

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 494 of 2002

Wednesday, this the 20th day of November, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. M.C. Ajimon,
S/o C. Chothi,
Gramin Dak Sevak Mail Deliverer-II,
Iringole Sub Office, Perumbavoor Sub Division,
Residing at 'Mullakkakudy' Iringole PO,
Perumbavoor - Pin - 683 548Applicant

[By Advocate Mr. Shafik M.A.]

Versus

1. Union of India, represented by Secretary,
Department of Posts/Director General,
Ministry of Communications, New Delhi.
2. The Sub Divisional Inspector (Postal),
Perumbavoor Sub Division, Perumbavoor.
3. Shynesh K Remanan,
'Thodiyil House', Iringole PO,
Perumbavoor.Respondents

[By Advocate Mrs. S. Chithra, ACGSC (R1 & R2)]

The application having been heard on 20-11-2002, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant was appointed provisionally as Gramin Dak Sevak Mail Deliverer-II (GDSMD-II for short), Iringole Sub Office with effect from 7-9-1999 on the put off vacancy of the incumbent of the post. The 2nd respondent issued a notification dated 6-10-2000 (Annexure A3) for selecting a person to man the post on a regular basis. While so, one Shri T.K.Kurian filed OA No.1194/2000 before the Tribunal challenging Annexure A3 notification and seeking appointment as a thrown out ED Agent. The Tribunal has issued an interim

order on 14-11-2000 keeping all further proceedings pursuant to Annexure A3 (Annexure A7 in OA No.1194/2000) in abeyance. The applicant thereafter continued on the post. While so, Annexure A1 notification was issued on 8-2-2002 inviting applications for appointment to the same post on a provisional basis. Apprehending his displacement by another provisional hand, the applicant initially filed the application for setting aside the Annexure A1 notification and for a declaration that he is entitled to continue on the post till a regular appointment is made. Finding that during the pendency of the OA the 3rd respondent has been provisionally appointed on the post by Annexure A1(a) order, the applicant amended the OA. Now, as per the amended OA, the applicant seeks to set aside not only Annexure A1, but also Annexure A1(a) by which the 3rd respondent was appointed and for a declaration that he is entitled to continue as provisional GDSMD-II till a regular selection and appointment is made.

2. Although the 3rd respondent was served with the notice by speed post on 12-8-2002, he did not appear to contest the application.

3. Respondents 1 and 2 have filed a statement in which they contend that the applicant having been appointed only as a stop gap arrangement, he cannot have any legitimate grievance when a selection is being made as per rules for making a provisional appointment. Respondents 1 and 2 also contend that the Tribunal in OA No.564/2000 has held that when a person has been appointed as a stop gap arrangement, he cannot have any grievance when a provisional appointment is being made in accordance with the rules.

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4. We have heard Shri Shafik MA, learned counsel of the applicant and Mrs. S. Chithra, ACGSC appearing for the respondents 1 and 2. Shri Shafik, learned counsel of the applicant argued that the applicant having been appointed with effect from 7-9-1999 as a provisional GDSMD-II till a regular selection and appointment is made, the official respondents cannot be allowed to replace him by another provisional hand in view of the ruling of the Apex Court in State of Haryana & Others etc etc vs. Piara Singh & Others [AIR 1992 SC 2130]. Mrs. Chithra, learned counsel of the respondents 1 and 2, on the other hand, argued that the appointment of the applicant on 7-9-1999 being only a stop gap arrangement and as even provisional appointment to ED posts as per instructions is required to be made after a due process of selection, the applicant cannot claim protection as a provisional ED Agent. In support of this argument, learned counsel referred us to the ruling of this Bench of the Tribunal in the case of Suresh Kumar Y vs. Union of India and Others in OA No. 564/2000, wherein it was held that where the applicant in that case was appointed without a process of selection as a stop gap arrangement to tide over the emergent situation, the decision of the superior authority to make regular appointment cannot be faulted as also to the ruling of the Apex Court in the case of Rudrakumar Sain & Others vs. Union of India & Others [2000 SCC (L&S) 1055], wherein it has been observed as follows:-

"If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then and to meet this contingency an appointment is made it can be appropriately called as stop-gap arrangement and appointment to the post is 'adhoc appointment'."

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5. On a careful consideration of the facts and circumstances of the case, we find that the facts situation cannot be compared to the facts situation in the cases under citation. In this case, the applicant was appointed as GDSMD-II on 7-9-1999 and the 2nd respondent did not take any step to make a selection for provisional appointment for more than a year. In the reply statement, it has been stated that since the post was not considered for filling up on a regular basis as it was kept vacant for considering accommodation of retrenched ED Agents and when it was found that no such person would be available, issued Annexure A3 notification for a regular selection. It is, therefore, evident that the period during which the decision would be taken regarding the necessity of filling up the post on a regular basis was not ascertained when the applicant was appointed on 7-9-1999. Thus, the appointment of the applicant cannot be said to be a stop gap arrangement to tide over an emergent situation for an uncertain period, but was an appointment till a regular selection is made. Therefore, we are of the considered view that the applicant, who has been appointed provisionally till a regular selection is made for permanent appointment, is entitled to continue in service till that contingency arises. The rulings under citation are on facts totally different. The situation in this case is covered by the ruling of the Apex Court in Piara Singh's case.

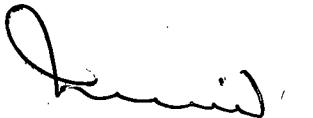
6. In the light of what is stated above, we allow the Original Application. We set aside Annexure A1 order and Annexure A1(a) order appointing the 3rd respondent and direct the respondents to reinstate the applicant as provisional ED Agent on the basis of his appointment on 7-9-1999 and allow him to continue till a regular selection and appointment is made or till it becomes necessary to terminate his services in

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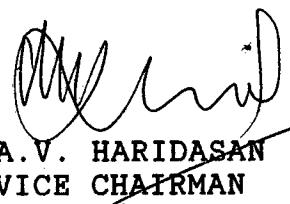
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accordance with law for any other valid reason. The above direction shall be complied with within a period of one month from the date of receipt of a copy of this order. No costs.

Wednesday, this the 20th day of November, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1: True copy of the Notification No.B2/3/3 dated 8.2.2002 issued by the 2nd respondent.
2. A-1A: True copy of the order No.B2/3/3 dated 5.7.02 issued by the 2nd respondent.
3. A-2: True copy of the Charge Report dated 7.9.99 of the applicant.
4. A-3: True copy of the Notification No.B2/3/3 dated 6.10.2000 issued by the 3rd respondent.
5. A-4: True copy of the order dated 14.11.2000 in OA No.1194/2000 of this Hon'ble Tribunal.

Respondents' Annexures:

1. R-2(1): True copy of the appointment order of the selected candidate.
2. R-2(2): True copy of the order of this Hon'ble Tribunal.

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