

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 429 / 2005

Friday, this the 2nd day of July, 2006

CORAM :

**HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

S.Vijayan
GDSMD Vattavila
Vattavila B.O Chenkal
Thiruvananthapuram
Residing at : Kitu Nivas
Kakala, Parasuvaikkal PO
Thiruvananthapuram - 8

Applicant

(By Advocate Mr. Sasidharan Chempazhanthiyil)

Versus

1. Sub Divisional Inspector of Posts
Neyyattinkara, Thiruvananthapuram
2. The Superintendent of Post Offices
Thiruvananthapuram South Division
Thiruvananthapuram – 14
3. Union of India represented by its Secretary
Department of Posts
New Delhi

Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 18.06.2006, the
Tribunal on 21-7-06 delivered the following :

ORDER

HON'BLE Mr. K.B.S.RAJAN, JUDICIAL MEMBER

1. The applicant, through this OA, has inter-alia claimed the following reliefs:-

(i) *✓* Declare that the applicant is entitled to the benefits of Annexure A-4 and direct the respondents to take action accordingly.

(ii) Direct the 1st and 2nd respondents to permit the applicant to continue as GDFSMD Vattavila on a regular basis.

2. The capsulated facts of the case are as under:-

a. By an order dated 31.10.1997, the applicant was offered a provisional appointment as Extra Departmental Delivery Agent (now designated as GDS Mail Deliverer) at Manchavilakam Post Office for a period from 01.10.1997 to 30.11.1997 or till regular appointment is made whichever is short. The appointment however continued and when the applicant moved this Tribunal for declaration to the effect that his appointment is of the character of provisional appointment, vide OA 324/98, this Tribunal declared that the applicant is entitled to continue as a provisional hand till the regular incumbent joined duty or till a regular appointment is made. The said order was implemented by the respondents and the applicant continued in the post of EDDA, Manchavilakam till 14.07.2004 when the regular incumbent joined duty.

b. The applicant had approached the Superintendent of Post Offices, Trivandrum with a request that as vacancies of GDSMD were available in the nearby Post Offices at Vattavila, Dhanuvachapuram and Ayira, he be considered for appointment in any one of the posts. His representation dated 19.07.2004 (Annexure A-2) refers. The respondents had, of course, did engage the applicant in the Post Office at Vattavila as GDSMD with effect from 20.07.2004 but without any reference to the aforesaid communication. On 13.05.2005, the applicant made a

representation to the Chief Post Master General to the effect that he having continued as a provisional EDDA for a period of 7 years, he be considered for GDS MD, Vattavila for which notification was issued and interview scheduled on 17.05.2005. Apparently this representation was either not considered or ignored and one Shri Anil Kumar who was topping the merit list (on the basis of the marks obtained in academic examination) came to be appointed to the said post. However, this individual chose to resign from the post on 30.05.2005 and the applicant was again appointed as GDSMD, Vattavila where he continues to work in the said capacity since then.

3. The applicant stakes his claim on the strength of the existing instructions of DGP&T letter dated 18.05.1979, in accordance with which, persons provisionally appointed to Extra Departmental posts for a period of three years and above, if discharged on administrative reasons, are entitled to have their names included in the waiting list of E.D Agents discharged from service in accordance with DGP&T letter dated 23.02.1979. The applicant also stakes his claim to continue in the appointment as GDS MD at Vattavila as his appointment in the said post was just after a few days of the appointment of his predecessor who had resigned from the post.

4. When the applicant has moved this OA by an interim order the respondents were directed that the applicant should be

permitted to continue as GDS MD, Vattavila and this interim order continues.

5. The respondents have contested this OA. According to them that the applicant continues as a provisional appointee till 2004 was only on the basis of the decision of the Tribunal in OA 324/08 and but for the orders the applicant could have been replaced by a candidate sponsored by Employment Exchange as per the selection procedure. The appointment of the applicant as GDS MD at Vattavila with effect from 20.07.2004 was not on the basis of any vested right that accrued to the applicant by virtue of his having served for a substantial period as EDDA but purely as an outsider on stop-gap arrangement with effect from 20.07.1004. Further, since the applicant could not figure in the top of the merit list, Shri Anil Kumar was appointed and after Anil Kumar resigned, in order to manage the delivery work, the applicant was asked again on stop gap arrangement as GDS MD, Vattavila with effect from 28.05.2005. However, 1st respondent initiated action to fill up the post on regular basis by appointing the candidate who ranked 2nd in the select list. The respondents have relied upon the decision by the Hon'ble Delhi High Court dated 08.07.2004 in WP (C)No. 8615/04 and WP(C)No. 9282/04 whereby the claim of the petitioners therein seeking regularisation of their services on the grounds that they are continuing as Extra Departmental employees for a long time was rejected.

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6. The applicant has filed rejoinder in which he has referred to and annexed a copy of judgment dated 01.03.2005 in WP(C)No. 17727/04(S) of the Hon'ble High Court of Kerala. According to this judgment the petitioner therein who served as Extra Departmental Employee on provisional basis, for about six years on the strength of an order of this Tribunal was held to be eligible and entitled to be considered for regular appointment in accordance with the order dated 18.07.1979 read with order dated 23.02.1979 of the respondents (already referred to in Para 3 above).

7. Arguments were heard and documents perused. The learned counsel for the applicant submitted that Annexure A-4 order dated 18.05.1979 provides the following conditions to be fulfilled for being eligible to be considered for against regular appointment :-

- (a) The appointment as Extra Departmental Agent should be provisional.
- (b) The individual should have put in not less than three years' service.
- (c) The discharge of the individual should be due to administrative reasons.

According to the counsel for the applicant all the three conditions stated above have been fulfilled by the applicant and his case is identical to that of the case dealt with by the Hon'ble High Court of Kerala in WP(C)No.17727/04. The learned counsel for applicant further argued that there is no provision for appointing a candidate from the waiting list even if there be a general provision for such appointment from the waiting list, as the vacancy for which

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notification was issued having already been filled up by appointment of Anil Kumar, resignation by the said Anil Kumar leads to arising of a fresh vacancy, for which no notification has been issued. As such, once vacancy has been filled up, the waiting list prepared in respect thereof ceases to exist.

8. Per contra the learned counsel for respondents submits that the applicant did not come through the Employment Exchange and that the decision of the Hon'ble High Court relied upon by the respondents supports their case. As regards, filling up of the vacancy on regular basis by offering the post to the waiting list candidate, the Counsel submitted that the same is not illegal.

9. No rule or administrative instructions has been quoted or referred to by the respondents in respect of their decision to appoint the 2nd in the waiting list for the post of GDS MD, Vattavila. As such, recourse has to be taken to the decisions of the higher Courts.

10 In *Uma Kant (Dr) v. Bhika Lal Jain (Dr)*, (1992) 1 SCC 105, the Apex Court has held as under:-

" We agree with the contention of the university that a reserve list is always prepared to meet the contingency of anticipated or future vacancies caused on account of resignation, retirement, promotion or otherwise. This is done in view of the fact that it takes a long time in constituting a fresh Selection Committee which has a cumbersome procedure and in order to avoid ad hoc appointments keeping in view the interest of the student community. (In this case the University had prepared a panel of two professors, and the validity of the panel was

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for six months and the one ranking first was appointed who had retired before the expiry of the said period of six months. Appointment of the next candidate from out of the reserve list for the vacancy so caused by the retirement of the earlier appointed was held valid. Again, there has been a specific provision for drawing of a panel/reserve list which would contain names more than the number of the vacancies notified) The Apex Court has also observed, "In the present case Dr G.S. Nathawat was selected on June 20, 1989 and was going to retire on September 30, 1989 and in these circumstances it was perfectly valid to select one more person and to keep him in the reserve list for being appointed on the regular vacancy which was shortly anticipated on account of retirement of Dr Nathawat."

11. In ***State of Punjab v. Raghbir Chand Sharma, (2002) 1 SCC***

113 the Apex Court has held as under:-

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently".

12. In Dr. Uma Kant's case the decision of the Apex Court to permit the University to appoint one in the waiting list was on the basis of the fact that the person on the top of the merit list, appointed as a Professor, retired within six months of his appointment, and the vacancy was already foreseen and hence it was held as perfectly valid to select one more person and to keep him in the reserve list for being appointed on the regular vacancy which was shortly anticipated on account of the retirement of the person appointed. In other words the select list was made that a reserved candidate in respect of an anticipated vacancy.

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13. In the case of **State of Punjab (supra)** the Apex Court has held that with the appointment of the 1st candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its unity at any rate and no one else in the panel would ultimately be offered appointment either in the vacancy arising and subsequent vacancy from the panel or any other vacancy arising subsequently. Of course, this decision of the Apex Court is in respect of appointment of Advocate General in the High Court and the distinction, that this post is different from the posts for which Public Service Commission are involved has also been spelt out in the decision.

14 In so far as the post in question in this case is concerned, by The Superintendent of Post Offices Vs. P.K.Rajamma, 1977 (3) SCC 94, the Apex Court has held that an Extra Departmental Agent is not a casual worker but he holds a post under the administrative control of the post. However, it has also been stated that such a post is outside the regular civil services.

15 From the above decisions it could be easily discerned that when a post has been filled up and thereafter vacancy arises on account of resignation of the incumbent so appointed, the vacancy not anticipated becomes one for which the Department has not prepared any panel. Panel if any, prepared over and above the number of vacancies could be utilised only for the purpose of

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filling up the vacancies available to non acceptance of offer. Thus, posting the 2nd candidate in the merit when the 1st candidate had already consumed the post and later on vacates is not permissible.

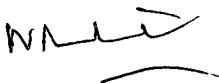
16. In so far as applicability of order dated 18.05.1979 to the applicant is concerned, the decision by the Hon'ble High Court of Kerala in WP(C)No. 17727/04 referred to above supports the case of the applicant. The three conditions stipulated in the said order are fulfilled. Once on the basis of the decision of this Tribunal in OA 324/98 the applicant was allowed to continue to work on provisional basis, it cannot lie in the teeth of the respondents to turn around and state that the applicant's initial appointment was not through Employment Exchange. As regards the decision referred to by the respondents (of the Hon'ble High Court of Delhi) a perusal of the same would go to show that the existence of order dated 18.05.1979 was not brought to the notice of the Hon'ble High Court and as such the Hon'ble High Court did not have an occasion to consider the same. In contra distinction thereto, the focal point of the judgment of the Hon'ble High Court of Kerala relied upon by the applicant is the very same order dated 18.07.1979 on the basis of which the Hon'ble High Court had allowed the Writ Petition of the petitioner therein whose case is identical to that of the applicant herein.

17. In view of the above, OA succeeds. It is declared that the applicant is entitled to have his name included in the



waiting list of GDS MD and thus the benefit of order dated 18.05.1979 are available to him. In addition, as held by the Hon'ble High Court of Kerala in W.P(C)No.17727/04 granting regularisation to the petitioner therein, the respondents are directed to consider regularisation of the applicant as GDS MD, Vattavila, in case the applicant is seniormost in the waiting list in the Sub Division in accordance with the provisions contained in order dated 23.02.1979 referred to in Annexure A-4 order dated 18.05.1979. The regularisation will take prospective effect. In case the applicant is not the seniormost in the waiting list, he shall be allowed to continue as GDS MD in the same capacity in which he was engaged/appointed till a regular incumbent in accordance with rules is posted. This order shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs.

Dated, the ^{21st} July, 2006.


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

vs