

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 122 OF 2004

Tuesday, this the 29th day of November, 2005.

CORAM:

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE Mr. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Haridas
Group D (Provisional), Chavara P.O
Residing at : Type I P&T Quarters
Chavara P.O : **Applicant**

(By Advocate Mr. M.R.Sudheendran)

Vs.

1. The Senior Superintendent of Post Offices,
Kollam Division , Kollam
2. Chief Post Master General,
Kerala Circle , Trivandrum
3. Union of India represented by the Secretary
to Government of India,
Ministry of Communications,
New Delhi : **Respondents**

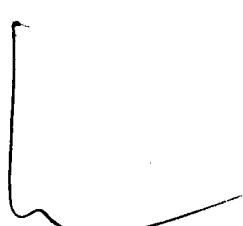
(By Advocate Mr. T.P.M.Ibrahim Khan, SCGSC)

The application having been heard on 29.11.2005, the Tribunal on the same day delivered the following:

OR D E R (Oral)

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant, a provisional Group 'D' employee, is aggrieved because of the change effected in the nature of his appointment as extra expenditure system without notice and hearing and even without issuing any order to that effect. The salary was also not disbursed to the applicant timely for the month of January, 2004. Aggrieved by the said inaction on



the part of the respondents, he has filed this O.A seeking the following reliefs:

- i. To declare that the applicant is entitled to continue a provisional Group D employee on the same terms and conditions made applicable to him with effect from the date of appointment and direct the respondents to allow the applicant to continue as Group D employee on the same terms and conditions.
- ii. To declare that the applicant is entitled to be considered for regular appointment as Group D with effect from 24.12.1999 and direct the respondents to consider the applicant for regular appointment as Group 'D' with effect from 24.12.1999 with all consequential benefits.
- iii. Call for the records leading to issuance of Annexure A-9 and A-10 and quash them.
- iv. To declare that the applicant is entitled to be continued on provisional engagement as Group D at Chavara in preference to juniors and direct the respondent to engage the applicant on provisional basis as Group D Chavara Post Office.

2. The applicant commenced his service as Extra Departmental Delivery Agent, Kollayil, with effect from 28.02.1979 and was provisionally appointed as Group 'D' by Annexure A-1 order. According to him, he was appointed against the regular vacancy occurred due to the death of the regular incumbent by virtue of his length of service as on 24.12.1999 and for all practical purposes. His appointment was treated as regular. He made representation for getting regular appointment as Group 'D'. In the reply received by him, it was informed that he will be considered for permanent posting when he is selected for regular appointment (Annexure A-2). Again by Annexure A-3 he expressed his willingness to be appointed to the cadre of Group D.

3. The respondents resisting the claim of the applicant contended that he was engaged as Group D on temporary basis as no other accommodation was available to him. He is a GDS engaged temporarily

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against a Group D vacancy. He was provisionally appointed as Group 'D' to manage the routine work. Since he was not appointed on regular basis as Group 'D', temporary engagement does not confer him any right to claim for regular appointment as there are 8 willing senior GDS awaiting regular appointment. He is not having any right to claim allotment of quarters as well. The present post cannot be filled up on regular basis, without the approval of the Screening Committee constituted at the Directorate. Even if approval is received, the applicant cannot be appointed on regular basis because 8 GDS senior to him are in the queue for regular appointment. It is further averred in the reply statement that steps are being taken to fill up the vacant post, when sanction of the Screening Committee is received and the applicant does not have any overriding priority above the seniors just because of his engagement on temporary basis against Group D post as his seniors were not willing to work on temporary basis as Group 'D' at Chavara Post Office.

4. The applicant has filed a rejoinder contending that the sub appointing authority has ordered to replace the applicant by another GDS who is very junior to him. The respondents filed additional reply statement reiterating their contentions in the original reply statement.

5. We have heard Mr. M.R.Sudheendran and Mr. P.A.Kumaran, learned counsel for applicant and Mr.T.P.M.Ibrahim Khan, SCGSC for respondents.

6. We have given due consideration to the pleadings, materials and evidence placed on record. The learned counsel for the applicant submitted that the applicant is continuing in the Group D post from 24.12.1999 and it gives an indication that he is entitled to regular appointment. The learned counsel for respondents argued that the applicant cannot be accommodated in preference to his seniors and he being a provisional hand, has no legal right to claim for the benefit.

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7. The short question for our consideration is whether the applicant is entitled for the appointment in Group 'D' post on regular basis ? One of the contentions of the respondents is that there is no vacancy, as such this Court had directed to submit the vacancy position. The learned counsel for respondents had submitted a Counsel statement on 23.11.2005 stating that " the number of direct recruitment vacancy arising in the year 2005 submitted for approval of Screening Committee is three which includes one Committee for this three vacancies of 2005 is not yet received." In Para 4 of the statement it is admitted that the number of vacancy for filling up in Grade D cadre for the year 2004 vide letter dated 18.10.2005 is only one." It is a settled position that a regular vacancy cannot be filled up by a provisional hand. It is an admitted fact that there are 7 or 8 seniors to the applicant who are eligible to be considered as Group D on regular basis. They did not opt to work on temporary basis, but the applicant expressed his willingness to work on temporary basis. The applicant is continuing from 1999. The learned counsel for applicant has brought to our attention to a notice dated 25.10.2005 received by him directing to express his willingness for consideration of Group 'D' post and also specified that if he has not intimated the same within three days from the receipt of this letter, it will be presumed that he is not interested for the post. The applicant has already intimated his willingness in time.

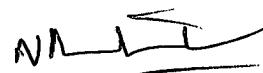
8. Considering the said notice and the subsequent events and also one of the prayers of the applicant is that his name may be considered for regular appointment, we are of the considered view that it will suffice the purpose. Therefore, relief No. 2 is met with. Another main relief that has been sought in the O.A is to declare that the applicant is entitled to be continued on provisional basis in preference to his juniors. On this point, the learned counsel for the applicant cited before us a decision reported in AIR 1992 SC 2130 State of Haryana & Ors Vs. Piara Singh and Ors , wherein it was held that a provisional hand cannot be replaced by another



provisional hand. We are in respectful agreement with the dictum laid down by the Hon'ble Supreme Court and following the said ruling, we direct that the applicant shall not be disturbed from the provisional post till a regular incumbent is selected for that post.

9. The O.A is disposed of with the above observations. In the circumstances, no order as to costs.

Dated the 29th November, 2005.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

VS