

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.449/04

Tuesday this the 22nd day of June 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

B.Sunithakumari,
Formerly Extra Departmental Mail Carrier,
Moonnumukku Branch Office,
Now residing at Sunitha Bhavan,
Karavaram P.O., Kallambalam.

Applicant

(By Advocate Mr.Sasidharan Chempazhanthiyil)

Versus

1. Sub Postmaster,
Pangode, Thiruvananthapuram.
2. Assistant Superintendent of Post Offices,
Central Sub Division, Thiruvananthapuram.
3. Assistant Superintendent of Post Offices,
O/o. the Senior Superintendent of Post Offices,
Thiruvananthapuram North, Thiruvananthapuram.
4. Senior Superintendent of Post Offices,
North Division, Thiruvananthapuram.
5. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
6. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.

Respondents

(By Advocate Mrs.Mariam Mathai,ACGSC)

This application having been heard on 22nd June 2004 the
Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant claiming to be a good volleyball player and
was appointed as ED MC was removed from service after an enquiry
for the alleged misconduct of unauthorised absence and refusal to
report for duty even on instruction. The appeal and revision
being unsuccessful the removal of service was challenged in
O.A.191/99. The Tribunal refused to interfere with the action

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taken and the O.A. was dismissed. The matter was carried before the Hon'ble High Court of Kerala by the applicant in O.P.6437/00. When the matter was taken up for hearing the learned counsel who appeared for the petitioner submitted that the applicant would be satisfied if a fresh appointment is granted to her and prayed that the matter be disposed of permitting the petitioner to submit a representation to the Chief Postmaster General in that regard. Accordingly the Hon'ble High Court of Kerala taking note of the submission that the applicant was a good volleyball player as also "the peculiar facts of the case" felt that the competent authority would consider the applicant's request favourably. Pursuant to the above decision, the applicant submitted a representation claiming fresh appointment which was rejected by the 5th respondent by the impugned order (Annexure A-16) regretting the inability to provide the applicant appointment as GDS inter alia on the ground that there was no provision for using the proficiency in sports as a basis for appointment of GDS. Aggrieved by that the applicant has filed this application seeking to set aside Annexure A-16 and for a direction to the respondents to reinstate the applicant back to service as an E.D.Agent with all consequential benefits and to conduct a fresh enquiry in accordance with the law from the stage of Annexure A-3 charge sheet. It is alleged in the application that the unauthorised absence of the applicant was for valid reasons that in the circumstances, where there was not even a toilet in the office it was not possible for a person like the applicant to work and that if there had been such convenience the applicant would have perhaps worked.

2. We have perused the application and other materials on record and have heard Shri.Vishnu S Chempazhanthiyil learned counsel for the applicant and Smt.Mariam Mathai,ACGSC for the respondents. The prayers in the OA for a direction to reinstate the applicant back in service and to hold an enquiry afresh in accordance with the law from the stage of Annexure A-3 charge sheet is misconceived and prima facie untenable because the challenge against the removal from service before the Tribunal in O.A.191/99 has been found meritless and before the Hon'ble High Court such a prayer was not pressed. The counsel for the petitioner before the Hon'ble High Court submitted that the O.P. be disposed of permitting the petitioner to make a representation claiming fresh appointment. Under these circumstances the applicant could not have sought the prayers 2 & 3 in paragraph 8 of the O.A. because that issue had already been agitated and held against the applicant. Regarding challenge to Annexure A-16 order although the Hon'ble High Court had observed that it had no doubt the request would be favourably considered by the competent authority, the Chief Postmaster General, Kerala, had considered the feasibility of appointing the applicant as GDS afresh and found that it was not possible. The applicant on the basis of the order of the Hon'ble High Court does not get any valid right for appointment. If there had been a vacancy of an ED Agent and if such vacancy could be filled by appointment of sports person the competent authority would have to select from among the sports persons in which probably the applicant would also be considered. The applicant does not derive any benefit out of her earlier service because the applicant has been removed from service and this order has become final. The Hon'ble High Court has not given any direction to the respondents to appoint the

applicant. We, therefore, do not find anything in this application which calls for its admission and further deliberation. The application is, therefore, rejected under Section 19(3) of the Administrative Tribunals Act, 1985.

(Dated the 22nd day of June 2004)

H. P. Das

H. P. DAS
ADMINISTRATIVE MEMBER

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A. V. HARIDASAN
VICE CHAIRMAN