

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.220/2005

Thursday this the 21st day of July, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

S. Bijukumar,
Gramin Dak Sevak Mail Deliverer,
Manikandeswaram P.O.,
Vattivoorcavu, Trivandrum. **Applicant**

(By Advocate Shri Thomas Mathew)
Vs.

1. Assistant Superintendent of Post Offices,
East Sub Division, Trivandrum -685 005.
2. Superintendent of Post Offices,
South Postal Division, Trivandrum -695 014.
3. Chief Postmaster General,
Kerala Circle, Trivandrum.
4. Director General,
Department of Posts, New Delhi;.
5. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.

(By Advocate Shri P.M.Sai, ACGSC)

**(The application having been heard on 21.7.2005
the Tribunal on the same day delivered the following:**

ORDER

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant started employment as EDDA re-designated as GDS - MD w.e.f. 28.10.1997. According to him he has completed a satisfactory service of 7 years and 2 months on 1.1.2005. The applicant has applied to appear the examination for the recruitment to the cadre of Postman on 23.2.2005, but he was not allowed to appear in the examination. Aggrieved by the inaction on the part of the respondents the applicant has

filed this O.A. seeking the following main reliefs:

- i). Quash Annexure A4 to the extent it determines the length of service after regular appointment appearing at sub para (iii) of para 8; and quash Annexure R1.
- ii) declare that the applicant is entitled to take the examination for recruitment to the cadre of Postman in terms of the eligibility condition prescribed at sub para II of para 5 of Annexure A4 and direct the respondents to consider the applicant for appointment to the cadre of Postman;
- iii) direct the respondents to admit the candidature of the applicant to the examination for recruitment to the cadre of Postman to be held on 3.4.2005.

2. The further contention of the applicant in this O.A. is that as per Clause 5(ii) of the Recruitment Rules (A4) dated 18.2.2005, the eligibility of the candidate for consideration is "5 years satisfactory service".

3. The respondents have filed a reply statement contending that, the applicant was engaged as GDSMD on a stop gap arrangement w.e.f. 28.10.1997 in the place of a regular incumbent who was deputed to Army Postal Service. The applicant was not subjected to any regular appointment as stipulated in the recruitment procedures nor to a provisional appointment. The contention of the applicant that he was provisionally appointed is denied by the respondents. The applicant has been engaged as a stop gap arrangement and he could not claim the status of a provisional or regular appointee, who has not been selected as per normal recruitment procedures. In the reply statement the respondents took a plea that, the length of service will be determined with effect from the date from which the GDS is continuously working after regular appointment, which is legal and valid since a person who is not appointed on regular basis to a cadre has no right to claim career progression open to the regular employees of that cadre. The applicant did not have five years service as on 1.1.2005 because his provisional appointment order was issued only on 2.7.2001.



4. The applicant has filed a rejoinder in which it is stated that he was working as GDSMD, Manikanteswaram intermittently from 23.11.1992 to 14.12.1996 as per Annexures A9 and A10.

5. We have heard Shri Thomas Mathew, learned counsel appearing for the applicant and Shri P.M.Saji, learned ACGSC appearing for the respondents.

6. Counsel for the applicant submitted that in the new Recruitment Rules what is required is, "satisfactory service of 5 years" which means the service may be either provisional or regular. Counsel for respondents on the other hand persuasively argued that, the applicant's service as per A2 cannot be termed to be a provisional one, since A2 was issued on 2.7.2001.

7. We have given due consideration to the arguments advanced by the parties, evidence and material placed on record. The short question that arise for consideration is that, whether the applicant has worked as provisional hand, for 5 years ? If so, whether he is entitled to be considered for the post of Postman as per the Recruitment Rules ? Our attention has been drawn to A-2 order dated 2.7.2001, issued by the Assistant Superintendent of Post Offices, which is reproduced as under:

ORDER

Whereas Sri.N.Shibu, EDDA, Manikanteswaram has been deputed to APS w.e.f. 27.10.97 a/n and the need has arisen to engage a person to look after the work of EDDA, Manikanteswaram, the undersigned has decided to make a Provisional Appointment to the post.

2. The Provisional Appointment is tenable till the promotion of the said Sri. N. Shibu to Group'D/other post or his return to the Post of EDDA Manikanteswaram.

3. Sri.S.Bijukumar, Udaya Bhavan, Manikanteswaram who has been working in the post of EDDA, Manikanteswaram in the absence of the said Sri. N.Shibu since 28/10/1997 is offered the Provisional Appointment to the Post EDDA, Manikanteswaram. Sri S.Bijukumar should clearly understand that if ever it comes for the said Sri.N.Shibu to



rejoin the Post of EDDA, Manikanteswaram, the Provisional Appointment will be terminated without notice.

4. The undersigned reserves the right to terminate the Provisional Appointment any time before the period mentioned in Paragraph 2 above without notice and without assigning any reason.

5. Sri. S.Bijukumar shall be governed by the ED Agents (Conduct and Service) Rules 1964 and all other rules and orders applicable to ED Agents.

6. In case the above conditions are acceptable to Sri.S.Bijukumar he should sign the duplicate copy of the memo and return the same to the undersigned.

Sd/-

Assistant Superintendent of Post Offices
Thiruvananthapuram East sub Division
Thiruvananthapuram-695 005

From the para 3 of the said order it is clear that since 28.10.1997 the applicant was offered the Provisional Appointment to the post of EDDA, Manikeswaram in the absence of Sri N.Shibu, even though the order was issued on 2.7.2001. In the operative portion of the said order it makes it clear that there was a necessity to engage a person to look after the work of EDDA, Manikeswaram and the undersigned has decided to make provisional appointment to the post. Thus the applicant was appointed. It is a fact that, though the order was issued on 2.7.2001, there was a clear indication that his services has been recognized and accepted by the authorities with effect from 28.10.1997 and status conferred. Therefore, we have no doubt that the engagement of the applicant was on provisional basis. Now, coming to the rule position, the earlier rule that was in existence prescribes "Regular Services" which was modified as "Satisfactory Services". In the amended rule it is made clear that the service can be either provisional or regular. The Hon'ble High Court of Kerala in W.P.(C) No.10694/2004(S) dated 27.9.2004 had occasion to consider this issue and interpreted the rule as follows:

"The counsel for the petitioner refers to the amended provision (Ext.P12) wherein it is stated as follows:



"Extra Departmental Agents, the age limit shall be 55 years with 5 years' relaxation for the Scheduled Castes/Schedule Tribes Candidates as on 1st July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1st January of year in which the examination is held".

It is clear from the above that, regular service is not the criterion, but what is required is only satisfactory service of five years. That means the service can either be provisional or regular. A combined reading of the old Rule and the new Rule reveals that the word 'regular' was omitted in the newly framed Rule. The intention of the rule making authority is clear from the omission of the word 'regular.'

8. From the above said discussions and deliberations and also on the perusal of A-6 and A-4 Recruitment Rules, we are of the considered view that the applicant has completed satisfactory service of more than 5 years notwithstanding the fact that he had worked more period as contended in the rejoinder, which is not claimed for this purpose because the applicant submitted that even the service that has been recognized and A-2 is considered he is qualified and eligible to be considered to the post. We are in acceptance of the said proposition .

9. In the conspectus of the facts and circumstances we are of the view that the applicant is entitled for the benefit claimed in the O.A. Vide interim order dated 29.3.2005 we directed the respondents to permit the applicant to take the examination for recruitment to the cadre of Postman to be held on 3.4.2005 and accordingly appeared for the examination. Therefore, we declare that the applicant is entitled to be considered for the post of Postman and set

h

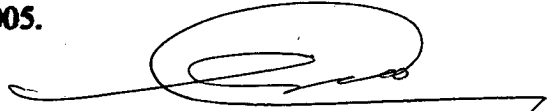
aside and quash A-4 impugned order directing the respondents to consider the applicant to the said post if he has come out successful in the examination and pass appropriate orders.

10. O.A is allowed. In the circumstance no order as to costs.

Dated the 21st July, 2005.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K. V. SACHIDANANDAN
JUDICIAL MEMBER