

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 82 of 2003

Wednesday, this the 23rd day of July, 2003

CORAM

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. D. Kaladharan,
S/o Damodaran,
Grameen Dak Sevak Stamp
Vendor (provisional), Chavara PO,
residing at Plavelil Thekkethil,
Kottakkakam, Chavara PO.Applicant

[By Advocate Mr. MR Hariraj for Mr. MR Rajendran Nair]

Versus

1. Sub Post Master, Chavara - 691 583
2. Superintendent of Posts,
Kollam Division, Kollam.
3. Chief Post Master General,
Kerala Circle, Trivandrum.
4. Union of India, represented by the
Secretary to Government of India,
Ministry of Communications, New Delhi.Respondents

[By Advocate Mr. K. Kesavankutty, ACGSC]

The application having been heard on 23-7-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant, Shri D.Kaladharan working as Gramin Dak Sevak Stamp Vendor (GDSSV for short), previously designated as Extra Departmental Stamp Vendor (EDSV for short), is aggrieved by the move on the part of the respondents to terminate what he considers to be his provisional engagement as GDSSV (EDSV) without considering him for alternate appointment. The applicant seeks the following main reliefs:-

9.

- "i. Declare that the services of the applicant as Stamp Vendor Chavara Sub Post Office is not liable to be terminated except in accordance with the principles contained in Ss. 25F and 25H of the Industrial Disputes Act and to direct the respondents not to terminate the services of the applicant except in accordance with the principles contained in Ss. 25F and 25H of the Industrial Disputes Act; and
- ii. To direct the respondents to consider the applicant for grant of alternate employment to the post of GDSSV, Chavara or any other existing or future vacancy on termination of his provisional service as GDSSV, Chavara."

2. The applicant's case is that after a brief interval of engagement as substitute for EDAs in different Post Offices under the 2nd respondent, he was engaged as a substitute for one Shri Agreyan by Annexure A2 dated 26-7-1999 with effect from 2-7-1999 to 31-7-1999. Apparently, he continued in that position till 12-9-1999 when the said Agreyan, who was on leave, resigned from the post of EDSV, Chavara. Thereupon, the applicant was engaged and allowed to continue as EDSV in place of Agreyan from 12-9-1999 onwards as what is described as an 'outsider'. The applicant is seen to have completed three years of service with effect from 12-9-1999 on 12-9-2002. Even after a period of over three years, he is still continuing in the same post. The applicant claims to be a provisional EDSV (GDSSV). Apprehending that his continuous engagement as GDSSV, Chavara for a long period is likely to be terminated without arrangements for his alternate employment, the applicant has filed this OA seeking the reliefs mentioned above.

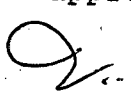
3. Respondents have filed reply statement followed by an additional reply statement enclosing various documents seeking to contest the averments made by the applicant in the OA and stating that the applicant is only an outsider engaged as a stop gap arrangement and not a provisional appointee. According to the respondents, due to the pendency of the litigation arising out of OA.No.764/98 filed by one Sobhana

9..

questioning the regular selection and appointment to the post of EDSV, Chavara and the consequent stay granted by the Hon'ble High Court of Kerala, the respondents were prevented from taking steps for regular appointment to the post. This was the circumstance under which the applicant was allowed to continue to do the job of EDSV, Chavara purely on a stop gap arrangement, the respondents would submit. Since there was no specific agreement between the applicant and the employer with regard to his engagement as an outsider as EDSV, the provisions contained in Section 25F and 25H of the Industrial Disputes Act were also not applicable in his case, the respondents would urge. Relying on Annexure R2(d) to Annexure R2(t) communications from the 1st respondent to the Post Master, Karunagappally, wherein the applicant was described as an outsider engaged to continue as EDSV in place of Agreyan from 12-9-1999, the respondents have advanced the argument that the applicant does not have the status of a provisional employee, but was purely an outsider engaged on the basis of a stop gap arrangement.

4. We have gone through the pleadings and other material on record and have also heard Shri M.R.Hariraj, learned counsel for the applicant, and Shri K.Kesavankutty, learned ACGSC appearing for the respondents.

5. According to Shri Hariraj, the applicant's status as a substitute ended with the resignation of Shri Agreyan on 12-9-1999. According to him, the applicant has put in more than three years of continuous service with effect from 12-9-1999 and whatever be the nomenclature which the respondents have chosen to put him under without his knowledge, he was essentially a provisional EDSV whose engagement was approved. He has put in the necessary qualifying service for



being considered for alternate employment in case the termination is necessary, it is urged. Drawing our attention to the findings of the Hon'ble Supreme Court in Union of India & Others vs. Debika Guha & Others [AIR 2000 SC 3522 (II)], Shri Hariraj would canvass for the proposition that even a long period of substitution would call for favourable consideration for absorption. As far as the applicant is concerned, he enjoys a stronger position because of his actual position as a provisional EDSV, learned counsel would maintain. Emphasising his contention that the applicant's engagement had been approved, the learned counsel would invite our attention to the Hon'ble Supreme Court's decision in U.P. Avas Evam Vikas Parishad & Another vs. Friends Coop. Housing Society Limited & Another [1995 Supp (3) SCC 456], wherein the Apex Court has observed that ordinarily the difference between 'approval' and 'permission' is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. The case of the learned counsel for the applicant is that having engaged the applicant immediately on resignation of Agreyan and allowing him to continue to do the same work for over three years without any interruption whatsoever, the respondents have effectively approved the applicant's provisional appointment, since no disapproval in that regard has ever been spelt out by the respondents on any occasion and since appropriate remuneration has been disbursed to him under intimation to the higher authorities. Accordingly, he would submit that since the applicant's engagement had all the essential trappings of provisional engagement, though the authorities might not have adhered to the form in which such provisional engagement was to be formalized, the applicant is entitled to all the benefits

9.

including the benefit of alternate appointment in case of a possible termination, which are available to a provisional EDA (GDS) in accordance with the existing rules and instructions.

6. Shri K.Kesavankutty, learned ACGSC has relied on the reply statement and the additional reply statement and has emphatically contended that the applicant was not a provisional hand at any point of time, that till Agreyan's exit on resignation the applicant was only a substitute and that in view of the litigation pending and the stay issued by the Hon'ble High Court of Kerala in regard to the selection and appointment of a regular incumbent as EDSV Chavara, the respondents could not take steps to fill that vacancy. It is not as though the applicant was ever given any provisional appointment; he was only allowed to continue in a purely temporary, stop gap manner which did not confer on him any right of a provisional employee. In this connection, learned ACGSC would invite our attention to the DG(P&T)'s letter dated 18-5-1979 and circular dated 30-12-1999, condensed and reproduced as Item 15 in Section IV - dealing with the method of recruitment of ED staff - at page 88 (2000 Edition) of Swamy's Compilation of Service Rules for Postal ED Staff and contend that the provisional appointment of EDA should be strictly in accordance with the instructions contained in the said letter and circular and that in the absence of statutory rules, the said instructions would have the effect of regular rules. Counsel would plead that the engagement of the applicant was not in accordance with the instructions contained in the letter and circular cited above in as much as no provisional appointment order was issued in the prescribed form Annexure-A, no period of engagement was indicated and as the applicant had not undergone the regular selection process visualized in the said instructions. Learned ACGSC also

9

emphasized the position that merely because the applicant has served the organization for a long period, it does not necessarily mean that that would give rise to a presumption that he was a provisional employee.

7. On going through the facts on record and the contentions put forward by the rival counsel, we find that the point at issue is whether or not the applicant was engaged provisionally as EDSV, Chavara. At this stage, we do not enter upon any enquiry as to what were the circumstances under which the respondents were prevented from undertaking the exercise of filling up of the vacancy of EDSV, Chavara on a regular basis. It is apparent from records and not denied by the respondents that at the time of resignation of Agreyan on 12-9-1999 the applicant was holding the post as a substitute. It is equally undeniable that on 12-9-1999 he was allowed to continue to work as EDSV, Chavara on account of the resignation of Shri Agreyan. We wanted an answer to our query as to what is the essence of the engagement of the applicant as on 12-9-1999 and thereafter. It is the contention of the applicant that his engagement with effect from 12-9-1999 is essentially provisional in character. The contention of the respondents, on the other hand, is that it was only as an outsider on a stop gap arrangement that he was engaged. We do agree with the respondents the appointment ought to have been made in accordance with the instructions reproduced as Item 15 in Section IV - at page 88 (2000 Edition) - of Swamy's Compilation of Service Rules for Postal ED Staff. But that does not mean that the respondents have no accountability to explain what exactly is the nature of the appointment, if no appointment order was issued in the form prescribed at Annexure-A under the said instructions. The submission that the applicant was engaged as an outsider is not persuasive and we are not in a position to accept it, since the

9.

rules do not permit the engagement of an outsider on an allegedly stop gap arrangement. The very essence of provisional engagement itself is that when there is a vacancy of an EDA (GDS) by death or resignation or when a new post is created and when it is not immediately possible to make regular appointment, a provisional appointment may be made for a specific period. It is true that the engagement of the applicant might not satisfy all the requirements of the form that goes with the appointment. But, we do accept that the engagement of the applicant satisfies all that goes with the substance of such an engagement. The applicant was made to work continuously for over three years with effect from 12-9-1999. He has acquitted himself satisfactorily and he was remunerated also accordingly. Therefore, the arrangement, which the respondents have chosen to make and continue for the long three years, has to be treated as provisional and not as anything else for the existing instructions take no cognizance of any other appointment in such a situation. It is true that the respondents were prevented from filling up the vacancy immediately due to more reasons than one. It is equally true that right from 12-9-1999 onwards, even before any litigation or any stay was in evidence, the applicant was in the position, though described as an outsider as per the respondents' version. In our considered opinion, there is no difference between an outsider on stop gap arrangement and a provisional appointee as far as the work carried out by the applicant is concerned. As mentioned earlier, as per the instructions, there is no provision for engaging any outsider on stop gap arrangement. Therefore, if there is any technical breach with reference to the requirements of the instructions including the prescribed form of appointment for provisional hands, there has been a breach of instructions in extracting work out of the applicant describing him an 'outsider' on stop gap arrangement,

2

since such a course is also not prescribed by the rules. The applicant was therefore in substance a provisional employee (GDSSV).

8. In view of our above findings, we do not consider it necessary at this stage to look into the applicant's rights under the Industrial Disputes Act, since our findings would mete out sufficient justice to the applicant.

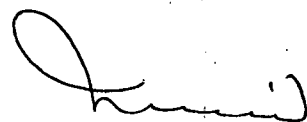
9. In view of the above, we declare that the applicant was provisionally appointed to the post of EDSV (GDSSV), Chavara with effect from 12-9-1999 and that under the extant rules, instructions and orders he is entitled to all the benefits including alternate appointment available to a provisional employee facing termination of service. The respondents are directed to treat the applicant as a provisionally engaged EDSV (GDSSV) and deal with his service matters accordingly.

10. The Original Application is allowed to the extent above. No order as to costs.

Thursday, this the 24th day of July, 2003



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

Ak.