

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.611/12

Thursday, this the 13th day of June, 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Smt. V. Gishamol, aged 31 years,
W/o. Biju Varghese, Gramin Dak Sevak
Branch Mail deliverer II, Iramallur PO,
Kothamangalam, Aluva Division,
Residing at "Puthenpurackal House,
Kothamangalam PO, Kothamangalam.

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Applicant

(By Advocate Mr.Shafik M.A.)

V e r s u s

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum-695 033.
2. The Senior Superintendent of Post Offices,
Aluva Division, Aluva – 683 101.
3. The Inspector (Postal),
Perumbavoor Sub Division,
Perumbavoor – 683 542.

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Respondents

(By Advocate Mrs. Jishamol Cleetus, ACGSC)

This application having been heard on 13th June 2013 this Tribunal
on the same day delivered the following :-

O R D E R

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

The applicant had, in 2007 been duly selected and appointed as
GDSMD at Iramallur Post Office. The appointment came to be made when
one Shri C.S. Rajesh, the regular incumbent was unauthorisedly absent from



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duty since 2005. In fact, no proceedings were initiated for a substantial period, and it was only in 2012 that on receipt of some police report that the regular incumbent Rajesh was proclaimed as absconder that departmental proceedings were initiated. By this time, the applicant had completed more than 5 years in the appointment as GDSMD. When the applicant sought for regularization, the same had been denied and hence, this OA seeking the following reliefs:-

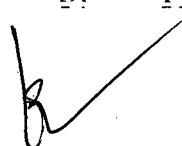
- “(i) To call for the records relating to Annexure A1 to A4 and to declare that the applicant is entitled to be reckoned as regularly appointed candidate to the post of GDSMD-II, Iramallur with effect from 23.11.2007.
- (ii) To direct the respondents to release her increments and bonus and to pay her TRCA with 4 years increments and all other attendant allowances and benefits and to pay the arrears with 18% penal interest;
- (iii) To direct the 1Ind respondent to pay her TRCA with increments of last 4 years and to reckon her service with effect from 23.11.2007 as regular service for the purpose of promotional examinations;
- (iv) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

And

- (v) To grant the costs of this Original Application.”

2. On a prayer for interim relief seeking permission to sit for MTS examination, the same was provisionally allowed, vide order dated 23-01-2013.

3. The contention of the respondents, as manifested through their reply



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and additional reply is that the applicant cannot be said to be a regular appointee as there was no regular vacancy against which he could have been appointed on regular basis. The nature of vacancy thus being not regular, there is no question of the engagement of applicant being taken as one of regular in character.

4. Counsel for the parties have argued on the basis of the pleadings.

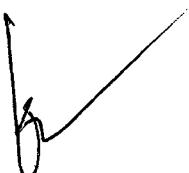
5. Arguments were heard and documents perused. Strictly speaking in so far as the drill adopted by the respondents in selection of candidates both for regular appointment as also for provisional appointment is one and the same. There is not even an iota of change in the procedure for selection as for regular and for provisional appointment. Merit is the main criteria in both the case. The tag 'provisional' is fastened upon such selections, where the vacancy is caused on temporary basis, such as the regular incumbent being on 'put off' duty and the like. In such cases, the departmental proceedings would follow and the decision would be available within a reasonable period. If the regular incumbent stages a come back after successfully facing the proceedings, obviously the incumbent who had been engaged on provisional basis should vacate the seat for the regular incumbent. Such a provisional appointment normally goes for a period of one to two years. In the instant case, as per the version of the counsel for the applicant, which has not been rebutted by the counsel for the respondents,



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the regular incumbent, who initially applied for 30 days leave, had not chosen to return and it was after a period of two years that the respondents had chosen to notify the vacancy for provisional appointment. Thereafter, no proceedings were initiated against the regular incumbent. It was after a full four and a half years that on receipt of some police report, that the department had chosen to initiate the proceedings. Para 5 of the reply refers. In fact, a simultaneous version has also been given by the respondents in their additional reply stating that the regular incumbent appears in the scene all of a sudden and submits resignation letter which has been accepted in November, 2012 and thus a clear vacancy is stated to have arisen from the date of acceptance of resignation. It is not the case of the respondents that diligently they had held correspondence with the regular incumbent calling him back for duty nor was it their case that departmental proceedings as per rules were initiated at the appropriate time.

6. Counsel for the respondents has cited a decision of the Tribunal vide one of the Annexures to the Reply. That was a case of put off duty and in cases of put off duties, departmental action used to be quick as otherwise, there is a threat of put off being revoked after 45 days. In the instant case, for full two years, there was no action taken and the notification for provisional appointment issued. The applicant was duly selected. Thereafter too, there was no sign of any departmental proceedings taken for a

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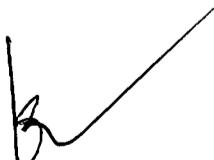
substantial period. The drill for provisional appointment being one and the same as of regular appointment, and the department not having spent any money on the regular incumbent during the period when the applicant was serving on provisional basis, there should be no impediment in treating his provisional appointment as regular.

7. At this juncture, we may take the support of a Constitution Bench judgment in the case of Rudra Kumar Sain vs Union of India (2000) 8 SCC 25 wherein the Apex Court has held as under:-

“20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be “stopgap or fortuitous or purely ad hoc”.

8. The above law laid down by the Apex Court if telescoped on the case of the applicant would readily make her appointment regular. A period of one year from the date of initial appointment has, however, been treated as provisional, as there was a possibility of the regular incumbent staging a come back.

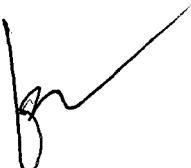
9. Thus, the provisional appointment of the applicant is deemed to have crystallized into regular appointment after a reasonable period of one year of his initial engagement i.e. November, 2008. The applicant would thus be

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entitled to the benefit of annual increment in the TRCA plus eligibility to participate in the examination, subject to fulfilment of requisite years of service reckoned from November, 2008 i.e. one year of her initial engagement in November, 2007.

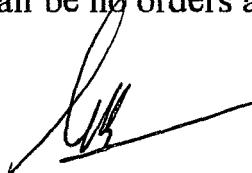
10. It has been intimated that the applicant has not been paid any increment and has been kept in the minimum of the TRCA of Rs 4220 – 75 – 6470. The reason is not known. Since the appointment has been through the same procedure as of regular appointment, the conditions also not specifying that there would be only the minimum in the TRCA scale that would be paid to the persons appointed on provisional basis, there does not appear to be any rationale in not affording the increment to the provisional appointees. It is expected that the first Respondent would bestow his/her attention in this regard as a general case.

11. In view of the discussions as above, the OA is allowed. It is declared that the applicant is deemed to have been appointed on regular basis after one year of the date of appointment. TRCA increments would accrue to the applicant on completion of service of one year after November, 2008 (i.e. after deemed regular appointment). The arrears arising out of the same shall be paid to the applicant within a period of four months. The applicant, subject to otherwise eligible for appearing for the examination, is declared

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have met the requisite condition of being regular as on 01-01-2010. Thus, Annexure MA-1 in so far as it relates to the applicant is quashed and set aside. The permission granted to sit for the examination on provisional basis is declared as absolute. The result of the applicant be declared and acted upon, subject however, his fulfilling the other conditions stipulated by the respondents in connection with the examination.

12. The OA is allowed on the above terms. Under the circumstances, there shall be no orders as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



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

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