

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 197 of 2003

Monday, this the 4th day of August, 2003

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HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. R. Bhadran,
Group 'D' (Non-test Category) Sweeper,
Postal Stores Depot, Trivandrum-23Applicant

[By Advocate Mr. Thomas Mathew]

Versus

1. Senior Superintendent of Post Offices,
Trivandrum North Division,
Trivandrum.
2. Superintendent,
Postal Stores Depot, Trivandrum-23
3. Chief Postmaster General,
Kerala Circle, Trivandrum.
4. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.Respondents

[By Advocate Mr. S.K. Balachandran, ACGSC]

The application having been heard on 4-8-2003, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, who was working as Gramin Dak Sevak Mail Deliverer (GDSMD for short), Perunguzhi, was deputed to work as Group D (Non-test Category) Sweeper purely as a stop gap arrangement as per Annexure A2 order dated 17-5-2002 issued by the 1st respondent. The applicant joined the Group D post on 23-5-2002. By the impugned order dated 31-5-2002 (Annexure A3) the applicant was informed that the applicant's appointment as Group D (Non-test Category) Sweeper was purely on adhoc basis at Postal Stores Depot, Trivandrum with effect from 23-5-2002

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for a period of 89 days. On 19-8-2002 the applicant was relieved on expiry of 89 days. The applicant had to relinquish charge on that date. He was again permitted to assume charge in the same post in the same place on 22-8-2002, i.e. after a break of two days, vide Annexure A5 charge report. Again, on the expiry of 89 days the applicant was relieved on 18-11-2002 as is revealed by Annexure A6 charge report. After a break of one day, the applicant again assumed charge on 20-11-2002 as per Annexure A7 charge report. Though the date of expiry of the term was 16-2-2003 as per Annexure A7, the applicant was allowed pay and allowances upto 14-2-2003 instead of the full length of 89 days. However, on 17-2-2003 the applicant is seen to have assumed charge again. According to the applicant, since he had been selected for appointment to the post of Group D (Non-test Category) Sweeper on the basis of his willingness as well as seniority, the artificial breaks of service during the various spells were uncalled for. The applicant apprehends that the respondents' move was to treat him on par with casual mazdoors with corresponding rate of wages. The applicant claims that he is entitled to continue as Group D in the vacant post till a regular appointment is made. Describing the action on the part of the respondents as arbitrary, unfair and unconstitutional, the applicant seeks the following main reliefs:-

- "i) quash Annexure A3 and A7 to the extent it appoint the applicant for 89 days;
- ii) to declare that the break imposed on the applicant's service on 20.8.2002, 21.8.2002 and 19.11.2002 is illegal, arbitrary and the applicant is entitled to the benefits of continuous service with effect from 23.5.2002 in the grade of Group 'D' (Sweeper) and direct the respondents accordingly; and
- iii) declare that the non-drawal of applicant's pay and allowances from 15.2.2003 and the move taken to treat the applicant as mazdoor with effect from 15.2.2003 and payment to be made on mazdoor charges is illegal and arbitrary and

discriminatory to deny due service benefits to this applicant including regularisation violating Articles 14 and 16 of the Constitution and direct the respondents to disburse the pay and allowances of the applicant for February 2003 from 15.2.2003."

2. In their reply statement the respondents have stated that the practice of giving appointment as Group D on adhoc basis repeatedly being irregular, the respondents decided to follow the correct procedure by engaging the applicant on extra cost arrangement. The applicant's selection was being not based on seniority but on willingness, he cannot demur against the terms of the appointment on expiry of the term of appointment. The applicant was directed to work as mazdoor on extra cost arrangement in accordance with the instructions on the subject. Respondents have produced Annexure R1 charge report which shows that the applicant has assumed charge as Group D on extra cost arrangement.

3. In the rejoinder, the applicant has reiterated his pleadings in the OA and contended that there was no justification for treating the applicant as Group D under extra cost arrangement, since he, in his capacity as GDSMD, was appointed as Group D (Non-test Category) Sweeper as per Annexure A2. Therefore, any move on the part of the respondents to put him under extra cost arrangement was vitiated by malafides, since the whole idea seems to be to convert his position into that of a mazdoor.

4. Respondents in their additional reply statement have cited Annexure R3 instructions from the Directorate of Posts to the effect that remuneration payable to unapproved candidates working as paid substitutes in short-term vacancies should be under extra cost arrangement only. Respondents have also

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relied on Rule 296 of the Financial Handbook Manual Vol.I (Annexure R4) and stated that the extra cost arrangement was, therefore, based on valid instructions on the subject.

5. We have heard Shri Thomas Mathew, learned counsel for the applicant and Shri S.K.Balachandran, learned ACGSC appearing for the respondents.

6. Taking us through the pleadings in the OA and the rejoinder, Shri Thomas Mathew, learned counsel for the applicant, has argued that the applicant having been appointed as per Annexure A2 order on deputation to carry out the duties of Group D (Non-test Category) Sweeper at the Postal Stores Depot, Trivandrum on the basis of a regular selection process, his service ought not to have been made to suffer any breaks by an unreasonable and arbitrary action on the part of the administration. According to him, the applicant ought to have been allowed to continue as Group D (Non-test Category) Sweeper at Postal Stores Depot, Trivandrum on the basis of the terms under which the appointment was effected until such time that a regular appointment was made in the retirement vacancy. He would, accordingly, contend that the applicant should be construed to have been a Group D employee from the very first date of his taking over charge, viz. 23-5-2002, by ignoring the artificial periodical breaks caused arbitrarily by the respondents. Consequently, the applicant should be entitled to the pay and allowances of Group D, learned counsel would submit. According to the learned counsel for the applicant, the artificial breaks have been deliberately caused only to deny the applicant's legitimate pay and allowances as Group D and in that process to push him to the level of a mazdoor. Shri Thomas Mathew would also invite our attention to the order of this Tribunal in OA No.421/97 on similar facts situation in

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which this Tribunal has held that artificial breaks imposed on an ED Agent who was appointed as Group D on adhoc basis should be ignored and that the employee would be entitled to annual increments, earned leave and other benefits available to the Group D employees.

7. Shri S.K.Baláchandran, learned ACGSC appearing for the respondents, on the other hand, relied on the reply statement and additional reply statement and would vehemently contend that the applicant who had expressed his willingness on the basis of the terms and conditions prevailing in respect of the appointment of Group D Sweeper from amongst the willing ED Agents, could not object to the break in service which was necessitated by the conditions of service under which he was deputed to hold the post. Reliance is placed by the learned counsel in this regard on the documents Annexure R2 to Annexure R4 filed along with the reply statement/additional reply statement.

8. We have examined the records and have considered the arguments put forward by the learned counsel on either side. We notice that the applicant was appointed on deputation basis to hold the post of Group D (Non-test Category) Sweeper at Postal Stores Depot, Trivandrum after he expressed his willingness. It is true that he was given engagement for 89 days in the first instance and this was followed by several spells of artificial break and assumption of charge. In our opinion, such artificial breaks are not warranted by the terms of appointment. It is found that the occasion for seeking willingness from GDSS (EDAs) for appointment on adhoc basis as a stop gap arrangement was the retirement of the incumbent in that post at Trivandrum. Therefore, in our view, the respondents could not create artificial breaks and reengage the

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applicant at several spells just to deny his legitimate rights. It is not as though during the breaks the applicant was sent back to his original post, viz. GDSMD at Perunguzhi. In our opinion, therefore, the applicant should have been allowed to continue as Group D (Non-test Category) Sweeper on the basis of Annexure A2 order itself. Respondents were, ofcourse, free to terminate the deputation as and when they decide to fill the post on a regular basis or by throwing open the appointment to suitable and willing GDSs, in which case the applicant would naturally get another opportunity to offer himself as a candidate. Documents R1 to R4 relied on by the respondents do not support the proposition that the applicant could be treated as a mazdoor on extra cost arrangement. Since the applicant was deputed to work as Group D Sweeper on stop gap arrangement and he had availed leave without allowance (LWA) from the post of GDSMD, Perunguzhi, the breaks imposed as well as the stipulation that his engagement was under extra cost arrangement are arbitrary and hence unsustainable.

9. In view of the above discussion, we hold that the entire period with effect from 23-5-2002 onwards spent on duty by the applicant as Group D Sweeper should be treated as on duty as Group D (Non-test Category) Sweeper and the applicant shall be entitled to all consequential benefits including pay and allowances, notwithstanding the artificial breaks effected by the respondents which we have held to be unsustainable. The impugned Annexure A3 and Annexure A7 orders to the extent to which those are inconsistent with the findings above are set aside. The applicant is entitled to the benefits of continuous service from 23-5-2002 in the grade of Group D (Non-test Category) Sweeper. The respondents are directed to grant the applicant all the consequential benefits including monetary

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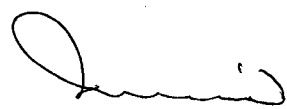
benefits for the entire period with effect from 23-5-2002 ignoring the artificial breaks within a period of two months from the date of receipt of a copy of this order.

10. The Original Application is disposed of as above. No order as to costs..

Monday, this the 4th day of August, 2003



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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