

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.164/2004.

Monday this the 13th day of December 2004.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.A.K.BHATT, ADMINISTRATIVE MEMBER

Sibi K Vargheese,
GDS MD (Provisional), Thekkanmarady,
Muvattupuzha Market SO, residing at:
Kanjirakkattu, Thekkanmarady,
Muvattupuzha.

Applicant

(By Advocate Shri O.V.Radhakrishnan)

Vs.

1. Sub Divisional Inspector of Post Offices,
Muvattupuzha Sub Division, Muvattupuzha.
 2. Senior Superintendent of Post Offices,
Aluva Division, Aluva.
 3. Postmaster General, Central Region,
Kochi.
 4. Director General (Posts),
Dak Bhavan, New Delhi.
 5. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.
- Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 13.12.2004, the
Tribunal on the same day delivered the following:

O R D E R

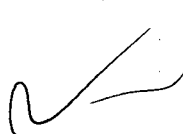
HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant was appointed to work as provisional Gramin Dak Sevak Mail Deliverer (GDSMD for short) on 13.5.99 during the put off duty of Shri TR Mohanan, GDSMD, Thekkanmarady who was the original incumbent in that post. The applicant was working continuously on that post without any break. Finding that the respondents have taken steps for filling up of the post on regular basis pursuant to A-3 notification dated 17.2.2004, apprehending that his services would be terminated and that his services would not be regularized as required in terms of the DG

Posts' letter dated 21.10.2002 (A2) the applicant has filed this O.A. seeking to set aside the notification A-3 and for a direction to the respondents to regularize the applicant in the post of GDSMD, Thekkanmarady BO having regard to the fact that he has been continuing in that post for over 4 years and 9 months uninterruptedly in terms of Annexure A-2 and not to take any further action on the basis of the notification A-3.

2. The respondents seek to justify the impugned action on the ground that in terms of the extant instructions, when a regular incumbent is dismissed from service, steps have to be taken for selection and appointment of a regular incumbent and the person who has been working on a stop gap arrangement has no right to be regularized. However, the respondents admit that the applicant has been continuing on that post without any break with effect from 14.5.1999 i.e. for 4 years and 9 months on a stop gap arrangement since the regular incumbent was placed under put off duty. Respondents also contend that as the appointment of the applicant was not after a due process of selection, he has no right to be regularized.

3. We have perused the pleadings and material placed on record and heard Shri O.V.Radhakrishnan, learned counsel for the applicant and Shri TPM Ibrahim Khan, learned SCGSC who took notice for the respondents. Learned counsel for the applicant with considerable tenacity argued that the applicant having been allowed to continue to work for 4 years and 9 months without any break it should be deemed that his extended service had the approval of the Head of the Region/Circle as per instructions contained in the letter of the DG Posts dated 21.10.2002 (A2) and



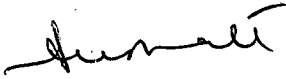
therefore, he is entitled to be regularised on the post, once the original incumbent has been dismissed from service in terms of the DG Posts' letter (A2). Learned counsel of the respondents admitted that had the applicant been provisionally appointed after a regular selection, in terms of A-2 he would have been enlisted to regularization once the original incumbent who was put of duty was removed from service, but argued that since the initial provisional appointment of the applicant was made without a selection, and was made only as a stop gap arrangement he is not entitled to regularization. Having given the factual situation in this case our anxious consideration in the light of the instructions on the subject and the submission of the learned counsel on either side, we find that there is no justification for the contention that the applicant's provisional appointment was a simple stop gap arrangement, because his service has been continued for more than 4 years without break or objection which would warrant an inference that his provisional appointment has been accepted and approved by the higher authorities as lawfully made and that even if there had been an omission to make a selection this flow had been condoned by the competent authority. Therefore, in the peculiar facts and circumstances of the case, the provisional appointment of the applicant which continued uninterruptedly for 4 years and 9 months has to be deemed to have been made in accordance with the instructions for making provisional appointment and the applicant should be held entitled to be regularized in the post which he had been holding for such a long time in the light of the instructions contained in para 12 of Annexure A-2 order of the DG(Posts) dated 21st October 1981.


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October 2002 which stipulates that "where the regular incumbent is not reinstated, immediate action should be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh recruitment".

4. In the light of what is stated above, we set aside A-3 and direct the respondents to regularise the services of the applicant in the post of GDSMD, Thekkanmarady BO and that orders in that regard shall be issued by the competent authority within a period of two months from the date of receipt of a copy of this order. No costs.

Dated the 13th December, 2004.


A.K. BHATT
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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