

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.537/2001.

Thursday this the 19th day of September 2002.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Sathyadevan V., Provisional EDDA,
Poonkulangi P.O., Pathanapuram, Kollam. Applicant

(By Advocate Shri M.R.Rajendran Nair)

Vs.

1. Sub Divisional Inspector of Post Offices,
Adoor Sub Division, Adoor.
2. Superintendent of Post Offices, Adoor Division,
Adoor.
3. The Chief Postmaster General,
Kerala Circle, Trivandrum.
4. Union of India, represented by the Secretary to
Government of India, Department of Posts,
Ministry of Communications,
New Delhi. Respondents

(By Advocate Mr. Shri Hari Rao, ACGSC)

The application having been heard on 19th September, 2002,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by the move of the respondents to fill up the post of Extra Departmental Delivery Agent (EDDA for short), Poonkulangi by A-4notification dated 11.6.01 issued by the first respondent, filed this O.A. He sought the following reliefs through this O.A.

- i. Quash Annexure A4.
- ii. To direct the respondents to regularise the applicant as EDDA, Poonkulangi forthwith.
- iii. Alternatively direct the respondents not to retrench the applicant save in accordance with law and direct the respondents, to grant him alternate employment in any ED post in the same unit.



- iv. Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and,
- v. Grant the costs of this Original Application.

2. According to the applicant, he was initially engaged as a substitute ED Agent in place of a regular EDDA, Poonkulanji. He claimed that he got a job in a private Construction Company at Gujarat and when he came on leave during early 1996, he was called to the post office by the then SDI and was informed that the regular incumbent was put off duty following a charge of fraud and that the authorities wanted a person who knew the beat correctly to work as EDDA and asked whether the applicant was interested in the job or not. When the applicant agreed he was required to make an application and he was asked to work as EDDA. He submitted that he was not given any appointment order initially. He submitted that when his leave expired, he met the then SDI and requested him to relieve him but the SDI required him to continue and told that he would get an alternate employment if he was continued in service provisionally for three years. Thereafter, he was given a Memo No.DA/BO 30 dated 8.3.1996 issued by the first respondent provisionally appointing him as EDDA, Poonkulanji. He was required to take the order to the BPM and to give the same there and he did so accordingly. The BPM permitted him to continue as EDDA, Poonkulanji on provisional basis. He was served with A1 notice dated 23.4.01 by the first respondent proposing to terminate his services. By A-1 he was required to make a representation within seven days. The applicant requested for some more time. He was given seven more days' time by A-2 order dated 30.4.01. He submitted A-3 representation dated 2.5.01 to the first respondent wherein he requested for regularisation of his services and in the alternative to consider his case for alternate employment as ED



agent in the same division. In the meanwhile the first respondent issued A-4 notification dated 11.6.2001 calling applications for transfer to the posts of EDDA, Karali and EDDA, Poonkulanji. Aggrieved and claiming that filling up of the post of EDDA on regular basis before considering his A-3 representation would prejudice him, he filed this O.A. seeking the above reliefs.

3. The respondents filed a reply statement resisting the claim of the applicant.

4. Heard the learned counsel of the parties. Learned counsel of the applicant after submitting the factual aspects as contained in this O.A. submitted that, from the objections filed by the respondents to M.A.576/02 and the M.A.-I enclosed thereof dated 8.3.96, it could be seen that the applicant had been appointed provisionally as EDDA, Poonkulanji w.e.f. 30.1.1996 in the put off vacancy of one K.A. Chellappan. He submitted that the applicant had continued in the post for more than five years. Based on his provisional service of more than three years of service, he was entitled for an alternate employment in terms of DG Posts letter dated 18.5.1979. It was also submitted that the respondents' contention that the applicant had been continued by a mistake, could not have been correct because, the applicant had been continuing for a long time. The other contention taken by the respondents that the applicant had not been given any offer of appointment in the prescribed form, could not also be accepted because it was within the hands of the respondents to issue a letter in the proper form. After continuing for such a long



time, denying alternate employment to the applicant, would be unfair and illegal and would be against the DG Posts' instructions. He also referred to the clarification appearing in page 89 of the Swamy's Compilation of Service Rules for Postal Extra Departmental Staff, (7th Edition 1999) and submitted that, as per the clarification it was not necessary that all provisional appointments should be done only through Employment Exchange and that the respondents' contention that the applicant had not been appointed through the Employment Exchange should not stand in the way of he being given alternate employment.

5. Learned counsel of the respondents took us through the reply statement and reiterated the points made therein. He submitted that the Annexure MA-I order filed by the respondents in reply to M.A.576/01 filed by the applicant which was relied on by the applicant, was an inter-office communication and this would not indicate that the applicant was given any appointment letter on provisional basis. The applicant's appointment was a stop-gap arrangement and the said stop-gap arrangement would not give a right to the applicant for seeking the benefits of DG Posts' letter dated 18.5.79. It is also submitted that before considering the A-3 representation by the respondents, the applicant had approached this Tribunal by filing this O.A.

6. We have given careful consideration to the rival submissions of the parties and have perused the documents brought on record. We find that the respondents are declining to grant the benefits on the basis of the instructions of the DG (Post)'s letter dated 18.5.79 mainly on the ground that, the applicant's

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appointment was not as a result of following the procedure laid down in the rules for appointing provisional hands. They claimed that the applicant's continuation had been as a result of a mistake. There is no dispute among the parties that the applicant was appointed as EDDA on provisional basis on 30.1.1996. From M.A.-I it is clear that the appointment was on provisional basis.

7. We find that the applicant had not been given any appointment order, but M.A.I order dated 8.3.96 indicate that the then appointing authority had appointed the applicant on provisional basis w.e.f. 30.1.96. We also find from the reply statement that the respondents had made efforts to make alternate arrangements against the put off vacancy through Employment Exchange. The respondents themselves have averred that no appointment order was issued to the applicant as it was a stop-gap arrangement. The fact remains that the stop-gap arrangement continued. The question is whether the continuation was a conscious decision or a mistake. From the averments in the reply statement we find that even though the respondents wanted to appoint an ED Agent through Employment Exchange, to fill up the vacancy on provisional basis, their efforts had failed. We find that on 16.8.96 the Employment Officer Punalur was requested to sponsor candidates to fill up the vacancy on provisional basis as per the then existing orders on the subject. The Employment Officer had sponsored nine candidates but the name of the applicant did not figure in the list. Among the nine candidates who have been sponsored by the Employment Officer, the most suitable candidate Shri I Thomas who was offered the post declined the order of appointment. The 2nd suitable candidate

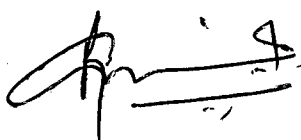


Shri TR Mohanan who was offered provisional appointment to the post of EDDA, Poomkulanji also declined the offer. The 3rd candidate Shri E.Thankappan the next suitable candidate among the remaining candidates who was offered the post of EDDA, Poonkulanji, also did not join the post. It is further submitted that immediately thereafter there was a change in incumbency in the post of Ist respondent who was the appointing authority and hence, the applicant continued to work as EDDA. Thus, the position that emerges is that, from the fourth quarter of 1996 the applicant had been continuing as EDDA on provisional basis. We are of the view that it was possible that the then SDI, the appointing authority, might have taken a decision not to offer the post to any more candidates because the appointment was on provisional basis and the three best candidates in the order of priority had declined the offer. The fact remains that the applicant continued on provisional basis from the fourth quarter of 1996 till 2001.

8. The directions of DG Posts letter dated 18.5.1979, paragraph No.2 reads as follows.

"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' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in DG P&T letter No.43-4/77-Pen., dated 23.2.1979."

9. We are of the considered view that taking into account all the factual aspects of this O.A. as well as the rival contentions, the fact that the applicant was continuing for more than five years in the post of EDDA, Poonkulanji he should be



given the benefit of those instructions of the DG Posts' letter. We also do not find in the above letter anything to show that the benefit of alternate employment would be available only to those selected through the Employment Exchange.

10. Accordingly we direct the respondents to enlist the name of the applicant in the list of discharged ED Agents and consider him for an alternate employment in any ED post which is vacant or which is likely to fall vacant in the near future. The O.A. stands disposed of as above with no order as to costs.

Dated the 19th September, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

rv

A P P E N D I X

Applicant's Annexures:

1. A-1: A true copy of the order No.DA/BP/30, dated 23.4.01 issued by the 1st respondent.
2. A-2: True copy of the order No.DA/BO/30 dated 30.4.01, issued by the 1st respondent.
3. A-3: True copy of the representation dated 2.5.2001 submitted by the applicant to the 1st respondent.
4. A-4: True copy of notification No.GL/ED/Tfr dated 11.6.2001 issued by the 1st respondent.

Respondents' Annexures:

1. MA-1: True copy of the Order No.DA/Bo-30 dated 8.3.96 of the 1st respondent to the Postmaster, Punalur H.O.
2. MA-2: True copy of the letter No.43-4/77-PEN dated 18.5.79 of the Director General of Posts.

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