

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 170 of 2009

Wednesday, this the 7th day of April, 2010

C O R A M

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Thomas Abraham,
GDS MD, Branch Post Office,
Kattakada S.O., Thiruvananthapuram.

... Applicant.

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

1. The Assistant Superintendent of Post Offices,
Nedumangad Sub Division,
Nedumangad : 695 541
2. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthapuram.
3. Union of India, represented by its
Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

... Respondents.

(By Advocate Mr. C.M. Nazar, ACGSC)

The Original Application having been heard on 30.03.2010, this Tribunal
on 02-04-10 delivered the following :

O R D E R

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

Aggrieved by Annexure – A-7 notice dated 09.02.2009 inviting applications for
appointment to the post of Gramin Dak Sevak Mail Deliverer (GDSMD, for short) at
Pantha Branch Post Office, the applicant has filed this O.A. to claim the benefit of
Annexure A-8 letter of D.G., P&T No. 43-4/77-Pen., dated 18.05.1979.

2. The short facts of the case are that the applicant was appointed vide Annexure A-1 Memo dated 30.07.1997 as Extra Departmental Delivery Agent (EDDA, for short) Pantha Branch Post Office, from 01.08.1997 to 31.08.1997 on provisional basis. He was continued on the post on the strength of Annexure R-1 order of this Tribunal dated 07.04.1999 allowing the applicant to continue as provisional EDDA till either the original incumbent of the post is reinstated or till a regular appointment is made to the post. While the respondents are processing the applications received as per the open notification at Annexure A-7, the applicant filed this O.A. for extending the benefit of Annexure A-8 letter to him.

3. It is submitted by the applicant that he was appointed on provisional basis since 1.8.1997 in a put off vacancy. Similarly situated persons appointed in a put off vacancy much later than him had already been regularly appointed. He is entitled to the benefit of Annexure A-8 letter of D.G., P&T, dated 18.05.1979. He has satisfied the conditions prescribed in it as he has completed 3 years' engagement as a provisional GDSMD.

4. The respondents contested the O.A. on the ground that his appointment was a stop gap arrangement for just one month which was extended for more than 11 years on account of the order of this Tribunal in OA No. 172/99 dated 7.4.99. The applicant did not respond to the open notification for filling the post of GDSMD on regular basis. The applicant is not a provisional employee under the respondents. But he was appointed merely on a stop gap arrangement. The Tribunal had made it clear that he would continue as provisional EDDA till either the original incumbent of the post is reinstated or till a regular appointment is made to the post. The original incumbent passed away and the O.A. No. 140/2004 filed by him against his removal was

dismissed by this Tribunal on 27.03.2007. Therefore, the respondents have taken steps to recruit a regular hand. The Hon'ble Supreme Court in the case of **Uma Devi vs. State of Karnataka** had held that "*merely because a temporary employee or a casual wage worker is continued beyond the term of his appointment he would not be entitled to be absorbed in regular service or made permanent just on the strength of such continuance if the original appointment was not made by following a due process of selection as envisaged in the relevant Rules.*" As the applicant was not engaged after following any prescribed procedure for selection, he has no legal claim for the post. In the circumstances, the O.A. should be dismissed being devoid of any merit.

5. In the rejoinder, the applicant pointed out that his appointment was on a provisional basis as evident from appointment orders and also Annexure R-1 order. As he has completed more than 3 years' service as a provisional GDSMD, he is entitled to the benefit of Annexure A-8 letter of D.G., P&T, as similarly situated person in Annexure A-9 order.

6. Arguments were heard and documents perused.

7. The simple issue to be decided in this OA is whether the applicant is a provisional hand or not. The respondents claim that the applicant was appointed on purely a stop gap arrangement. But the appointment order at Annexure A-1 dated 30.07.1997 shows that he was appointed on provisional basis. The relevant para of the said order reads as follows :

✓
"Whereas the post of Extra Departmental Delivery Agent, Pantha, has become vacant and it is not possible to make regular appointment to the said post immediately, the has decided to make **provisional appointment** to the said post for a period of from 01-08-97 to 31-08-97 or till regular appointment is made, whichever is shorter.

2. Shri Thomas Abraham, Kannadipara Veedu, Mayam, is offered the ***provisional appointment***. He should clearly understand that the ***provisional appointment*** will be terminated when regular appointment is made and he shall no claim for appointment to any post."

(emphasis supplied)

8. In Annexure A-3 Inspection Report-2001, para 2 states as under :

"2. Establishment of the office with its incumbents, are as follows:

<u>Designation</u>	<u>Name</u>	<u>DOB</u>	<u>DOA</u>	<u>TRCA</u>
BPM	K.O. Samuel	28.01.56	06.02.78	1840/-
EDMC	K.Krishankutty	01.05.52	25.11.83	-

The permanent EDDA is under put off duty and one Thomas Abraham, a ***provisionally appointed*** ED Agent is working in his place since 1.8.1997."

(emphasis supplied)

9. Annexure R-1 order dated 7.4.1999 (in OA No. 172/99 filed by the applicant herein) states as under :

"4. In the light of what is stated above, the applicant is bound to succeed. Application is, therefore, allowed. A-5 notification is set aside and the respondent is directed to allow the applicant to continue as ***provisional Extra Departmental Delivery Agent*** till either the original incumbent of the post is reinstated or till a regular appointment is made to the post in terms of Annexure A-4. No order as to costs."

(emphasis supplied)

10. A provisional appointment is stated so in the appointment order as in the case of the applicant. If any procedure is to be followed in making a provisional appointment it is expected that the appointing authority has done so. If there is any infirmity that vitiates the provisional appointment, the responsibility for it lies with the appointing



authority, not the applicant. Appropriate corrective action could have been taken by the concerned authority in time. On completion of three years' service, a provisional employee like the applicant is eligible for a certain benefit. At that point of time the appointing authority cannot punish the applicant by depriving him of that benefit for any failure on the part of the appointing authority in following strictly the procedure for making provisional appointment. The respondents have not adduced any evidence to show that the applicant has been appointed not on a provisional basis. All the above records show that he had been appointed on a provisional basis. In our considered view, as per records, the applicant is an ED Agent who is appointed provisionally. If so, he is eligible for the benefit of Annexure A-8 letter issued by the D.G.,P&T, dated 18.05.1979. The relevant para 2 of the said letter reads as follows :

"2. Efforts should be made to give alternate employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G.,P&T, Letter No. 43-4/77-Pen. dated 23.02.1979."

11. In O.A. No. 471/2009, this Tribunal had decided as under :

"3. Considering the rival contentions raised in this O.A and on analyzing the impact of Annexure A6, the question to be decided is that whether the applicant is entitled to any reliefs as he claimed in the O.A. or not. The fact remains that the applicant was allowed to work in the post of GDSMD II with effect from 23.04.99 and he continued for more than 10 years. Such an engagement was due to the reason that the original incumbent was on put off duty with effect from that date. The stand taken in the reply statement is that the applicant is not a temporary employee, but he was only a substitute for a stop gap arrangement for the time being. Hence he cannot claim the benefit of Annexure A6. A reading of Annexure A6 especially the last paragraph of the said letter of the Director General of the Posts, would show that after considering the question of dismissal or removal of an ED Agent who was allowed to work in a vacancy occurred due to put of duty on account of dismissal or removal, such employees should be included in the

waiting list of ED Agents discharged from service. The relevant portion of the letter reads as follows:-

" Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G., P&T, Letter No.43-4/77-Pen. dated 23.3.1979."

A reading of the above portion would clearly indicate that ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons are entitled for their names to be included in the waiting list of ED Agents discharged from service. The only difference with that of the case of the applicant is that he was according to the respondents appointed as a substitute, but the fact remains that he remained in service for more than 10 years and he was appointed temporarily in the post due to the order of put off duty of the original incumbent. If so, we are of the view that the applicant is entitled for the benefit of Annexure A6, for which the applicant may apply to the respondents or the competent authority to get his name registered in the Live Register. By the above declaration, we allow this O.A. to the extent as indicated, with no order as to costs."

The above cited decision fully covers the case of applicant in the present O.A.

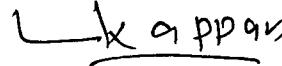
12. As the applicant who is appointed as EDDA on provisional basis, has at his credit more than 11 years of service as ED Agent, he is entitled to be included in the waiting list of ED Agents discharged from service and eligible for appointment as ED Agent. All that a provisional appointee needs is 3 years' service. It does not matter whether he served 3 years or more on the strength of a Court order or not. The applicant is not claiming regularization on the strength of his continuance on the post of ED Agent for 11 years as a provisional employee. Therefore, the ratio of the decision of the Apex Court in Uma Devi's case will not apply in the instant case. The applicant's claim is based on the letter of D.G., P&T, dated 18.05.1979 (Annexure A-8 refers) which provides the benefit of inclusion in the waiting list of ED Agents

discharged from service to a provisionally appointed ED Agent who has put in not less than 3 years' service at the time of discharge from service due to administrative reasons.

13. In the result, the O.A. is allowed to the extent of getting his name registered in the waiting list of ED Agents discharged from service as prescribed in D.G.,P&T, Letter No.43-4/77-Pen. dated 23.2.1979 and consequential benefits arising therefrom. No order as to costs.

(Dated, the 7th April, 2010)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

CVR.