

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00895/2015

Friday, this the 29th day of March, 2019

CORAM:

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

C. Ramachandran Nair,
 MTS, Parassala,
 Thiruvananthapuram-695 502,
 Residing at Rajesh Bhavan,
 Thekkupara PO, Vellarada,
 Thiruvananthapuram – 695 505. **Applicant**

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. Union of India,
 represented by the Secretary,
 Department of Posts,
 Ministry of Communications,
 New Delhi.
2. The Chief Postmaster General,
 Kerala Circle,
 Thiruvananthapuram – 695 033.
3. The Superintendent of Posts,
 Thiruvananthapuram South Division,
 Thiruvananthapuram – 695 036. **Respondents**

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

This application having been heard on 25.03.2019 the Tribunal on 29.03.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“1. Direct the respondents to consider the appointment of the applicant in respect of the Group D vacancies of the year 2002 / 2003 as mentioned in Annexure A3.

2. Declare that the applicant entitled to be promoted as a Group D in a vacancy of the year 2002 / 2003 with all consequential benefits.

3. Direct the respondents to consider granting fixation of pay from the date of occurrence of vacancy and grant consequential annual increments and release the entire arrears there upon forthwith in terms of the directions in Annexure A1 judgment.

4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

5. Award the cost of these proceedings.”

2. The brief facts of the case are that the applicant while working as GDS was appointed as Group-D employee with the Department of Post pursuant to the directions in OA No. 263 of 2006 wherein this Tribunal had directed the respondents that the applicant be considered for regular appointment in Group-D in his turn in accordance with the Recruitment Rules as expeditiously as possible. Ultimately the applicant was appointed against the vacancy of 25.9.2008 but later on it was modified by antedating as 1.5.2006. As his appointment is after 1.1.2004 he came under the New Pension Scheme. However, applicant came to know that there were vacancies in the years 2002 and 2003 and the same were not filled up and applicant being senior enough in the list was entitled to be appointed in such vacancy of the year 2002-2003. This information he had received under the Right to Information Act. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through Shri N. Anilkumar, SCGSC who filed a reply statement contending

that one Shri Sreekumar S. filed OA No. 649 of 2011 and two other OAs claiming that since some vacancies in the year 2002-2003 remained unfilled, he should have been considered for notional appointment w.e.f. 2002-2003. These OAs were allowed and it was held that they were entitled to be considered against the said vacancies on the basis of seniority in the cadre of GDS. Then a review DPC was convened by the department on 10.2.2014 to fill up the abolished vacancies from 2002 onwards which were subsequently revived. The DPC considered all the GDS who were eligible on the date of each vacancy. The applicant herein was at serial No. 60 in the seniority list of GDS cadre and as per his turn he was given regular appointment w.e.f. 1.5.2006 by antedating it strictly as per the list. Respondents pray for dismissal of the OA.

4. Heard Shri Vishnu S. Chempazhanthiyil, learned counsel for the applicant and Shri N. Anilkumar, SCGSC learned counsel appearing for the respondents. Perused the record.

5. The grievance of the applicant is that he should be considered for regular appointment to the Group-D post with effect from 2002-2003 and for consequential benefits. This grievance of the applicant was examined by us in OA No. 263 of 2006. That said OA No.263 of 2006 was allowed by this Tribunal on 16.7.2008 directing the respondents as under:-

“20. We, therefore, allow this Original Application and quash and set aside the impugned Annexure A-4 letter dated 13.2.2006 to the extent it refuses to consider the applicant for regular appointment to Group D posts lying vacant. We hold that the non-filing of the available vacancies in Group D under the Trivandrum Postal Division in accordance with Department of Posts (Group D posts) Recruitment Rules, 2002 notified on

23.1.2002 is arbitrary and illegal. We, therefore, direct the respondents to take necessary steps as per the Recruitment Rules expeditiously and consider the applicant for appointment as Group D in his turn. If he is found suitable, he shall be appointed from the date of his turn has come with all consequential benefits including seniority, arrears of pay and allowances within a period of two months from the date of receipt of this order. There shall be no order as to costs.”

So this Tribunal had directed the respondents to consider the case of the applicant for appointment as Group 'D' in turn with consequential benefits meaning thereby that the applicant should be considered as per his seniority in the GDS list maintained by the respondents. As per the reply filed by the respondents the applicant's name figured in the seniority list at serial No. 60. He was duly considered by the review DPC convened pursuance to the direction in the OA No. 649 of 2011 filed by one Shri Sreekumar S. & others wherein this Tribunal directed the respondents to consider them for vacancies of 2002-2003. Along with them the applicant was also considered and given appointment initially from 2008 vacancy but later it was antedated against 2006 vacancy with all benefits from that date onwards. The applicant has no grievance in this regard. But at the same time applicant has not disputed his seniority at serial No. 60 nor he has claimed that he was senior to those who have been assigned seniority and appointment against 2002-2003 vacancies onwards. Mere claim for appointment from retrospective date is not sufficient. Applicant has to prove his legal right to claim the appointment against the vacancies of 2002-2003 in Group-D post. The fact remain that applicant is entitled for the same in the year 2006 only i.e. from where he has been given regular Group-D post as per his seniority in the GDS cadre. Under the facts and circumstances of the case we hold that the applicant is not entitled to get his appointment antedated against the

vacancy/ies which arose in the year 2002-2003 for regular Group-D post.

6. Thus, we are of the view that the present Original Application is devoid of merit and is liable to be rejected. We order so. Parties shall bear their own costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 180/00895/2015**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of order dated 16.7.2008 in OA No. 263/2006 of this Hon'ble Tribunal.

Annexure A2 - True copy of the memo No. IPNTA/Estt. Dated 14.10.2009 issued by the Inspector of Posts, Neyyattinkara Sub Division.

Annexure A3 - True copy of communication No. RTI/TV(S)/53/2011 dated 28.11.2011 issued by the 3rd respondent.

Annexure A4 - True copy of the communication No. B4/Rectt/GL/TV(S) dated 1.4.2015 issued by the 3rd respondent.

Annexure A5 - True copy of representation dated 16.2.2015 to the 2nd and 3rd respondents.

Annexure A6 - True copy of the order in OA No. 455/2012 of this Hon'ble Tribunal.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the minutes of the review DPC dated 10.2.2014.

Annexure R2 - True copy of the recommendations of the review DPC for notional appointment against the vacancies from 2002 to 2009.

Annexure R3 - True copy of the details of recommendation by the review DPC for the vacancies from 2002 to 2009.