

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 92/92
~~XXXXXX~~

199

DATE OF DECISION 6.8.1992

A Aboobacker Applicant (s)

M/s DV Radhakrishnan Advocate for the Applicant (s)

Versus

Sub Divisional Inspector of Post
Offices, Malappuram Sub Divn. Respondent (s)
Malappuram and others.

Mr P Sankaran Kutty Nair, AC GSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji, Vice Chairman
and

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Shri AV Haridasan, J.M

The applicant was first engaged as a ED Mail Carrier for ~~about~~ 89 days with effect from 25.7.91. Thereafter, after a day's break, he has again been engaged and is still continuing.

2 The grievance of the applicant is that instead of allowing the applicant to continue in the post till a regular selection/appointment is made, the respondents are making his tenure for 89 days with intermittent breaks. He has also raised a grievance that steps are being taken for combining the post of ED Mail Carrier, Nediyrippu and that of ED Mail Carrier, Chirayil. The applicant has in this application prayed that the respondents may be directed not to terminate his provisional service on the expiry of 89 days and to allow him to continue till a regular selection is made and to consider the applicant also for selection while they make regular

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selection giving due weightage for the provisional service. He has also sought for a declaration that the functions of ED Mail Carrier, Nediyrippu and that of ED Mail Carrier, Chirayil are not liable to be combined considering the pressure of work of the two posts.

3 The respondents in the reply statement have stated that no decision has been taken by the Department as yet for combining the posts of ED Mail Carrier of the two Post Offices and that the proposal is only under consideration. They have contended that as the provisional service of the applicant had already come to an end on the date of the application was filed, and as the applicant was reinstated pursuant to the interim order, the applicant is not entitled to the relief of a direction to allow him to continue till a regular selection/appointment is made. They have raised^a/further contention that unless the applicant's name is sponsored by the Employment Exchange, the question of considering his candidature for regular selection would not arise.

4 Since the respondents have not taken any decision regarding combining the duties of the two posts of ED Mail Carriers in the above Post Offices, and since the applicant is holding the post of ED Mail Carrier on a provisional basis, we are of the view that it is premature for him to agitate that issue. So, we leave that question open.

5 The contention of the respondents that the applicant who has been reinstated into service solely on the basis of the interim order is not entitled for continuance in service till a regular appointment is made has only to be rejected for the reason that as per Annexure A2 order dated 1.11.91 the applicant was entitled to be in provisional service till 19.1.92 and the

interim order dated 17.1.92 was issued to maintain the statusquo regarding the applicant's continuance. Therefore, it is evident that on the date on which the interim order was issued, the applicant was in service as a provisional ED Messenger. Since the respondents have appointed the applicant as a provisional ED Messenger, ^{the question of} his replacement by another provisional ED Messenger unless he is found to be unfit does not arise. Therefore, the necessity of appointing him for a period of 89 days and reappointing him after a short break also is not there. The provisional appointment should be until a regular selection and appointment is made or until for a valid reason the provisional service is terminated. Therefore, we are of the view that the respondents have to be directed to allow the applicant to continue in the present post till a regularly selected candidate is appointed.

6 This Tribunal has been consistently taking the view that an ED Agent working in the post on a provisional basis is entitled to be considered for regular selection even if he/she is not sponsored by the Employment Exchange. Therefore, we are of the view that in this case also, the applicant is entitled to be considered for regular selection as and when regular process of selection is being undertaken.

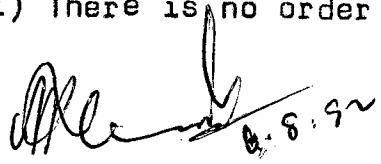
7 A Larger Bench of this Tribunal has in DA 29/90 held that working ED Agents are entitled to weightage for provisional service rendered by them while being considered for regular appointment. We, therefore, hold that the respondents should consider the applicant for regular selection by giving due weightage for his provisional service.

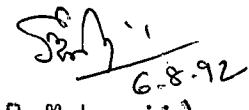
8 In the conspectus of facts and circumstances, we dispose of the application with the following directions:

(i) The respondents shall consider the applicant also when they make regular selection to the post of ED Mail Carrier, Nediyrippu by giving him due weightage for his service even if the post of ED Mail Carrier, Nediyrippu and Chirayil are combined together and even if not sponsored by the Employment Exchange.

(ii) The services of the applicant shall not be terminated, otherwise in accordance with law and except for appointment of regularly selected candidate.

(iii) There is no order as to costs.


(AV Haridasan)
Judicial Member


(SP Mukerji)
Vice Chairman