

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.601/98

Thursday this the 23rd day of July,1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.C.Kurian,
Pulichottil House,
Puthencruz,
Extra Departmental Delivery Agent/
Mail Carrier,Varikkoli P.O.

..Applicant

(By Advocate Mr.K.S.Bahuleyan)

vs.

1. The Sub Divisional Inspector(Postal),
Tripunithura Sub Division,
Tripunithura- 682 301.

2. The Senior Superintendent of Post Offices,
Ernakulam Division,
Kochi-682 011.

..Respondents

(By Advocate Mr. Varghese P.Thomas,ACGSC)

The Application having been heard on 23.7.98, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant was considered for appointment
to the permanent post of Extra Departmental Delivery
Agent/Mail Carrier, Varikkoli Post Office being
sponsored by the Employment Exchange at the interview
which was held on 27.3.92. Considering all the
candidates sponsored by the Employment Exchange the
applicant was selected and appointed by order dated
18.4.92 (A3). The applicant joined the post on the same
day, but in the order of appointment it was stated that

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the appointment was provisional. While the applicant was thus working one Shri Rajesh Khanna selected for appointed as Extra Departmental Agent in the sports quota was provisionally appointed as Extra Departmental Delivery Agent/Mail Carrier on the post on which the applicant was working. Aggrieved by that the applicant filed O.A. 1828/92. However, during the pendency of that application Shri Rajesh Khanna got appointed on another post and the applicant was appointed on the post of Extra Departmental Delivery Agent/Mail Carrier by order dated 10.11.93 (A6) with effect from 15.12.92. However, by the order dated 16.11.93 (A7) that appointment was cancelled. Then again by order dated 17.11.93 (A8) the applicant was appointed as EDDA/MC, Varikkoli Post Office with effect from 21.8.93. The applicant applied for permission to appear in the Postman Examination to be held on 26.4.98. However, in the eligibility list of candidates who have been permitted to appear in the examination, the applicant's name was not included. Against his name it was shown that he has not completed the requisite service. It is aggrieved by that impugning the letter dated 25.3.98 (A.1) the applicant has filed this application for setting aside the A.1 order to the extent it disentitles the applicant from appearing in the Postman Examination proposed to be held on 26.4.98, for a declaration that he is entitled to appear in the examination as also that he is entitled to seniority in the post of Extra Departmental Delivery agent/Mail Carrier with effect from 18.4.92.

2. The respondents contest the claim of the applicant. They have contended that the provisional service of the applicant was terminated on 12.12.92 while Shri Rajesh Khanna was appointed on the post, that the

applicant was thereafter inducted as a substitute of Rajesh Khanna with effect from 14.12.92 onwards when he entered on leave, that the applicant has been appointed on the post only with effect from 21.8.93 and that therefore as on 1.1.98 the applicant does not possess five years of regular service which is required to be eligible to appear in the examination according to the Recruitment Rules. Respondents therefore contend that the applicant being ineligible as per the Rules has no valid cause of action.

3. The applicant in the rejoinder has stated that though Shri Rajesh Khanna was appointed technically on the post, which the applicant was holding on 12.12.92, he joined only on the afternoon of 12.12.92 being a Saturday and entered on leave on 14.12.92 with the result the applicant virtually continued on the post and the taking over by Rajesh Khanna was only a paper business. Since the applicant has got more than five years of service the applicant contends that he is entitled to appear in the examination as the amended Recruitment Rules does not prescribe regular service but only requires satisfactory service of five years.

4. We have with meticulous care gone through the materials placed on record and have heard the learned counsel for the parties. The first question that we have to address ourselves is whether for being eligible to appear in the Postman Examination, an Extra Departmental Agent has to put in five years of regular service or whether five years service alone is sufficient if at the time when he applies for permission to appear in the examination holds the post on a regular basis. According

to the Recruitment Rules notified on 6.7.89 (A.10) five years of regular and satisfactory service was one of the conditions of eligibility. This Recruitment Rule has later undergone a change. According to the Recruitment Rules notified on 30.1.95 (A.11) one of the requirements is:

"For Extra Departmental Agents the upper age limit shall be 50 years with 5 years relaxation for the scheduled caste/scheduled Tribes candidates as on 1st July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1st January of the year in which the examination is held."

Adverting to this clause in the Recruitment Rules the learned counsel for the applicant with considerable tenacity argued that a deviation from prescription of "regular and satisfactory service" to "satisfactory service" of five years has to be considered as a conscious decision and that after the amendment to the Recruitment Rules five years service need not be either continuous or regular. According to him since the applicant has got more than five years service though part of it is not regular service on adhoc, the applicant is entitled to appear in the examination. We are of the considered view that this argument is with considerable force. If five years regular service was a condition precedent for eligibility to appear in the examination, then that would have been specifically mentioned in the

Recruitment Rules as was done in the Recruitment Rules which stood prior to the amendment.

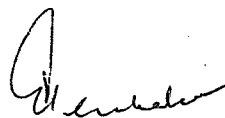
5. The next question is whether the applicant has five years of satisfactory service as on 1.1.98, the crucial date. According to the respondents, the applicant started his service only on 21.8.93 and therefore he does not have five years of regular service. It is not in dispute that the applicant was selected against a permanent vacancy and appointed though provisionally on 18.4.92 and continued there until 12.12.92 on which date Shri Rajesh Khanna was appointed on the post. The applicant, therefore, had seven months twenty five days of provisional service. From 14.12.92 onwards as Rajesh Khanna entered on leave nominating the applicant as his substitute the service of the applicant can be considered as that of a substitute and not a provisional, according to the respondents. However, counting the period from 21.8.93 upto 1.1.98 it comes to four years, four months and eleven days. This period coupled with the provisional service, the applicant had a total service of five years and five days. Regarding the service being satisfactory, there is no contention for the respondents that the applicant's services were not satisfactory. Further the appointment of Rajesh Khanna on a provisional basis while the applicant was holding the post provisionally on the basis of a regular selection was irregular, though it was not so declared or set aside. As a matter of fact the applicant virtually continued on the post also.

6. In the light of what is stated above, we are of the considered view that the applicant is eligible to appear in the Postman Examiantion since he has got five


years service though a part of it on a provisional basis. The Recruitment Rules does not specifically lay down that the entire five years of service should be in a regular capacity or continuously.

7. In the result, the application is allowed. The impugned order A.1 is set aside. As the applicant has already been permitted to appear in the examination provisionally and subject to the outcome of this application, we direct that the applicant's result shall be published and acted upon as it is declared that he was eligible to appear in the examination. There is no order as to costs.

Dated the 23rd day of July, 1998.



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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