

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.184/99

Tuesday, this the 16th day of October, 2001.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

V.Ayyappan,
Extra Departmental Branch Post Master,
Ookode.P.O.
Nemom,
Trivandrum-695 020. - Applicant

By Advocate Mr Thomas Mathew -

Vs

1. Superintendent of Post Offices,
South Postal Division,
Trivandrum.
2. Assistant Superintendent of Post Offices,
Trivandrum East Sub Division,
Trivandrum.
3. Chief Postmaster General,
Kerala Circle,
Trivandrum.
4. Union of India represented by
its Secretary,
Department of Posts,
New Delhi. - Respondents

By Advocate Ms P Vani, ACGSC

The application having been heard on 21.8.2001, the Tribunal
on 16.10.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

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The applicant, Shri V.Ayyappan, claims to have been
working as Extra Departmental Branch Post Master (EDBPM for
short), Ookode.P.O. of the Trivandrum South Postal Sub

Division for several years. While being so, he volunteered himself for being deputed to Army Postal Service (APS for short) as per the existing rules and instructions. As per A-1 memo dated 19.3.91 issued by the first respondent, the applicant and a few other ED Agents were formally informed of their selection for deputation to APS and were directed to report before Branch Recruiting Officer, Tirumala on 27.3.91 for further formalities to be fulfilled. By R-2 dated 26.3.91, the applicant and 2 other ED Agents were "appointed as Class IV for a day on 26.3.91" against the leave vacancies noted against each. The applicant was enrolled as Sepoy/Packer in the Indian Army on 27.3.91. While serving in the Group'D' post in the APS, the applicant was medically decategorised as CEE(Temporary) on account of his problem having been diagnosed as "Spinal Bifida Spondylosis" caused by an injury he had sustained while on duty (A-2). His discharge from Army being under contemplation, the first respondent issued A-3 letter dated 2.3.98 addressed to the Major, Officer-in-Charge, P&T Administration Cell, C/o 56 APO, intimating the proposal to accommodate the applicant in the post of EDBPM, Ookode, on discharge from APS. Eventually, as per A-4 medical opinion, the applicant was recommended to be released as "Low Medical Category CEE(P)". On that basis, A-5 Discharge-cum-Move order dated 15.6.98 was issued. The applicant made A-6 representation dated 1.7.98 to the first respondent pointing out the alleged illegality in A-3 order and requesting him to post him, (the applicant) as Group'D' in Trivandrum South Division with protection of last pay drawn, instead of the lower post of EDBPM. However, since he did not

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receive any orders in that regard, the applicant had to join duty as EDBPM, Ookode on 15.8.98 on expiry of two months leave preparatory to discharge after having served APS for over 7 years. As the expected relief was not forthcoming in response to A-6 representation, the applicant made another representation dated 18.12.98 (A-11) highlighting his claim for regular posting as Group 'D' with effect from 15.8.98 with all consequential benefits. Meanwhile, the applicant who appeared for the Postman Examination of 1998, apparently did well in the Examination (A-10), but was denied the post as he was considered against EDA quota and not the departmental quota. On finding that his A-11 representation dated 18.12.98 also did not yield any result, the applicant has approached this Tribunal by filing the present O.A. seeking the following reliefs:

a) To quash Annexure-A3.

b) To declare that the applicant is entitled to be posted as Group 'D' on his repatriation from Army Postal Service and direct the respondents to post the applicant as Group 'D' retrospectively with effect from 15.8.1998, the date on which the applicant was repatriated with all consequential benefits.

c) Declare that the applicant is entitled to draw basic pay of Rs.2780/- plus O.A. so long as he continues as BPM, Ookode, and direct the respondents accordingly.

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d) To direct the respondents to review the result of Postman examination of 1998 undergone by the applicant treating the applicant against departmental quota of vacancies and to pass appropriate orders.

2. In the reply statement the respondents have resisted the O.A. by stating that the applicant was never appointed as Group'D' on a regular basis in the civil side at any time, that his seniors and juniors are still working as EDAs, that his appointment as Group'D' in the civil side for one day was purely for the technical purpose of his deputation to APS (Group'D') for which he had volunteered, that on the basis of R-1 memo dated 8.11.90, EDAs having minimum 3 years of service and educational qualification of Matriculation or equivalent were eligible to volunteer for deputation service in APS and that, therefore, the R-2 appointment order cannot be taken as a regular appointment order posting the applicant as Group'D'. It is maintained by the respondents that it was purely an ad hoc officiation for the limited purpose of deputation. Posting in a Group'D' post on regular basis could not be done before the applicant acquiring a right. The applicant has no case that any of his juniors are posted to Group'D', it is stated. The irregularity in issuing confirmation order in the case of Shri C.Sudheendra Bose which is cited as a precedent for fortifying the applicant's claim, was due to a mistake and the same was rectified by R-4 order dated 1.3.96, it is pointed out. Many of the applicant's seniors are still working as EDAs as their turn for promotion/regularisation as Group'D' has not come yet. The pay drawn by the applicant while on

deputation in APS cannot be allowed on repatriation to the civil side. R-3 letter makes it clear that there was no objection to the detailment of any category of EDAs who were eligible and have qualified to be appointed as Group'D' officials without any commitment on the part of the Department of Posts in the event of their return from the APS before their being regularly absorbed as Group'D' to appoint them in a Group'D' capacity. The appointment of the EDA to Group'D' was notional and the vacancy continues to be available after the detailment of the EDA to the APS. There was, therefore, no objection to a number of EDAs being sent to APS against the same vacancy, according to the respondents. Respondents cite the order of this Tribunal in O.A.1175/94 dated 22.3.95 (R-5) to support their contention that the applicant's claim for a posting in Group'D' capacity was legally not maintainable. The respondents would state that the facts cited in that case are identical to those arising in the present case and that, therefore, the findings of the Tribunal in that case rejecting the similar claim therein are applicable to this case. With regard to the applicant's claim that inspite of his qualifying for the Postman's Examination, he was not considered against the Group'D' quota, the respondents would state that the applicant did not have a claim against the Group'D' quota as he was not holding a Group'D' post in the civil side and accordingly he could be considered only against the ED quota and hence his exclusion.

3. In his rejoinder, the applicant reiterates his claim and contends that several posts of Group'D' were vacant and

the applicant should have been accommodated in one of them having regard to his regular service as Group'D' in the APS to which he was deputed as a Group'D' official. The respondents in their additional reply statement contest the applicant's argument by stating that whatever vacancies available in Group'D' would be filled on the basis of seniority and that since the applicant's seniors are still waiting to be absorbed as Group'D', he can expect to get it only when his turn comes. The respondents would emphasise the position that the applicant has not been brought on the approved list of EDAs for appointment to Group'D' post on the civil side and that as long as there are seniors who satisfy all the prescribed norms for being considered for such appointment, the applicant's case cannot be considered.

4. The applicant has filed an additional rejoinder in which he repeated his earlier submissions and underscored his main plea that when he proceeded on deputation to the APS he was Group'D' in the RMS (civil side), that he continued as Group'D' in the APS for over 7 years and that because of the operation of Clause(c) of Para 5 of Chapter I of Appendix 23 of the P&T Manual, Vol.IV, the applicant has acquired a right for rejoining the post of Group'D' from which he was deputed to APS.

5. We have heard Shri Thomas Mathew, learned counsel for applicant and Ms P Vani, learned ACGSC for the respondents. Learned counsel for the applicant has, apart from relying on the pleadings brought on record, raised the legal contention

that since a Group'D' official alone, and not an ED Agent, could be deputed to APS as per rules, the departmental authorities could not dilute the position by saying that those who were considered for deputation were not regularly posted as Group'D', but were in fact EDAs only. According to him, this is absolutely contrary to the relevant provisions of the P&T Manual. Learned counsel invites our attention to Appendix 23 of P&T Manual containing the rules and regulations governing the procedure for deputation of the P&T personnel to APS. While Group'D' (not above the Packers grade) is one of the categories of P&T personnel eligible for deputation to the APS, officials who are not likely to remain in continuous employment before being made permanent and EDAs are specifically mentioned as ineligible for such deputation. The learned counsel would also draw our attention to the fact that the applicant was granted the initial Army rank of Sepoy as per paragraph 24 of Chapter I of Appendix 23 dealing with the ranks granted to P&T personnel on the basis of their cadre status in the P&T department. It is also pointed that one of the requirements to be fulfilled when the volunteers are selected for APS deputation includes production and furnishing of an officiating certificate in respect of personnel working in temporary/officiating capacity in the proforma prescribed in Appendix-E read with Para 44(h)(iv) for the purpose of regulating their pay in the APS. The learned counsel for the applicant would submit that the mere fact that the applicant had signed a declaration at the time of his assignment on deputation would not disentitle the applicant to his legal right of posting to Group'D' on repatriation from the APS.

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The undertaking was compulsorily made, and it is well settled that such undertaking obtained from persons like the applicant, being an unequal party to the contract, could not be used against him. He would sum up his argument by stating that going by the rules as per the P&T Manual, the applicant was entitled to be posted back as Group'D' on repatriation from his deputation and any instruction or decision to the contrary issued or taken departmentally would not have the force of law.

6. Ms P Vani, learned ACGSC would reiterate the pleadings and contentions in the reply statements. She would urge that the applicant did not hold a lien on the post of Group'D', that his appointment as Group'D' being just for a day in order to enable him to be deputed to a Group'D' post in the APS would not have the effect of conferring any right on him to hold that post on repatriation and that as a volunteer for deputation to APS, he knew the implications thereof and had accordingly, signed the declaration. It cannot be said that the declaration was obtained under any coercion or undue influence or inducement. Placing her reliance on this Tribunal's decision in O.A.1175/94, the learned ACGSC would stress that all the material facts for consideration in this case had been thoroughly gone into by the Tribunal in the said decision before arriving at the conclusion that the applicant therein was not entitled to be posted as Group'D' on return from deputation except according to his normal turn.

9. 7. We have carefully considered the facts and contentions

in this case. The applicant was selected for deputation in the APS while he was EDBPM in Ookode. This is borne out by A-1. According to applicant's counsel, EDAs are not eligible for deputation to APS and the applicant got the deputation post by virtue of his occupying a Group'D' post in the P&T. The learned counsel's strenuous endeavour is to substantiate the applicant's basic argument that before he was sent on deputation, he had been appointed as Group'D' and that, being so, his Group'D' status would continue even at the point of his repatriation to the parent unit later. This argument is not sound for reasons to be discussed forthwith. But before that it is considered necessary to go through the provisions in the P&T Manual which have been relied on by the applicant and which according to us are relevant to decide the issue before us.

8. Part-II, Appendix No.23 of the P&T Manual, Vol.IV concerns itself with the terms and conditions and concessions admissible to volunteers from P&T Department serving on deputation in the APS. From the introduction to Chapter I to Para-II, Appendix No.23, it is abundantly clear that the said Chapter is only a convenient compendium of the Departmental Instructions regarding deputation of P&T personnel to the APS designed for easy reference and to serve us a ready guide to supervising officers and officials looking forward for deputation to APS. Paragraph 2 deals with categories of officials of the P&T Department eligible for deputation to APS. The eligible categories include;

"(a): Post Office, RMS and RLOs

- i).....
- ii).....
- iii).....
- iv).....
- v).....
- vi).....
- vii) Group'D' officials (not above the Pakcers' Grade)

b)"

While it is true that the eligible categories for deputation to APS include Group'D', it is significant to note that under exceptional circumstances, volunteers from categories other than those which are mentioned as eligible can also be deputed to APS. It is provided in Paragraph 3 which reads as under:

"3. In exceptional circumstances volunteers from categories other than those mentioned in para 2 above may be deputed to APS with the approval of P.and T. Directorate if their services are specially requisitioned by the Director Army Postal Services.."

Paragraph 5 deals with categories of personnel which are not eligible for deputation to the APS. The relevant part of the paragraph referred to by the applicant's counsel reads:

Paragraph(5) "The undermentioned categories are not eligible for deputation to the Army Postal Service:

- a)....
- b)....
- c) Officials who are not likely to remain in continuous employment before being made permanent.
- d) Extra Departmental Agents."

Thus, broadly certain categories of employees have been declared eligible and certain others declared ineligible. At the same time, under exceptional circumstances the authorities

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could take on deputation volunteers from categories other than those specifically mentioned as eligible. The Additional DG, APS, New Delhi's letter No.90413/APS-IC/R 341(b) dated 29.10.90 forwarded under the Chief PMG, Kerala Circle's covering letter dated 8.11.90 addressed to various Heads of Office within Kerala Circle(R-1) clearly corroborates the existence of the exceptional circumstances duly perceived and acted upon by the Postal authorities in the matter of deputation of P&T personnel to APS. The relevant excerpts of the said communication dated 29.10.90(R-1) cited above are quoted below:

"2. The manpower position of Gr C and D officials has become acute in the APS as were not getting required number of volunteers from the civil postal Divisions.

3. A large number of P&T officials having done their field service and now desirous of returning to their parent department on extreme compassionate grounds and on completion of initial terms of engagement are not able to be repatriated in time. This causes hardship to the officials and their continued retention in the APS against their desire also affects their morale. Divisional Supdts. and Chief PMGs may, therefore, be instructed not to withhold the applications of eligible volunteers for deputation to APS.

4. The literacy test prescribed for EDAs for selection to Gr D posts was abolished vide Dept. of Posts letter No.4431/89 SPB I dt.28.8.90. As such the eligible EDAs whose educational qualifications is matriculation or equivalent and have completed 3 years of continuous service may please be brought on the approved list by the Divisional Supdt. and deputed to APS."

From the above, it is clear that even EDAs with Matriculation or equivalent educational qualification and with 3 years of continuous service could be considered for deputation. However, in order to enable them to be posted against Group'D' vacancies in APS, it was considered technically necessary to

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allow them absolutely temporary and ad hoc promotion as Group'D' in the parent unit. The modality for detailing a large number of eligible EDAs without there being matching number of Group'D' posts in the P&T Department is, as rightly pointed out by the learned Additional Central Government Standing Counsel, explained in R-3.

9. With regard to the counsel's contention that the certificate of officiation as per proforma Appendix-E, read with Paragraph 44(iv)(h) of Chapter-I of Appendix-23, furnished by the applicant at the time of his joining the deputation post would clearly indicate that he was holding a Group'D' post to which he was legally entitled to return on repatriation to deputation, we are of the view that such officiating certificate does not come to the applicant's assistance. The certificate of officiation as per Appendix-E proforma is for the purpose of regulating the pay of the deputationists in APS. It has no bearing whatsoever on such deputationist employees' rights or status on repatriation from APS. The argument advanced by the applicant in this regard does not clinch the point at issue.

10. In our considered opinion, had it not been for the applicant's deputation to APS which required to be expedited, there would not have been any occasion or justification to make him officiate as Group'D' for one day. The lending and borrowing Units/Departments clearly understood it in that light and acted accordingly. There is no material from which

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it can be deduced that the applicant had any information or reason to believe otherwise. No doubt, the applicant and several other EDAs who volunteered were appointed as Group'D' for a day on specific dates against specific leave vacancies. The facts and circumstances would go to show that the dispensation was by way of purely temporary and ad hoc appointment. The department did not and could not vest the applicant with any right to regular appointment to Group'D' without adhering to the rules governing such appointments. In other words, the applicant in the first instance had never acquired a right to be appointed to Group'D' post nor could there be a presumption of any promise which later would give rise to a contention based on the theory of promissory estoppel. The respondents submission that if such a technical order or officiation is taken as regular posting to Group'D', all his seniors identically placed would also have a similar claim cannot be brushed aside on unreal grounds divorced from administrative prudence and appointment rules. The argument that the declaration containing the undertaking to the effect that the applicant would have no right to hold any post other than EDA in the event of his repatriation to the parent unit was obtained under undue influence or inducement or was given under a constraint from which he could not escape cannot be accepted. This is a case of deputation, not one of appointment for the first time. There is no scope for any presumption of an unconscionable undertaking or any inequality of bargaining power inflicted on the applicant thereby handicapping him vis-a-vis the employer. He volunteered for the APS deputation. Many persons junior to him also might

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have opted for such deputation while many of his seniors might have stayed back. The implications were made known to him. Therefore, the applicant cannot take refuge under the argument that he had no alternative but to sign an unequal contract.

11. The applicant's claim that he was entitled to be considered against the Group'D' quota for promotion to Postman also does not have any merit for the same reasons discussed above. The applicant being an EDA could not have been considered against Group'D' quota.

12. On a perusal of the records, we find that the earlier order of this Tribunal in O.A.1175/95 (R-5) dated 22.3.95 turn on identical facts and issues. In our considered opinion, factually and legally this case is on all fours with the one considered by this Bench of the Tribunal in O.A.1175/94 dated 22.3.95. After going through all the relevant facts including the legal aspects of seniority, lien etc., the Bench held:

"Till 1.1.1991 the EDDAs had to pass a literary test for selection to Group'D' post. From 1.1.1991 this requirement had been abolished and selection from EDAs to Group'D' was on the basis of seniority, subject to satisfactory service (R2). At the time of deputation of the applicant in March 1991 this new procedure had come into force and therefore applicant could have got a Group'D' post only on the basis of seniority subject to satisfactory service. It is not the contention of the applicant that he was senior enough to have got a Group'D' appointment on the basis of his seniority and satisfactory service. Respondents state that several senior eligible EDAs are there in the Division waiting for years for appointment as Group'D'. It is therefore clear that the appointment order A-1 appointed the applicant temporarily to a Group'D' only for the limited purpose of deputing him to APS and enabling him to draw the higher pay of Group'D' while working in the APS. The appointment order A-1 clearly mentions that the applicant was appointed as temporary

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Group'D' official. Such an appointment does not give the applicant any right of lien to the post of Group'D' since the lien would arise only on his regular appointment against a substantive vacancy to a Group'D' post. The position regarding deputation to APS is clearly summarised and stated in R7. It may be noticed that R7 is not a set of instructions which comes into force from the date of that letter, but is a summary of the position taken by the department in such cases. R7 makes it clear that deputation to APS as Group'D' official does not confer any right on the person deputed to a Group'D' post and that on return applicant can be considered only for the ED appointment held prior to joining APS unless in the meantime applicant has been appointed to a Group'D' post on a regular basis. This position has also been made clear to the applicant when the respondents obtained an undertaking from him. If the applicant did not agree to the terms of the deputation or the undertaking, he could have opted to return to his original posting of EDA at that time itself. It was the duty of the applicant to have familiarised himself about the terms of deputation before volunteering for deputation. In any case applicant who had only been temporarily posted to a Group'D' post cannot of right claim that post when his seniors are working only as EDAs. Applicant has to wait for his turn to be appointed to a Group'D' post as stated by the respondents in their reply."

We are in respectful agreement with the above findings.

13. On the facts and circumstances of the case and for reasons discussed above, we are unable to grant any of the reliefs prayed for in this O.A. The O.A. is accordingly dismissed. Parties shall bear their respective costs.

Dated, the 16th October, 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

APPLICANT'S ANNEXURES :

1. Annexure A-1 : True copy of Memo No.B/Rectt/APS, dated 19.3.1991 issued by the 1st respondent.
2. Annexure A-2 : True copy of Medical opinion dated 3.8.1994 issued by Military Hospital, Kamptee.
3. Annexure A-3 : True copy of letter No.B/Rectt/APS/Dlg dated 2.3.1998 issued by the first respondent.
4. Annexure A-4 : True copy of opinion of Army Hospital dated 24.4.98.
5. Annexure A-5 : True copy of discharge-cum-move order dated 15.6.98.
6. Annexure A-6 : True copy of applicant's representation dated 1.7.98, addressed to the first respondent.
7. Annexure A-7 : True copy of page 7 of discharge certificate showing applicant's service in army.
8. Annexure A-8 : True copy of page 11 of discharge certificate showing disability.
9. Annexure A-9 : True copy of Last Pay certificate .
10. Annexure A-10: True copy of marks secured in the Postman Examination held ion 1998.
11. Annexure A-11: True copy of applicant's representation dated 18.12.1998 addressed to the first respondent.
12. Annexure A-12: True extract of seniority list of E.D.Agents as on 30.6.89 published by the 1st respondent.
13. Annexure A-13: True copy of Memo No.GL/35 dated 26.3.91 issued by the Sub Divisional Inspector of Post Offices, Nedumangad.
14. Annexure A-14: True copy of Memo No.GL/35 dated 27.10.93 issued by the Sub Divisional Inspector of Post Offices, Nedumangad.
15. Annexure A-15: True extract of Department of Posts letter No.44-31/87-SPS.I dated 28.8.90.
16. Annexure A-16: True copy of Rule 5 of Appendix 23 of P & T Manual Vol.IV..

RESPONDENT'S ANNEXURES :

17. Annexure R-1 : True copy of Order No.ST/301/Dlg^{gs}, dated 8.11.1990 by the Department of Post Office of the Chief Post Master General, Kerala Circle, Trivandrum.
18. Annexure R-2 : True copy of the Order of appointment issued by the 2nd respondent dated 26.3.1991.
19. Annexure R-3 : True copy of the Order No.ST/301/Dlg/91 dated 31.5.1991 issued by Major Deputy Director APS.
20. Annexure R-4 : True copy of the Memo No.G1.35 dated 1.3.1996 by the office of the Sub Divisional Inspector of Post Offices, Nedumangad.
21. Annexure R-5 : True copy of the judgment in O.A No.1175/94 by C.A.T, Ernakulam Bench.
22. Annexure R-6 : True copy of declaration given by the applicant.
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