

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.2/07

Thursday this the 19th day of April 2007

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

P.Shyju,
S/o.Balakrishnan Nair,
Gramin Dak Sevak Mail Deliverer II,
(Ousted from service), Pokkunnu, Kozhikode.
Residing at Pilavily House, Karapampu PO,
Kozhikode District.

...Applicant

(By Advocate Mr.Shafik M.A.)

Versus

1. Union of India represented by
the Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Superintendent of Post Offices,
Calicut Division, Calicut.
3. The Assistant Superintendent of Post Offices,
Calicut South Sub Division, Calicut.
4. Sri.P.Ratheesh,
Punnathoor, Perumanna, Calicut District.

...Respondents

(By Advocate Mrs.Aysha Youseff,ACGSC [R1-3])

This application having been heard on 19th April 2007 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicant was presently working as GDS MD II of Pokkunnu Post Office of Calicut South Sub Division under the 3rd respondent. He had been appointed in a provisional basis, as such with effect from 11.7.2005 and is continuing as such without any break. Prior to that he had been working against a number of GDS posts since 1992. He was appointed to

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a vacancy which arose consequent to the regular incumbent being proceeded against in a disciplinary proceeding. He has completed more than 18 months service now in the present post. As per Annexure A-1 notification, the 3rd respondent has invited applications to fill up the post which the applicant is holding, again on provisional basis, which will result in termination of the services of the applicant. The said procedure it has been contended is irregular and is against the decisions of the Hon'ble Supreme Court in this regard. The applicant a member of Kerala Postal Football Team was away doing his duties as a player, and returned victorious on 13.12.2006. On his return, he finds that 4th respondent been appointed in his post and he has been ousted from service in his absence. Hence the applicant has approached this Tribunal for redressal of his grievances. The applicant has sought the following reliefs :-

1. To call for the records relating to Annexure A-1 to Annexure A-8 and to quash Annexure A-1 and Annexure A-2 being illegal, arbitrary and violative of the rules relating to the subject.
 2. To declare that the applicant being a provisional appointee is entitled to continue as GDS MD II, Pokkunnu, till a regular appointment is made to the post.
 3. To declare that the termination of the applicant's services as GDS MD II, Pokkunnu PO, in his absence, not in accordance with law pursuant to Annexure A-1 and appointment of 4th respondent as per Annexure A-2, is illegal and arbitrary and to direct the 3rd respondent to continue the applicant till the regular incumbent is ousted from service and the vacancy become open or till he is regularly appointed as such.
2. Respondents have filed a reply statement denying the averments of the applicant. He was provisionally appointed as the Gramin Dak Sevak Mail Deliverer II, Pokkunnu vide order dated 6.7.2005 for a period of 89 days from 11.7.2005 to 7.10.2005. On attaining the period of 89 days the

applicant was relieved from the post on 7.10.2005 afternoon. Therefore, his contention that he had been working continuously is not correct and that the applicant is not a regular employee and his posting was intermittent with breaks. Since his provisional appointment has been terminated the process of selection has to be followed for making provisional appointment. In the light of instructions contained in RO letter dated 8.8.2006 directions were issued to Sub Divisional Heads to make provisional appointments in the posts where stop gap arrangements were in force. Accordingly, ASP, Calicut South Sub Division took action for making provisional appointment. Ten candidates were sponsored by the Employment Exchange and six applications were received in response to local notification for the post of GDS MD I and GDS MD II. On processing of the applications the applicant was one among the short listed candidates for the post of GDS MD I, Pokkunnu. But he did not come up in the short list for the post of GDS MD II, Pokkunnu. The notice to appear in the office for verification of records/cycling test was issued on 23.11.2006. The said notice was served on the applicant on 24.11.2006 but the applicant did not appear before the ASP, Calicut South Sub Division in person on 4.12.2006 as required. Though directed the applicant did not appear before the 3rd respondent on 4.12.2006 for considering his eligibility to the post of GDS MD I, Pokkunnu. The candidate selected by respondent No.3 to the post of GDS MD I, Pokkunnu was having 253/600 marks in SSLC while the applicant was having only 232/600. The 4th respondent was therefore selected. In short they have contended the applicant has no right to claim appointment to any post in the Department and he is not eligible for putting forth the claim for appointment under Sports Quota. Regarding the contention of the applicant that he was relieved from the post of GDS MD

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II, Pokkunnu for attending the coaching camp, they have submitted that there are no records in the office to show that the applicant was in coaching camp at Tirur from 22.11.2006.

3. A rejoinder has been filed by the applicant reiterating that he was appointed against the vacancy which has arisen due to the disciplinary proceedings initiated against the regular incumbent and not against any leave period. He has not been terminated as stated by the respondents on 7.10.2005 but has continued after a short leave period. It has been pointed out that the respondents have been utilising the sporting talent of the applicant. He has joined the coaching camp for Kerala Postal Football Team on 22.11.2006 and thereafter has gone as a team member of the Football team to Bangalore where the team has become all India Winners also. The Tribunal had passed interim orders that the applicant should be engaged in any of the vacancies existing in the said Division as an interim measure but the respondents have not complied with the direction. Immediately after the interim order was passed the applicant has made a representation also pointing out the vacancies in the Postal Division.

4. When the matter came up today, we have heard both the sides and also perused the records. As regards the rival contention of the parties regarding the nature of appointment of the applicant to the post of GDS MD, Annexure R-1 enclosed to the reply statement by the respondents themselves would show that the applicant was appointed on a provisional basis to the post of GDS MD, Pokkunnu which became vacant as it was not possible to make a regular appointment. Paragraphs 1 & 2 of this order is as under :-

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1. Where as the post of GDS MD, Pokkunnu has become vacant and as it is not possible to make regular appointment to the said post immediately the undersigned has decided to make provisional appointment to the said post for a period of 89 days from 11.7.2005 to 7.10.2005 or till regular appointment is made whichever is shorter.

2. Shri.Shyju.P., S/o.A.K.Balakrishnan, Plavili House, Karaparamba is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

5. It was made clear in paragraph 2 that "the applicant should clearly understand that the provisional appointment would be terminated when the regular appointment is made." Against this background the contention of the respondents in Paragraph 10 of the reply statement that the applicant was only engaged to look after the duties for a period of 89 days with intermittent breaks as a purely temporary and stop gap basis on the sole responsibility of the GDS SPM, Pokkunnu is untenable. It is true that the appointment was made to look after the duties of the post which fell vacant consequent on the put off duty of the permanent incumbent but Annexure R-1 order is clear that appointment was on a provisional basis and not as a stop gap/substitute. There was also a mention that the provisional appointment will be terminated only if a regular appointment is made. Such a provision is usually incorporated only when provisional appointments are made and not for stop gap appointments.

6. The next contention of the respondents is that there are no records to show that the applicant was relieved from the post for attending the coaching camp and it is not true that the applicant was in the coaching camp from 22.11.2006. This contention is also belied by the Annexure A-4 letter dated 8.11.2006 from the Chief Postmaster General,

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Kerala Circle informing the selection of 22 officials in which the applicant's name finds place at Serial No.12 for all India participation at Bangalore and permitting them to be relieved from the duty for attending Kerala Postal Football Coaching Camp at Tirur from 22.11.2006 to 5.12.2006 with copy of the order marked to the Divisional Heads and officers concerned. It is surprising that the respondents are denying the knowledge of this letter. Evidently since the applicant had been engaged for the Kerala Postal Football Coaching Camp at Tirur from 22.11.2006 to 5.12.2006 and also required to proceed to Bangalore for all India participation from 8.12.2006 to 12.12.2006 he could not attend the interview on 4.12.2006 the absence of the applicant at interview should not have been held against him when by Annexure A-7 letter dated 1.12.2006, the applicant had also informed this in writing. He had also pointed out that he was working against the post of GDS MD II and not GDS MD I.

7. DG (P) letter dated 18th May 1979 referred to in Paragraph 11 of the reply statement stipulates that :-

" Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made, in the form annexed (Annexure B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment."


8. Respondents contended that the applicant is not eligible for benefit under this rule. We do not find any reason for denying the benefit of this rule to the applicant as the order issued to the applicant, quoted above is very clear that he was appointed on a provisional basis and if the

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appointment was on provisional basis it was liable to be continued till a regular appointment is made as provided in Paragraphs 1 and 2 of Annexure R-1. Therefore in accordance with the appointment order issued by the respondents themselves and as provided in the rules, we are of the considered view that the applicant was a provisional appointee liable to be continued till a regular appointment was made and the action of the respondents in terminating his appointment on the ground that he was a stop gap arrangement and appointing 4th respondent again on a provisional basis by Annexure A-2 order was clearly illegal and this amounts to also substituting a provisional appointee by another provisional appointee which is against the well settled law laid down by the Apex Court in Pyare Singh's case reported in AIR 1992 SC 2130.

9. Notice has been issued to 4th respondent but he has not chosen to appear nor represented by any counsel. In the light of the above findings, the OA is allowed. Orders at Annexure A-1 and Annexure A-2 are quashed. Respondents are directed to continue the applicant as GDS MD II, Pokkunnu till a regular appointment is made. We also direct that the applicant shall be deemed to have been in service from 22.11.2006, the date of his deputation to the coaching camp. These directions shall be complied with within a period of three weeks from the date of receipt of a copy of this order. No order as to costs.

(Dated this the 19th day of April 2007)


K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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