

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 172/99

Wednesday the 7th day of April 1999.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR B.N.BAHADUR, ADMINISTRATIVE MEMBER

Thomas Abraham
S/o K.J.Abraham
Kannadipara, Mayam P.O.
Vellerada (via), Trivandrum
working as Provisional EDDA
Pantha B.P.O.

...Applicant.

(By advocate Mr K.S.Bahuleyan)

Versus

The Sub Divisional Inspector of Post Offices
Nedumangad Sub Division
Nedumangad.

...Respondent

(By advocate Mr P.M.M.Najeeb Khan)

The application having been heard on 7th April 1999,
the Tribunal on the same day delivered the following:

O R D E R

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

Sri D.Stephen, Extra Departmental Delivery Agent, Pantha Post Office was put off duty pending disciplinary proceedings. The applicant was by order dated 30.7.97 (Annexure A-3) appointed on provisional basis as Extra Departmental Delivery Agent (EDDA for short) for a period from 1.8.97 to 31.8.97. Then by order dated 1.4.98, the applicant's provisional appointment was ordered to be tenable till the disciplinary proceedings against Sri D.Stephen are finally disposed of and he has exhausted all channels of departmental and judicial appeals and petitions and in case it is finally decided not to take Sri D.Stephen back into service till a regular appointment is made. The applicant is continuing as EDDA on provisional basis under the said order. The provocation for filing this application is that the respondent has issued a notification Annexure A-5 dated 1.11.98 inviting candidates for appointment to the post of EDDA, Pantha P.O. on provisional basis. Apprehending that

the applicant's provisional appointment is likely to be terminated, replacing him by another provisional hand, the applicant has filed this application for a declaration that he is entitled to continue as ^aprovisional EDDA, Pantha B.P.O. untill the permanent incumbent of the post is reinstated or until a regular appointment is made to the post, setting aside A-5 notice and also to direct the respondents to allow him to continue in that post until the permanent incumbent is reinstated or until a regular appointment is made.

2. The respondent seeks to justify the action in notifying the vacancy on the ground that the applicant was appointed on a provisional basis without being sponsored by the employment exchange and, therefore, his appointment is not according to the rules and instructions on the subject.

3. We have heard learned counsel of the parties and have perused the pleadings and annexures placed on record. It is not in dispute that the applicant was provisionally appointed. If it was merely a stop-gap arrangement as per A-3 order of appointment, a mention of the same should have been made in the order. Contrary to this, what is stated in Annexure A-4 is that the appointment would be tenable till the regular incumbent is reinstated or till a regular appointment is made. If the respondent did not take recourse to calling for nominations from the employment exchange before making the selection and appointment of the applicant on provisional basis, the mistake was committed by the respondent. The applicant who accepted the offer is entitled to continue on provisional basis until a regular appointment takes place or until he is removed for valid reasons after a due process of law. While the applicant who was provisionally appointed is working, it is not open for the respondent to notify the vacancy for another provisional appointee. The Apex Court has in AIR 1992 SC 2130 State of

Haryana vs Pyara Singh observed that a provisional appointee shall not be replaced by another provisional/ adhoc appointee.

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.

Dated 7th April 1999.

B.N. Bahadur

B.N. BAHADUR
ADMINISTRATIVE MEMBER

A.V. Haridasan

A.V. HARIDASAN
VICE CHAIRMAN

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Annexures referred to in the order:

1. A-5, true copy of notice dtd. 1.11.98 of the respondent.
2. A-3, true copy of the memo No.EDDA/Pantha dtd.30.7.97 of the Sub Divisional Inspector of Post Offices, Nedumangad Sub Dvn., Nedumangad.
3. A-4, true copy of memo No.DDA/Pantha dtd. 1.4.98 of the respondent.