

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.01/2013

Friday this the 08th day of February 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

Haritha R.P Chandran
GDS BPM, Venkode B.O
Vattapara P.O, Thiruvananthapuram-695 028
Residing at Ambady, Venkode P.O
Thiruvananthapuram – 695 028

...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Senior Superintendent of Post Offices
Thiruvananthapuram North Postal Division
Thiruvananthapuram – 695 001
2. Union of India, represented by its
The Chief Postmaster General
Kerala Circle, Thiruvananthapuram – 695 033

...Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

This application having been heard on 08th February 2013, this Tribunal on the same day delivered the following :-

ORDER

HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicant has filed this Original Application seeking a declaration that she is fully qualified to participate in the Limited Departmental Competitive Examination to the cadre of Postman/Mail Guard, in terms of the notification.
2. The applicant avers that she joined as GDS BPM Venkode on



23.11.2005 by going through a regular selection process and being appointed on provisional basis by the respondents (Annexure A-2 to A-4). Later, vide Annexure A-5, her appointment was regularised with effect from 20.10.2010. The applicant states that she had appeared for the Departmental Competitive Examination for the post of Postman in the year 2009 and 2010 (Annexure A-6). While so, her request for appearing for the Departmental Competitive Examination in the post of Postman in 2011 was turned down by R1 on the ground that she does not have 5 years regular service as GDS on 01.01.2011 vide Annexure A-7 impugned order. She produced a copy of Annexure A-1 notification to point out that as per para 5 (2) of the aforesaid notification GDS is eligible to sit for the competitive examination if the GDS has worked for atleast 5 years in that capacity as on 01st January of the year to which the vacancy relates. She contends that the Rule does not stipulate that the GDS should have 5 years of regular service as per para 6(IV) of Annexure A-1 notification. Hence, the applicant alleges that Annexure A-7 impugned order is illegal and arbitrary and is opposed to the provisions in the notification itself.

3. The respondents contested the Original Application and filed reply statement. The respondents submitted that the appointment of the applicant was regularised with effect from 20.10.2010 eventhough she was appointed on provisional basis in November 2005. They contended that it is settled position that a provisional employee engaged in a put off vacancy is entitled to be regularised only when the original incumbent is dismissed or removed from service as laid down by this Tribunal in O.A 913/09 and O.A 609/09. They submitted that in her Annexure A-4 order of provisional appointment it was clearly mentioned that she is being appointed against

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the vacancy created by the put off duty of Shri.SL Rajasekharan Nair against whom disciplinary proceedings have been initiated and the applicant's appointment is tenable till it is decided not to take Shri SL Rajasekharan Nair back into service. He was dismissed on 20.10.2010 and hence the applicant was regularised from the said date. They contended that as per the law laid down by the Tribunal, the service of the applicant during the period she was a provisional appointee cannot be taken as service in that capacity as the original incumbent had a lien on this post. They placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of N.Suresh Nathan Versus Union of India reported in 1992 AIR SCW 181, where it was held that " where the rule admits more than one interpretation, but the past practice in the department is based on one of the possible constructions, it shall not be appropriate for the courts of law to upset the same". They submitted that the said observation of the Apex Court will be clearly applicable in the instant case as in so far as in none of the past Recruitment Rules there were provisions which allowed a provisional appointee to take part in the Postman Examination. According to the respondents, only on being regularised as GDS the applicant gets the status of GDS, and hence, the contention of the applicant that she satisfies the condition laid down in the Recruitment Rules is not true to facts and is liable to be discarded.

4. Arguments were heard and documents perused.

5. At the admission stage, an interim order was issued to permit the applicant to appear in the Postman examination on provisional basis and to withhold the result of the same in her case. When the case was taken up



for final hearing the counsel for the respondents stated that against the 3 vacancies notified, only 2 candidates qualified and the applicant is the first meritorious candidate.

6. A perusal of Annexure A-1 notification for the Limited Departmental Competitive Examination to the cadre of Postman/Mail Guard shows that the eligibility conditions are shown in para 5(2) and 6(4). The same is extracted below:-

05. Method of Recruitment

A. Postman

(1) xxxxxxxxxxxx

(2) 50% by direct recruitment on the basis of Competitive Examination limited to Gramin Dak Sevaks of the Recruiting Division who have worked for at least five years in that capacity as on the 1st day of January of the year to which the vacancy (ies) belong, failing which from amongst Gramin Dak Sevaks of the neighbouring Division/Unit on the basis of the said Examination, failing which by direct recruitment from 'open market'.

06. Eligibility

(iv) Gramin Dak Sevaks should have worked for at least five years in that capacity as on the 1st day of January 2011.

It may be a fact that the respondents could have intended working as GDS on a regular basis for 5 years. However, what is prescribed in the notification is only working for 5 years in the capacity of GDS. It is undisputed that the applicant worked continuously as GDS from 23.11.2005. She underwent a process of regular selection and was appointed on a provisional basis as the vacancy could not be declared as clear since the disciplinary proceedings were under way for the original


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incumbent Shri S.L Rajasekharan Nair. Her provisional appointment was converted into regular appointment on 20.10.2010, when the disciplinary proceedings were finalised and the said S.L Rajasekharan Nair was dismissed from service. It is an administrative exigency to keep the post vacant in case the original incumbent is to be reinstated on finalisation of disciplinary/judicial proceedings. Thus the vacancy was not declared as a clear vacancy and the appointment of the applicant was made provisional. As per the standing orders of the Postal Directorate, if a regularly selected GDS provisional appointee is discharged as a result of the original incumbent being reinstated, he is to be offered alternative appointment. When such a provision exists in the department, the applicant is definitely a beneficiary as she gets credit for 5 years of service from 2005 to 2010. In this particular case, she is entitled for such service benefits granted by the DG Post. Out of the 3 notified vacancies, only 2 qualified and the applicant is the top scorer. Hence, it is declared that she is eligible to appear for the examination in view of her having worked continuously in the post of GDS for 5 years after she was selected observing all the formalities of recruitment and being appointed on provisional basis.

7. In view of the foregoing, the O.A succeeds. The first respondent is directed to issue necessary order for her selection, training and appointment as Postman within a time line of 4 weeks. The Original Application is allowed. No costs.

(Dated this the 08th day of February, 2013)


K.NOORJEHAN
 ADMINISTRATIVE MEMBER
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Dr.K.B.S.RAJAN
 JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P.(C) No.61/13 in O.A.No.1/13

Wednesday this the 3rd day of July 2013

C O R A M :

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

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Haritha R.P.Chandran,
W/o.Binu.D.S.,
GDS BPM, Venkode B.O., Vattapara P.O.,
Thiruvananthapuram – 695 028.
Residing at Ambady, Venkode P.O.,
Thiruvananthapuram – 695 028.

...Petitioner

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. Shri.Rema Devi,
The Senior Superintendent of Post Offices,
Thiruvananthapuram North Postal Division,
Thiruvananthapuram – 695 001.

2. Smt. Sobha Koshy, -
The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram - 695 033.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 3rd July 2013 this Tribunal on the same day delivered the following :-

ORDER

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

Counsel for the petitioner submitted that certain orders have already been passed and as such this CPC may be closed. Accordingly, the CPC is closed.

(Dated this the 3rd day of July 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER
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Dr.K.B.S.RAJAN
JUDICIAL MEMBER