

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.443/06

Thursday this the 3rd day of January 2008

C O R A M :

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

Seby Kuriakose,
S/o.K.Kuriakose,
Gramin Dak Sevak Mail Carrier,
Athirunkal Post Office,
Pathanamthitta Division, Pathanamthitta Division.
Residing at 'Kenkireth House'
Kumbazha, Pathanamthitta District.

...Applicant

(By Advocate Mr.Shafik M.A.)

Versus

1. Union of India represented
by the Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Senior Superintendent of Post Offices,
Pathanamthitta Division, Pathanamthitta.

...Respondents

(By Advocate Mr.P.J.Philip,ACGSC)

This application having been heard on 3rd January 2008 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN

The applicant is aggrieved by the order dated 12.5.2006 issued by the 1st respondent rejecting his claim for granting him the full financial benefits on regularisation as GDS MC, Athirumkal. It is the 2nd round of litigation. Earlier the applicant had approached this Tribunal in O.A.156/03 claiming that though the Department has been utilising his skill in sports consistently and he had worked in GDS MC post at Vettur at frequent intervals the respondents were not regularising his services. The O.A was

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disposed of with a direction to the 1st respondent to consider the representation of the applicant. The 1st respondent issued an order dated 4.11.2004 directing to regularise the services of the applicant (Annexure A-2) and consequently Annexure A-3 order dated 24.11.2004 was passed by the 2nd respondent appointing the applicant as GDS MC, Athirumkal with immediate effect. On receipt of the same, the applicant has submitted a representation pointing out that the direction of the 1st respondent was to regularise his services as GDS MC and not to appoint him afresh. As a result, Annexure A-2 order was revised making the appointment with effect from 11.1.2001. However, it was specified that the applicant will not be entitled for any ex-gratia bonus, annual increments etc. Aggrieved by the said stand of the 2nd respondent the applicant submitted detailed representation to the 1st respondent (Annexure A-5) followed by representations at Annexure A-6 and Annexure A-7. Again in O.A 127/06 the Tribunal directed the 1st respondent to dispose of the representations of the applicant. The impugned order is issued in purported compliance of the said order of the Tribunal.

2. The claim of the applicant has been rejected mainly on the ground that his appointment was on a stop gap arrangement but the applicant's service has been utilised by the Department right from 11.1.2001 continuously and the Annexure A-2 order has been issued only due to that reason and once he has been regularised the entire service has to be considered as eligible for all benefits and not just for seniority. If he was a stop gap appointee he would not have continued for four years without any break. The following reliefs have been prayed for by the applicant :-

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1. To call for the records relating to Annexure A-1 to Annexure A-8 and to quash Annexure A-1.

2. To declare that the applicant is entitled to be granted all benefits including financial benefits of increments, bonus etc. with effect from 11.1.2001 on regularisation as per Annexure A-2 order of the 1st respondent.

3. To direct the 2nd respondent to grant all financial benefits of regularisation with effect from 11.1.2001 immediately with all consequential benefits and arrears with 18% penal interest.

3. Respondents in the reply statement have denied the claims of the applicant and reiterated that the applicant has been engaged as a stop gap arrangement as GDS MC Vettur from 11.1.2001 to 31.5.2001 and that when the post was filled on regular basis, he was permitted to work in a stop gap arrangement of GDS MC, Athirumkal from 1.6.2001. When the post was proposed to be filled up on regular basis the applicant preferred OA 156/03 and the applicant was allowed to continue in the post by the interim order of the Tribunal and finally the CPMG ordered for regularisation of the service of the applicant on the basis of the representation submitted by the applicant. According to the respondents bonus and annual increments are not being paid to any candidate who serves the Postal Department on stop gap arrangements. Stop gap appointments are made only temporarily to fill up gaps during the interregnum before regular appointments are made in accordance with rules. Hence bonus and other financial benefits are not paid to any stop gap appointees. Respondents have relied on the orders in O.A.126/05 of C.A.T. Ahmedabad Bench at Annexure R-4 and this Tribunal's order in O.A.826/98 holding that continuation in a post by virtue of an interim order of CAT will not entitle them for regularisation by counting that service.

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4. Rejoinder has been filed in which the applicant has stoutly denied the contentions of the respondents that he was engaged in a stop gap arrangement. It was by virtue of a direction of the 1st respondent that the appointment of the applicant was regularised, though the order of the Tribunal was only to consider the representation of the applicant. The initial appointments of the applicant as GDS MC, Vettur and GDS MC, Athirumkal were made on a provisional basis and the denial of ex-gratia payment bonus and increment is arbitrary and illegal, as this Tribunal in its order in O.A.1197/00 has held that such payments cannot be denied to provisional appointees.

5. Additional reply statement has been filed in which the respondents have taken the stand that the applicant is not similarly placed as the applicant in O.A.1197/00. Respondents have also referred to the judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka and others Vs. Uma Devi and others in which it is held that merely because a temporary employee or a casual wage worker is continued for a time beyond his appointment, he would not be entitled to be absorbed in regular service.

6. We have heard the counsel on both the sides, Shri.Shafik M.A for the applicant and Shri.P.J.Philip,ACGSC for the respondents. The question to be considered is a simple one whether the respondents were right in rejecting the claim of the applicant for granting him full financial benefits after having regularised his services. It is an admitted position that in pursuance of the order in O.A.156/03 filed by the applicant claiming regularisation which was disposed of directing the 1st respondent

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to consider the representation of the applicant, a considered order was passed by the 1st respondent, namely, the CPMG at Annexure A-2 directing regularisation of the applicant as GDS MC, Athirumkal. The operative portion of the order is reproduced under :-

" The petitioner submitted his representation on 30.8.04, which is the one cited No.(ii) above. I have gone through the representation carefully. Keeping in mind the directions given in the judgment of the Hon'ble CAT in the OA cited, the petitioner is found fit to get appointment as GDS MC. He has been continuously working as GDS from 11.1.2001 onwards satisfactorily. The representation of the petitioner is disposed of with the direction to regularise his appointment in the post of GDS MC, Athirumkal B.O in Pathanamthitta Division."

7. It is evident that the main consideration for granting regularisation was that the applicant had been continuously working from 11.1.2001 in the post satisfactorily. Consequential order regularising him was also issued at Annexure A-4 dated 3.12.2004 and by virtue of this order his seniority has been reckoned from 11.1.2001. All the averments now made by the respondents in their reply statement and additional reply statement for denying him the monetary benefits are the reasons submitted by them in the earlier O.A for not granting him regularisation. The question whether he was a stop gap or a provisional employee was relevant at the time of consideration of regularisation but once the regularisation is granted after taking into account all these factors and in accordance with the rules an order has been passed regularising him and seniority granted from the date of his initial appointment there can be no justification for denying him the benefits due to the regular employee. The reiteration of the respondents that bonus and increments cannot be paid to stop gap employee has no relevance when the applicant has ceased to be a stop gap employee from the date mentioned in the Annexure A-4 order. He has to be treated as a regular employee for all purposes with effect from that date mentioned in

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the order. Hence these arguments of the respondents are rejected.

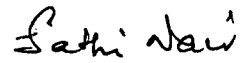
The applicant's prayer has merit and we direct that the applicant is entitled to be granted all financial benefits of regularisation including grant of increments, bonus with effect from 11.1.2001 and all such payments due to the applicant shall be paid by the respondents within a period of three months from the date of receipt of a copy of this order. O.A is allowed. No order as to costs.

(Dated this the 3rd day of January 2008)



K.B.S.RAJAN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P.(C) No.52/08 IN O.A. No.443/06

Monday this the 30th day of June 2008

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

Seby Kuriakose,
S/o.K.Kuriakose,
GDS MC, Athirumkal PO.
Residing at Kenkireth House,
Kumabazha, Pathanamthitta.

...Petitioner

(By Advocate Mr.Shafik M.A.)

Versus

1. Mr.Uday Balakrishnan,
Chief Post Master General,
Kerala Circle, Thiruvananthapuram.

2. Mr.Reveendran Pillai,
Senior Superintendent of Post Offices,
Pathanamthitta Division, Pathanamthitta.

...Respondents

(By Advocate Mr.M.V.S.Nampoothiry,ACGSC)

This C.P.(C) having been heard on 30th June 2008 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

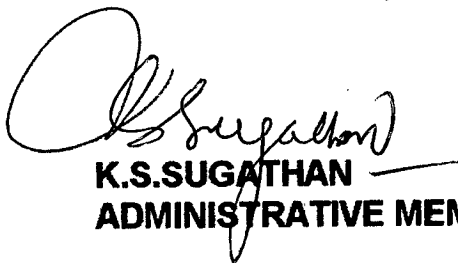
This Contempt Petition has been filed by the petitioner for the
alleged non-implementation of the order of this Tribunal dated 3.1.2008 in
O.A.No.443/06. Notice was issued to the respondents to file a compliance
report on 3.6.2008.



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2. When the matter came up for consideration today, counsel for the petitioner submitted that the order of this Tribunal in the aforesaid O.A has since been complied with by the respondents and he has no further grievance in the matter. In this view of the matter, the Contempt Petition (Civil) is closed. There shall be no order as to costs.

(Dated this the 30th day of June 2008)



K.S.SUGATHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER