

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 512 OF 2012

Thursday, this the 13th day of June, 2013

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.T.Dileepkumar
Gramin Dak Sevak Deliverer
Veliyanadu Post Office
Arakkunnam Sub Office
Ernakulam Division
Residing at Puthiyedath House
Veliyanadu PO
Arakkunnam, Ernakulam – 682 313

... Applicant

(By Advocate Mr. P.A.Kumaran)

versus

1. Union of India represented by the Secretary
to Government of India
Ministry of Communications
Department of Posts
New Delhi – 110 001

2. Chief Postmaster General
Central Circle
Thiruvananthapuram – 695 033

3. Postmaster General
Central Region
Kochi – 18

4. Senior Superintendent of Posts
Ernakulam Division
Kochi – 11

5. Inspector (Postal)
Thripunithura Sub Division
Thripunithura - 682 301

... Respondents

(By Advocate Mrs.Jishamol Cleetus, ACGSC)

The application having been heard on 13.06.2013, the Tribunal
on the same day delivered the following:

[Signature]

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant's father who was working as EDDA (presently rechristened as GDSMD) was discharged from service on grounds of medical invalidation in February, 1997. He had at the time of discharge requested for appointment of his son on compassionate grounds. The SDI considered and appointed the son as EDDA w.e.f. March 1997 provisionally and stated that the said appointment would be treated regular subject to the decision of the Circle Relaxation Committee. Customary and conventional conditions such as that the appointment would not confer any right for regular appointment (if the decision of CRC goes against the applicant) etc., have all been mentioned in the said order. Annexure A-1 refers. The applicant accepted the same and has continued to function in the said post since then. The father of the applicant breathed his last on 22-05-1999.

2. Though the request of applicant's father for appointment of his son on compassionate ground itself constituted an application for compassionate appointment, it appears that the same was not referred to the Circle Relaxation Committee, instead, a separate application was submitted to the CPMG, but the same was not acceded to on the ground that as per order dated 29-05-1992, compassionate appointment on medical invalidation was not provided for.

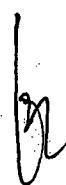
3. Vide OA No. 762 of 1997 the Tribunal dealt with the case of the applicant and relying upon the Full Bench decision of the Tribunal in OA No. 220 of 1998, which held that dependent / near relative of ED Agents prematurely discharged on medical invalidation are entitled to the benefits of

the scheme for employment assistance on compassionate grounds. (Annexure 2 to the OA refers) allowed the OA. This order was challenged by the respondents therein before the High Court in WP (C) No. 16180 of 2004(S) and the High Court in its judgment dated 28-09-2004 upheld the said order stating as under:-

" We are also in perfect agreement with the view taken by the Tribunal. When all other categories are entitled to the benefit of employment assistance including to the dependents of those who are medically invalidated and discharged from service, there is no reason to exclude the dependents of Extra Departmental Agents alone from the purview of such benefit. That the Department does not have, at present, a machinery to probe and examine whether it is being misused by Extra Departmental Agents is no reason to act arbitrarily. It is up to the department, to find out some machinery including reference to medical board, as and when required, the case of medical invalidation, to avert misuse."

4. Once the High Court had upheld the decision of the Tribunal, which is dated February, 2004, which had attained finality, the respondents ought to have by themselves considered the case for compassionate appointment by way of regularization of the services. This was not done. Hence, the applicant renewed his request for regularization, vide Annexure A-4. And the respondent NO. 4 called for certain documents vide Annexure A-5 and the same were provided. However, there was no further immediate response.

5. Meanwhile, as early as 1st March, 2005, the High Court had occasion to consider the extent of benefits available to the provisionally appointed individuals who have served for over three years in that capacity and held as under:-



"10. A vacancy may arise because of many reasons. It may be a temporary vacancy, casual vacancy or a regular vacancy. From the averments in the counter affidavit, as also as seen from the application and the Writ Petition, vacancy has arisen and is continuing. An employee had been put off duty, which led to Ext. P1 order being issued. It was for 78 days but he is continuing indefinitely though by intervention of the Tribunal. The Department is definite that such vacancies, cannot be filled up, unless the disciplinary proceedings against the employee is finalized or the legal proceedings come to a close. This is obviously for the reason that if in the meanwhile the post is filled up, in the event the employee who is put off reports back for duty, it will lead to a position that he cannot be accommodated.

11. However this difficulty has not been there as far as this case is concerned since, it is admitted that as on 28.12.2000, proceedings as against the erring employee had come to a conclusion. He has been removed from service and there has not been any appeal or other proceedings. Therefore, the vacancy required to be filled up as one permanent at least on 28.12.2000. The Department has not explained the reason why a process of selection for regularly filling up the post had not been held.

12. The matter has to be looked, in the above said background. On the authority of the circulars, we have to come to the conclusion that it is the intention of the Department to see that all the available vacancies, are manned on a regular basis. They have no intention to make stop gap arrangement to the extent possible. The question is how far these circulars would come to the help of the petitioner. In the present case, it is noticed by the Tribunal that the earlier order in O.A. 1093 of 1996 permitted him to continue, as a provisional employee, with a rider that the post has to be filled up on a regular basis, and he can also be considered for appointment to the abovesaid post, when it is done earliest. Mr. Hariraj submits that there are two methods. (1) By selection from open market. (2) By inviting the seniormost person who would have been enlisted by way of qualification of three year service, if such a list existed, or if such a list was deemed as in existence.

13. Mr. Krishna Moorthy on behalf of the respondents submit that all throughout the applicant was engaged on a provisional arrangement, on the strength of orders of court and the applicant/petitioner may not be entitled to draw any sustenance from the orders to the disadvantage of open market candidates.

14. We do not think that a restricted view as above is necessary since it was on the basis of orders of the competent authority that the petitioner had been able to continue as a provisional employee. There is no challenge about the orders passed by the Tribunal, in the matter of grant of admissible allowance and certain other allowances. The only question is as to the manner in which the Department has to proceed with the regular filling up of the post concerned. The procedure is that notification is to be made, persons are to be sponsored by the District Employment Exchange. But before that a termination is to be made. The moment the termination is made, the petitioner becomes entitled to be included in the priority list, and this insulates him with protection that he has a priority to be accommodated to

the posts against any other open market candidates. In the present case it is asserted that there are no other claimants.

15. *Although normally, for filling up the post of GDSM Carrier (formerly GDMC) such a procedure was to be followed, we are of the view that the petitioner will be entitled to the benefits of the regulations, by virtue of his continued and long service. Only for the reason that he was permitted to continue on the strength of the orders passed by the Central Administrative Tribunal, we are not prepared to accept the contention of the learned counsel for the respondent that such service has to be ignored for any purpose.*

16. *The post needs to be filled up, on a regular basis, with a rider that the petitioner is entitled to priority, as a purposive interpretation of the order warrants. In other words, in so far as the petitioner has been in service for more than three years, as a provisional hand, it has to be presumed that he will be entitled to the benefits arising from the circulars. If there are no other claimants, in such list maintained by the Department, petitioner is to be given automatic priority for claiming appointment to the abovesaid post. Therefore, it may not be necessary that a full process of selection is carried out. The documents made available indicate that the petitioner had been continuing for almost seven years in the post, and no others have any superior claim. He is to be considered as an approved candidate for all purposes.*

17. *In the said circumstances we direct that expeditious steps are to be taken so as to see that the benefit of the regularization is granted to the petitioner, without delay. This regularization should be deemed as to have become operative from 25.12.2000. It may not be possible for the petitioner however to claim seniority, as rights of others are involved. Therefore, for the purpose of seniority, date relevant will be the date of order of the regularization and such proceedings are to be issued within two months from today."*

6. It was as late as on 08-08-2012 that the request for compassionate appointment was rejected vide Annexure A-08. The applicant who had already filed this OA, got the same amended impugning the order of rejection as well.

7. The following are the reliefs sought:-

i. *"To declare that the applicant is entitled to be regularized as Gramin Dak Sevak with effect from the date of completion of 3 years continuous service and to direct the respondents to consider the applicant for appointment on regular basis as Gramin Dak Sevak Mail Deliverer, Veliyanad with effect from the date of completion of 3 years continuous service with all consequential benefits.*

ii. Alternatively to direct the respondents to consider the applicant for regular appointment on compassionate grounds with effect from the date of his initial engagement with all consequential benefits.

iii. Grant such other reliefs as may be prayed for and the court may deem fit to grant.

iv. Grant the costs of this Original Application

v. To call for the records leading to Annexure A-8 and quash them including Annexure A-8 and to direct the respondents to consider the applicant for regular appointment on compassionate grounds with effect from the date of his initial engagement with all consequential benefits."

8. Respondents have contested the O.A. They have referred to an order dated 14-12-2010 of the department and an order in OA No. 60 of 2010 delivered on 14-07-2011 in support of their stand.

9. Counsel for the applicant argued that the applicant has been serving as EDDA (GDS) since 1997 uninterruptedly. Compassionate appointment in cases of discharge on medical invalidation had been approved vide Annexure A-2 and A-3. Again, beyond three years, provisional appointment could crystallize for being considered for regular appointment. Annexure A-7 refers. The reason given by the respondents for rejection of the case of compassionate ground was that the family of the deceased is not in indigent condition. Even assuming the same to be correct, the applicant has crystallized his rights for regularisation on the strength of Annexure A-7 order.

10. The counsel for the respondents relied upon the contents of counter and adopted the same in his arguments.

[Signature]

11. Arguments were heard and documents perused. The facts are not in dispute. The claim of the applicant is that his services should be regularized either on the basis of provisions for appointment on compassionate ground or on the basis of the applicant having been functioning as a provisional appointee beyond three years. The reason for rejection of the request for appointment on compassionate ground is that the family is not in indigent circumstances. This decision is based on the present day statistics. While arriving at the above conclusion, the Circle Relaxation Committee presumably has taken into account the extent of income of the applicant derived from the post he has been holding. If so, the indigenous condition is absent not without such an employment but only after such an employment. Thus, the views taken by the CRC cannot be held to be correct.

12. Be that as it may. The claim of the applicant is on the basis of the fact that an individual who had been serving for over three years on provisional basis is entitled to be considered for regularization as held by the High Court vide Annexure A-7. That cannot be denied to the applicant.

13. In view of the above, we have no hesitation to hold that non regularization of the applicant in the post of GDS MD is illegal. He is entitled to be considered for regularization as held in Annexure A-2 read with A-3. On the basis of the fact that vide Annexure A-7, such regularization shall date back to three years posterior to the date of engagement as a provisional hand, it is declared that the applicant is entitled to the grant of regularization from 2000 onwards. The consequential benefits, i.e. payment of increments (if not already granted), counting of service for the purpose of sitting for examination for Group D or Postman as the case may be and also for grant of ex gratia would be available.



14. OA is thus, allowed. Respondents are directed to pass suitable orders for regularization of the services of the applicant from the date of completion of 3 years reckoned from the initial date of appointment on provisional basis and work out the TRCA including grant of annual increment and make the payment of difference in TRCA within a period of four months from the date of communication of this order.

15. No order as to costs.

Dated, the 13th June, 2013.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs