

Central Administrative Tribunal; Ernakulam Bench

Date of decision : 2-4-1990

Present

Hon'ble Shri NV Krishnan, Administrative Member  
and

Hon'ble Shri N Dharmadan, Judicial Member

DA No. 104/90

V Sreekumara Kaimal

: Applicant

Vs.

- 1 The Senior Superintendent of Post Offices, Alleppey.
- 2 The Assistant Superintendent of Post Offices, Alleppey Sub Division.
- 3 Union of India rep. by its Secretary to the Government, Ministry of Communications, New Delhi.
- 4 J Raju, S/o M Jacob, Valiyathera Alleppey-5, EDMC, Purakkad

: Respondents

Mr MR Rajendran Nair

: Counsel of Applicant

Mr TPM Ibrahim Khan

: ( for R 1 to 3)

Mr CM Suresh Babu

: ( for R-4)

O R D E R

Shri NV Krishnan, Administrative Member.

The applicant <sup>u</sup>who was appointed as a substitute in the Purakkad EDMC ~~by xxxx~~ the permanent incumbent <sup>u</sup>TM Jacob on 1.1.90. He has now been replaced by Respondent-4 who has been appointed provisionally to the post by Respondent-2 with effect from 12.1.90. The applicant is aggrieved by his being relieved in this manner from the post held by him.

2 Respondents 1 to 3 have submitted that the permanent incumbent Mr Jacob who was working as EDMC, Purakkad initially proceeded on leave from 1.1.90 to 11.1.90 nominating the applicant as his substitute. At his request, Mr Jacob was transferred to Thottappilli. When that transfer took place, the applicant had no locus <sup>u</sup>standi as the permanent

incumbent having left Purakkad, the post became vacant.

Therefore, the respondents found it necessary to make a provisional appointment and Respondent-4 was appointed provisionally by the impugned Annexure-I order. Counsel for Respondent-4 submitted that his appointment has since been renewed from 1.1.90 to 9.4.90. The government respondents contend that in the matter of making provisional appointment, the department has considerable discretion and it is incorrect that Respondent-4 was appointed merely because he happens to be <sup>the</sup> <sub>son</sub> of <sup>a</sup> postal employee. It is submitted that Respondent-4 too has earlier experience and in addition, he also belongs to Scheduled Caste.

3 Counsel of Respondent-4 submitted that as and when vacancies arise it is necessary that every one is given a chance to work provisionally to gain experience and therefore, his provisional appointment cannot be questioned.


4 The learned counsel for the applicant submits that it is not as if that the applicant was a mere substitute having 10 days' experience. It is stated <sup>that</sup> <sub>details</sub> of the earlier experience are given in para 4 of the application, according to which he has nearly 600 days of experience. It is contended that during 1988 alone, the applicant worked for more than 252 days as EDDA, Ambalapuzha when he was appointed provisionally.


5 We are of the view that even in making a provisional appointment, there should be application of mind and even if the matter is discretionary, it has to be seen that the discretion is exercised properly. If the applicant had been a mere substitute with an experience of <sup>only</sup> 10 days behind

him, perhaps, we may not have found fault with the decision of the respondents in giving a provisional appointment to Respondent-4. We notice that the applicant has substantial experience. When the Respondent-2 took a decision that provisional appointment was to be made, the case of the applicant who was working as a substitute with their concurrence <sup>should</sup> ~~stated to~~ have been considered by Respondent 1- 3. <sup>Therefore</sup>, the decision to appoint Respondent-4 is one sided, if not, even arbitrary.

6 In this view of the matter we find that the ends of justice would be met if the impugned order is quashed and Respondent-2 is directed to consider the merits of the applicant and Respondent-4 and decide as to who should be appointed provisionally to the post of EDMC Purakkad, pending final selection of the regular incumbent. It is accordingly ordered. We further direct that such a decision should be taken well in time within a week before expiry of the 4th Respondents current term on 9.4.90 and before its renewal. Until then, Respondent No.4 will not be disturbed from the present post.

7 The application is disposed of with the above direction without considering any other questions on merits.

  
(N Dharmadan) 2/4/90  
Judicial Member

  
2/4/90  
(NV Krishnan)  
Administrative Member

2-4-1990

Admittedly  
this has not  
been done.