

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.456/07

Tuesday this the 4th day of November 2008

C O R A M :

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

S.B.Sujatha,
W/o.Vijayakumar.J.,
Branch Postmaster (Provisional),
Kuruthemcode B.O.
Residing at Vijitha Vihar,
Kuruthemcode, Kattakada.

...Applicant

(By Advocate Mr.G.Sasidharan Chempazhanthiyil)

Versus

1. Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram – 14.
2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 4th November 2008 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

According to the applicant, she was engaged by the respondents intermittently in Kuruthemcode B.O since 1985 and she worked for the following days in the respective years as under :-

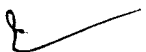


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1985 – 28, 1986 – 75, 1987 – 29, 1988 – 45, 1989 – 96,
1990 – 137, 1992 – 120, 1993 – 140, 1994 – 117, 1995 – 167,
1996 – 150, 1997 – 94, 1998 – 178, 1999 – 163, 2000 – 96,
2001 – 57, 2002 – 96, 2003 – 17.

She has also submitted that from 29.6.2004 onwards she has been working continuously in the said Branch Office. While the applicant was working in the said capacity, the 1st respondent has issued Annexure A-1 notification dated 25.10.2005 inviting applications for filling up the post of GDS BPM, Kuruthemcode B.O on provisional basis. The applicant challenged the aforesaid notification vide O.A.842/05. She claimed that when she herself was working on a provisional basis, there was no need to replace her by yet another provisional hand. However, during the pendency of the said OA the respondents have filed M.A.202/07 seeking permission from this Tribunal to make regular appointment to the post of GDS BPM, Kuruthemcode and the OA itself was disposed of vide Annexure A-2 order dated 15.3.2007 allowing the respondents to make regular appointment to the aforesaid post with the condition that the applicant shall be allowed to continue in the post till such time regular appointment is made.

2. Thereafter, the respondents have issued Annexure A-3 notice dated 15.5.2007 inviting applications for regular appointment to the post of GDS BPM, Kuruthemcode. The applicant made Annexure A-5 representation dated 30.6.2007 stating that after the orders of this Tribunal dated 15.3.2007 in O.A.842/05 (supra) she has been continuing in the post of GDS BPM, Kuruthemcode and on 29.6.2007 she completed three years continuous service and, therefore, she has become entitled to the benefits



as envisaged in Annexure A-4 letter of the DG P&T's dated 18.5.1979 which reads as follows :-

"(15) Provisional appointment of ED Agents :-

It has come to the notice of this office that provisional appointments made to ED posts are being allowed to continue for indefinite periods and when regular appointments are made, the provisionally appointed persons do not readily hand over the charge. The following instructions are issued in this regard :-

- (i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.
- (ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. Where a new post office is opened or where a new post is created or where an ED Agent dies while in service or resigns from his post and it is not possible to make regular appointment immediately, a provisional appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure A).
- (iii) Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made, in the form annexed (Annexure B). It should be made clear to the provisionally appointed person that if over it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment.

Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional. The offer for appointment should be in the form annexed (Annexure B).

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2. Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in DG, P&T, Letter No.43-4/77-Pen. Dated 23.2.1979.


3. These instructions may be brought to the notice of all Appointing Authorities."

3. The counsel for the applicant has relied upon an order of this Tribunal in O.A.429/05 in which one Vijayan was directed to be given the benefits of aforesaid letter dated 18.5.1979 without disengaging his provisional engagement on the condition that there are no other ED Agents in the discharged ED Agents wait list.

4. He has also relied upon the judgment of the Hon'ble High Court of Kerala in W.P(C) No.17727/04 (S) in the case of V.Jayachandran Nair Vs. the Sub Divisional Inspector of Post Offices and others decided on 1.3.2005. The said WPC has arisen out of the order of this Tribunal in O.A.146/02 in which the applicant therein has sought the following reliefs :-

1. Declare that the applicant is entitled for being regularly appointed as Gramin Dak Sevak Mail Carrier, Mayam with effect from the date on which he completed 3 years of continuous provisional service with all consequential benefits including arrears of pay, seniority etc.


2. Declare the respondents to consider the applicant for regular appointment as Gramin Dak Sevak Mail Carrier, Mayam with effect from the date on which he completed 3 years continuous service as provisional GDS MC, Mayam with all consequential benefits including arrears of pay and allowances, seniority etc.



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3. Direct the respondent to grant the applicant cycle maintenance allowance, bonus and annual increments granted to the regular ED Agents as also the arrears of the said allowances from dates on which they became due till date of payment with interest at the rate of 18% per annum.

The claim for regularisation was disallowed by the Tribunal on the ground that no orders of the competent authorities had been placed before the Tribunal to indicate that if an employee render service for a specified period, there is provision for automatic regularisation. While allowing the said WPC, the Hon'ble High Court has noticed that the petitioner therein was appointed provisionally for a period of 78 days in the year 1996. The incumbent who was holding the post of EDMC, Mayam Branch Office had been put off duty. The High Court has also noted the proceedings regarding the method of selection that had been carried out before the orders appointing the petitioner on provisional basis was issued. The initial engagement was only for the period from 15.7.1996 to 30.9.1996. When the respondents had been taking steps to engage another person on provisional basis he filed O.A.1093/96 on the basis of the principle that a provisional employee shall not be replaced by another provisional employee. This Tribunal directed to continue his service till such time the post was filled up on regular basis and to consider the case of the petitioner also at the time of regular selection in accordance with the rules. Thereafter, he had filed a fresh OA stating that he has been continuing as a provisional appointee from 15.7.1996 and in terms of the aforesaid DG P&T letter dated 18.5.1979 he should be given alternative employment. Considering the fact that the petitioner therein was a provisional appointee the Hon'ble High Court allowed the petition and ordered for his regularisation.



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5. Since the respondents have not favourably considered her aforesaid Annexure A-5 representation, she has filed this O.A seeking the following reliefs :-

1. Direct the respondents to consider the claim of the applicant for the benefits of Annexure A-4.
2. Direct the respondents to consider the inclusion of the applicant in the wait list of ED Agents discharged from service maintained in Thiruvananthapuram South Postal Division.
3. Direct the respondents to immediately disburse the wages for discharging duties as GDS BPM Kuruthemcode as claimed in Annexure A-7.
4. Direct the respondents to consider and pass orders on Annexure A-5 in the light of Annexure A-6 judgment.
5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
6. Award the cost of these proceedings.

6. During the course of the argument, counsel for the applicant submitted that the applicant was also a candidate for the aforementioned post but the respondents have selected another person.

7. Respondents in their reply statement have submitted that the applicant was only an outsider substitute engaged intermittently by the regular BPM, Kuruthemcode while he was availing leave on different occasions. When the post of GDS BPM, Kuruthemcode fell vacant with effect from 1.6.2005, consequent on the resignation of the regular incumbent, the applicant was engaged in that place with effect from 6.8.2005 on stop gap arrangement. The respondents have specifically denied that the applicant has been continuing as a provisional appointee as



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claimed by her in this O.A. They have also submitted that when the application for regular appointment to the aforesaid post was called for through open notification and from Employment Exchange, 20 candidates have applied pursuant to the open notification and 8 candidates were sponsored by the Employment Exchange. The applicant was also one of the candidates who applied for the aforesaid post in terms of the open notification. The selection was made based on the marks obtained in the SSLC examination and one Smt.R.K.Raji who secured 526 marks out of 600 was the highest scorer and accordingly she was selected for the post. They have also drawn distinction between the applicant in O.A.429/05 (supra) and the applicant herein. While the applicant in O.A.429/05 (supra) was initially appointed on provisional basis, the applicant herein was only a substitute. The petitioner in W.P.(C) No.17727/04, Shri.J.Jayachandran Nair, GDS MC, Mayam was also a provisional appointee.

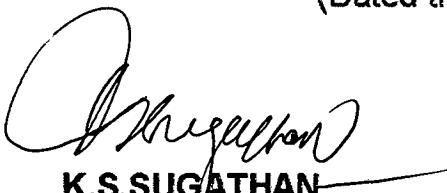
8. We have heard Shri.Vishnu S Chempazhanthiyil on behalf of Shri.G.Sasidharan Chempazhanthiyil and Smt.Jisha on behalf of Shri.T.P.M.Ibrahim Khan,SCGSC. The only question for consideration is whether the claim of the applicant that she was a provisional appointee was correct or not. The records clearly shows that she has never been appointed as a provisional hand. She has always been appointed as a substitute or on a stop gap arrangement basis. Therefore, the Annexure A-4 letter of the DG P&T dated 18.5.1979 has no application in this case. Further, it is the applicant's own submission that she herself was a candidate in the regular selection for GDS BPM, Kuruthemcode notified by the respondents for open selection. She appeared for the said post but



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could not secure appointment as more meritorious candidates were available. Since there was only one post, Smt.R.K.Raji, who got the maximum marks, has been selected and appointed. She has already satisfactorily completed the training and joined the post on 7.7.2007. In the above facts and circumstances, there is no merit in this case and therefore, the same is dismissed. There shall be no order as to costs.

(Dated this the 4th day of November 2008)



K.S.SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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