

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.598/05

Thursday this the 7th day of June 2007

C O R A M :

**HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.GAUTAM RAY, ADMINISTRATIVE MEMBER**

Sindhu P.,
Ex-GDS MD, Alakkode,
Kuttaramba B.O.,
D/o.Govindan,
Pothera House, Panamkutty,
Chittadi P.O., Alakkode (via), Kannur.

...Applicant

(By Advocate Mr.M.Sasindran & M.B.Prajith)

Versus

1. The Superintendent of Post Offices,
Kannur Division, Kannur.
2. The Assistant Superintendent of Post Offices,
Taliparamba Sub Division, Taliparamba, Kannur.
3. The Director General of Posts,
New Delhi.
4. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.
5. Roy Thomas,
GDS MD, Alakkode, Kuttaramba B.O.,
Alakkode, Kannur.

...Respondents

(By Advocate Mrs.Aysha Youseff,ACGSC [R1-4])

This application having been heard on 7th June 2007 the Tribunal on the same day delivered the following :-

ORDER

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

The applicant was provisionally appointed by Annexure A-1 order dated 21.6.2004 as GDS MD, Kuttaramba, Alakkode. The applicant's appointment was in a vacancy that arose due to the unauthorised absence

[Signature]

.2.

of the regular incumbent. By virtue of Annexure A-3 impugned order dated 22.7.2005 the services of the applicant were terminated "with immediate effect in order to accommodate retrenched GDS MM, Alakkode." The applicant preferred an appeal Annexure A-5 requesting the Superintendent of Post Office, Kannur to take necessary action for providing engagement in any other office. The same has been turned down as per Annexure A-6 dated 2.8.2005. The applicant has challenged Annexure A-6 order along with Annexure A-4 order appointing the 5th respondent in her place and Annexure A-3 order of termination. The grounds inter-alia include that the termination of the applicant's services without notice is violative of Rule 8 of the GDS (C & E) Rules 2001 as per which the applicant is entitled to prior notice of at least one month before termination takes effect.

2. Respondents have contested the OA. According to them there has been no violation and since the 5th respondent is a retrenched employee he has priority to be appointed on regular basis and hence 5th respondent has been appointed in the place of the applicant. It has also been stated that there has been no vacancy in and around the place of posting of the applicant where the applicant could be accommodated.

3. The applicant has filed a rejoinder reiterating her contentions as contained in the OA.

4. Counsel for the applicant submitted that provision exists for regular appointment to the provisional appointee subject to putting in three years of service and the applicant has already put in one year by the time her services were terminated. She has also submitted that as the provision of Rule 8 has been violated the termination order is illegal.

.3.

5. Counsel for the respondents conceded that no prior notice has been given to the applicant while terminating her service.

6. Arguments were heard and documents perused. Sub Rule 2 of Rule 8 states as under :-

" The period of such notice shall be one month; provided that the employment of any sevak may be terminated forthwith and on such termination, the sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment, or as the case may be, for the period by which such notice falls short of one month."

7. By virtue of the above order the applicant was entitled to either one month's notice or emoluments for a period of one month in lieu of notice. In the absence of notice, the applicant becomes entitled to the emoluments in lieu of notice. The error committed by the respondents is thus to the extent of not having paid one month's emoluments in lieu of notice. Unlike any other provisions of Industrial Dispute Act wherein payment in lieu of notice be paid in advance at the time of termination, in the case of GDS, in such a circumstance, the sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance (TRCA for short) plus Dearness Allowance as admissible for the period of notice. As such it is for the applicant to claim the same which she may do so now and if so claimed, the respondents shall disburse the amount.

8. As regards appointment of 5th respondent since retrenched GDS employee has a priority for appointment, we do not find any illegality in the appointment of 5th respondent. As such Annexure A-4 is held to be valid.

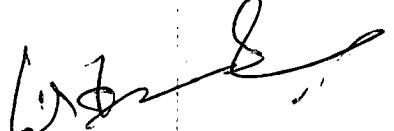
.4.

9. The applicant has submitted that there are vacancies in and around Alakkode whereby the applicant can be provisionally appointed in any vacant post. Normally provisional appointments are thrown open for public by a regular selection method. If the department choose to invite applications to fill up any such vacancies and if the applicant is one of the aspirants to the post, other things being equal, the applicant should be given preference by virtue of her having worked for more than one year as GDS MD. With the above observations the O.A is disposed of.

(Dated the 7th day of June 2007)



GAUTAM RAY
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

asp