

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.536/2004.

Dated the 12th day of July, 2005

CORAM:

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER**

Ajikumar N.R.,
G.D.S.M.D. Thaickal P.O.,
Cherthala Sub-Division, Cherthala,
residing at Nedumparambil, Thaickal P.O.,
Cherthala, Alappuzha District-688554. Applicant

(By Advocate Shri CJ Joy)

Vs.

1. The Superintendent of Post Offices,
Alappuzha Division, Alappuzha.
2. The Sub-Divisional Inspector of Post Offices,
Cherthala Sub-Division, Cherthala-688524.
3. The Sub Postmaster, Thaickal-688554.
4. Union of India, represented by its Secretary,
Ministry of Communications,
New Delhi. Respondents


(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 20.6.2005,
the Tribunal on 12.7.05. delivered the following:

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is working as Gramin Dak Sevak Mail Deliverer (GDS-MD for short) Thaickal Post Office under the 2nd respondent. One Shri K.V.Chandran, Extra Departmental Delivery Agent (EDDA for short) absconded from duty on 10.6.1997 after committing serious irregularities including financial misappropriation. Thereafter one Shri M.P.Babu was appointed temporarily on 12.6.1997 who, later resigned on 19.6.1997. The applicant was engaged on ad-hoc basis vide order dated 19.6.1997(A1) and continued till 4.4.2000 for a period of 2 years, 9 months and 14 days without any



leave. The services of the original incumbent Shri KV Chandran was terminated and Smt. Rachana Devi was appointed on 4.4.2000. It is averred in the O.A. that the applicant having been allowed to continue on the post without any break for a long period, the respondents would be estopped from contending that the applicant was appointed without following the requisite formalities for making provisional appointment and it should be taken that the pre-requisite procedure for making provisional appointment was relaxed in the case of the applicant. As per DG (Posts) letter dated 21.10.2002(A3), stop-gap arrangement shall not exceed 60 to 90 days and the approval of the next higher authority should be taken in respect of all provisional appointments exceeding 90 days and 180 days, and, where the period exceeds one year, express approval of the head of the Region/Circle would be necessary. While permitting the applicant to continue in the post it is to be presumed that the above formalities have been complied with. The services of the applicant was terminated on 4.4.2000, whereas he ought to have been regularised in the said post and the termination without giving any notice is null and void. Finally one Smt. T.J.Jesna was appointed vide Annexure-A5 and she went on leave on 5.4.2004 and the applicant continued as her substitute, duly approved by the department by A-6 and on her resignation on 30.4.2004, the applicant was again permitted to continue as a provisional appointee from 1.5.2004 onwards and still she is continuing in the said post. Therefore, the applicant was working for more than 3 years and as such, she is entitled to get alternate employment. Now, the 2nd respondent issued A-8 notification calling upon fresh hands for selection on provisional basis, which is impugned in this O.A. Aggrieved by the same the applicant has filed this O.A. seeking the following main reliefs:

1. To issue appropriate direction or order directing the respondents to regularise the service of the applicant in the post of GDS Mail Deliverer, Thaickal P.O., treating him as a regular member of the service.
 2. To issue appropriate direction or order directing the respondents not to fill up the post of GDS Mail Deliverer, Thaickal P.O. by any other persons, other than the applicant, to be appointed on temporary, ad-hoc or regular basis pursuant to Annexure A8 or otherwise.
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2. The respondents have filed a counsel statement on 26.8.2004 contending that Shri KV Chandran, EDDA(GDSMD) was absconding from duty on 10.6.1997 after committing serious irregularities including financial misappropriation. Subsequently, Mr. M.P.Babu was appointed temporarily on adhoc basis, who later resigned on 19.6.1997 and thereafter the applicant was provisionally appointed in the post of GDS-MD, Thaickkal Post Office on 19.6.1997 on a stop gap arrangement to manage the delivery work consequent upon unauthorised absence of regular incumbent. Regular selection was made to the post on completion of disciplinary proceedings and removal of regular incumbent from service. Smt. Rachana Devi was selected and appointed with effect from 4.4.2000. The applicant was engaged to work on stop gap basis to manage the emergent situation. He was not selected by observing the recognised recruitment procedures. Hence, he has no right or claim for a regular appointment in this post high lighting the period of service rendered with the respondents and is not eligible to be appointed in the post on a permanent basis. Smt. Rachana Devi resigned from the post on 5.4.2000 and one Mr. Kunjumon was engaged on stop gap basis with effect from 6.4.2000. Subsequently the vacancy was filled on regular basis by giving a transfer to Shri Babu as GDS-MC, Nadavathu Nagar as GDSMD, Thaickal w.e.f. 1.8.2001 and Shri Babu also was absconding from duty after committing monetary fraud and the applicant was again engaged to work in the post as a stop gap arrangement w.e.f. 31.3.2004 to manage the delivery work. Thereafter the put off period of Shri Babu was found to be continued for a long period, later one TJ Jesna was appointed w.e.f. 1.11.2003 who was also resigned from the post w.e.f. 1.5.2004, and thereafter the applicant was engaged to work in the post as a stop-gap arrangement w.e.f. 1.5.2004 to manage the work. The applicant did not work continuously in the said post for more than 3 years. As the put off duty of Shri Babu is likely to continue and the Disciplinary proceedings should be initiated, the respondents were compelled to make provisional arrangement on long term basis, A-8 notification was issued to meet the requirements, so that all those who are eligible can get an opportunity to apply for the post. The applicant was at liberty to apply and to compete with other such persons.

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3. The applicant has filed a rejoinder contending that the applicant's engagement was not a stop gap arrangement but a provisional one. He claims that he had worked continuously for three years under the respondents and there is no considerable gap between re-engagement.

4. We have heard the Shri C.J. Joy, learned counsel for the applicant and Shri TPM Ibrahim Khan, SCGSC for the respondents and also given due consideration to the arguments advanced by them and the materials placed on record. On going through the pleadings and material available on record, we find that, the applicant was engaged intermittently for different spells of time in different vacancies on various occasions on stop gap arrangement. The documents A(4), A(5), A(6) and A (7) charge reports of the applicant will show that it was on intermittent periods and it never reveals that it was on provisional basis. The applicant was not able to produce any letter to show that he was engaged on provisional basis. Admittedly, even from the averments in the O.A. it is clear that he was engaged in the emergent situation in the absence of Shri K.V.Chandran, MP Babu, Rachana Devi and Smt.Jesna for intermittent periods. The DG (Posts) letter No.17-115/2001-GDS, dated 21.10.2002 (A-3), which was relied on by the applicant only gives an advantage that if a person is engaged for three years continuously on provisional basis, she can be considered for regular appointment and certain procedures laid down, wherein are that, if the provisional appointment exceeds 60 to 90 days, stop-gap arrangement will be made, and if it is beyond 90 days, sanction of the next higher authority should be taken so also in the case of 180 days, and where the period exceeds one year, express approval of the head of the region/circle should be obtained. This was clarified by the guidelines for regulating substitutes. Provisional arrangement is made in the place of regular GDS vide O.M.No.17-115/2001-GDS. The full text of which has been submitted by the respondents. Paragraph 5 of the said O.M. reads as follows:

"In the case of Devika guha V/s Union of India, the Supreme Court has also not recognized the right of the substitutes for regularisation. On the other

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hand the Apex court has maintained that substitutes have no legal claim on the basis of having worked continuously and if there are cases where the substitutes have worked for a "long period" it is for the Department to consider the same as to whether there was a proper case for absorption or not, and pass appropriate orders."

5 It is further reiterated that "substitutes have no legal claim" as far as the regularisation in the department is concerned.


6. Learned counsel for the applicant has invited our attention to the decisions in State of Haryana Vs. Piara Singh (AIR 1992 SC 2130) and Bhagavathy Prasad Vs. Delhi State Mineral Development Corporation (1990 (1) SCC 361) in support of his contentions. The former decision deals that, a provisional hand should not be replaced by another provisional hand and the latter decision deals with the prescription of minimum educational qualification. It need not be insisted if it was overlooked at the initial entry to the service. In our opinion, both these decisions are not applicable in the case on hand, since the facts of the case are entirely different from each other. Having found that the engagement and continuance of the applicant in the post was only a stop gap arrangement, which is necessitated to meet such emergent situation and the applicant was not subjected to the prescribed selection process, we do not find any substance in the argument of the applicant's counsel. The engagements of the applicant initially and subsequently being only a stop gap arrangement to tide over the emergent situation arising out of the put off duty of the original incumbent holding the post. Since the put off duty is likely to continue and there is every likelihood of original incumbent to be subjected to the disciplinary proceedings, the long term arrangement had to be made and in such circumstances in the matter of appointment it was necessary to give an opportunity to all those who were eligible to apply and that is how A-8 notification was issued and therefore, the situation does not call for any judicial intervention. In terms of the extant instructions, if a provisional appointment of an EDA is likely to continue for a long period, a selection has to be made from the candidates in the open market. We do not find anything wrong with the action of the respondents in inviting the applications vide A-8 notification. The applicant may also compete with others, who apply for the

post. Since he has no legal right to be considered for the post excluding others nor he hold any weightage for the said post.

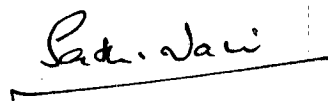
7. In the result, we are of the view that the O.A. does not merit and therefore, to be dismissed.

8. Accordingly, we dismiss the O.A. In the circumstance no order as to costs.

Dated the 12th day of July, 2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER
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SATHI NAIR
VICE CHAIRMAN