

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 592/2012

This the 04th day of December, 2012

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mrs K NOORJEHAN, ADMINISTRATIVE MEMBER

S.Noushad, S/o Sulaiman A, GDSMP, Uchakkada,
R/o Kannikuzhy, Puthenveedu House, Kulathoor,
Uchakkada P.O, Neyyattinkara, Trivandrum-695506.

..Applicant

(By Advocate Mr.M.R.Hariraj)

versus

1 Union of India represented by the Secretary to the
Govt of India, Ministry of Communications, Department
of Posts, New Delhi.

2 Chief Post Master General, Kerala Circle, Trivandrum-695033.

3 Superintendent of Posts, Trivandrum South Division
Trivandrum.

4 The Inspector of Posts Neyyattinkara Sub Division,
Trivandrum - 695121..

... Respondents

(By Advocate Mr. S.Jamal, ACGSC)

The applications having been heard on 16.11.2012, the
Tribunal delivered the following:

ORDER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by refusal of the respondents to
consider him for appointment as Gramin Dak Sevak (for short GDS) in
preference to fresher/outsiders.

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2 In this O.A, the issue to be adjudicated is whether the applicant is eligible for preference in the matter of appointment as GDS

3 It is submitted by the applicant that he is a Matriculate and has passed Pre-Degree Examination. He averred that he was engaged as provisional Gramin Dak Sevak Mail Packer (GDSMP for short) under the 4th respondent (Sri Valsalam, GDSMP, Uchakada from March 2006 to April 2006 on leave ~~on leave~~). While so Sri Valsalam died on 2.5.2006 and the applicant was engaged as a provisional hand as GDSMP. As such he continued there with artificial break and performed the work as per the directions of the 4th respondent. He further avers that he continued as GDSMP, Uchakada after the death of Sri Valsalam with the approval of the competent authorities. He placed on record various engagement orders issued as Anxx.A2. He made various representations the latest being on 2.7.2012 to the respondent authority to regularise him as GDSMP Uchakada as he has completed 6 years of service as a provisional hand. He referred to the DGP&T letter which says that if a provisional Gramin Dak Sevak is discharged due to administrative reasons and he has put in 3 years of service he can be included in the list of discharged EDAs for alternative appointment. The respondents have issued notification inviting applications for appointment as GDSMP, Uchakada by order dated 8.6.2012. He apprehends that he would be retrenched when regular appointment is made pursuant to Anxx.A1. According to the applicant he was working continuously as a provisional hand from March 2006 onwards under the respondents and is fully qualified for the post of GDSMP. It is alleged that without giving the entitled preference to the applicant the respondents are going ahead to fill up

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the vacancy from open market. It is contended that since he is working from 2006 as provisional hand he is entitled for the benefit of preference for appointment as GDS and non-consideration of his preferential claim by the respondents is illegal and arbitrary. The applicant brought to our notice the judgment of the Hon'ble High Court in WP(C) No.17727 of 2004(S), a similar claim made by the petitioner was allowed.

4 The respondents in their reply statement denied the contention of the applicant that he is a provisional employee and submitted that he is only an outsider engaged intermittently to work as GDSMP Uchakada in Trivandrum South Division on stop gap arrangements till a regular appointment is made to fill up the post. They further submitted that the applicant would be eligible for preference, be it with a minimum 3 years continuous service or less, only if he is a provisional appointee who is appointed after following the prescribed procedure. In this case the applicant is an outsider who has been engaged purely on a stop gap basis in the post of GDSMP, Uchakada which had fallen vacant due to death of the incumbent Srl Valsalam on 2.5.2006. They have referred to order of this Tribunal in OA 684/09 which clearly defined the term provisional appointment. They further submitted that the applicant has not undergone any prescribed process of selection and as such he is not entitled for regular appointment.

5 On 13.7.2012 this Tribunal issued an interim order directing the respondents to stay of appointment of GDSMP pursuant to Annx.A1 for a period one week.

6 We have heard the learned counsel for the parties and perused the records.



7 The respondents may have a valid contention that the applicant was not appointed as a provisional hand after a due process of selection. That does not explain why a clear vacancy which arose as a result of the demise of the regular incumbent in May 2006 was not filled up for six long years. To aggravate matters, the applicant and another person, were engaged for alternative month from May 2006 onwards, till date, even after publication of Annexure A-I notification on 08.06.12. The Hon'ble High Court of Kerala dealing with an identical issue in W.P No.17727/2004 made the following observation.

14. We do not think that a restricted view as above is necessary since it was on the basis of orders of the competent authority that the petitioner had been able to continue as a provisional employee. There is no challenge about the orders passed by the Tribunal, in the matter of grant of admissible allowance and certain other allowances. The only question is as to the manner in which the Department has to proceed with the regular filling up of the post concerned. The procedure is that notification is to be made, persons are to be sponsored by the District Employment Exchange. But before that a termination is to be made. The moment the termination is made, the petitioner becomes entitled to be included in the priority list, and this insulates him with protection that he has a priority to be accommodated to the posts against any other open market candidates. In the present case it is asserted that there are no other claimants.

15. Although normally, for filling up the post of GDSM Carrier (formerly GDMC) such a procedure was to be followed, we are of the view that the petitioner will be entitled to the benefits of the regulations, by virtue of his continued and long service. "

8 In the light of what is stated above, we declare that the applicant is eligible for preference in the matter of appointment as

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GDSMP Uchakada despite the fact that the applicant's engagement was not routed through employment exchange. The O.A is allowed. No order as to costs.

(Dated, the 11th December, 2012)


(K NOORJEHAN)
ADMINISTRATIVE MEMBER


(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

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