order in respect of the applicant herein. The relevant order is extracted below:

'2. In the result, the second respondent is directed to consider the case of the applicant under the direct recruitment quota for appointment to the post of Driver as and when the vacancy is notified. The Original Application is disposed of with the above direction. No costs.'

20. Thus, having obtained a direction for consideration in the Direct Recruitment quota, the applicant will be governed by the conditions existing for direct recruitment. From the schedule II Annexure R-(1) notification dated 01.11.1983, it is seen that the age for Direct Recruits is between 21 and 28 (relaxable for Government servants upto 35 years in accordance with the instructions or orders issued by Central Government). Thus, even if relaxation is given, the maximum relaxation would only be 35 years in accordance with the instructions issued by the Central Government. It is not in dispute that the applicant's date of birth is 30.03.1969 and that he has crossed the age of 35 years. In the light of the fact that it has already been ordered that the applicant can be considered against Direct Recruitment Quota, he would not be eligible for any age relaxation beyond 35 years. In this view of the matter, the contention of the applicant that he has not been given age relaxation for period prior to 12.03.2007 is devoid of merit. Further, as this Tribunal has already ordered that the applicant be considered under the direct recruitment quota for appointment to the post of Driver as and when the vacancy is notified, the applicant is not justified in seeking a further direction at this juncture to consider GDS as a departmental candidate and thereby consider him in the departmental vacancy as a departmental candidate without age restriction.

21. The Original Application, therefore, fails and is liable to be dismissed. Ordered accordingly.”

6. We find that in OA No. 1905 of 2013 the applicant sought relief for age relaxation and consider him for appointment as a Driver. This Tribunal after considering the issue had dismissed the OA. Therefore, we are of the

considered opinion that this OA is hit by the principles of *res judicata* and is liable to be dismissed on that ground alone.

7. Accordingly, the Original Application is dismissed as barred by the principles of *res judicata*. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/01107/2014

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the certificate dated 8.11.2013 issued by the 3rd respondent.
- Annexure A2** - True copy of the certificate dated 26.4.2013 issued by the 3rd respondent.
- Annexure A3** - True copy of the order dated 5.12.2012 of this Hon'ble Tribunal in OA No.1097/2012.
- Annexure A4** - True copy of the letter No. DO B1/Driver dated 1.7.2008 of the 2nd respondent.
- Annexure A5** - True copy of the letter No. Rectt/35-1/2003 dated 19.2.2010 issued by the Asst. Director of the PMG Northern Region.
- Annexure A6** - True copy of the representation dated 4.11.2014 submitted before the 1st respondent.
- Annexure A7** - True copy of the representation dated 10.7.2013 before the 1st respondent.
- Annexure A8** - True copy of the representation dated 8.7.2014 before the 1st respondent.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** - True copy of the letter No. 18-1/2010/MV dated 3.3.2011 of Ministry of Communications and IT, Department of Posts, New Delhi.
- Annexure R1(b)** - True copy of the Department of Posts Staff Car Driver iin the Civil Wing Recruitment Rules, 2012.

-X-X-X-X-X-X-X-