

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 18.12.1989

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.87/89

P.G.Thomas - Applicant

Versus

1. The Post Master General,
Kerala, Trivandrum.
2. The Senior Superintendent
of Post Office,
Pathanamthitta Division.
3. P.K.Sadasivan Nair,
Postman, Ranni Sub Division - Respondents.

Mr.MR Rajendran Nair - Counsel for applicant

Mr.K.Karthikeya Panicker,
ACGSC - Counsel for respondents.

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

The applicant was initially appointed in Postal Department as E.D. Packer, Pathanamthitta w.e.f. 16.12.'72 in the vacancy caused by promotion of one T.N.Ramakrishnan Nair, E.D.Packer as Postman. While continuing as E.D. Packer, he was deployed as E.D.Messenger and was working in Telegraph branch of Pathanamthitta Central Post Office. While so on account of the opening of a Departmental

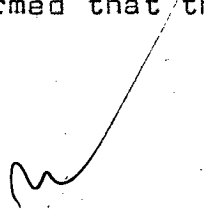
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Telegraph Office dislinking the branch of Pathanamthitta
CHO w.e.f. 16.7.1986, two posts of E.D. Messengers of
Pathanamthitta Post Office were abolished. Though
the applicant and another person who were working as
E.D. Messengers were relieved on 16.7.1986. They were
immediately absorbed on deputation in the DTO, Pathanam-
thitta in accordance with the instructions contained
in DGP&T, New Delhi letter No.253/41/78 FTN dated
15.2.1985 till they get absorbed in the Postal Branch.
While so the department decided to conduct examination
for recruitment to the post of Postmen/Mailguards. E.D.
Agents with more than three years service and who are
below 42 years of age were eligible to appear for the
examination. It was provided in the circular No.BB/
27/Exam/88 dated 25.5.1988 regarding the examination
for promotion to the post of Postmen that the past
service of an E.D. Agent incase of his discharge from
service on upgradation and who were offered alternative
appointment within one year would be counted from the
initial appointment and the interruption would be
ignored. The applicant also submitted an application
for the competitive examination to be held on 25.9.1988.
In the seniority list of departmental/outsider E.D
candidates permitted to appear for examination published
per
as/Memo dated 12.9.1988, the applicant's name was shown.

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as Item No.18. But in the list of selected candidates the applicant's name was not included though ^{he} was senior to many others who were shown ^{as} selected, Obviously because his result was withheld since he was only provisionally allowed to take the examination. Thereafter the PMG, Kerala considered the case of the applicant and another person similarly placed and directed to allow them to sit for the examination stating that the break was condoned by the Additional PMG. Meanwhile The Assistant Superintendent of Post Office, Pathanamthitta directed the applicant to report at that office for being considered for the post of E.D. Delivery Agent, Elanthoor. On his reporting on 14.12.'88 he was offered the post of E.D.Delivery Agent and Assistant Superintendent of Telegraph Traffic, CTO was directed to relieve him. By another letter dated 14.12.1988, the Branch Post Master, Elanthoor, Pariyaram PO. was informed that the applicant who was offered alternative appointment was directed to join the new post on his relief from CTO, Pathanamthitta. On that basis the applicant was relieved on the forenoon of 23.12.1988 with a direction to report to the Assistant Superintendent of Post Office, Pathanamthitta. While so by memo dated 23.12.1988 the Senior Superintendent of Post Offices informed that the applicant was selected for :

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appointment to the cadre of Postman on the result of the examination and that he was No.6 in the seniority list. Pursuant to this the applicant was directed to take leave by providing suitable nominee/substitute for his E.D.Agents post and to undergo training in accordance with the instructions contained in DGP&T's letter No.31.24/62 Rlg. dated 14.4.1964. On completion of the training the applicant was allotted to the Ranni Sub Division for appointment as Postman by memo dated 11.1.'89. The applicant was working as part-time Chowkidar in CTO, Pathanamthitta on being relieved from the post of E.D.Agent w.e.f. 16.7.1985 to 22.12.'88 continuously without any break in service. It was when the applicant was allotted to Ranni Sub Division for appointment to the post of Postman that the impugned order No.BB/27/Exam/88 dated 23.1.'89 was issued by the Senior Superintendent of Post Office, Pathanamthitta by which the applicant was informed that the orders issued regularising the candidature of the applicant had been withdrawn by the PMG, Kerala circle by letter No.Rectt/12-Misc/87 dated 19.1.1989 consequent to which the memo No.BB/27/Exam/88 dated 23.1.89 announcing the result of the applicant was treated as cancelled. Aggrieved by the above the applicant has filed this application under Section 19 of the Administrative Tribunals Act for the

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reliefs to set aside the Annexure-I order, the letter No.Rectt/12-Misc/87 dated 19.1.1989 of PMG, Kerala and the order of appointment of the third respondent in the post where the applicant ^{ought to} have been appointed and also for a declaration that the applicant was entitled to appear for the examination and for the consequential reliefs. The application has been admitted only ⁱⁿ so far it relates to the relief of cancellation of the order dated 23.1.1989 and the order dated 19.1.1989 referred therein and not admitted so far as it related to the cancellation of the order of the appointment of third respondent.

2. In the reply statement filed on behalf of the respondents 1 and 2 it has been contended that in terms of DGP&T's letter No.47-5/79-SPB I dated 27.1.'81 reappointment in ED post is a pre-requisite condition for condonation of break in service in the case of ED Agents discharged on the ground of upgradation of post office and since the applicant was not reappointed to the postal department, the condonation of delay by the Assistant Post Master General in his order No.Rectt./12-Misc/87 dated 22.11.'88 at Annexure-XI was irregular and that the same has been withdrawn rightly by the circle office letter No.Rectt./12-Misc/87 dated 19.1.'89 stating that the candidature of the applicant was not

allowed and directing the invalidation of the announcement of the result of the applicant.

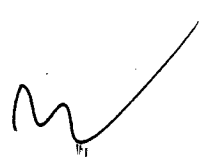
3. We have heard the arguments of the learned counsel on either side and have carefully gone through the documents produced in this case. ^{That} the applicant was serving in the Postal Department as ED Agent from 16.12.'72 till he was relieved on 16.7.'86 on the abolition of the post of ED Messenger in Pathanamthitta CHO where he was working and that thereafter he was given alternative employment in newly opened DTO on deputation till such time he gets absorption in the personnel branch in accordance with instructions contained in DGP&T Letter No.253/41/78/STN dated 15.2.'85 are facts admitted. By Annexure-XIV order of the Assistant Superintendent of Post Office, Pathanamthitta dated 14.12.'88 alternative appointment as EDDA-II, Elanthur, Pariyaram PO. was given to the applicant. When the applicant applied for participation in the selection for the post of Postman in the quota for the EDDA, he was provisionally allowed to participate in the examination and his result was withheld. The Post Master General, Kerala considered the case of the applicant and another person and by Annexure-XI order dated 22.11.'88 condoned the break in service and ordered the applicants to sit in the examination.

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Thereafter the results of the examination was published in which the applicant was declared selected for appointment to the cadre of Postman, his seniority being No.6 in the list. These facts are also not disputed. It is thereafter by impugned order Annexure-I, that the selection of the applicant as Postman was cancelled stating that the PMG, Kerala Circle vide letter No.Rectt./12-Misc/87 dated 19.1.'89 has withdrawn the condonation orders issued regularising the candidature of Shri PG Thomas, the applicant. The reason stated in the reply statement filed by the respondents for withdrawal of the condonation is that the applicant had not been reappointed in Postal Department within a period of one year as required in DGP&T's letter No.47-5/79-SPB dated 27.1.'81. In this case the applicant though relieved from the post as ED Messenger on abolition of two posts on 16.7.'86 was immediately absorbed in the Telegraph Department under DTO, Pathanamthitta on deputation, till the date he was accommodated in a regular post in the Postal branch on ^{Deputation} deputation, can be made only retaining a person's lien in the parent department. So though the applicant was relieved on the abolition of the post of ED Messenger, he was sent to Telegraph office only

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on deputation and therefore the question of there being a break in service and not being reappointed in Postal Department does not arise. In this background the order of the Assistant Post Master General dated 22nd November, '88 condoning the break if any is perfectly in order. There is absolutely no justification for cancellation of this order and the cancellation of the selection of the applicant under the impugned order at Annexure-I. Having directed the applicant to take leave from the post of ED Agent and to undergo the training, the department is barred by the principles of promissory estoppel from cancelling the selection. The applicant has been allotted to the Ranni Division as Postman by the order of the Senior Superintendent of Post Office dt.11.1.'89. Since the cancellation of the order is unsustainable in law, the applicant is entitled to be posted as a Postman in the Ranni Division for which he has been rightly selected and allotted.

4. In the result the application is allowed. Annexure-I order No.Rectt./12-Misc/87 dt.19.1.'89 of the Post Master General, Kerala cancelling the memo No.BB/27/Exam/88 dt.23.12.'88 of the Senior Superintendent of Post Office, Pathanamthitta Division

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announcing the result of the applicant is set aside.

The applicant is declared to be entitled to appear for the promotion examination held on 25.9.1988 and that he is entitled to be appointed as Postman in his due turn on the basis of Annexure-XVIII order dated 11.1.'89 of the Senior Superintendent of Post

Office, Pathanamthitta Division in accordance with

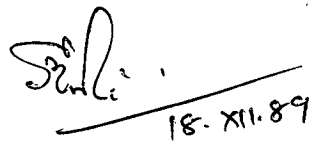
^{his}
the seniority in the selection. If any person who

has obtained a lower rank than the applicant has been posted as Postman, the applicant will be given a posting with effect from that date, so that his seniority will not be affected. But he will not be entitled to any arrears of pay on account of the antedated appointment.

We are not making any order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER


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(S.P.MUKERJI)
VICE CHAIRMAN

18.12.1989

krm