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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.471/09

Thursday this, the 18th March, 2010

CORAM:

**HON'BLE MR.JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

**Geethakumar.C, GDS MD-II, Irinchayam P.O.,
Thiruvananthapuram.**

.. Applicant

By Advocate: Shri Vishnu S.Chempazhanthiyil

vs.

1. **The Assistant Superintendent of Post Offices,
Nedumangad Sub Division, Nedumangad-695 541.**
2. **The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division, Thiruvananthapuram.**
3. **Union of India, represented by the
Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.**
4. **Vishnu. R.S., T.C. No. 27/1124, Vanchiyoor P.O.,
Thiruvananthapuram.** .. **Respondents.**

**By Advocate :Ms.Sheeja for Mr. Sunil Jacob Jose, SCGSC(R1-3) &
Ms. M. Jayasree (R4)**

**The Application having been heard on 09.03.2010, the Tribunal on 18-03-2010
delivered the following:-**

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Aggrieved by Annexure A5 notification the applicant has filed this Original Application claiming the benefit of Annexure A6 of the D.G., P&T vide No. 43-44/77-Pen dated the 18th May, 1979. The few facts in the case are that the

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applicant was appointed to work a GDSMD-II at Irinchayam Sub Post Office with effect from 23.4.1999 and on completion of his provisional period of service, he filed a representation to register his name in the Live Register of E.D Agents for seniority and getting the benefit of conferment of such temporary hands for future appointments. But since the respondents have not considered his claim, the applicant has filed this Original Application.

2. The Original Application has been admitted by this Tribunal on 15.07.09 and directed the respondents to file a reply statement in the matter and consequently the respondents have filed reply statement on 5th November, 2009. The stand taken in the reply statement is that the applicant is not entitled for the benefit of Annexure A6 letter since he was not appointed as a provisional hand, but he was working as a GDS Mail Carrier for a short time due to the put off duty of the regular incumbent with effect from 22.04.99. Hence he cannot be considered as a provisional hand though he was allowed to continue more than 6 years. The further stand taken in the reply statement is that though the applicant is qualified for the post, his services could not be regularized as per the instructions of DG, P&T and further it is stated that the applicant has no case to be aggrieved by Annexure A5 notification issued by the respondents for conducting a regular selection to the post of GDSMD- II, Irinchayam, as the settled law is that a temporary or stop gap arrangement continuing in a post, can be terminated at any time by conducting a regular selection for the post. Further it is stated in the reply statement that the benefits available under Annexure A6 was applicable to those officials who have been appointed on

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provisional basis and subsequently discharged from such engagement, whereas the applicant was only a stop gap appointee and as such, he cannot be brought into the ambit of Annexure A6 letter. The applicant with his experience can apply for regular selection and without claiming any benefit of Annexure A6. Further it is stated in the reply statement that regularization is not a mode of appointment when the Department wanted to make regular appointment by issuing notification. Hence the respondents have stated in the reply statement that the O.A. is devoid of any merit and shall be dismissed by this Tribunal.

3. Considering the rival contentions raised in this O.A and on analyzing the impact of Annexure A6, the question to be decided is that whether the applicant is entitled to any reliefs as he claimed in the O.A. or not. The fact remains that the applicant was allowed to work in the post of GDSMD II with effect from 23.04.99 and he continued for more than 10 years. Such an engagement was due to the reason that the original incumbent was on put off duty with effect from that date. The stand taken in the reply statement is that the applicant is not a temporary employee, but he was only a substitute for a stop gap arrangement for the time being. Hence he cannot claim the benefit of Annexure A6. A reading of Annexure A6 especially the last paragraph of the said letter of the Director General of the Posts, would show that after considering the question of dismissal or removal of an ED Agent who was allowed to work in a vacancy occurred due to put of duty on account of dismissal or removal, such employees should be included in the waiting list of ED Agents discharged from service. The relevant portion of the letter reads as

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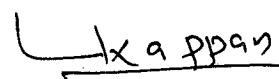
follows:-

" 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 D.G., P&T, Letter No.43-4/77-Pen. dated 23.3.1979."

A reading of the above portion would clearly indicate that ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons are entitled for their names to be included in the waiting list of ED Agents discharged from service. The only difference with that of the case of the applicant is that he was according to the respondents appointed as a substitute, but the fact remains that he remained in service for more than 10 years and he was appointed temporarily in the post due to the order of put off duty of the original incumbent. If so, we are of the view that the applicant is entitled for the benefit of Annexure A6, for which the applicant may apply to the respondents or the competent authority to get his name registered in the Live Register. By the above declaration, we allow this O.A. to the extent as indicated, with no order as to costs.

(Dated the 18 th March,2010)


(K.GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

MISC. APPLICATION NO. 586 OF 2010
IN
ORIGINAL APPLICATION NO. 471 OF 2009

Wednesday, this the 5th day of January, 2011.

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

C. Geethakumar,
GDS MD-II, Irinchayam P.O.,
Thiruvananthapuram ... Applicant.

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

1. The Assistant Superintendent of Post Offices,
Nedumangad Sub Division,
Nedumangad : 695 541
2. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthapuram.
3. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Vishnu R.S.,
T.C. No. 27/1124,
Vanchiyoor, Trivandrum. ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1-3
and Ms. M. Jayasree for R4)

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This M.A. has been filed by the applicant for a direction to the
respondents to implement the order of this Tribunal in O.A. No. 471/2009.



The operative part of the order in the aforesaid O.A. is reproduced as under:

“3. Considering the rival contentions raised in this O.A and on analyzing the impact of Annexure A6, the question to be decided is that whether the applicant is entitled to any reliefs as he claimed in the O.A. or not. The fact remains that the applicant was allowed to work in the post of GDSMD II with effect from 23.04.99 and he continued for more than 10 years. Such an engagement was due to the reason that the original incumbent was on put off duty with effect from that date. The stand taken in the reply statement is that the applicant is not a temporary employee, but he was only a substitute for a stop gap arrangement for the time being. Hence he cannot claim the benefit of Annexure A6. A reading of Annexure A6 especially the last paragraph of the said letter of the Director General of the Posts, would show that after considering the question of dismissal or removal of an ED Agent who was allowed to work in a vacancy occurred due to put of duty on account of dismissal or removal, such employees should be included in the waiting list of ED Agents discharged from service. The relevant portion of the letter reads as follows:-

“ 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 D.G., P&T, Letter No.43-4/77-Pen. dated 23.3.1979.”

A reading of the above portion would clearly indicate that ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons are entitled for their names to be included in the waiting list of ED Agents discharged from service. The only difference with that of the case of the applicant is that he was according to the respondents appointed as a substitute, but the fact remains that he remained in service for more than 10 years and he was appointed temporarily in the post due to the order of put off duty of the original incumbent. If so, we are of the view that the applicant is entitled for the benefit of Annexure A6, for which the applicant may apply to the respondents or the competent authority to get his name registered in the Live Register. By the above declaration, we allow this O.A. to the extent as indicated, with no order as to costs.”



2. In the status report filed by the respondents, they submitted that they had filed Writ Petition (C) No. 28552 of 2010 before Hon'ble High Court of Kerala against the order of this Tribunal, which was, however, dismissed by its judgement dated 23.09.2010 upholding the order of this Tribunal. It is further submitted that they have initiated action for filing SLP in the Hon'ble Supreme Court and that the implementation of the order of this Tribunal at this stage would make the SLP infructuous. The respondents prayed for further time of 3 months in the interest of justice.

3. We have heard Mr. Vishnu S. Chempazhanthiyil, learned counsel for the applicant and Mr. Sunil Jacob Jose, SCGSC, learned counsel for the respondents.

4. The direction given by this Tribunal in O.A. No. 471/2009 on 18.03.2010 is that the applicant is entitled for the benefit of D.G., P&T Letter No. 43-4/77-Pen. dated 23.03.1979. The benefit given to the E.D. Agents, like the applicant, who were appointed provisionally and subsequently discharged from service due to administrative reasons, is that if at the time of discharge they had put in not less than 3 years' service then their names should be included in the waiting list of ED Agents discharged from service, for making efforts to give alternate employment to them. In order to get this benefit, the applicant was directed to apply to the respondents or the competent authority to get her name registered in the live register. The O.A. was allowed to this extent only.

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5. The respondents have taken steps to fill up the vacancies of Gramin Dak Sevak Mail Deliverer-I, in the Post Offices at Panavur and Poovathur. The contention of the applicant is that only after considering and providing him with alternate employment, the respondents should proceed with the direct recruitment. The stand of the applicant is at variance with the direction given by this Tribunal in O.A. No. 471/2009. This Tribunal has only declared the entitlement of the applicant for the benefit already described. The applicant was advised to apply to the respondents for this benefit. It is only after discharge, the respondents are expected to give alternate employment to the ED Agents as per letter dated 23.03.1979. For this purpose, the applicant will have to get his name registered in the Live Register by applying to the respondents. It is in no way an embargo upon initiating action to fill up vacant posts of GDS. Therefore, we find the M.A. as misconceived and as such it is dismissed.

(Dated, the 05th January, 2011)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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