

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.86/04

Tuesday this the 4th day of July 2006

C O R A M :-

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

K.Sulu,
W/o.Kunju,
Panakkada House,
P.O.Elad, Perinthalmanna,
Malappuram District.

...Applicant

(By Advocate Mr.P.Chandrasekhar)

Versus

1. The Superintendent of Post Offices,
Manjeri Division, Manjeri – 676 121.
2. The Assistant Superintendent of Post Offices,
Perinthalmanna Sub Division, Perinthalmanna,
Malappuram District.
3. Smt.Indira,
W/o.P.C.Ayyappan,
Grama Dak Sevak Delivery Agent,
P.O.Elad, Perinthalamanna,
Malappuram District.

...Respondents

(By Advocate Mr.S.Abilash,ACGSC)

This application having been heard on 4th July 2006 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

This O.A has been filed challenging the denial of appointment to the applicant as Gramin Dak Sevak Delivery Agent (GDS DA for short) in Elad Post Office. The applicant was appointed as an Extra Department Delivery Agent of Elad Post Office (now redesignated as Gramin Dak Sevak Mail Deliverer) with effect from 1.4.2001 till a regular appointment is made to the said post vide Annexure A-1 order. The vacancy in which she was

appointed was occasioned by the absence of Shri.M.C.Rajagopalan who had been placed on put off duty pending disciplinary action. The applicant's appointment was terminated on 26.11.2002 consequent to the rejoining of duty of Shri.Rajagopalan (Annexure A-2). Shri.Rajagopalan was subsequently dismissed from service with effect from 26.9.2003 and accordingly the post of GDS MD in Elad Post Office fell vacant again. The grievance of the applicant is that the Branch Postmaster of Elad Post Office engaged his wife, the 3rd respondent, as GDS MD in that vacancy but the applicant in view of her earlier work experience was entitled to be appointed in that vacancy. It is argued on behalf of the applicant that the Branch Postmaster has no power or authority to engage or appoint his wife as GDS MD and it is clearly against the Rules and secondly, the Supreme Court has held that a temporary employee should not be replaced by another temporary employee and till a regular appointment is made to the vacancy created by the dismissal of Shri.Rajagopalan the applicant is entitled to work as GDS MD. The applicant has, therefore, filed this application seeking the following relief :-

1. A direction directing the respondents to appoint the applicant as Grama Dak Sevak Mail Deliverer in Elad Post Office, Perinthalmanna till regular appointment is made to the said post in accordance with rules.
2. The facts are not denied by the respondents. They contend in the reply statement that the 3rd respondent was only engaged as a stop gap arrangement till such time a regular arrangement is made to the post and no regular appointment could be made so far as there is a temporary ban on filling up a vacant GDS posts also. Shri.M.C.Rajagopalan has submitted an appeal against his order of removal from service and the same is pending disposal. There is no provision for preference of

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appointment on account of past service as per GDS (Conduct & Employment) Rules 2001. The preference can be given to only those who have put in not less than three years service on the date of discharge. The provisional appointment of the applicant was over once Shri.MC Rajagopalan was taken back into service and by very same ratio of the Supreme Court judgment quoted by the applicant the 3rd respondent cannot be replaced by making another provisional appointment of the applicant. Respondents are not duty bound to appoint the applicant as contended by her and there is no violation of any rights of the applicant. The applicant has filed a rejoinder more or less reiterating the same facts.

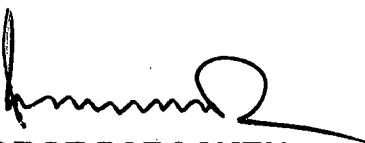
3. We have heard the learned counsel on both the sides. The claim of the applicant is mainly based on the ground that the applicant has already worked as GDS MD in the said Post Office on provisional basis and therefore she has a better claim to the said post regardless of whether the vacancy is temporary or permanent. She further based her claim on the principles of propriety and fairness. The respondents have correctly submitted the rule position according to which the preference in appointment can be given only to those who have put in not less than three years service and were continuing in the post. The applicant entered service on 1.4.2001 and her service was terminated on 26.11.2002. Hence she had service of less than three years. Shri.M.C.Rajagopalan was again removed from service after a gap of approximately one year and the vacancy arising out of the second removal from service would be treated as a fresh vacancy and not continuation of the vacancy arising out of his being put of duty before reinstatement. Thus the applicant's provisional appointment is rightly held to be terminated when Shri.M.C.Rajagopalan was taken back into service. The applicant cannot also claim the benefit of

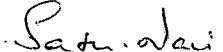
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the Apex Court judgment regarding replacement of temporary employee by another temporary employee as her termination was not followed by appointment of any temporary employee but by the rejoining of Shri.M.C.Rajagopalan a regular incumbent. Hence in the face of the rule position as rightly submitted by the respondents the applicant cannot stake any claim to be appointed on a temporary/provisional basis to the post. As and when post is filled up on regular basis the applicant would have to apply for the post and would be entitled to consideration along with others.

4. In the light of the above position, we do not think that any interference is required. No particular order has been challenged in this O.A. Therefore, the O.A is dismissed. No order as to costs.

(Dated the 4th day of July 2006)


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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