

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 596 / 2007

Wednesday, this the 19th day of November, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

Reghunadhan , Pillai,
Gramin Dak Sevak Mail Deliverer,
Kattilkadavu Branch Office,
Karunagappally.

.....Applicant

(By Advocate Mr K Karthikeya Panicker)

v.

1. Union of India represented by
the Secretary,
Department of Posts,
New Delhi.

2. The Inspector of Posts,
Karunagappally Sub Division,
Karunagappally, Kollam.

.....Respondents

(By Advocate Mr Varghese P Thomas, ACGSC)

This application having been finally heard on 14.10.2008, the Tribunal on 19th Nov '2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-3 notice dated 5.9.2007 by which the 2nd respondent has invited application for provisional appointment to the post of Gramin Dak Sevak Mail Deliverer (GDSMD for short), Kattilkadavu Branch Office. He has, sought a direction from this Tribunal to quash the aforesaid notice on the ground that he has been serving against the said post on provisional basis and he cannot be replaced by another provisional appointee.



2. According to the applicant, he was employed as GDSMD on provisional basis with effect from 27.11.2000 when one Shri Krishna Pillai holding the said post on regular basis went on leave and it continued till 9.6.2002, i.e. the date on which Shri Krishna Pillai retired from service. After his retirement, one Shri Rajendran was appointed in his place on regular basis with effect from 10.6.2002. Later on, Shri Rajendran was promoted as a Postman on regular basis with effect from 2.3.2006 and he left the charge to the applicant as per the Annexure A-1 charge dated 2.3.2006. According to him, with effect from 2.3.2006, he has been working on the said post of provisional basis without any interruption and he was also being paid the salary by the 1st respondent as indicated in Annexure A-2 salary receipt for the month of March, 2006. According to him, there is no need to terminate his provisional service to accommodate another provisional hand and the same is also not permitted by law and therefore the proceedings initiated by the respondents vide Annexure A-3 notice is arbitrary, malafide and illegal.

3. During the pendency of the proceedings of this O.A before this Tribunal, we have directed the respondents to allow the applicant to continue in the present post in the same capacity in which he was engaged earlier. However, it was made clear that there is no bar for the respondents to proceed with the selection in terms of the Annexure A-3 notice subject to the outcome of this O.A

4. The respondents in their reply have denied at the outset that the applicant was a provisional appointee. They have also submitted that it was by an inadvertent mistake that they have used the word 'provisional' in the Annexure A-3 notice dated 5.9.2007 and they wanted to rectify the same by renotifying the vacancy for regular selection. As regards the service details of the applicant are



concerned, they have submitted that he was a leave substitute in different spells of two regular incumbents of the post of GDSMD, Kattilkadavu Branch Office, viz, Shri Krishna Pillai and Shri Rajendran. He served as a substitute of Shri Krishna Pillai on 21.11.2000 to 31.5.2002. Shri Krishna Pillai was discharged from service on attaining 65 years on 9.6.2002. From 10.6.2002 Shri Rajendran was appointed in place of Shri Krishna Pillai. Shri Rajendran was subsequently promoted to the cadre of Postman with effect from 5.5.2007. Shri Rajendran had engaged the applicant as a leave substitute during from (i) 2.3.2006 to 31.5.2006, (ii) from 9.6.2006 to 31.8.2006, (iii) from 1.10.2006 to 31.12.2006 and (iv) from 1.2.2007 to 4.5.2007. During the said period Shri Rajendran had engaged 2 other substitutes also viz, Shri Babu and Shri Balan. Shri Babu was engaged from 1.6.2006 to 8.6.2006 and Shri Balan was engaged from 1.9.2006 to 30.9.2006 and from 1.1.2007 to 31.1.2007. After Shri Rajendran was promoted from 5.5.2007, the 2nd respondent had engaged the applicant Shri Balan and one Shri Vinod during different spells. Applicant was engaged from 5.5.2007 to 25.8.2007 and Shri Balan was engaged from 26.8.2007 to 3.11.2007 and Shri Vinod from 4.11.2007 onwards. All those arrangements were made on stop gap arrangement as is evident from Annexure R-4, R-5 and R-6. Thereafter, on receipt of the sanction to fill up the post from CPMG, the 2nd respondent issued the Annexure A-3 notification inviting applications for the post of GDSMD, Kattilkadavu Branch Office. In terms of the aforesaid notice applicant had also applied and he was duly considered along with others sponsored by the Employment exchange. The selection was made on the basis of the marks obtained in the SSLC examination. Accordingly, Smt Vinida.R who secured the highest marks in SSLC was offered the appointment and directed her to join the duty with immediate effect vide Annexure R-7 letter dated 11.10.2007. However, she has not been placed in the post in view of the interim order of this Tribunal. The respondents have further submitted that it was by an



inadvertent mistake that in the Annexure A-3 notice, the proposed appointment was shown "as on provisional basis" but it was for a regular appointment and the mistake has occurred due to an over sight on the part of the 2nd respondent. Further, except for the word 'provisional' that found a place in the Annexure A-3 notice, it satisfied all the conditions of regular appointment and the interest of the applicant was not at all affected by the said mistake as he has also applied in response to the said notice and was considered for selection along with other candidates applied for appointment directly and those candidates sponsored by the Employment Exchange. Applicant was not selected because his position was low in the merit list and the applicant who secured the highest marks in the SSLC has been selected.

5. The respondents have also relied upon the judgment of the Apex Court in **Uma Devi v. State of Karnataka** [(2006) 4 SCC 1] to press their point that applicant being a back door entry has no right to get a regular appointment on the basis of his past service. They have also relied upon the judgment dated 29.1.2008 of the Hon'ble High Court of Kerala in W.P.(C) 9144 of 2004(S) **Swamidas P.V. v. Union of India & others** which has been arisen from the orders of this Tribunal in O.A.996/2001. The Writ Petitioners were working as substitutes in the place of Gramin Dak Sevak Mailmen. They claim, they were working in the said post since 1996-97. While so, some of the Gramin Dak Sevak Mailmen were promoted as Group D employees and therefore, regular vacancies were available from 11.10.2000. So, the writ petitioners were being engaged continuously in those vacancies without any break. It is not in dispute that they were not recruited through the employment exchange. Their initial engagement as substitute employees was made by the concerned Gramin Dak Sevak Mailmen, who were on leave. While so, the second respondent invited applications as per notification dated 24.09.2001 for appointment to the post of



Gramin Dak Sevak Mailmen. The last date for receipt of application was 05.10.2001. The writ petitioners submitted representations claiming preference in appointment to the vacancies notified. According to them, casual employees are entitled to preference in the matter of recruitment to the post of Gramin Dak Sevak Mailmen. The High court dismissed the Writ Petition and held as under:

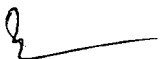
"We are of the view that the principles laid down in that case do not apply to the facts of this case. We are bound by the Constitution Bench decision of the Apex Court in Umadevi's case. Therefore, the said contention of the learned counsel for the petitioners cannot be accepted. In the result, the Writ Petition fails and it is dismissed."

6. In the rejoinder, the applicant has stated that with effect from 2.3.2006, he has been continuing as GDS Mail Deliverer of Kattilkadavu Post Office without any break in service and the same can be confirmed from the B.O Journal and Post Man Book maintained in the Kattilkadavu Post Office. He has also submitted that he was only concerned with his service from 2.3.2006 and from that date he alone was working as GDSMD, Kattilkadavu Post Office and nobody else as stated by the respondents. After transfer, Shri Rajendran lost all his right over the post of GDSMD, Kattilkadavu Post Office and while working at Klappana, he cannot engage anybody as his substitute in Kattilkadavu. A regular incumbent alone is permitted to engage a substitute, that too only to avail leave. Shri Rajendran was promoted while he was holding the post of GDSMD, Klappana. His promotion has nothing to do with Kattilkadavu Post Office. He reiterated that so long as he was continuing in service without any interruption from 2.3.2006, he cannot be replaced by another provisional hand. He has also submitted that Annexure A-7 has no legal sanctity, especially when on 11.11.2007 itself an interim order was passed by this tribunal that the selection proceedings are subject to the final decision in the application.



7. On our direction, the respondents have produced the Branch Office Register which contain the details of all accountable postal articles such as money orders, registered letters, handed over under acquittance to the GDSMD, Kattilkadavu Post Office. They have also produced the Postman's Book maintained by the GDSMD of Kattilkadavu Post Office which contains the details of all accountable postal articles such as money orders, registered letters obtained by him for deliver/payment.

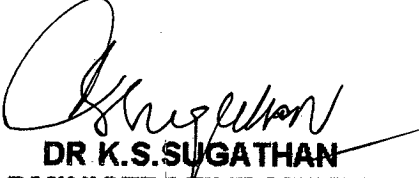
8. We have heard the learned counsel for the parties. We have also perused the records made available by the respondents. The contention of the applicant is that he has been working as a provisional appointee against the post of GDSMD, Kattilkadavu Branch Office from 2.3.2006 and has been continuing in that post without any interruption. His grievance is that the respondents have issued the Annexure A-3 notice dated 9.5.2007 inviting application to fill up the aforesaid post again on provisional basis. He has further contended that a provisional appointee cannot be replaced by another provisional employee as the same is not permitted under the law. On a perusal of the record, we find that the contention of the applicant that he has been working as a provisional appointee has no basis. He has also not produced any document to prove that he was appointed on provisional basis at any time. On the contrary, as per the records, the applicant has worked as a substitute to 2 of the regular incumbents of the post of GDSMD, Kattilkadavu Branch Office on different spells. First, he worked as a substitute from 21.11.2000 to 31.5.2002 in place of Shri Krishna Pillai regular GDSMD who retired on 9.6.2002. From 10.6.2002 the aforesaid post was held by Shri R Rajendran on regular basis. He was on leave on different spells. During his leave period from 1.6.2006 to 8.6.2006 and from 9.6.2006 to 31.8.2006, 1.9.2006 to 30.9.2006, 1.10.2006 to 31.12.2006,



1.1.2007 to 31.1.2007 and from 1.2.2007 to 4.5.2007, the applicant was engaged as his substitute. The only inadvertent mistake made by the respondents was that they had used the word 'provisional' in place of 'regular' in the Annexure A-3 notice dated 5.9.2007. The respondents have gone ahead with the selection procedure pursuant to Annexure A-3 notice dated 5.9.2007. The applicant has also applied for the same. He was duly considered by the respondents on merits. The person who got highest marks in the SSLC has been selected and appointment letter has already been issued. However, respondents have not allowed her to join duty only because of the interim order passed by this Tribunal on 11.10.2007 to the effect that the final selection would be subject to the outcome of this O.A. The procedure regarding selection on regular basis as well as on provisional basis is exactly the same. The vacancies are notified for public information. The applications are received directly as well as by way of sponsorship by the Employment Exchange. Thereafter, the selection was made from among the applicants on the basis of the marks obtained in the SSLC examination. Since the selection procedure in respect of provisional appointment followed by the respondents is noway different from the selection procedure adopted in the matter on regular appointment and the appointment letter has already been issued to the selected candidate vide Annexure R-7 letter dated 11.10.2007, we do find any fault in the Annexure A-3 notice issued by the respondents. The present Original Application has only served the applicant to perpetuate himself in the post of GDSMD, Kattilkadavu Branch Office without any valid claim for over a period of one year. At least from the date of appointment of the candidate who has been selected on merits, there was no justification for the respondents to allow the applicant to continue against the aforesaid post as there was no stay against any appointment of the person already selected. Consequently, we find no merit in this O.A and accordingly the same is dismissed. The interim order passed by this Tribunal



dated on 11.10.2007 also stand vacated. There shall be no order as to costs.



DR K.S.SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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