

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.522/2003

Dated Tuesday this the 23rd day of September, 2003.

C O R A M

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

M.C.Ajimon
S/o C.Chothi
Gramin Dak Sevak Mail Deliverer-II
Iringole Sub Office
Perumbavoor Sub Division.
Residing at 'Mullakkakudy'
Iringole P.O.
Perumbavoor - 683 548.

Applicant

(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. Respondents.

(By advocate Mr.M.Rajeev, ACGSC)

The application having been heard on 23rd September, 2003, 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 initially engaged as a Gramin Dak Sevak Mail Deliverer with effect from 7.9.1999. Subsequently, a notification was issued on 6.10.2000 for making regular appointment. The applicant also put in an application. However, in the meanwhile, OA No.1194/2000 was filed by another person and the Tribunal had stayed the notification. Nothing further was heard on that. While so, another notification dated 8.2.2002 was issued by the respondents inviting applications for provisional appointment to the post which the applicant was holding. Knowing that the applicant would be replaced by another person, the applicant filed OA No.494/2002. However, since the respondents

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contended that another person had been selected and appointed, the applicant amended the OA seeking to set aside the appointment. The OA was finally allowed by order dated 20.11.2002 and the applicant was reinstated in service on 3.1.2003. The applicant has been thus continuing. While so, another notification Annexure A-1 dated 1.4.2003 was issued calling for applications to fill the post on regular basis. The applicant, aggrieved by the steps taken for filling up the post and apprehending displacement, has filed this application, seeking to set aside the A-1 notification, declaring that he is entitled to continue as GDSMD-II, Iringole Sub Office, regularly since he has already completed more than 3 years of service in the same post and for a direction to the second respondent to appoint him as a regular GDSMD-II, Iringole and also that the proposal to terminate his services as GDSMD is not in accordance with law.

2. The respondents in their reply statement contend that the applicant does not have any legitimate grievance which calls for redressal. They contend that the applicant who has been inducted as a stop gap arrangement cannot claim a regular appointment even though he has completed 3 years of service which was on the basis of the interim order of the Tribunal, that in view of the ruling of the Hon'ble High Court of Kerala in O.P.No.35908/2001, completion of 3 years of service on the strength of the stay order would not give rise to any claim or right for the applicant, that the applicant, though applied in pursuance to A-1 notification, could not be considered for selection as he does not belong to OBC as the post was earmarked for reserved category and that the applicant is not entitled to any relief.

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3. The applicant has filed a rejoinder in which it is made clear that he was not continuing on the basis of the interim orders obtained by him. The judgement of the High Court of Kerala, relied on by the respondents in the reply statement, is not applicable to the facts of the applicant's case, according to him. It is further contended by the applicant that the Tribunal in its order in OA No.494/2002 had already declared the status of the applicant as a provisional GDSMD and, therefore, the respondents are estopped from raising the contentions to the contrary.

4. We have gone through the pleadings and the material placed on record and have also heard Mr.Shafik M.A., the learned counsel of the applicant and Mr.M.Rajeev, the learned ACGSC appearing for the respondents.

5. Mr.Shafik M.A., the learned counsel of the applicant argued that the applicant having been declared as a provisional ED Agent and had undoubtedly continued as such for a period of over 3 years, in terms of the extant instructions issued by the Director General (Posts), he is to be treated as a displaced ED Agent and is, therefore, entitled to continue as GDSMD-II, Iringole Sub Office and to be regularised on the post and that therefore, the A-1 notification was not called for. Mr.M.Rajeev, ACGSC, on the other hand, argued that the applicant was not a provisional ED Agent but was engaged only as a stop gap arrangement, that even if it is assumed that the applicant's appointment was on provisional basis, since he had continued for three years only on the basis of the interim order of the Tribunal, he does not get any benefit in view of the judgement of

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the Hon'ble High Court of Kerala referred to in the reply statement and that further as there has been a gap within the three years period of service, he does not become entitled to the relief claimed.

6. On a careful scrutiny of the rules and instructions in regard to the benefits due to provisional ED Agents discharged after completion of 3 years of service for administrative reasons, and other instructions regarding preparation of a waiting list and efforts to give alternative employment to discharged GDS, we find that the provisional ED agent (GDS) has not been given any preference or right to be regularized on the post on which he has been working even if such service exceeded a period of 3 years in terms of the Director General (Posts) instructions dated 18th May 1979, which provides that a list of such discharged ED Agents should be prepared and efforts made to offer alternative employment to them. The instructions read as follows:

"2. 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 23.2.1979.

3. These instructions may be brought to the notice of all Appointing Authorities."

7. It is evident from a reading of the above instructions that only after discharge an ED Agent would be entitled to have his name included in the list and then only effort is to be made to give him alternative employment if at the time of discharge, he had put in 3 years of service. Here, the applicant cannot

claim to be a discharged ED Agent, so long as he is not discharged. The argument of the learned counsel of the applicant that resorting to the notification A-1 was unwarranted and against the instructions and that the applicant was entitled to be regularized on the post which he has been holding on provisional basis does not have any force at all. However, the arguments of the learned counsel for the respondents that the applicant is not even entitled to the benefits of the instructions issued by the Director General (Posts) in its letter dated 18th May 1979 for three reasons (i) that the applicant was not a provisional ED Agent but only a stop gap appointee (ii) that he continued for 3 years on the basis of an interim order of the Tribunal and (iii) that even if he had worked for 3 years, it was not continuous, also has no force because the above three conditions are baseless and wrong. In the order in OA 494/2002 (Annexure A-4), this Bench of the Tribunal had categorically stated that the engagement of the applicant could not be treated as a stop gap arrangement but only a provisional appointment and that he could not be displaced by another provisional appointee. The contention, therefore, that the applicant is not a provisional ED Agent cannot now be raised by the respondents and, therefore, the contention is only to be rejected. The next contention that the applicant has continued for 3 years only on the basis of the interim order issued by the Tribunal placing reliance on the judgement of the Hon'ble High Court of Kerala in OP No.35908 of 2001 also has no force because it was not on the basis of the interim order issued in his favour the applicant continued in service. The Tribunal allowed the OA 494 of 2002 and directed the respondents to reinstate the applicant in service, allowing him to continue in service till a regular

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selection was made. The stay order in OA No.1194/2000 was only against the notification for regular selection and that did not stand in the way of the respondents dealing with the applicant either terminating his provisional service or not in accordance with law. Therefore, the contention that the applicant continued in service on the basis of the interim order is untenable. Coming to the last contention of the respondents that even if the applicant be treated as a provisional ED Agent, his service for 3 years was not continuous as there had been interruption is also untenable because the interruption was caused due to the discharge of the applicant, which was declared illegal and the Tribunal declared that the applicant had a right to continue until a regular selection was made. Since the applicant is not entitled to regularization in the post of GDS MD the post which he has been holding on provisional basis, he has no right to challenge A-1 notification.

8. In the light of what is stated above, the application is disposed of with the following directions and declarations:

- (i) The challenge to A-1 notification is rejected.
- (ii) Respondents are directed to place the applicant's name in the list of discharged/displaced ED Agents who at the time of discharge had 3 years of service as mentioned in the letter of Director General (Posts) dated 18th May 1979 and resultant efforts be made by the respondents to give him alternative employment in accordance with law. There is no order as to costs.

Dated 23rd September, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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