

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 611 of 2007.

THURSDAY THIS THE 24th DAY OF APRIL, 2008

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

P. Shyju S/o Balakrishnan Nair
Gramin Dak Sevak Mail Deliverer-II
Pokkunnu, Kozhikode District.
Residing at Pilavily House, Karaparmpu PO
Kozhikode District.

Applicant

By Advocate Mr. Shafik M.A.

Vs.

- 1 Union of India represented by the
Chief Postmaster General,
Kerala Circle, Trivandrum.
- 2 The Superintendent of Post Offices
Calicut Division, Calicut.
- 3 The Asst. Superintendent of Post offices
Calicut South Sub division, Calicut

Respondents

By Advocate Ms Aysha Youseff

O R D E R

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

The applicant in this OA is working as a GDSMD II of Pokkunnu Post office under Calicut South Sub Division. He was appointed on 6.7.2005 to the said post on a provisional basis and has been continuing since then. He was appointed in a vacancy arising out of the regular incumbent being proceeded against departmentally. Prior to the present posting, he had worked against a number of GDS posts since 1992. The applicant is a member of Kerala Postal Football Team for many years. In September 2006 the respondents issued a notification for filling up the post which the applicant was holding. The applicant



had also applied but he was not selected as he had secured less marks. The applicant then filed OA2/2007 challenging the provisional appointment of another person in the post which was held by him also on provisional basis. This Tribunal allowed the OA and directed the respondents to continue him in the same post till a regular appointment is made. The respondents have now issued notification dated 10.9.2007 for selecting a regular candidate. Through this OA the applicant has prayed for the following relief:

- (i) To call for the records relating to Annexure A1 to A8 and to quash A1 being illegal, arbitrary and violative of the rules relating to the subject
- (ii) To declare that the applicant being a provisional appointee is entitled to continue as GDSMD-II Pokkunnu, as per DG Posts Letter No. 43-4/77-PEN dated 18.5.1979
 - or in the alternative
- (iii) To direct the respondents to include the applicant in the discharged/displaced GDS list as per DG Posts letter No. 43-4/77-Pen dated 18.5.1979 and to provide him alternative employment in any other equivalent GDS post in the sub division.
- (iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case
 - and
- (v) To grant the costs of this Original Application.

2 In support of the relief claimed the applicant has contended that in similar circumstances the respondents have regularised the services of one Seby Kuriakose who was a Volleyball Player and whose services was utilised by the Postal Department as a volleyball player. In that case this Tribunal had directed the respondent No1 to consider the representation of the employee for a regular appointment. The 1st respondent vide her order dated 4.11.2004 had issued orders regularising the said Seby Kuriakose as a GDSMC. In another case of P.S.Manu (OA224/2005), also a volleyball player who was employed on a stop-gap arrangement but represented the Postal Department in many all-India competitions the Tribunal had directed the respondents to verify the vacancy

position and consider the employee for regular appointment in any of the vacant posts in the GDS cadre and pass appropriate orders. The respondents had challenged the order of the Tribunal in OA 224/2005 in the Hon'ble High Court of Kerala, but the WP was dismissed on 24.11.2005. The applicant is also a similarly placed sportsperson and is entitled to similar treatment. The applicant has been continuing as a GDSMD of Pokkunnu since 11.7.2005. If his previous service is counted the total service as a GDS will be more than 10 years. As per the DG Post letter dated 18.5.1979 efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons if they have put it three years of service. The applicant has represented the Kerala Postal Department in Football competitions at national level since 2003 continuously. He was earlier selected as a member of the Kerala Postal team when he was working as GDSBPM Nedungattur. He was again selected when he was working in the present post and in all the All India tournament at Bangalore the team was all-India champions. But when he returned from Bangalore after playing for the Department he found himself ousted by a provisional appointee in December 2006. Because of the Tribunal's intervention he was allowed to continue. Now he is sought to be again ousted. Having utilised the services of the applicant as a Football player to bring laurels to the Department, there is corresponding duty on the part of the respondents to secure his livelihood.

3 The respondents have contested the OA. They have contended that the applicant is being continued in the post of GDSMD Pokkunnu on the directions of the Tribunal in OA2/2007 till regular appointment is made. The Department has now initiated the process for regular recruitment. It is not proper to give a regular posting to anybody who happened to work in a leave vacancy or on provisional basis without coming through the normal recruitment formalities. That would be back-door entry resulting in injustice to similarly placed persons in the open market. In the case of **State of Karnataka vs Umadevi** the Hon'ble



Supreme Court has held that merely because a temporary employee is continued for a long time beyond the tenure of his appointment he could not be entitled to be absorbed in regular service, if the original appointment was not made without following due selection process. Playing Football for the Department or representing the Department in all-India competitions do not entitle him for regular appointment, when there is no such provision in the recruitment rules. The post is not earmarked for sportspersons. In December 2006 during the provisional selection process the applicant was found to have secured only 232 marks in SSLC whereas the selected candidate had secured 253 marks. In OA643/06 this Tribunal had rejected the prayer for continuation of a GDS employee. In OA53/2003 this Tribunal had observed that provisional service does not become entitled for regularisation.

4 We have heard the learned counsel for the applicant Shri M.A.Shafik and the learned counsel for the respondents Smt. Ayesha Youseff. We have also given due consideration to the documents on record.

5 The subject matter in this OA raises an important question, namely, whether sportspersons who are hired on a temporary or ad hoc basis by a government department has a right to be considered for regular appointment after they have been used to represent the Department in various sports competitions. It is admitted that the applicant has been working on a provisional basis as GDSMD. It is also an admitted fact that the applicant has been playing Football for the Postal Department for many years. He has represented the Kerala Postal Department in regional and all-India tournaments. The team in which he was a member became all-India champions in Bangalore in the year 2006. But when he returned from Bangalore after winning the all-India championship he found that his post has been occupied by somebody else. The respondents have relied upon the judgment of the Hon'ble Supreme Court in **Uma Devi case**. The principle laid down by the Apex Court in the said case is



unambiguous. Merely because a temporary employee had been continued for long does not entitle him for regularisation. But in this case the applicant is not seeking regularisation merely because he has served the Department in temporary/provisional capacities for long. He is seeking regularisation on the ground that he was selected because he was an excellent Football player. He represented the Kerala Postal Department in all-India competitions and won laurels for the Department. His plea is based on similar consideration given to another employee Seby Kuriakose who was regularised by the respondent No.1 by her order dated 4.11.2004. In another case also, that of PS Manu also a volleyball player this Tribunal had directed to consider regularisation (OA224/05). Though this order was challenged by the respondents the Hon'ble High Court of Kerala dismissed the WP. The following extract from the orders of the Hon'ble High Court in WP © 27829 places the issue in its correct perspective:

"2 The contention of the learned Assistant Solicitor General is that there is no provision for considering the proficiency in sports quota as basis for selection and appointment. There is no quarrel on that submission. But the fact remains that the proficiency in the discipline of volleyball had weighed with the appellants concerned while engaging the applicant, Sri Seby Kuriakose and Sri Aneesh and as a matter of fact, all those three persons had represented the Postal Department in various tournaments including at the national level."

(Emphasis added)

6 The respondents have relied on the judgments of this Tribunal in OA643/06 and OA53/03. But the facts in those two cases are different. The candidates involved in those cases were not sportspersons. Whereas the applicant is identically placed as Seby Kuriakose except that the applicant played Football and Kuriakose played volleyball. But that cannot be a issue for discrimination. There is ample evidence to support the contention of the applicant that his talent as a football player was utilised by the Department on several occasions. That he was honoured by the Department for his proficiency. There is also evidence to show that before working as GDSMD Pokkunnu since

July 2005 he had earlier worked as GDSBPM in Nedungatur, Vengeri. This is borne out by the document at A3 dated 24.5.2005 by which he was selected for Kerala Postal Football team. The applicant's claim that he has altogether served for 10 years in various GDS posts has not been disputed by the respondents. The learned counsel for the respondent has in a very sober and persuasive manner placed before the Tribunal that the regular selection process initiated by the respondent is perfectly legal. We do not disagree. But we see merit in the overall case presented by the applicant that he was selected for his Football proficiency and has served the interests of the respondent Department when they needed him to win laurels. We also see merit in the plea that his livelihood is at stake. It is not the fault of the applicant that the required formalities were not fulfilled before his selection on provisional basis which was clearly based on his proficiency as a Football player. There is also merit in the comparison with the case of Seby Kuriakose. The facts of this case are identical with Seby Kuriakose. Kuriakose had served as GDCMC since 2001. He was regularised in 2004. Having regard to all these considerations we are of the view that the applicant's prayer merits consideration.

7 For the reasons stated above OA is disposed of with directions to respondent No.1 to consider the representation of the applicant dated 15.9.2007 keeping in view the observations supra and the context in which Seby Kuriakose was regularised and pass appropriate orders in respect of his prayer for regularisation or for alternate employment as GDS in the same Sub-Division. Till such time appropriate orders are passed the interim orders issued by the Tribunal will continue to operate. No costs.

Dated 24th April, 2008



K.S. SUGATHAN
ADMINISTRATIVE MEMBER

kmn



GEORGE PARACKEN
JUDICIAL MEMBER