

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA 118/98

Friday this the 15th day of December, 2000.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER  
HON'BLE MR. T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.P.Mohammed Raffi  
S/o Kunhothi Haji K.P.  
Extra Departmental Mail Carrier  
Valiyaparambu (Provisional)  
residing at Kottoparammal House  
Elettil Vattoly P.O.  
Koduvally (via)

...Applicant

By advocate Mr.M.R.Rajendran Nair

Versus

1. The Superintendent of Post Offices  
Calicut Division.
2. The Sub Divisional Inspector  
Kunnamangalam P.O.

Respondents

By advocate Mr.Govind K. Bharathan, SCGSC

The application having been heard on 15th December, 2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to declare that the provisional service rendered by him from 1.11.92 is liable to be reckoned as qualifying service for appearing in the departmental qualifying examination, to direct the respondent to treat his provisional service from 1.11.92 as qualifying service for appearing in the departmental qualifying examination and to quash Annexure A5.

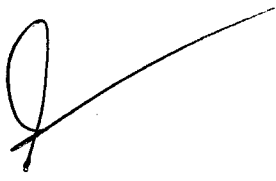
2. Applicant is an Extra Departmental Mail Carrier (EDMC for short) at Valiyaparambu. He has been working as such since 1.11.92. He was regularly appointed as EDMC, Valiyaparambu with effect from 5.5.97. Extra Departmental Agent can aspire to become postman. For that it is necessary to pass departmental examination. The minimum qualifying service for appearing in the departmental examination is 5 years. If the

provisional service of the applicant is taken into account he will be having 5 years by this time. He submitted a representation. His representation has been rejected as per A5 stating that his provisional service cannot be counted.

3. Respondents resit the Original Application contending that the provisional engagement was purely temporary and at any time it could be dispensed with. Applicant cannot claim to be a regularly appointed employee just because his provisional engagement was continued due to administrative reasons. Applicant has not approached higher authorities and has straight away approached this Tribunal.

4. The contention of the respondents that the applicant if aggrieved by A5 could have approached higher authorities and instead of doing so has straight away approached this Tribunal cannot be upheld for the reason that it is submitted by both sides that there is no statutory provision to prefer an appeal or review against A5 order and what Section 20 of the C.A.T. Act says is that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance.

5. The sole question remaining is whether the provisional service of the applicant is also to be counted or only his regular service. It is the admitted case of the applicant that if only the regular service is counted, he is not having the qualifying service and if his provisional service is also counted, he has got the requisite qualifying service and is entitled to appear in the departmental qualifying examination.




6. As per the Recruitment Rules notified on 30.1.95, one of the requirements is "For E.D.Agents, the upper age limit shall be 50 years with 5 years relaxation for the SC/ST candidates as on 1st July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1st January of the year in which the examination is held".

7. So the minimum required length of service is for a period of 5 years.

8. The stand of the respondents is that 5 years service should be 5 years regular service and provisional service cannot be counted.

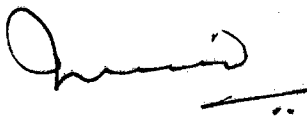
9. At this juncture it is pertinent to note that for the post of mailman, it is specifically stated in the rules that ED agents should have put in the required number of years of regular service. So it is clear that the rule making authority is fully aware of the difference between the service and regular service. If the intention of the rule making authority is to insist on 5 years of regular service for incumbents like the applicant to appear for the post of postman, there would not have any difficulty in stating it expressly. Instead, what is stated is only 5 years satisfactory service. In that context, the reasonable interpretation of the same should be that the intention of the rule making authority is only to insist on 5 years of satisfactory service which will include the applicant's provisional service also. For this view, a ruling of this Bench of the Tribunal in OA 601/98 lends support.



10. A5, the impugned order says that the request of the applicant for counting past provisional ED service shall not be complied with. In the light of what we have stated, A5 cannot be sustained.

11. A5 is accordingly quashed. It is declared that the provisional service rendered by the applicant from 1.11.92 is liable to be reckoned as qualifying service for appearing in the departmental qualifying examination for the post of postman. Respondents are directed to treat the provisional service of the applicant from 1.11.92 as qualifying service for appearing in the departmental qualifying examination for the post of postman.

Dated 15th December, 2000.



T.N.T. NAYAR  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

A5 True copy of the memo dated 17.11.97 No.MC/75/97 issued by the 2nd respondent.