

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.513/92

Friday, this the 19th day of November, 1993.

**SHRI N DHARMADAN, JUDICIAL MEMBER
AND
SHRI S KASIPANDIAN, ADMINISTRATIVE MEMBER**

Attakoya,
S/o Belipura Basha, aged 26 years,
EDMC, Kavarathi PO,
Thiruvathapura House, Kadamath. - Applicant

By Advocate Shri MR Rajendran Nair

Vs.

1. The Superintendent of Post offices,
Lakshadweep Division, Kavaratti.
2. The Post Master General,
Kerala Circle, Kochi-16.
3. The Chief Post Master General,
Kerala Circle, Trivandrum.
4. Union of India, represented by
Secretary to Government,
Ministry of Communications,
New Delhi. - Respondents

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By Advocate Shri George CP Tharakan, SCGSC

O R D E R

N DHARMADAN, JUDICIAL MEMBER

The applicant who is at present working as Extra Departmental Mail Carrier, Kavarathi P.O. filed this application under Section 19 of the Administrative Tribunals Act with the following prayers:

"(i) Declare that the services rendered by applicant with effect from 3.1.88 as EDDA and with effect from 30.3.91 as EDMC are liable to be reckoned for the purpose of seniority and in the cadre of ED Agents and for other benefits condoning the break in service.

(ii) Direct the respondents to assign seniority to applicant accordingly and to consider him for promotion as Group 'D' on the basis of his seniority thus reckoned."

2. The respondents have admitted the service of the applicant from 3.1.1988 but contended that he was only working as substitute upto 14.10.1990 solely on the responsibility of the regular incumbent. Hence he is a

substitute and that service cannot be considered for seniority and other service benefits. It is, in the same reply, the respondents have admitted that the regular incumbent of the post was deputed to work as EDMC with effect from 3.1.1988. The respondents also stated that the applicant was not working continuously from 3.1.1988 and if he is given seniority as claimed, the right of a number of others working the post office would be affected.

3. The applicant has in the rejoinder, denied the statement in the reply and submitted that Shri Hameed, who was working as a regular incumbent in the post, in which the applicant worked as EDMC, joined at Mattanchery on 6.1.1988 as Chowkidar and hence the applicant's service after 6.1.1988 is to be deemed as provisional service in the light of a good number of decisions of this Tribunal and that the applicant should be granted the benefit of counting seniority from 3.1.1988.

4. This application can be disposed of on the basis of the admitted facts. Admittedly, the applicant was originally worked as EDMC in the Kadamath Post office from 3.1.1988 on being sponsored by the Employment Exchange. Later, he was appointed as EDMC from 30.3.1989 in the same post office. He is continuing in that post. The applicant filed a representation Annxure-V for considering his services seniority from 3.1.1988 and all other consequential benefits. Admittedly this is not disposed of so far. The respondents have admitted the services of the applicant. They have also admitted that the regular incumbent in the post Shri Hameed, has joined at Mattanchery on 6.1.1988 as Chowkidar. There is no prospect of immediate return of regular incumbent. Under these circumstances, applicant's claim for seniority from 3.1.1988, if he was continuously working from that date,

requires consideration by the second respondent. If there was no continuous work, the question whether he is eligible for condonation of breakes is also a matter ^{which} requires consideration.

5. The statement in the reply that if the applicant is granted the benefit of seniority from the original date of appointment namely, 3.1.1988, it may affect others adversely has not been substantiated by producing facts and figures. But if actually it affects others, they are to be heard before taking a final decision in this behalf.

6. In the light of the above, we are satisfied that this application can be disposed of with appropriate direction to the second respondent. The second respondent shall consider the claim of the applicant for seniority from 3.1.1988 and take a final decision within a period of four months from the date of receipt of a copy of this order. While doing so, notice should be given to all affected parties, so as to avoid embarrassment to others and further litigation.

7. The OA is disposed of as above. No costs.



(S KASIPANDIAN)
ADMINISTRATIVE MEMBER



(N DHARMADAN)
JUDICIAL MEMBER

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