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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.525/09

Friday this the 16th day of July 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

M.Anandan,
S/o.Velayudhan,
Mannarikkal House, Ambalavayal Post,
Ambukuthi, S.Bathery Thaluk,
Wayanad District.

...Applicant

(By Advocate Mr.K.M.Joseph)

V e r s u s

1. Assistant Superintendent of Posts,
Head Post Office, Kalpatta,
Wayanad District.

2. Post Master,
Narikkund Branch Post Office,
S.Bathery Thaluk, Wayanad District.

3. K.K.Vijayakumar,
Kavil Thekke Valappil,
Madhanlamoola, Narikkund P.O.,
Ambalavayal, S.Bathery, Wayanad District.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1-2])

This application having been heard on 16th July 2010 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the appointment of the 3rd respondent, namely, Shri.K.K.Vijayakumar, as the Gramin Dak Sevak Mail Deliverer (GDS MD for short) at Narikkund Post Office on stop gap basis with effect from 3.7.2009.



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2. According to the applicant he was appointed as GDS MD at Narikkund Post Office on 1.3.2008. Since it was a temporary appointment, after having served 482 days, the 1st respondent, namely, the Assistant Superintendent of Posts, Head Post Office, Kalpatta, has asked him orally on 1.7.2009 that he must hand over the charge to 3rd respondent. The applicant protested against the same and demanded a written communication from the said respondent. However, on 3.7.2009 when the applicant reached the Post Office he found that the 3rd respondent was already appointed in his post. The submission of the applicant is that since he had 482 days of continuous service, his service could not have been terminated without any notice. Further, he should have been given weightage of his past service for regular appointment .


3. The respondents in their reply statement submitted that the post of GDS MD, Narikkund fell vacant with effect from 7.2.2008 consequent upon the resignation of the regular incumbent. The applicant was engaged in the post purely on stop gap basis from 1.3.2008 to 2.7.2009 pending regular appointment. He worked there up to 2.7.2009. From 3.7.2009 the 3rd respondent was engaged on stop gap basis. In the meantime, notification for regular appointment to the post of GDS MD, Narikkund was issued on 8.5.2009. Pursuant to the said notification 21 candidates including the applicant applied for the post. Thereafter, the respondents have made a short list of 5 candidates based on the marks obtained by them in the SSLC Examination subject to fulfillment of other eligibility conditions. The applicant's name did not appear in the said short list as he secured only 236/600 marks (39.33% in the SSLC examination) whereas

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the last candidate short listed has secured 362/600 (60.33%). After verification of the documents and cycling test held on 16.9.2009 Shri.Shinoy.K., who secured the highest marks in SSLC examination (448/600 – 74.66%) among the short listed candidates and who has satisfied all other eligibility conditions was selected. He was accordingly appointed as GDS MD against the said vacancy on 30.9.2009.

4. We have considered the submissions on behalf of the parties in this OA. Of course, no doubt, as the applicant was appointed on a stop gap basis he has no right whatsoever for regular appointment on that ground. In his case, he has applied for regular appointment but he was not selected for the reason that there were other meritorious candidates who secured higher marks in the SSLC examination which is the main criterion for selection. The respondents have rightly selected Shri.Shinoy K., who got the highest percentage of marks in the SSLC examination and satisfied other eligibility conditions. However, the settled law is that the applicant while working on stop gap basis could not have been replaced by another candidate engaged on stop gap basis. The respondents have not given any reason as to why the applicant's engagement as GDS MD on stop gap basis has been dispensed with abruptly on 2.7.2009 and in his place the 3rd respondent was appointed on stop gap basis till the regular appointment of Shri.Shinoy.K., was made. In our considered view, the appointment of the 3rd respondent as GDS MD Narikkund Post Office on stop gap basis replacing the applicant was highly arbitrary, illegal and whimsical on the part of the respondents. We, therefore, deprecate the manner in which the 3rd respondent was appointed.



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5. In view of the above position, we recognise the right of the applicant to continue on stop gap basis till regular incumbent was appointed and to draw his admissible allowances up to that date. The respondents are, therefore, directed to pay the allowances as admissible to the GDS MD to the applicant from 3.7.2009 till 29.9.2009. The authorities concerned in the respondent department is also directed to look into the circumstances under which the applicant was replaced by the 3rd respondent on stop gap basis again. They are also entitled to recover the additional allowances which is to be paid to the applicant from 3.7.2009 to 29.9.2009 from the pay of the officer who was responsible for appointing the 3rd respondent on stop gap basis.

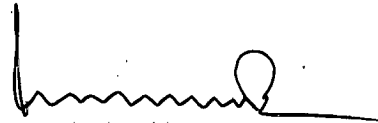
6. With the aforesaid directions, this OA is disposed of. There shall be no order as to costs.

(Dated this the 16th day of July 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER