

(2024) 03 CAT CK 0046

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00832 Of 2016

Kumari Sailaja

APPELLANT

Vs

Superintendent Of Post Offices, Thiruvananthapuram South
Division, Thiruvananthapuram-695036 & Others

RESPONDENT

Date of Decision : 25-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(1)

Citation : (2024) 03 CAT CK 0046

Hon'ble Judges : Sunil Thomas, Member (J); K.V. Eapen, Member A

Bench : Division Bench

Advocate : O.V. Radhakrishnan, K. Radhamani Amma, Antony Mukkath, John T. Paul, P. Abdul Nishad, N. Anil Kumar

Final Decision : Dismissed

Judgement

K.V. Eapen, Member A

1. The applicant had filed this O.A on 03.10.2016, when working as Gramin Dak Sevak Branch Post Master (GDSBPM), Kattakode. She entered service as GDSBPM on 14.10.1981. She had been ranked at Sl.No.50 in the Divisional Seniority List of GDS as on 01.07.2014 in the Thiruvananthapuram South Division as revealed at Annexure A1. The applicant submits that the Department of Posts (Group D Posts) Recruitment Rules, 2002, herein after referred to as the Recruitment Rules, 2002, were published on 23.01.2002 in the Gazette of India and had come into force on and from that day. A copy of the said Rules has been produced at Annexure A2. As per these Rules, in relation to appointment to the post under Group D-non Gazetted, as per Column 11 of the Schedule in relation to "method of recruitment", it has been indicated that 75% of the posts remaining unfilled after the recruitment mentioned at Sl.No.2, shall be filled up by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur, failing which, by Gramin Dak Sevaks of the neighboring Division or Unit by selection-cum-seniority.

2. It is the submission of the applicant that there were 28 Group D posts vacant in the Thiruvananthapuram South Division in the Department of Posts. These vacancies were not filled up for want of approval from the Screening Committee. It is submitted that the respondents had produced the full vacancy position in respect of various Divisions before the Hon'ble High Court of Kerala in WP(C) No.28574 of 2009 and connected cases. A copy of the vacancy position, furnished by the respondents is produced at Annexure A4(2). The number of Group D vacancies in the Thiruvananthapuram South Division for the years 2002-2009 (8 years) was a total of 28 as per this statement. However, only 2 vacancies were filled up by GDS and the remaining 23 vacancies were shown as deemed abolished. Further another 3 vacancies are shown as unfilled. It is the contention of the applicant that though the Screening Committee seems to have approved only 2 vacancies, which have since been filled up by the GDSs, a total of 26 vacancies (23 shown as deemed abolished plus the 3 remaining vacancies) are actually remaining unfilled in the Thiruvananthapuram South Division. It is submitted that in the judgment dated 23.12.2009 in WP(C) No.28574/2009 and connected cases, the Hon'ble High Court of Kerala had found that the records made available would show that there has never been any abolition of posts in Group D or any re-fixation of Cadre strength.

3. The applicant has produced a copy of the judgment dated 23.12.2009 in WP(C) No.28574/2009 at Annexure A5. At paragraph 4 of the judgment, the Hon'ble High Court had observed that admittedly there were vacancies remaining unfilled from 2002 onwards. Though the learned Central Government Counsel had attempted to advance an argument on the basis of an O.M dated 16.05.2001 that the vacancies remaining in the particular year would vanish by the end of the year, the contention was found to have no basis. The Hon'ble High Court found that the records made available reveal that there had been no abolition of the posts in Group D Cadre and re-fixation of Cadre strength. In addition, the Hon'ble High Court declared that in view of the Division Bench decision of the Court dated 22.03.2007 in W.P (C) 22818/2006, it was made clear that no clearance from the Screening Committee would be required for filling up the vacancies as above. Further, the applicant submits that this Tribunal in its order dated 29.07.2011 in C.P (C) No.90 of 2009 and connected cases had directed the respondents that all the vacancies are to be filled up, including those vacancies treated to have been abolished. A copy of the order of this Tribunal in C.P (C) No.90 of 2009 and connected cases dated 29.07.2011 is produced at Annexure A6. Hence, the applicant submits that in view of the Annexure A5 judgment of the Hon'ble High Court of Kerala as well as the Annexure A6 order of this Tribunal, 23 vacancies which were treated to have been abolished in the Thiruvananthapuram South Division are also to be filled up in accordance with the Annexure A2 Recruitment Rules, 2002.

4. The applicant submits that she was at Sl.No.50 in the Annexure A1 Seniority List. All her seniors had been promoted to Group D. She is the next eligible person to be appointed in the Group D in accordance with the Annexure A2

Recruitment Rules. She submitted that she is legally entitled to be promoted to the post of Group D against one of the vacancies out of the 23 vacancies wrongly treated as abolished as per her seniority. She submits that the first respondent issued an order on 16.07.2010 appointing 11 candidates as Group D, as at Annexure A8. Later another Memorandum dated 21.04.2011 was issued in purported implementation of the Annexure A6 order, appointing 3 more candidates as Group D, as at Annexure A9. The applicant submits that the person at Sl.No.1 in the Annexure A9 order, one Shri Thulaseedharan K. however did not join the post. Hence, out of 26 vacancies which are remaining unfilled at Thiruvananthapuram South Division, only 13 vacancies have been filled up. The remaining 13 posts are to be filled up with effect from respective dates of entitlement.

5. The applicant further submits that the Government of India had issued Department of Posts (Multi Tasking Staff) Recruitment Rules, 2010 in supersession of Annexure A4 Department of Posts (Group D Posts) Recruitment Rules, 2002. These Recruitment Rules of 2010 now regulate the method of recruitment to the post of Multi Tasking Staff (MTS) in the Department of Posts. A copy of GSR No.984(E) dated 12.12.2010 containing the Recruitment Rules of 2010 has been produced at Annexure A10. These Rules having been published in the official Gazette on 20.12.2010 can only come into prospective operation after that date. The applicant submits that it is a settled legal position that the vacancies which existed prior to the date of coming into force of the new Rules of 2010 at Annexure A10, have to be filled up in accordance with the old Rules i.e. the earlier Recruitment Rules, 2002 produced at Annexure A2. In this connection she relies on the decision in *Y.V. Rangaiah vs. J. Sreenivasa Rao* [AIR 1983 SCC 852]. The principle laid by the Hon'ble Supreme Court therein was that the vacancies which occurred prior to the amended rules would be governed by the old Rules and not by the amended Rules. This principle was followed in the decision of the Hon'ble High Court of Kerala in *Mohanan vs. Director of Homeopathy* reported in 2006 (3) KLT 641, where it was held that the vacancies which arose subsequent to the amendment of the Rules shall be filled up only in accordance with the Special Rules promulgated and that the vacancies prior to the amendment are to be filled up in accordance with the unamended Rules. Later in another decision in *State of Uttar Pradesh & Ors. vs. Mahesh Narain & Ors.* [2013 4 SCC], the Hon'ble Apex Court held that the amendment made cannot affect the claim of the employees for promotion since a rule cannot work to the prejudice of an employee who possessed the required qualification/experience/met the required criteria prior to the enactment and enforcement of the amended Rules. Hence, the applicant contends that it is settled law that the vacancies which remained unfilled are to be filled up according to the Rules in vogue at that time. It is submitted that the candidate who is eligible and entitled to be appointed as Group D in accordance with the Recruitment Rules, 2002 also acquires a vested right to be considered for such appointment in accordance with these Rules as they existed on the date of occurrence of the vacancy. It is

submitted that the applicant cannot be deprived of this Right on the basis of any new Rules, which have no retroactive operation. Hence, the 13 vacancies in the Cadre of Group D in Thiruvananthapuram South Division would have to be filled up by the respondents in accordance with Annexure A2 Recruitment Rules of 2002. It is submitted that the applicant has to be appointed against these vacancies in order of her seniority with effect from the date of her entitlement with all consequential benefits.

6. The applicant submits that the Annexure A2 Recruitment Rules of 2002 had provided that 75% of the vacancies of Group D are to be earmarked for Gramin Dak Sevaks and 25% of the vacancies for Casual Labourers, applying the ratio 75:25. However, in the Annexure A10 Recruitment Rules, 2010, 50% is by direct recruitment from amongst Gramin Dak Sevaks of the recruiting Division/Unit on the basis of selection-cum-seniority, 25% by direct recruitment on the basis of competitive examination restricted to Gramin Dak Sevaks of the Division or Units and 25% is earmarked for the Casual Labourers. It is further submitted that Note 3 under Column 7 of the Schedule at Annexure A10 has provided that the age limit for appointment of Gramin Dak Sevaks will be 50 years as on the 1st day of January of the year of the vacancies relaxable for those belonging to SC/ST up to five years and for those belonging to OBC up to three years in accordance with Government of India instructions. Hence, the 50% of the vacancies set apart for Gramin Dak Sevaks are now hedged in with an age condition and restraints, compared to the earlier conditions of eligibility for appointment to the Group D, prescribed in the Annexure A2 Recruitment Rules, 2002.

7. The applicant submits that she is aged 57 at the time of filing the O.A. If she was to be considered for recruitment to the Group D under the Annexure A10 Recruitment Rules of 2010, she will be overaged ab initio. Her contention is that she should be considered eligible to be appointed as a Group D official only in accordance with Annexure A2 Rules. Her point is that the vacancy arose prior to the date of coming into force of Annexure A10 Rules. In other words, the Annexure A10 Rules of 2010 had changed the mode of recruitment. If these Rules are given retroactive operation it would impair the vested rights of the candidates like her, offending Article 16 (1) of the Constitution. The Annexure A10 Recruitment Rules, 2010 should be taken to be prospective in operation and rights accrued to persons like the applicant should remain intact and unaffected by the new Rules. She submits that this right cannot be taken away by the 1st respondent by applying the Annexure A10 Rules retrospectively, as it has no sanction of law. She submits that the Annexure A10 Rules, expressively or by implication, do not direct that the vacancies remaining unfilled as on date of coming into force of the Rules have to be filled up in accordance with the Rules.

8. In line with the above, the applicant seeks a direction to the respondents to consider her case in accordance with Annexure A2 Recruitment Rules, 2002, in order of her seniority and with effect from the date of her entitlement, with all service benefits. She seeks the following reliefs in the O.A:

"i) to declare that the 13 vacancies shown in Annexure A-4 as abolished are also to be filled up in accordance with Annexure A-2 Recruitment Rules, 2002 in view of the declaration of law made by the Hon'ble High Court in Annexure A-5 and followed by this Hon'ble Tribunal in Annexure A-6 and non-filling up those vacancies is demonstrably illegal, unreasonable, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India;

ii) to issue appropriate direction or order directing the respondents 1 to 3 to fill up the 10 vacancies of Group D posts against 75% quota of 13 vacancies set apart for Gramin Dak Sevaks remaining unfilled immediately before the date of coming into force of Annexure A-10 Recruitment Rules, 2010 in accordance with Annexure A-2 Department of Posts Group D Recruitment Rules, 2002 and to direct the 1st respondent to appoint the applicant against one of the vacancies in the order of seniority from the respective date of her entitlement with all consequential benefits including arrears of pay and allowances forthwith and at any rate, within a time-frame that may be fixed by this Hon'ble Tribunal;

iii) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case such other;

iv) to allow the OA with costs."

9. In their reply statement filed on 07.09.2017 the respondents contended that, as part of the implementation of the common order of this Tribunal in O.A No.312/2008 and other connected cases, a mechanism had been put forth in place to scrutinize and monitor all related documents and facts and to cross tally the number of vacancies from the date of their occurrence etc. After tallying the figures from 2002 to 2008, rosters were prepared and lists of eligible persons were identified in each Division. They were then given appointment as Group D from the date of occurrence of each vacancy, strictly according to seniority as a onetime measure in compliance with the orders of this Tribunal. Thus all the eligible persons were appointed notionally from the date of occurrence of the vacancies. The total number of vacancies identified to be filled up across the Kerala Circle was 424. It is submitted that the vacancies were duly filled up by appointing the eligible GDS/Casual labourers. Thereafter, in accordance with the common order dated 23.05.2013 in O.A No.649/2011 and connected cases, a review Departmental Promotion Committee (DPC) was convened on 10.02.2014 to fill up some of the abolished vacancies from 2002 onwards which had been revived. The review DPC had considered all the GDS who were eligible as on the date of occurrence of each vacancy. Further, in accordance with the outcome of the review DPC, the dates of notional promotion as Group D/MTS already granted to the GDS, were antedated strictly according to their seniority position. The said review DPC had considered all eligible GDS in the seniority list. 35 GDSs, including casual labourers, up to Sl.No.104 in the seniority list of GDS as on 01.07.2002 were then found eligible for notional promotion against all vacancies that arose from 2002 to 2009.

10. It is submitted by the respondents that the applicant in the instant O.A was at Sl.No.135 of the Seniority List. Hence, she did not come under the Zone of Consideration since only those GDS up to Sl. No.104 had come under the Zone of Consideration with reference to the vacancy position. In sum, therefore, it is submitted that all the abolished vacancies have been filled up by the respondents in due compliance of the Common Order dated 23.05.2013 of this Tribunal in O.A No.649/2011 and connected cases. Thus this O.A is clearly liable to be declared as infructuous. In fact, it is to be presumed that the applicant herein appears to be unaware that the proceedings of the review DPC held on 10.02.2014 had considered all the GDS as per the Divisional Seniority List of GDS as on 01.07.2002. After eliminating all the ineligible candidates, 35 GDSs including Casual Labourers as stated earlier were found eligible for notional promotion against the vacancies from 2002 to 2009. Thus, since all the vacancies have been filled up, there are no more vacancies to accommodate the applicant herein. In any case, the applicant did not come in the Zone of Consideration on the basis of her seniority. It is further submitted that this Tribunal had upheld the process of holding the review DPC and had closed the C.P (C) and M.As which had been filed in O.A No.248/2012, O.A No.649/2011 and O.A No.455/2012.

11. The applicant has contested the above explanation of the respondents. It is submitted that the respondents have not produced the consequential order of promotion, if any, carried out in accordance with the recommendations of the Review DPC. Only the Minutes of the Proceedings of the DPC have been produced by the respondents along with their reply statement at Annexure R5. In response, however, the respondents filed an additional reply statement on 11.07.2022 further clarifying the issue. In that statement, they produced a list of 17 GDS who had been given notional promotion/appointment consequent to the DPC held on 10.02.2014. They also brought to notice the further development that the applicant, who had been engaged as Branch GDSBPM, Kattakode with effect from 14.10.1981, had since applied and obtained voluntary discharge from engagement from the afternoon of 10.03.2020. They also pointed out that her rejoinder had been filed after a delay of 4.5 years after the reply statement had been filed on 07.09.2017 in the O.A. At that stage, this Tribunal, after hearing both sides, observed in the daily Order sheet on 10.08.2023, that the DPC at Annexure R5 appears to have considered a total number of 28 vacancies for filling up for the years 2002 and 2009. As against these 28 vacancies, the DPC had recommended the names of 35 persons at annexure 3 of the Minutes produced at Annexure R5 (DPC). However, from the additional reply statement provided, only 17 appointment orders appeared to have been issued. Hence, the question which was raised by the learned Counsel for the applicant as to what happened to the remaining 11 vacancies out of the 28 vacancies was relevant.

12. In reply to the above query the respondents filed another reply statement on 29.01.2024. They submitted that the review DPC held on 10.02.2014 had been convened for giving notional promotion to eligible GDS to Group D cadre from the date of occurrence of vacancies in the years 2002 to 2009, due to

retirements, promotions, deaths etc. A total of 35 GDS, including casual labourers, had been found eligible for notional promotion by the DPC for this period 2002 to 2009. It was clarified that out of the 28 vacancies mentioned in the review DPC report dated 10.02.2014, as many as GDS had been issued with notional promotion orders in 2014 and 2015. It was submitted that the remaining 11 eligible GDS were also considered against the 11 vacancies but had not been issued with promotion orders, as they had, in the meantime, already been promoted either to the cadre of Postman/Group D by then and thus, with reference to the said 11 vacancies the action of DPC had been confined only to giving notional promotion by antedating their date of promotion. No formal orders in this regard are seen available in the file. The details of the said 11 officials were then brought out in the reply statement. These 11 officials had already retired either as Postman or MTS. Thus, in other words, the respondents have submitted that all the vacancies from 2002 to 2009 were filled up based on the seniority list as on 01.07.2002. The review DPC considered all the GDS up to Sl.No.104 in the seniority list. The applicant being at Sl.No.135 in the list did not come under the Zone of Consideration. Further, all vacancies which arose after 2014 were also filled up subsequently through competitive examination/seniority cum fitness. It is submitted that the sanctioned strength is 36 MTS (erstwhile Group D) as on 31.12.2023 in Trivandrum South Division. Of this, the working strength was 29 and the remaining 7 vacancies had been earmarked for recruitment in the year 2023. The applicant, however, submitted another additional rejoinder on 26.02.2024 stating that the explanation of the respondents was that totally incorrect and misleading. The averment made that, although 11 eligible GDS were considered by the DPC for promotion they were not issued promotion orders as they had been promoted either to the cadre of Postman/Group D by then, was contradictory. In addition some further contentions in relation to these officials were made by the applicant in the additional rejoinder.

13. We have carefully considered these issues and there are certain observations that immediately strike us on the said consideration. We note that the Department had considered the matter like abolished vacancies etc. in the review DPC held on 14.11.2014 as seen in the minutes at Annexure R5. Certain appointments/notional backdated promotion were then given to the various GDS of Trivandrum South Division as a result of this DPC. The applicant is agitating the same issues after very long gaps. There is a long unexplained hiatus between the filing of the O.A and filing of her rejoinder/additional reply statement. Various contentions about decisions taken in the said DPC along with details have been brought forth. At this length of time at a stage where the applicant has already crossed the age of retirement for Government service, we feel that it would hardly be correct to reopen such settled matters. We also observe that this Tribunal had previously considered these averments in light of its orders in various O.As and had then closed the Contempt Petitions/Miscellaneous Applications for implementation that had been filed at the relevant time. Further,

the issue in relation to which of the Recruitment Rules have to be used for grant of notional promotion being emphasised by the applicant is no longer relevant because, as per the respondents, all the posts had been filled up and there was nothing left. In any case, it is to be noted that even if the applicant is to be considered for promotion, the law in relation to the averment made in the O.A that vacancies should necessarily be filled on the basis of the law which existed on the date when they arose has been overturned by the Hon'ble Supreme Court on 20.05.2022 in *State of Himachal Pradesh and others vs. Raj Kumar and others* in Civil Appeal No.9746 of 2011 [2023 3 SCC 773]. It was held that there is no right for an employee outside the Rules governing the services. The service under the state are in the nature of a State's decision, a hallmark of which is the need of the State to unilaterally alter the rules to subserve the public interest.

14. Further, even otherwise, the notion that a GDS has any right for 'promotion' to posts in Group D/MTS is no longer valid as has been held in *Y. Najithamol & Ors. vs. Soumya S.D. & Ors.* [2016 9 SCC 352] decided on 12.08.2016. Any appointment of GDS to Postman can only be by way of direct recruitment. It is declared that promotion to a post can only happen when the promotional post and the post from which the promotion is sought are part of the same class of service. Members of the GDS are only Extra Departmental Agents and hence cannot be considered for promotion to the post of Postman. Hence, there is no vested right, unlike what is contended by the applicant in this O.A, for her consideration for promotion or even notional promotion etc. anymore to the Cadre of Group D/MTS. It has also been separately held that the GDS post is not to be considered as a civil post under the Union. As such, there is no more any right for promotion from GDS to further civil posts in the Department of Post. At best, they can be considered for direct recruitment.

15. We also note that the applicant had voluntarily got disengaged from the post of GDS, during the course of hearing this O.A. As such, there was a cessation of the jural relationship between the employer and the employee. In *Union of India & Ors. vs. Manpreet Singh Poonam* [2022 6 SCC 105] decided on 08.03.2022, it had been held that such former employee cannot seek to agitate his past as well as future rights if any, sans prescription of rules. No official has a vested right to a promotional post, which is restricted to that of consideration according to law. It was also held that promotion to a post should only be granted from date of promotion and not from the date on which vacancy has arisen.

16. Thus, drawing from these pronouncements which are all important judgments in the realm of service law, we do not find that the applicant has made a compelling case for reopening a settled issue of "promotions/appointment" to the Group D posts in the Department of Posts, Thiruvananthapuram South Division against the so called 13 vacancies of 2002-2009. As already noted, it is difficult at this length of time to reopen such already settled matters. In addition, action including notional promotions had been granted others up to Sl.No.104 in the Seniority List as is clearly maintained

by the respondents. The applicant has already obtained voluntarily discharge from engagement from the afternoon of 10.03.2020. Hence, there is no longer a jural relationship between her employer and her. In any case, the post of GDS is no longer a post under the Civil Service of Union and there is no more any vested right for a GDS to be considered for promotion to another civil post.

17. In view of these considerations, the O.A is dismissed. We make no order as to costs.

(Dated, 25th March, 2024)