

**SCENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 97 of 2008

Tuesday, this the 12th day of August, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

C. Joseph,
GDSMD, Plamootukada,
Neyyattinkara Postal Sub Division. ... Applicant.

(By Advocate Mr. G. Sasidharan Chempazhanthiyil)

v e r s u s

1. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram.
2. Union of India represented by
Chief Postmaster General,
Kerala Circle, Thiruvananthapuram. ... Respondents

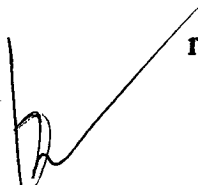
(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The Original Application having been heard on 12.08.08, this Tribunal on the same day delivered the following :

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Provisional appointment of GDS, inter alia is resorted to when a regular ED Agent is put off duty pending departmental or judicial



proceedings against him, as it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized. While so appointing any one on provisional basis, in the event of the regular GDS staging a comeback on his exoneration from disciplinary proceedings or acquittal in judicial proceedings, the provisional appointment made during the inter-regnum period has to be terminated. This is the relevant Rule relating to provisional appointment, vide D.G. P & T letter dated 18th May 1979 (Annexure A-1). The very same letter also provides as under: -

“Efforts should be made to give alternative employment in Ed Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years’ service. In such case, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G. P & T letter No. 41-4/77-Pen dated 23-02-1979”

2. The respondents had, on the regular incumbent to the post of GDS MD Plamootukada having been placed under put off duty from 16-09-1999, engaged the applicant to perform the duties attached to the said post. According to them, they have not observed the formalities of engagement on provisional basis in regard to the engagement of the applicant to that post. The vacancy was then notified to be filled up on provisional basis on 19th March 2002 i.e. after 30 months of the

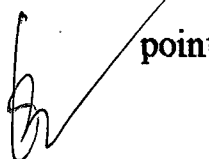
engagement of the applicant. The applicant moved the Tribunal in OA No. 264/2002 which was, however, rejected by the Tribunal. When the order of the Tribunal was challenged before the Hon'ble High Court in OP No. 11472/2002(S), the High Court had, rendering a finding, **'the background in which the petition's selection came to be made, is not clear, although the petitioner has a case that the selection was after following the parameters required.'** held, **'We feel that he is to be permitted to continue as a provisional employee...'** The applicant continued to hold the post on Provisional Basis till recently (27-11-2007), when disciplinary proceedings against the regular incumbent were finalized and he was reinstated. The claim of the applicant is that he should be enlisted in the list of those Provisional GDS who had rendered more than three years on provisional basis in accordance with the DG P & T letter at Annexure A-1 (extracted above). However, the case of the respondents is that since at the time of initial engagement of the applicant, the prescribed procedure was not followed and he could complete three years of service only on the strength of stay granted by the Court, he is not entitled to the said concession. Hence this O.A.

3. On completion of pleadings the case was heard. Counsel for the applicant invited our attention to the observations of the High Court in its

order vide Annexure A-2 and submitted that his continuance for nearly three years as provisional GDS was without intervention of the Court and even after that, his continuance was as per his entitlement as the decision in the Writ petition went in his favour.

4. Counsel for the respondents submitted that the applicant not having come through proper procedure for provisional appointment, he is not entitled to the benefit contained in DG P & T letter at Annexure A-1 available to such provisional appointees.

5. Arguments were heard and documents perused. Admittedly From September 1999 till at least March 2002 the applicant was serving as GDS MD without the intervention of the court. It was only on 26th April 2002 that by an interim order of the High Court that the applicant continued to hold the post for the subsequent period. If the writ petition were dismissed, it would mean that the applicant was holding the post on the basis of the order of the High Court and but for such an interim order, he was not eligible to hold the post and the stay granted was a grace. Instead, when the writ petition was allowed, it means that the applicant was fully entitled to hold the post even otherwise. It is to pertinent to point out here that the provisional character of the appointment of the




applicant right from the beginning has been appreciated by the High Court and tacitly spelt out when it has stated, 'We feel that he is to be permitted to continue, as a provisional employee...' vide the penultimate para of Annexure A-2 judgment. Thus the view of the High Court is that right from the beginning the applicant had been functioning on provisional basis.

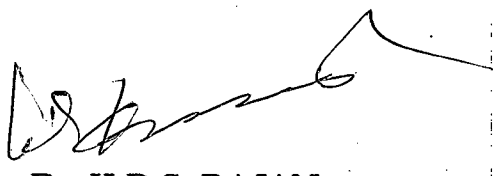
6. When a person gets a stay order from the Court, he undertakes a risk in the sense that he would not be relieved from the clutches of any liability which otherwise would have fastened upon him but for the stay nor would he crystallize any right on the basis of the stay if ultimately he loses his case. (See *Kanoria Chemicals and Industries Ltd. v. U.P. SEB*, (1997) 5 SCC 772, and *Chamundi Motors Pvt Ltd vs South India Trust Association* (1992) 3 SCC 1). In case he succeeds in his litigation, then it would mean that the benefit of stay is fully available to him. In the instant case as the applicant was victorious in his writ petition, the stay granted to him to continue in the post was ultimately made absolute which means that he was otherwise also entitled to continue even without a stay. Thus, the entire service rendered by him qualifies to be a service on provisional basis and hence, the benefit of D.G. P&T order dated 18th May 1979 is fully available to the applicant.

7. In view of the above, the OA is allowed. Respondents are directed to consider inclusion of the applicant in the wait list of ED Agents discharged from service maintained in Thiruvananthapuram South Postal Division and he be given alternative employment as and when his turn comes. The applicant shall be informed of his seniority in the wait list and as and when the applicant submits an application to ascertain the position of his turn, he shall be suitably informed.

8. Under the above circumstances, there shall be no order as to costs.

(Dated, the 12th August, 2008)


Dr. K S SUGATHAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.