

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO. 71/2009

This the <sup>15</sup> ~~26~~ day of November, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Sreejith P.M. S/o Gopalan Nair  
Gramin Dak Sevak Mail Deliverer  
Chulliyode Post Office, Manjeri  
residing at Sreenilayam, Chulliyode PO  
Pookkottumpadam Via, Malappuram District.

..Applicant

By Advocate Ms Rekha Vasudevan

Vs

- 1 Union of India represented by the  
Secretary to the Govt. of India  
Ministry of Communications  
New Delhi
  - 2 The Superintendent of Post Offices  
Pookkottumpadam,  
Malappuram District
  - 3 The Assistant Superintendent of Post Offices  
Manjeri sub Division  
Manjeri
  - 4 The Post Master.  
Manjeri, Malappuram District.
  - 5 The Branch Postmaster  
Chuttiyode Post Office  
Manjeri.
- Respondents.

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 25.11.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by Annexure A-2 notification inviting application for provisional appointment to the post of Gramin Dak Sevak Mail Deliverer at Chulliyode Post Office rejecting his application for regularisation.

2 According to the applicant, he was appointed to the post of GDS Mail Deliverer, Chulliyode Post Office w.e.f. 23.10.2002 due to the dismissal of the regular incumbent from service. Though the post was notified in 2004, the selection process could not be completed which was dropped later. While so, the respondents issued an order changing the nature of his appointment to that of a stop gap arrangement w.e.f. 14.9.2006. On 20.4.2007 the third respondent issued notification inviting applications for provisional appointment reserving the post for OBC. Aggrieved he moved the Tribunal through O.A. 297/07 which was disposed off directing the respondents to make appointment to the post on regular basis in accordance with the extant rules with direction to continue the applicant till then(A-1). The respondents took steps to fill up the post on regular basis by Annexure A-2 notification. Aggrieved, the applicant submitted representation on 31.12.2008 seeking regular appointment(A-3) which was rejected (A-4) Hence he has filed this O.A. on the grounds that the inaction of the respondents to fill up the post on regular basis is illegal, arbitrary and discriminatory, is clear violation of the directions of the Tribunal, as he is fully entitled to be regularised, efforts should be made to give alternate employment to the EDAs who are appointed provisionally, etc. Hence he seeks to quash A-2 and A-4, to declare that he is entitled to be regularly appointed and for a direction to resort to regular recruitment.

3 The respondents in their reply statement submitted that the post of GDS MD Chulliyode became vacant w.e.f. 17.10.2002 due to removal of the regular incumbent. The applicant was engaged on stop gap arrangement w.e.f.

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23.10.02 with intermittent breaks. As the applicant was irregularly continuing for long in the post Shri PM Gopalan was engaged w.e.f. 2.4.07 The applicant filed O.A.297/07 which was disposed of directing the respondents to continue the applicant till a regular selection is made. The respondents took steps to fill up the post on regular basis by A-4 notification in which the word "provisional" was inadvertently mentioned. They have defended the rejection of applicant's representation for regular appointment. They asserted that the applicant was appointed only as a stop gap arrangement and he has no legal claim to be appointed on regular basis. They submitted that the orders referred to by the applicant deal with absorption of surplus/displaced EDAs appointed on regular basis which is not applicable to the applicant. They further submitted that the post was not reserved for OBC as there was no shortfall of OBC representation in the recruiting unit.

4 We have heard learned counsel for both parties.

5 The learned counsel for the applicant relied on the order of this Tribunal in O.A. 297/07 and the judgment of the High Court of Kerala in WP (C) No.17727 of 2004. The relevant portion in the order in O.A. 297/07 is extracted below:

"Accordingly we direct the respondents to continue the applicant in the present post of GDSMD Chulliyode post office till a regular selection and appointment is made to the post in accordance with the extant rules. The O.A is disposed of with the above direction."

In view of the above direction the respondents are free to make regular appointment till which time the applicant is entitled to be continued in service. There is no iota of doubt about the intention of the Tribunal.

5 The claim of the applicant is that he is entitled to alternate employment as an EDA who is appointed on provisional basis and who have put in not less than three years of service. He relied on a more or less identical case in WP(C) 17727/04 in which the High Court observed as

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follows:

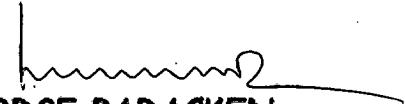
"In other words, in so far as the petitioner has been in service for more than three years, as a provisional hand, it has to be presumed that he will be entitled to the benefits arising from the circulars. If there are no other claimants in such a list maintained by the Department, the petitioner is to be given automatic priority for claiming appointment to the above said post. Therefore it may not be necessary that a full process of selection is carried out. The documents made available indicate that the petitioner had been continuing for almost even years in the post and no others have any superior claim. He is to be considered as an approved candidate for all purposes."

The High Court observed that a provisional hand is entitled to be included in the priority list and no others have a superior claim than him if he is continuing for a long period.

6 Pursuant to the direction of the Tribunal in O.A.297/07, the respondents have taken steps to fill up the post on regular basis. However, in the reply statement they have admitted that in the notification the word "provisional" has crept in inadvertently. In that view of the matter, we dispose of the O.A. permitting the respondents to proceed with regular selection to the post of Chulliyode post office in accordance with the rules. It is made clear that while finalising the regular appointment the claim of the applicant that he is entitled to preferential claim as a provisional hand, etc. will have to be considered by the respondents in the light of orders and the observation of the Tribunal in its in O.A. 297/07 and the High Court in the WP(C) referred to above. The OA is disposed of as above. No costs.

Dated 26<sup>th</sup> November, 2009

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

  
GEORGE PARACKEN  
JUDICIAL MEMBER