

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 142 OF 2013

Tuesday this the *27th* day of October, 2015

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

Biniith C.S,
S/o. Chandran
Residing at : Srambikkal House,
Mukkam (P.O), Calicut – 673 602.

- Applicant

(By Advocate T.C. Govindaswamy)

Versus

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Communications & Information Technology
(Department of Posts), Dak Bhavan,
Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.
3. The Superintendent of Post Offices,
Calicut Division, Calicut – 673 033.
4. The Inspector of Posts,
Department of Posts,
Kunnamangalam Sub Division,
Kunnamangalam – 673 571.

- Respondents

(By Advocate Mr. N. Anil Kumar, Sr. PCGC)

The application having been heard on 05.10.2015, the Tribunal on *27.10.2015* delivered the following:

ORDER
P. GOPINATH, ADMINISTRATIVE MEMBER

The applicant, a retrenched Gramin Dak Sevak Mail Deliverer (GDSMD) of Mannasserri Branch Office, Kozhikode Division of Postal Department, is aggrieved by a notification issued by the 4th respondent under No. GDS/RECTT/2/2013 dated 16.01.2013 without considering the applicant's request for appointment, as directed by this Hon'ble Tribunal in O.A No. 319/2011 (Annexure A-7). In response to a notification issued by



the 4th respondent, the applicant applied for the post of Gramin Dak Sevak Mail Deliverer, Mannasserri Branch Office. The applicant was selected and appointed for the post by an order bearing No. GDS/Selection/02/06 dated 31.01.2009. Applicant joined the post of GDSMD on 26.02.2009. The applicant was issued a provisional appointment order bearing Memo No. GDS/Selection/3/06 dated 01.05.2009 issued by 4th respondent. In Annexure A-5, it was stated that the appointment offered is subject to the settlement of the case against one Shri Raju Jacob. Thereafter, the conditional appointment of applicant was terminated by an order bearing No. GDS/Selection/3/06 dated 11.06.2010 issued by the 4th respondent.

1.2 Annexure A-6 order was challenged before this Hon'ble Tribunal in O.A No. 319/2011. Even though the O.A was dismissed, this Hon'ble Tribunal has pleased to direct that, if there is any general vacancy available in the department, since the applicant was appointed through a regular selection, the applicant can make a representation to that effect and the authorities shall duly consider the same. As per the direction of this Hon'ble Tribunal in O.A No. 319/2011, this applicant has submitted various representations addressed to the Senior Superintendent of Post Offices, Calicut Division, Calicut. While so, the applicant was being utilised against the leave vacancy of one Shri Rajendran Nair, BPM of Neeleswaram, who was to retire from service on 09.08.2012. The applicant has an educational qualification of SSLC and the applicant has also qualified in the Plus Two Course and therefore, the applicant was eligible to be considered and appointed as a GDS BPM.

1.3 In the circumstances, the applicant submitted a representation to the Senior Superintendent of Post Offices, Calicut, requesting consideration for appointment against the vacancy of Gramin Dak Sevak Branch Post



Master (GDSBPM)/Neeleswaram which had arisen, as a result of retirement of Shri Rajendran Nair. There was no response to Annexure A-8, however, another person was appointed to the post of GDSBPM, Neeleswaram by transfer, without considering the representation submitted by the applicant.

1.4 The person who was appointed treating the vacancy at Mannasseri as General also left the job leaving the post vacant again. In the circumstances, the applicant made another representation dated 10.01.2013 requesting that the available vacancy be filled, duly considering the applicant, as directed by this Hon'ble Tribunal. It is understood that another person has been appointed at Mannasseri now, without resorting to any recruitment process and without considering the applicant's Annexure A-8 and A-9 representations also. The applicant has now come across another notification – Annexure A-1 issued by the fourth respondent – inviting applications for filling up the post of GDSMD, Kodiyathur, under the same postal sub-division. During the pendency of the O.A, the Inspector of Posts, Kunnamangalam Sub-Division has issued a Memorandum No. MD-II/BO-40 dated 11.03.2013 stating that the application of any candidate including the applicant can be considered based on Recruitment Rules only and that the applicant is free to apply for any vacancy when notified and the application will be considered along with other applications received as per Recruitment Rules. The memo further stated that rules do not provide for any special consideration or weightage to person who might have worked in provisional vacancies or stop gap arrangements. The applicant's prayer is to appoint the applicant against the vacant post of GDS Mail Carrier, Kodiyathur Post Office, now notified by Annexure A-1.

2.1 Respondents in their reply statement aver that the applicant was provisionally appointed as Gramin Dak Sevak Mail Deliverer -II (GDSMD-II)



at Mannasserri Post Office of Kunnamangalam Sub-Division in Calicut Postal Division on 26.02.2009. The provisional appointment was made when the services of Shri Raju Jacob were terminated on finalisation of a disciplinary action against him. While making the provisional appointment it was categorically specified that the provisional appointment would be subject to outcome of O.A 569/2008 filed by Shri Raju Jacob. This Hon'ble Tribunal disposed of the O.A ordering that Shri Raju Jacob be reinstated in service. Accordingly, Shri Raju Jacob was reinstated on 14.06.2010 terminating the services of the applicant. The applicant filed O.A 319/2011 and this Tribunal dismissed the O.A. However, in the said order it was mentioned that the applicant could submit application in respect of future general vacancies which should be considered by the authorities.

2.2 As regards the post of BPM, Neeleswaram it is submitted that the applicant was never engaged as an approved substitute in the said post. Even though, the said post had been notified for provisional appointment no provisional appointment was made as another serving GDS was granted a transfer to the post. It is submitted that one representation dated 10.01.2013 (Annexure A-9) was received along with a copy of judgment in O.A 319/2011 dated 25.06.2012 (Annexure A-7) from the applicant seeking appointment to the post of GDSMD-I, Mannasserri. It is true that in reply to the above letter, a written reply was given to the applicant vide Annexure A-10 by the 4th respondent. It is submitted that the post of GDSMD-I, Mannasserri was notified for selection in the unreserved category vide notification No. GDS/Rectt/2/2012 dated 10.04.2012, which was well in advance of the judgment of Hon'ble CAT dated 25.06.2012 in O.A No. 319/2011. The post was filled up by a regular selection process. Shri Muhammed Nisar. T.N, Naranchilath House (P.O), Kodyathur was appointed to the post on 21.06.2012 and a select panel of five candidates was drawn up by a regular



selection process. The select panel was drawn up as per instructions contained in DG, Posts New Delhi letter No. 19-14/2010-GDS dated 25.06.2010 (Annexure R-3). The incumbent resigned within one year and as a result the select panel of five candidates drawn up was operationalized. As the 1st meritorious candidate in the select list expressed his unwillingness to accept the appointment, Shri Mahesh V., Vayanamparambath House, Arakkinar (P.O)m the 2nd candidate was appointed to the post. The applicant in the O.A was not a candidate for the selection to the post of GDSMD I, Mannasserri. The appointment process to the post had been finalized on 14.06.2012, which was well in advance of the judgment of Hon'ble CAT on 25.06.2012 in O.A 319/2011. In the wake of resignation of the originally selected candidate, another candidate from the select list was being appointed in accordance with the departmental instructions. The Recruitment Rules do not permit the respondents to select a person outside the select panel as the select panel was valid upto 13.06.2013. Hence, Annexure A-10 is in no way illegal and unconstitutional.

2.3. Respondent submits that there is nothing arbitrary, discriminatory or contrary to the directions of this Tribunal in Annexure A-1 notification. The applicant who has not even submitted an application in respect of the post does not have any right to allege arbitrariness, discrimination or any other irregularity on the part of the respondents. The applicant had worked only under a provisional arrangement. When the regular incumbent in the post was reinstated in compliance with the directions of this Hon'ble Tribunal his services were terminated. Applicant is not entitled to any alternate appointment as per GDS Rules, he had not completed three years of provisional service before termination as required. In view of the interim order of the Hon'ble Tribunal in this case the appointment process has been kept in abeyance. In obedience to the direction of the Hon'ble Tribunal staying Annexure A-1



notification for selection to the post of GDSMC, Kodyathur, no further action was carried out for selection, Annexure A-10 was issued in response to Annexure A-9 representation submitted by the applicant for appointment to the post of GDSMD I, Mannasserri for which the appointment process was completed before the judgment was pronounced in O.A No. 319/2011. Hence the contention of the applicant that Annexure A-10 is issued for defeating justice and frustrating the relief is baseless.

3. Prayer in the O.A is to consider the applicant against the vacant post of GDSMD, Kodyathur Post Office.

4. Heard the learned counsel for the applicant and respondents and written submissions made. Vide Annexure A-5 provisional appointment order the applicant was informed that his appointment was subject to outcome of case filed against Shri Raju Jacob. As Shri Raju Jacob was reinstated by a Court order, the provisional appointment of applicant was terminated.

5. O.A No. 319/2011 filed by applicant before this Tribunal was dismissed with the proviso that if there is a general vacancy available in the department and as the applicant was appointed by a regular selection, he can make a representation for the same and the authorities can consider the same. The respondent was right in not appointing the applicant to GDSMD Mannasserri as the applicant had not applied and the selection was finalised and appointment order issued on 21.06.2012 prior to the order of this Bench in respect of applicant made on 25.06.2012 i.e., 4 days after the appointment was made. As the appointment process had drawn up an extended panel of selected candidates, the offer of appointment, on the resignation of selected candidate, had to be made to the candidates placed in the extended panel of



selected candidates in the serial order and the applicant's demand for being appointed will not be in the interest of justice to the selected candidates. The correct procedure would have been for the applicant to respond to Annexure A-1 notification with an application and a copy of this Tribunal's order for being considered for the post.

6. The applicant is now seeking appointment, knowing fully well that the notification inviting applications for the post of GDSMD Kodyathur Post Office is a post for a period of one year, as the mail route is proposed to be mechanised and the post of GDS Mail Carrier will thereafter become redundant. The respondents inform that no further action has been taken to fill the post of GDSMD Kodyathur in view of the Bench's direction on 19.02.2013 not to go ahead with the impugned notification. Be that as it may, vide Annexure A-3, the applicant was selected as GDSMD Mannassery BO and hence he would be fulfilling all the conditions for appointment as GDS. The respondent is directed to appoint the applicant as GDSMD Kodyathur P.O within thirty days from the date of receipt of a copy of this order.

7. The Original Application is **disposed of** accordingly. No order as to costs.

(Dated, the 22nd October, 2015.)


(P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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