

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.536/03

Tuesday this the 1st day of July, 2003

C O R A M:

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

Sini Atholi,
W/o. Haridasan,
G.D.S.Mail Packer,
Kadampuzha (P.O.).

Applicant

(By advocate Mr.Sasidharan Chempazhanthiyil)

Versus

1. Sri. Subramanian,
Sub Divisional Inspector of
Post Offices, Kottakkal Sub
Division, Kottakkal.
2. Superintendent of Post Offices,
Tirur Division, Tirur.
3. Postmaster General,
Northern Region, Kozhikode.
4. Union of India, represented by
Director General,
Postal Department,
New Delhi.
5. Sajini. C.
Cholakkal House,
Edarikode, (Via) Kottakkal.

Respondents

(By advocate Mr.K.Kesavankutty,ACGSC)

The application having been heard on 1st day of July, 2003
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

For appointment to the post of G.D.S.Mail Packer,
Kadampuzha the applicant as also the fifth respondent were the
candidates. However, in the initial selection as made on 26.7.02
the applicant was selected. The fifth respondent aggrieved by
that filed O.A.662/02 challenging the selection of appointment of
the applicant. The application was allowed and a direction was

given to the official respondents to re-do the selection permitting the applicant to continue provisionally. A further cycling test was scheduled to be held on 20.6.03. The applicant also received a call letter to attend the cycling test. Alleging that the cycling test was not held properly, that the fifth respondent accompanied by six musclemen intimidated the applicant and manhandled the Mail Overseer who filed a police complaint on the basis of which a crime has been registered and that despite all these the first respondent is attempting to select the fifth respondent by arranging another cycling test, the applicant has filed this application for the following reliefs:

1. Declare that the fifth respondent is a failed candidate in the test conducted by the first respondent on 20.6.2003, pursuant to Annexure A3 and direct the first and second respondents to regulate the selection accordingly.
2. Direct the first respondent not to permit the fifth respondent to join duty as G.D.S. Mail Packer pursuant to Annexure A3 till the criminal case against her is finally disposed of.
3. Direct the first respondent to permit the applicant to continue as GDS Mail Packer as now.
4. Direct the first respondent to complete the selection excluding the fifth respondent from the list of candidates for the post of GDS Mail Packer Kadampuzha.
5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
6. Award the cost of these proceedings.

2. The applicant has also stated that on the very same day 21.6.03 itself the applicant had raised her protest and had made a complaint to the second respondent (Annexure A3), that there has

been a report in the Mathrubhoomi Malayalam Daily dated 21.6.03 on the occurrence and that the whole episode was malpractice which should not be allowed to be perpetuated.

3. When the application came up for hearing Mr.K.Kesavankutty,ACGSC took notice on behalf of R2,3 & 4. In the face of the allegation that musclemen accompanying the 5th repondennt intimidated the applicant and manhandled the Mail Oversear, that the Mail Oversear has filed a criminal complaint on the basis of which a crime has been registered and that the applicant has submitted Annexure.A6 representation to the third respondent protesting against the whole episode which has not been disposed of, we are of the considered view that the application should be disposed of directing the third respondent to consider the complaint of the applicant made in her representation Annexure.A6 by making a proper enquiry and take a final decision allowing the applicant to continue provisionally till a decision is taken by the third respondent. Learned counsel for the applicant as also the official respondents agree that the application may be disposed of in that manner since the 5th respondent has not so far been appointed.

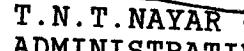
4. In the light of the above submission by the learned counsel and also in the interests of justice, we dispose of this application directing the third respondent to consider the applicant's representation (Annexure A6), in the light of the complaint by the Mail Overseer on the basis of which the police has registered a case, the paper reports and other relevant

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materials, after examining the Mail Overseer and other concerned and to take an appropriate decision. Till the third respondent's decision is communicated to the applicant, the third respondent is directed that the post shall not be filled up and the applicant who is presently working as GDSMP, Kadampuzha shall be allowed to continue provisionally. No costs.


(Dated the 1st day of July, 2003)


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 536/2003

...Tuesday.....this the 7th day of March, 2006

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HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Sini Atholi, aged 26,W/o Haridasan,
GDS Mail Packer,
Kadampuzha (PO)
residing at Pallath House,
Ward II/187,(New) Plathara,
Kadampuzha PO.

...Applicant

(By Advocate Mr.Sasidharan Chempazhanthiyil)

V.

- 1 Sri Subramanian,
Sub Divisional Inspector of Post Offices,
Kottakkal Sub Division, Kottakkal.
- 2 Superintendent of Post Offices,
Tirur Division, Tirur.
- 3 The Postmaster General
Northern Region, Kozhikode.
- 4 Union of India, represented by the
Director General, Postal Department,
New Delhi.
- 5 Sajini C,
Cholakkal House, Edarikode
Via.Kottakkal.Respondents

(By Advocate Mr.Thomas Mathew Nellimootil (rep)(R.2to4)
Mr.OV Radhakrishnan Sr.Advocate (R5)

The application having been heard on 17.2.2006, the Tribunal
on 7.3.2006 delivered the following:

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ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The present application was earlier disposed of vide order dated 1.7.03. The facts of the case are that the applicant and the 5th respondent were candidates for appointment to the post of Gramin Dak Sevak Mail Packer (GDSMP for short), Kadampuzha. During the selection held on 26.6.02 the applicant was selected. The 5th respondent challenged the appointment of the applicant in O.A 662/02 and the same was allowed on 4.3.03 with a direction to the official respondents to re-do the selection but permitting the applicant to continue provisionally. Accordingly another cycling test was scheduled for 20.6.03. The applicant was also called for the test. The applicant has alleged that the cycling test was not held properly and the 5th respondent by the help of six muscle-men intimated the applicant and man-handled the Mail Overseer who filed a complaint before the police on the basis of which a case has been registered. The applicant has, therefore, made the Annexure A6 representation dated 20.6.03 to the Respondent No.3 and her submission was that the Respondent No.1 was making preparations to appoint the Respondent No.5 in spite of the fact that she failed in the cycling test. She has, therefore,

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requested the respondents to permit her to continue in the post. Since no action was taken on her aforesaid representation dated 20.6.2003, she filed the present OA seeking the following reliefs:

- "(1) Declare that the 5th respondent is a failed candidate in the test conducted by the 1st respondent on 20.6.2003, pursuant to Annexur.A3 and direct the 1st and 2nd respondents to regulate the selection accordingly.
- (2) Direct the 1st respondent not to permit the 5th respondent to join duty as GDS Mail Packer pursuant to Annexure.A3 till the criminal case against her is finally disposed of.
- (3) Direct the 1st respondent to permit the applicant to continue as GDS Mail Packer as now.
- (4) Direct the 1st respondent to complete the selection excluding the 5th respondent from the list of candidates for the post of GDS Mail Packer, Kadampuzha.
- (5) Call for the records and quash Annexure.A8.
- (6) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the end of justice; and
- (7) to award the costs of these proceedings."

In the background of the case as explained earlier, this Tribunal disposed of this Original Application on 1.7.2003 directing the third Respondent to consider the applicant's Annexure.A6 representation dated 20.6.03 against the selection of the 5th respondent and to allow the applicant to continue to work as GDSMP, Kadampuzha, provisionally.

2 The 5th respondent filed RA 12/03 earlier for a review of the order dated 1.7.2003 and to vacate the aforesaid directions. On review, this Tribunal came to the conclusion

that the earlier order passed on 1.7.03 was erroneous on the face of the record because in spite of the serious allegations against the 5th respondent (review applicant) that she appeared in the cycling test accompanied by muscle-men who at her instance prevented the original applicant from performing the cycling test and in spite of it she was being selected and appointed as GDSMP, Kadampuzha. The Review Applicant has submitted that the Original Application was filed without bonafide and by suppressing material facts and making false allegations against her. She contended that this Tribunal had apparently fallen into an error in deciding the OA on the basis of the one-sided version. Accepting the contention of the Review Applicant (5th respondent herein), vide order dated 19.11.2003 the Review Application was allowed and the Tribunal has recalled the order dated 1.7.03 and restored the OA for disposal afresh on merits.

3 The official respondents have filed their reply. They have submitted that on the direction of the Tribunal in OA 662/02 dated 3.4.03 they conducted the cycling test afresh on 20.6.03 but the near relatives of Smt.Sajani.C, the 5th respondent caused obstructions to conduct the test and also manhandled the Mail Overseer, Shri P.Balakrishnan.

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However, the Respondent No.1, ie., the SDI (Postal) Kottackal selected the Respondent No.5 on 20.6.03 itself and informed her by the Annexure.R2(d) Memo dated 21.6.03 that she will be appointed after completing the office formalities in accordance with the order of the Tribunal in OA 662/03 dated 3.4.03. The Applicant has filed the present OA challenging the aforesaid selection Memo dated 21.6.03. During the pendency of this OA, the 5th respondent filed Contempt Petition No.79/090 in OA 662/02 in view of the failure on the part of the respondents to implement the order dated 3.4.03 in that OA. Subsequently, the order in OA 662/02 was complied with and the 5th respondent was appointed provisionally as GDSMP, Kadampuzha with effect from 4.12.03 subject to the outcome of the present original application.

4 The 5th respondent had also filed a very detailed reply. She has submitted that she was called upon to appear before the 1st respondent on 24.6.02 along with documents in original for verification and also for undergoing the cycling test scheduled on that date. She was asked to bring a suitable cycle and accordingly the 5th respondent appeared before the 1st respondent and produced all her original documents and got it verified. Even though she had brought

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the cycle no cycling test was conducted on that day and she was informed that the date of cycling test would be duly intimated to her later. However, the applicant in this application was appointed as GDSMP, Kadampuzha with effect from 7.8.02 vide the Annexure A1 order dated 5.8.02. According to the 5th respondent the applicant was selected overlooking her superior merit and suitability and without any justifiable reason. The 5th respondent has, therefore, submitted a representation to the second respondent pointing out that injustice was done to her and sought remedial steps. Since no response was received from the second respondent, the 5th respondent had made a representation to the 3rd respondent. Even then no reply was forthcoming from any of the authorities in the respondent department. Therefore, she had filed OA 662/02. In the order dated 3.4.02 in OA 662/02 this Tribunal found that the selection and appointment of the applicant herein to the post of GDSMP, Kadampuzha in preference to the 5th respondent herein was not justified and was illegal. This Tribunal has, therefore, directed the official respondents to review the whole selection process and conduct a fresh selection to the post of GDSMP, Kadampuzha from amongst the candidates who attended the interview held on 24.6.2002 in accordance with law and to

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select and appoint the applicant subject to her qualifying the necessary criteria including knowledge of cycling and production of non-creamy layer certificate in the proforma prescribed by the Government of India within two months. The applicant challenged the aforesaid order of this Tribunal dated 3.4.03 before the Hon'ble High Court of Kerala in WP© No.17861/03 and the same was dismissed vide order dated 9.6.03. In implementation of this Tribunal's order dated 3.4.03, the 5th respondent was served with a notice directing her to appear before the second respondent on 20.6.03 along with the documents mentioned therein in original and thereafter to undergo a test of knowledge of cycling. Accordingly the 5th respondent appeared before the second respondent and has shown the requisite certificates. The 5th respondent successfully gave cycling test but the applicant could not ride the cycle though she had made unsuccessful attempts for three times. But Shri Balakrishnan, the Mail Overseer came near the 5th respondent and got hold of her hand, asking her to stop riding cycle and pushed her down. On seeing the above incident, the husband of the 5th respondent's sister Shri Gopi who was standing outside the gate came to the premises and questioned the Mail Overseer about the impediment caused by him and about his

behaviour. However, Shri Balakrishnan kicked Shri Gopi in the groin and used abusive words and returned to his office. Shri Gopi was thereafter admitted in the hospital and police has registered case on the basis of FIR filed against the Mail Overseer under Section 354 and 323 of IPC. Subsequently, a criminal case was also registered vide No.903/03 on the files of the First Class Judicial Magistrate, Malappuram. The said Mail Overseer Shri Balakrishnan had also made a counter complaint against Shri Gopi as Crime No.188/03 of the Kottakkal Police for offences punishable under Section 353 and 324 of the IPC. However, the name of the 5th respondent did not find place and no criminal complaint has been filed against her. Subsequently the 5th respondent was served with a memo dated 21.6.03 by the second respondent informing her that she was selected for appointment to the post of GDSMP, Kadampuzha on the basis of the selection test held on 20.6.03. It was at this junction that this Tribunal passed the order dated 1.7.03 in this OA directing the third respondent to consider the applicant's representation and not fill the post and allow the applicant to continue in the post provisionally. Later on, the said order dated 1.7.03 was recalled as per order dated 19.11.03 in RA 12/03 as stated earlier. However, the said order was implemented only after

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the Contempt Petition 79/03 was filed in OA 662/02. Meanwhile the Judicial First Class Magistrate Court, Malappuram acquitted Shri Gopi and compounded the matter with permission of the court in the case of Shri Balakrishnan. In the facts and circumstances of the case, the 5th respondent requested to dismiss the present OA with costs.

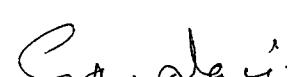
5 We have heard Shri Vishnu S.Chepazhanthiyil for the applicant, the proxy counsel appearing for Shri Thomas Mathew Nellimootil for the official respondents and Shri OV Radhakrishnan, Sr.Advocate for the 5th respondent. We have also gone through the documents and records produced in the OA. The Tribunal in order dated 3.4.2003 in OA 662/2002 has already held that the selection and appointment of the 5th Respondent therein (Applicant in the present OA) to the post of GDSMP, Kadampuzha in preference to the Applicant (5th Respondent in the present OA) was not justified and it was illegal. The order has already been carried out by appointing the 5th respondent as GDSMP, Kadampuzha w.e.f 4.12.2003 provisionally subject to the outcome of this OA and she is still continuing in the said post. The Hon'ble High Court of Kerala has also upheld the aforesaid order of the Tribunal dated 3.4.2003 in OA 662/02 in the Writ Petition No.17861/03 filed by the Applicant vide order dated 9.6.03. In the facts and

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circumstances of the case, the present OA is nothing but a vexatious litigation and accordingly the same has to be dismissed. We order accordingly. Ordinarily, we would have imposed exemplary costs on the Applicant for the harassment inflicted on the 5th respondent by this unnecessary litigation and the financial loss caused to her on account of litigation expenses. However, we do not burden the Applicant with any costs in the present OA considering the status of the Applicant that she is only an aspirant for the post of GDSMP, which is even lower than a Group 'D' post.

Dated this the 7th day of March, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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