

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.198/2012

TUESDAY..... this the 24th day of MARCH..... 2015

C O R A M :

**HON'BLE Mr.NARESH GUPTA, ADMINISTRATIVE MEMBER
HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER**

Ajeesh.K.K.,
S/o.Karunan,
Residing at Kuniyil House,
Ambukuttimaithanam,
Mananthavady Post Office – 670 645.

...Applicant

(By Advocate Mrs.R.Jagada Bai)

V e r s u s

1. Union of India
represented by the Secretary to Department of Posts,
New Delhi – 110 001.
2. The Superintendent of Post Offices,
Thalassery Division,
Thalassery – 670 101.
3. Inspector of Post Offices,
Mananthavady Sub Division,
Mananthavady – 670 645.
4. P.Gangadharan,
Gramin Dak Sevak Mail Deliverer,
Vallat Post Office,
Thalapuzha – 670 644.Respondents

(By Advocate Mr.A.D.Raveendraprasad,ACGSC [R1-3])

This application having been heard on 5th February 2015 this Tribunal
on 24.03.2015 delivered the following :



ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant's case is that he was appointed as Gramin Dak Sevak Mail Deliverer (GDS MD) at Vallat Post Office on provisional basis vide Annexure A-2 on the basis of a notification issued by Respondent No.3 announcing that vacancy. Annexure A-2 appointment was made after interviewing him along with 15 others. Since he had secured the highest marks in the SSLC examination, he was selected for the post after observing the due recruitment formalities. After joining duty as GDS MD in the above said Post Office, he was placed in a scale of pay of Rs.4220-75-6470. Annexure A-4 is the copy of the pay slip for the month of January, 2010. Annexure A-5 is the copy of the pay slip for the month of February, 2010. In October, 2010 a sum of Rs.275/- was recovered from his pay towards the first premium of Fidelity Guarantee Bond, as is indicated in Annexure A-6 pay slip. He was granted his first increment on completion of a period of increment and he was inducted into the Central Government Employees Group Insurance Scheme (CGEGIS), which is mandatory for permanent employees, with a monthly premium of Rs.50/-. Till an elapse of 21 months no formal appointment order was issued in his favour. However, vide Annexure A-9 dated 30.9.2011 his appointment was abruptly terminated by Respondent No.2 and in his place Respondent No.4, who was working as Gramin Dak Sevak Mail Carrier (GDS MC), was posted abolishing that post. Aggrieved by this, applicant has approached this Tribunal seeking the following reliefs :



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1. Quash Annexure A-9.
2. Order reinstatement of the applicant as Gramin Dak Sevak Mail Deliverer Vallat Post Office with all consequential benefits.
3. Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.
4. Grant costs to the applicant.

2. A reply was filed by the respondents stating that since the Postal Directorate issued Annexure R-1 letter directing that the establishment of Branch Offices should not exceed three persons including the BPM and that wherever a Branch Office establishment exceeds three, the excess post should be redeployed/kept vacant immediately. But since the other GDSSs available at Vallat Branch Office are having sufficient work load the duty of GDSCMC cannot be entrusted to them and the post of GDSCMC was kept vacant or redeployed immediately. There were also no suitable private buses in the route to mechanise the GDSCMC route. In July, 2009 the post of GDSCMD-II, Vallat became vacant due to the resignation of the regular incumbent of the post. Since filling up of the post on regular basis was not permissible and the work of the GDSCMD was not manageable by the other GDSSs of Vallat Branch Office, provisional appointment was made in the post of GDSCMD-II, Vallat following all recruitment formalities with an intention to terminate his appointment to accommodate Respondent No.4 the regular incumbent of the post of GDSCMC, Vallat who was in continuous service with effect from 30.6.1994, on mechanisation of the GDSCMC route. According to the respondents, the applicant was provisionally appointed with effect from 23.1.2010. In the meantime, a proposal for entrustment of mail conveyance to KSRTC bus was taken up in December, 2009 and after



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getting the approval from KSRTC authorities in July, 2011 the GDSCMC line was mechanised with effect from 1.10.2011, thereby redeploying the Respondent No.4 as GDS MD II, Vallat and terminating the provisional appointment of the applicant. The respondents contend that applicant's appointment was purely on provisional basis as is evident from Annexure A-2. The drawal of increment and recovery towards CGEGIS was a mistake on the part of the Pay Drawing Authority which cannot be taken as a proof that he was regularly appointed to the post of GDSCMD II, Vallat.

3. A rejoinder was filed by the applicant stating that the applicant's appointment had been bearing all characteristic of regular employment like the Fidelity Guarantee Bond and induction to CGEGIS for which provisional appointees are not eligible. Moreover, he was granted increment when he completed a period of increment. According to the respondents even as per Annexure R-1 communication from the Directorate and as per the letter of Director General P&T No.43-4/77-Pen dated 23.2.1979 it can be seen that the policy of the department is to keep the surplus/displaced GDSs on waiting list for alternate appointment in the vacancies to come. It is further stated by the applicant that Respondent No.4 who was holding the post of GDSCMC, Vallat on becoming surplus could be posted as GDS MD, Ellumandam and Payyambilly where such vacancies had arisen. Since his appointment more than three posts fell vacant in the Manathavady Recruiting Division, yet no action was taken by the respondents to redeploy Respondent No.4 in any one of the vacant post.



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4. An additional reply statement was filed by the respondents reiterating the reasons why Respondent No.4 had to be redeployed as GDSMD at Vallat and stating that induction of the applicant in the CGEGIS and granting him increment were done by way of a mistake on the part of the Pay Drawing Authority.

5. An additional rejoinder was again filed by the applicant pointing out that in all cases of notifying the vacant post of GDS for recruitment the respondents indicate that initial appointment will be given on purely temporary basis, which does not mean that such persons would be terminated after appointment as has been done in the case of the applicant.

6. We have heard Smt.Jagada Bai, learned counsel for the applicant and Shri.A.D.Raveendraprasad, learned ACGSC for the respondents. Learned counsel for the applicant relied on the order dated 1.11.2010 of this Tribunal in O.A.No.494/2009.

7. The controversy in this case is revolving around the nature of appointment the applicant has been given vide Annexure A-2. According to the respondents, by reason of Annexure R-1 administrative instruction from the Postal Directorate that a Branch Office shall not consist of more than three employees, the respondents had to redeploy one Mail Carrier ie. Respondent No.4 who was working since 1994. Moreover, it is stated that the post of Mail Carrier had to be abolished because of the mechanisation of



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Mail Carrier route by making arrangement for mail conveyance through the KSRTC bus service which could be materialised only with effect from 1.10.2011. It is also contended by the respondents that the post of the regular Mail Deliverer-II became vacant due to the resignation of the incumbent of that post and hence it was decided to make appointment to that post on provisional basis. Respondents state that it was in this backdrop the applicant was selected and appointed on provisional basis vide Annexure A-2 order. According to applicant subsequent to his appointment he was working in that post with all the trappings of a regular GDS with increment, execution of Fidelity Bond and even getting enrolled to the CGEGIS. Respondents contend that from the very beginning the intention of giving appointment to the applicant was purely on provisional basis as is revealed from Annexure A-2 order and that the other facilities granted to him by way of increment and making him a member of CGEGIS were mistakes committed by the Drawing Authority.

8. It is worthwhile to have a look at Annexure A-2 appointment order by which the applicant was appointed as GDS MD of Vallat Post Office. The relevant portion of Annexure A-2 is extracted below :

DEPARTMENT OF POSTS, INDIA
Office of the Inspector Posts
Mananthavady Sub Dvn.
Mananthavady – 670 645.

Memo.No.B3/2010/Vallat/GDSMD/dtd. at Mdy the 23.1.2010

PROVISIONAL APPOINTMENT ORDER



Whereas the post of Gramin Dak Sevak Mail Delivery agent Vallat PO (name of the post and post office of duty) has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately. The appointing authority has therefore decided to make provisional appointment to the said post for a period of days from 23.1.2010 to or till regular appointment is made, whichever period is shorter.

2. Shri/Smt.Ajeesh KK Kuniyil house PO Ambuthy mydanam Mananthavady PO (Name and address of the candidate) is offered the provisional appointment to the said post. He/she should clearly understand that the provisional appointment is purely temporary and on contract basis and is liable to be terminated by the appointing authority at any time without notice and without assigning any reason and that he/she is required to hand over the charge to the regularly selected candidate, if he/she is not so selected later.

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5. Shri/Smt.Ajeesh KK (provisional candidate) should clearly understand that the service rendered in the provisional appointment will not count towards regular service as Gramin Dak Sevak.

6. The provisional appointment is subject to the outcome of verification of character and antecedents, caste certificate and marks card. If the outcome of verification of character and antecedents were adverse, the provisional appointment would be terminated. If the caste certificate/marks card is found to be false, the provisional appointment would be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of Indian Penal Code for production of false certificates.

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8. The appointing authority also reserves the right to terminate the provisional appointment at any time before the period mentioned in para 1 above without notice and without assigning any reason.

9. Shri/Smt.Ajeesh KK shall be governed by the Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 and all other rules and orders applicable to Gramin Dak Sevaks.

10.

Sd/-
Signature and designation of the
Appointing Authority

To
Sri.Ajeesh KK, Kuniyil house,
Ambuthy mydanam, Mananthavady PO.

Copy to :

1. The Branch Postmaster, Vallat PO.
2. The Sub Postmaster, Thalapuzha.
3. SPOS Thalassery Dvn.
4. PM Kalpetta HO.
5. Spare.



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9. Applicant in the additional rejoinder states that respondent department has been stating in all cases of posting of GDS that such posts as purely temporary. He refers to Annexure A-12 as an example of this type of statement in the notifications of vacancies for the post of GDSSs.

10. Learned counsel for the applicant pointed out that the administrative instruction as revealed from Annexure R-1 itself says that a redeployed or displaced GDS has to be kept on waiting to be posted in the next available vacancy at the same place or some other nearby place. It is worth noting that applicant has put in service for more than one year. Having undergone a regular recruitment process and after having worked for a fairly long time, it was only just and proper that the applicant ought to have been kept on waiting when he had to be displaced on account of the restructuring that took place in the establishment of Vallat B.O.

11. In the circumstances of the case, respondents are directed to keep the applicant in a waiting list from the date on which he was relieved and he shall be considered for a vacancy of GDS in the same division or in the nearby divisions to be posted as GDS MD with pay and allowances to be given from the date of his appointment and not back date ie. 1.10.2011.

(Dated this the 24th day of March 2015)

U. Sarathchandran

U.SARATHCHANDRAN
JUDICIAL MEMBER

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Naresh Gupta
NARESH GUPTA
ADMINISTRATIVE MEMBER