

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

No. OA No.114/07

THURSDAY THIS THE 11th DAY OF OCTOBER, 2007.

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

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

S. Geethakumary w/o S. Krishnan
GDS BPM Kuthirakulam
Vellanad Sub Office.

.. Applicant.

By Advocates G. Sasidharan Chempazhantiyl &
Vishnu Chempazhanthiyil

Vs.

1 Union of India represented by
the Chief Postmaster General
Kerala circle, Thiruvananthapuram.

2 Superintendent of Post Offices
South Postal Division
Thiruvananthapuram.

3 Assistant Supdt. Of Post Offices
Nedumangad Sub Division
Thiruvananthapuram.

4 Sheeja, GDS BPM
Kuthirakulam
Vellanad Sub Office.

.. Respondents

By Advocate Mr. P. M. Saji, ACGSC for R 1-3

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant has submitted the following facts in the O.A:-

2 She was initially engaged as GDSBPM, Kuthirakulam under the
Vellanad Sub Office from 14.11.2005 on a provisional basis and the said

engagement had been continuous and without any break for more than a year till December 23, 2006. The attendance roll maintained in the office for the period from November, 2005 to December 2006 is produced. On 23.12.2006, the respondents orally instructed the applicant to hand over charge of the post to the 4th respondent. The applicant was forced to handover the charge to the 4th respondent. The applicant filed a formal complaint against the appointment of the 4th respondent and she was assured that she will be given another posting. Since no action was taken by the respondents this O.A has been filed.

The applicant has relied on the law settled by the Hon'ble Supreme Court in State of Haryana Vs. Piara Singh (1992 (4) SCC 118) holding that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee.

3 The respondents have filed reply statement denying the averments of the applicant. They submitted the factual position as follows:-

Consequent on the termination of the services of Sri Ravindran, the regular BPM, Kuthirakalam Branch office on 29.5.05 on attaining the age of 65 it was notified to fill up the post provisionally and one Smt. S. Sreeja was appointed after following due selection process on provisional basis w.e.f. 22.10.2005. The said person had frequently proceeded on leave for study purposes and the applicant was engaged as a substitute in the post of BPM, Kuthirakalam as proposed by the said incumbent. The applicant was never appointed on provisional basis as BPM and no formal appointment orders were issued. The substitute arrangements made from 14.11.2005 till 26.12.2006 have been detailed

by the respondents in para 3 of their reply. Since the said Smt. Sreeja availed frequent leave for study purposes, her service was terminated w.e.f. 21.11..2006, the applicant being her substitute, was asked to hand over charge to the 4th respondent. The respondents have taken further steps to fill up the post either by transfer or by regular appointment. The applicant has no legal grounds to claim for continuance of her appointment as EDBPM, Kuthirakulam. She has distorted the facts before this Tribunal. She has no evidence to claim that she was appointed even on provisional basis. It is further submitted that no formal orders were necessary to be given to the applicant as she was only a substitute of Smt. S. Sreeja, she has no direct connection with the Department, no force was exerted on the applicant to handover charge and the action of the respondents cannot be assailed.

4 No rejoinder has been filed.

5 The respondents however, filed additional reply statement enclosing Annexures R-3 and R-4 orders of the Assistant Supdt. Of Post Offices, Nedumangad permitting the engagement of outsiders to work at Kuthirakalam Branch Office, as it is the duty of the Assistant Supdt. Of Post Offices to engage outsiders and run the office during the leave period of the regular incumbent.

6 We have heard Shri Vishnu, Chempazhanthiyil for the applicant and Shri PM Saji ACGSC for the respondents 1-3.

7 The learned counsel for the applicant submitted that the applicant is not in a position to show any order of provisional appointment in the light of the submission made by the respondents, but argued that as

such situations are arising due to the wrong practice adopted by the Department in issuing oral orders of engagement and disengagement of the GDS employees. Such practices have been deprecated by this Tribunal in its order in O.A. 764/2006 dated 25.6.2007 which may be reiterated in the case of the applicant also.

8 The learned counsel for the respondents maintained that since the applicant was only a substitute no formal orders are required to be issued by the Department in the light of extant instructions.

9 From the records produced before us it is very clear that the applicant's claim as provisional appointment is fallacious. The details of outsiders engaged during the leave period of the original incumbent as furnished by the respondents in para 3 of the reply and Annexure R-1 clearly reveal that the applicant was only engaged intermittently while the original provisional incumbent Smt. Sreeja was on leave. It is also seen that other substitutes like S/Shri Rajesh, Damodaran Nair, Saseendran etc. were being engaged on the same basis during the leave periods. Since the provisional appointee namely Smt. Sreeja was not attending to the duties but was actually pursuing her studies, the respondents in order to put an end to the practice of the provisional appointee Smt. Sreeja going on leave frequently decided to stop the engagement of the substitute in the leave vacancies and in that context only had directed the applicant to hand over/charge to the 4th respondent. In fact here the 4th respondent herself is the provisional appointee, and not the applicant, she being a mere substitute. Therefore, the question of replacing a provisional hand by another provisional employee did not

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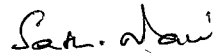
arise at all. The applicant cannot portray herself as a provisional appointee. The averment of the counsel that the observations made by the Tribunal in O.A. 764/06 is applicable in this case has also to be rejected since that was a case where the applicant had continued for three years without any break and the respondents suddenly took steps to fill up the post by observing formalities of provisional appointment. In no way the applicant in this case is similar to the applicant in that O.A. The applicant's claims are absolutely without any merit. The respondents have stated ~~xxxxxx~~ in their additional reply that the engagement of the respondent No. 4 is also since dispensed with and regular appointment by way of redeployment has been done by the Department w.e.f. 23.4.2007. Hence the prayers of the applicant in this O.A. cannot be granted. The O.A. is dismissed. No costs.

Dated 11.10.2007



DR. K.B.S. RAJAN
JUDICIAL MEMBER

kmn



SATHI NAIR
VICE CHAIRMAN