

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 505/07

MONDAY THIS THE 3rd DAY OF MARCH 2008.

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

1 V.S. Anu
D/o C. Surendranathan Nair
GDSMD
Puthencurichy

2 Shaji Godwin
S/o A. Wilfred
GDSMD
Puthencurichy. **Applicants**

By Advocates Mr. G. Sasidharan Chempazhanthiyil & Vishnu S. Chenmpazhanthiyil

Vs

1 The Assistant Superintendent of Post Offices
Thiruvananthapuram North Sub Division
Thiruvananthapuram-695 036

2 The Senior Superintendent of Post Offices
Thiruvananthapuram North Sub Division
Thiruvananthapuram-695 036

3 Union of India represented by
Chief Postmaster General
Kerala Circle, Thiruvananthapuram. **Respondents**

By Advocate Mr. P.J. Philip, ACGSC

O R D E R

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicants in this O.A. are presently working as Gramin Dak Sevak Mail Deliverers (GDSMD) at Puthencurichy Sub Post Office. The

applicants had responded to a notification issued by the respondents in September, 2006 and they were selected as GDSMDs on the basis of their SSLC marks as well as passing the cycling test. They were appointed vide orders dated 1.1.2007. On 31st July, 2007, the respondent No. 2 issued a show cause notice to both the applicants. The notice stated that the selection procedure followed for their appointment was not found as per the prescribed rules and therefore it was proposed to terminate their appointment. The applicants were given an opportunity to submit their representations if any to the proposed termination. Aggrieved by the show cause notice dated 31.7.2007 the applicants have approached this Tribunal through this O.A. for the following reliefs:

- 1 Call for records leading to the issue of Annexure A-6 and A-6(a) and set aside the same
- 2 Declare that the applicants are entitled to continue as GDS MD-I and II on the basis of their selection held on 15.12.2006 and set aside the termination orders.
- 3 Declare that the termination of the applicants without an opportunity of hearing is illegal and arbitrary
- 4 Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice
- 5 Award the cost of these proceedings to the applicant."

2 In support of the reliefs the applicants have argued that show cause notice at Annexure A-6 and A-6(a) are vague and ambiguous. It does not disclose as to which rule or instruction has been violated. The applicants cannot be expected to give effective reply to such vague finding. The respondents have already come to the conclusion that there is violation of rules in the matter of selection and appointment of the applicants.

Such a conclusion has been arrived at without giving an opportunity to the applicants. The applicants have fully satisfied the eligibility conditions prescribed for the recruitment. They took part in the selection process held by the respondents in pursuance of the notification. Having secured the highest marks in the SSLC and qualified in the cycling test they were entitled to be appointed and there is no illegality in the matter of their appointment. There are no complaints relating to the selection of the applicants.

3 The respondents have contested the O.A. The respondent No.2 has filed a reply. It is contended in the reply that on receipt of certain complaints regarding selection of GDS posts at Puthenkurichy Sub Post ; Office, the files relating to the selection were called for review. During the the review it was noticed that the Asst. Superintendent of Post Offices, Thiruvananthapuram North Sub Division had issued a combined notification inviting application for two posts of Gramin Dak Sevak Mail Deliverer (GDSMD) and one post of Gramin Dak Sevak Mail Packer (GDSMP) Puthencurichy . The post of GDS Mail Packer was wrongly shown as GDS Mail Peon. The two posts of GDSMD were to be filled by open competition and against the GDS MP post the nature of vacancy was shown as provisional and the category was notified as reserved for OBC. There is no provision in the rule to earmark provisional vacancy for reserved category. Further, instead of directly addressing the Employment Officer for nominating candidates in the prescribed requisite form, the Asst. Superintendent of Post Offices was found to have simply endorsed a copy of the notification to the Employment Exchange without

request to forward the the list of nominees. The applicants were appointed pursuant to the selection process done by the first respondent. However, the appointment of the applicants does not mean that any right has been accrued to them especially when an irregularity in the selection process has been noticed. The show cause notice has been issued by the respondent No. 2 in accordance with the sub rule 3 of Rule 4 of the GDS (Conduct and Employment) Amendment Rules, 2003 and Directorate letter No. 1915/2002/GDS dated 9.5.2003 (Annexure R-4). The irregularity is not confined to the post of GDSMD alone as projected by the applicants. Only the show cause notice has been issued to the applicants. The averment that a finding is recorded in the show cause notice is incorrect. The applicants are required to respond to the show cause notice and they are free to raise all valid contentions.

4 We have heard the learned counsel for the applicant Shri Vishnu Chempazhanthiyil and the learned counsel for the respondents Shri P.J. Philip, ACGSC. We have also perused the documents carefully.

5 The issue for consideration in this O.A. is whether the show cause at Annexure A-6 and A-6(a) issued by the respondent No. 2 can be legally sustained. Admittedly, both the applicants have come out successful from the selection process and were given appointment on 1st January, 2007. The respondents have not cited any illegality in the criteria adopted for selecting the applicants. The objection raised by the respondents relate to failure of the respondent No. 1 to seek requisition from the Employment Exchange while issuing the vacancy notification and secondly to the description of the vacancy of GDS MP as provisional.



The applicants are concerned with only the selection process of GDSMDs. Nothing comes out in the reply of the respondents about any illegality in the selection of the applicants. It is nowhere mentioned in the reply that any candidate with higher marks than the applicants has been selected. The failure of the respondent No. 1 to seek requisition of names from the Employment Exchange cannot be sufficient ground for cancellation of the entire selection process. It is relevant to note that a copy of the notification was endorsed to the Employment Exchange. The Employment Exchange could have very well sponsored candidates if they wanted to. The requirement of notifying the Employment Exchange has been fulfilled substantially. In the matter between Union of India Vs. Rajesh P.U. and another (2003 7 SCC 285) the Hon'ble Supreme Court has held that unless there was widespread infirmities of an all pervasive nature, there was hardly any justification to deny appointment to the other selected candidates whose selections were not found to be vitiated. The following extract from the said judgment is relevant in this regard:

“In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selection despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and

reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

Even though we have not seen any illegality in the selection of the applicants, as explained above, we do not consider it appropriate to allow the prayer by quashing the show cause notices. The reasons are discussed in the following paragraphs.

6 The learned counsel for the applicants has argued that the show cause notice should be quashed as the decision has already been taken to terminate the applicants' service and therefore it is a post decisional hearing. He relied on the following judgments in this regard:

- (i) H.Trehan and Others Vs. Union of India and Others
(1989) 1 SCC 765
- (ii). Shekhar Ghosh Vs. Union of India and Another
(2007)1 SCC 331

7 We have gone through the citations referred to above. In the case involving H.L.Trehan and Others, the Apex Court upheld the decision of the Delhi High Court in quashing the circular in which the conditions of service were altered by the Company. The Apex Court had held that:-

“...the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post decisional opportunity.

In the matter between Shekhar Ghosh Vs. Union of India and another it was observed by the Hon'ble Supreme Court that a post decisional hearing was not called for as the disciplinary authority had already made out its mind before giving opportunity of hearing. Such a post decisional hearing in a case of this nature is not contemplated in law. The result of such hearing was a foregone conclusion.

8 Having regard to the facts and circumstances of this case we are of the considered view that the principle laid down by the Apex Court in the cases cited above, is not applicable to this case because the show cause notice does not specifically say that it has been decided to terminate the appointment of the applicants. The specific words used in the show cause notice in this case are as follows:-

"And whereas the selection procedure followed for the appointment of the said GDSMD Puthenkurichy is found not as per the prescribed rules and instructions.

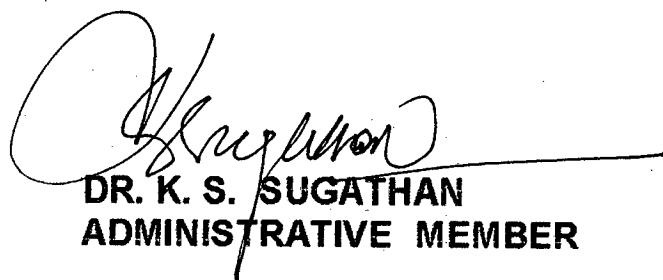
And therefore, it is proposed to terminate the appointment of Kumari V. Anu, GDS MD, Puthenkurichy PO Kum. VS Anu is directed to submit her representation if any on this to this office within five days of receipt of this memo. If no representation is received within the specified period, it will be presumed that he has nothing to represent and final decision will be taken ex parte."

9 A careful reading of the above notice would indicate that no decision has been taken to terminate the appointment of the applicants. It is only at the proposal stage. The competence of respondent No. 2 to issue the notice is not challenged. We are therefore of the considered view that it is premature to quash the show cause notices. The applicants have already submitted their response to the show cause notice. During the course of the hearing the learned counsel for the

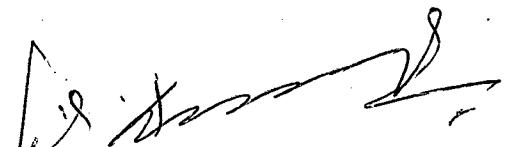
applicants stated that the applicants would like to submit a further comprehensive representation.

10 For the reasons stated above we consider it appropriate to dispose of the OA with a direction to the respondent No.2 to dispose of the reply submitted by the applicants to the notice and also any other supplementary representation that may be submitted by the applicants hereafter and decide the matter keeping in view the observations of the Tribunal in this order. The applicants shall submit further representations within a period of one month from the date of receipt of copy of this order and the respondents No. 2 shall decide the matter after considering all the points within a further period of two months from the date of receipt of the supplementary representations of the applicants. The OA is disposed of accordingly. No costs.

Dated 3.3. 2008.



DR. K. S. SUGATHAN
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER

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