

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 19-10-1989

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

DA NO.206/89

C Vijayan : Applicant

Vs.

- 1 The Sub Divisional Inspector,
Post Offices,
Badagara Sub Division,
Kozhikode.
- 2 The Senior Superintendent of
Post Offices, Badagara Division,
Badagara.
- 3 The Post Master General of Kerala
Post Master General's Office
Trivandrum
- 4 The District Employment Officer
District Employment Office
Kozhikode

: Respondents

M/s Johnson Manayani &
PC Sasidharan : Counsel of Applicant

Mr PVM Nambiar, Sr CGSC : Counsel of Respondents

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Hon'ble Shri NV Krishnan, Administrative Member.

This application has been filed for the issue of
a direction to the Respondents not to terminate the
appointment of the applicant as ED Branch Post Master,
Mattanode and to regularise his service in the post.

2 The facts of the case can be briefly noticed.

The applicant was initially appointed on 6.2.88 (Annexure-A)
as an ED Branch Post Master on ad-hoc and provisional

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basis at Mattanode Post Office in place of the previous incumbent, Shri C Kannan Nair who died on 15.1.88.

2.2 The applicant claims that proceedings to recruit an ED Branch Post Master on a regular basis were initiated by the Respondents. An interview was held on 6.7.88 of the candidates sponsored by the Employment Exchange for this purpose. The Respondents state that the applicant was provisionally selected for the post on the basis of the interview and therefore, he was allowed to continue on the post. The applicant contends that the selection was not for a provisional appointment, but for a regular appointment.

2.3 This application was presented before this Tribunal when the applicant did not receive any formal orders of appointment and he came to understand that the Respondent-2 (Senior Superintendent of Post Offices, Badagara Division, Badagara) was taking steps to terminate his services.

3.1 In the reply filed by the Respondents, it is stated that the interview held on 6.7.88, in which the applicant was also participated and selected, was on the basis of a requisition to the Employment Exchange for a purely temporary appointment to the post, as can be seen from the copy of the requisition exhibited as Annexure R-2. Hence, the applicant's appointment will continue to be provisional and it is liable to be terminated when regular appointment to the post is made.

3.2 It is stated that N Sethumadhavan, S/o Shri C Kannan Nair, who died on 15.1.88 in harness as ED Branch Postmaster,

Mattanode had applied in February, 1988 for compassionate appointment to the post. As the local officials were inclined to accept his request and it was also felt that the procedure and formalities to obtain the necessary sanction would take a long time, it was found advisable to make a provisional appointment in the meanwhile. It is in this circumstances that the applicant came to be appointed provisionally from 6.7.88 on the results of the interview, though a formal order was not issued to him.

3.3 The Postmaster General had conveyed his sanction dated 25.1.89 (Annexure R3) to the appointment of the said N Sethumadhavan on compassionate ground as ED Branch Postmaster in the Badagara Division (Annexure R3). It was, therefore, necessary to appoint him at the Mattanode Post Office. This could not be done in view of the interim direction given by this Tribunal in favour of the applicant in this case.

3.4 The Respondents, therefore, contend that the applicant has no case to be appointed ~~on a regular basis~~ ^{ed} and this application should be dismissed.

4 We have heard the counsel of both sides and also perused the records.

5 The counsel for the applicant has, in this connection, drawn our attention to the instructions of the Director General of Posts & Telegraphs in his letter No. 43-4/77-Pen dated 18.5.79 referred to by him in his rejoinder.

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These instructions are as follows:-

(a) ~~No~~ provisional appointment should be made to fill up a vacancy due to retirement, as the retirement can be anticipated.

(b) ~~Further~~, in the case of vacancy arising due to death of an incumbent, ~~will be needed, but~~ provisional appointment/should be for a specific period to be indicated in the order and the appointment order should be in the form Annexure-A to those directions.

(c) When the vacancy is due, an ED Agent being put off duty pending departmental or judicial proceedings which are likely to take more time and nothing can be said definitely as to when the proceedings will come to an end, a provisional appointment can be made and the appointment order should be in Annexure B to those directions.

6. This argument has been sought to be met in the first additional reply by stating that even a provisional appointment can be made after calling names from the Employment Exchange and interviewing the candidates. He relied upon the instructions of the Director General, P&T in letter No.41-286/87-PE II dated 14.12.87 referred to in that reply which reads as follows:

" A reference is invited to this office letter No.43-4/77-Pen dated 18.5.79 containing instructions regarding provisional appointment of EDAs. The mode of the provisional appointment was not indicated in the Instructions. It is understood that such provisional appointments are made in some Circles on the spot by SDIs or Divisional Superintendents, without going through the prescribed process of recruitment, and the provisionally appointed substitute may not be a nominee of the Employment Exchange but may continue for long on provisional basis. Keeping in view these circumstances, the Post Master General, Kerala Circle has suggested that the provisional appointments should also be made through Employment Exchange. After careful

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consideration it has now been decided that provisional appointment of EDAs which are expected to continue for a long period should be made in the light of instructions contained in letter No. 45-22/71-SPB-1 /Pen dated 4.9.82. However, it should be made clear to the Employment Exchange and the selected candidate that his appointment is purely on provisional basis and liable to be terminated whatever the length as the service may be, in case it is ordered to reinstate the regular incumbent and the appointment letter may be issued in the respective forms as prescribed in letter No.43-4/77-Pen dated 18.5.79 referred to above". (emphasis ours)

7 A perusal of the extracts reproduced above will make it clear that these instructions have been issued only in the context of the provisional appointment to be made when departmental/judicial proceedings are pending against a regular employee. They cannot apply to the provisional appointment made to a vacancy caused by the death of a regular incumbent. This is due to the fact that on the spot provisional appointment could be made and proceedings could be initiated simultaneously for which need not take a long time making the regular appointment. It is for that reason that the direction requires that the appointment order should be for a specific period only by which time the proceedings for regular appointment could be completed. This possibility has to be ruled out in the case of a vacancy arising on account of the initiation of the departmental/judicial proceedings against a regular incumbent, as one does not know when these proceedings will be completed. They can take a long time. Hence, while an on the spot appointment can be made to carry on the work, a provisional appointment after calling names from the Employment Exchange should be made in such

cases. It is in this context that the underlined portion of the instructions extracted in para 6 above makes a sense. For, it states that both the Employment Exchange and the Selected candidate should be informed that the appointment is temporary and will be terminated in case the regular incumbent is reinstated.

8 In view of the foregoing analysis we are of the view that the instructions dated 14.12.87 of the Director General, P&T relied upon ^{by} the respondents does not lead to the conclusion that the applicant's appointment in the present case is provisional in nature.

9 However, as we are taking certain other circumstances also into account, we feel that we are not required to decide in this case whether the department can resort to provisional appointment by calling names a case where from the Employment Exchange only in /the vacancy to be filled up has arisen due to the initiation of departmental/judicial proceedings against the regular incumbent, even though such a conclusion can legitimately be drawn from the instructions dated 14.12.87.

10 It is admitted that N Sethumadhavan, in whose favour orders have been received for compassionate appointment, has been appointed as ED Branch Postmaster at Kayanna Bazar Post Office, which is a regular vacancy.

The sanction of the Postmaster General in this regard (Annexure R3) does not appoint him to the Mattanode Post Office. Respondent-2 has been authorised in this

order to appoint him any where in the Badagara Division and he has already been so appointed in Kayanna Bazar Post Office.

11. The learned counsel for the Respondents did not have any strong arguments as to why N. Sethumadhavan should be posted, on compassionate grounds, to Mattanode Post Office only, which if allowed as legal, will lead to the termination of the services of the applicant.

12. In the circumstances, we are of the view that the applicant who has been subjected to the formalities of recruitment procedure applicable to the recruitment of ED Branch Postmaster on a regular basis - even though the Respondents state that it was only a provisional appointment - should not be disturbed from the post he is holding at present at Mattanode Post Office. We note that this can be achieved without depriving N. Sethumadhavan of the compassionate appointment granted to him by the Post Master General by allowing him to continue at Kayanna Bazar Post Office. We direct accordingly.

13. In these circumstances, we also direct that the applicant should be deemed to have been regularly appointed after proper selection in accordance with the provisions of law/standing instructions with effect from 6.7.88, ie, the date on which he, alongwith other candidates sponsored by the Employment Exchange, were interviewed by Respondent-2 for what was intended by him to be only a provisional appointment.

14. The present order is to be dated 10.7.88.8...

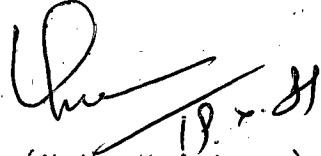
For the Additional Director of Posts

14. The application is allowed with the directions as above. There will be no order as to costs.


(N. Dharmadan)

Judicial Member

19.10.89


(N.V. Krishnan)

Administrative Member

19.10.89