

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 224/2005

Tuesday, this the 12 th day of July, 2005

CORAM:

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

Manu P.S.

S/o. Shri N. Peethambaran,
Gramin Dak Sevak Delivery Agent,
Kadakkal Sub Post office,
Kottarakara Sub Division,
Kollam Division, Residing at
'Roadvila Puthenveedu',
Kollayil P.O., Madathara,
Kollam District

.... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India,
Represented by the Director General,
Department of Posts,
New Delhi.
2. The Chief Postmaster General,
Kerala Circle,
Trivandrum.
3. The Senior Superintendent of Post Offices,
Kollam Division, Kollam.
4. The Postmaster,
Kadakkal Sub Post Office,
Kollam Division.

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil, ACGSC)

The application having been heard on 27.6.2005, the Tribunal on
12-7-2005 delivered the following:

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ORDER

Hon'ble Mr. K.V. Sachidanandan, Judicial Member


The applicant being aggrieved by rejection of his request for appointment on regular basis as GDS Agent as also by the refusal of the respondents to regularly appoint the applicant on any of the ED Posts even though his services are being utilised for sporting events, has filed this O.A. seeking the following main reliefs.:

"To call for the records relating to Annexure A-1 to A-10 and to quash A-1 being illegal and arbitrary;

To declare that the applicant is entitled to be appointed as GDSMD, Kadakkal or in any other GDS post on a regular basis considering his services as GDSMD as well as a player of the Postal Volley Ball Team for the last so many years;

To declare that the applicant is entitled to continue as GDSMD, Kadakkal S.O. on the basis of his present posting and is entitled to be appointed as GDSMD, Kadakkal or any other vacancy in any of the nearby offices on regular basis under Sports Quota;

To direct the 2nd respondent to reconsider and dispose of Annexure A8 representation in the light of the decision taken as per Annexure A6 order at the earliest."

2. The case of the applicant is that he was a volleyball player and has been appointed as GDSMD, Kollayil with effect from 29.12.1999 as the substitute of a regular incumbent, Shri Haridas, who was appointed provisionally as Group 'D'
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and the applicant worked on that post till 2002. When the regular incumbent, Shri Haridas, was posted back after his provisional appointment as Group 'D' during January, 2004, the applicant was terminated from the said post. It is averred that while working as GDSMD, Kollayil PO, vide A/2 order, the applicant has been selected for Coaching Camp for selection of the team to represent the Kerala Postal Circle in Volleyball for the 17th All India Postal Volleyball Tournament held in Jaipur during 5.3.2002 to 8.3.2002. He has participated in the said Coaching Camp, but was not selected for the Kerala Team. He was, however, selected to the team of Regional Sports Board of Kerala representing Postal Department and also participated in All India Civil Services Volleyball Tournament held during the year 2002-2003 (as per A/3) and further selected for the Volleyball team for the All India Postal Tournament to be held in Saharanpur from 17.2.2003 to 20.2.2003 vide A/4 letter. He was granted special paid duty leave for this participation representing the Kerala Circle (A/5) and become the runners up in that Tournament. He made A/6 representation requesting to regular appointment in GDS cadre, but the same was rejected by the 3rd respondent vide letter dated 2.4.2003 stating that he cannot be considered for the said post since he was a substitute. In 2004, he was again offered a posting at Kadakkal Sub Post Office as GDSMD on ad hoc basis itself and he joined the said post with effect from 17.7.2004. It is pleaded that one Seby Kuriakose, a similarly situated Volleyball player, approached this Tribunal in O.A. No. 156/2003 which was disposed of vide order dated 4.8.2004, directing the 2nd respondent to consider and dispose of the representation made by him in the light of the fact


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that the Department has utilised his services as Volleyball player. Accordingly, it has been ordered by the competent authority vide A7 order to regularise his appointment in the post of GDSMC. Athirumkal B.O in Pathanamthitta Division. The applicant again made A/8 representation dated 21.7.2004 to the 2nd respondent. Meanwhile, another GDS Agent who was working against a lower post of GDSMC, Perumpuzha Cherupoyka P.O has become surplus and was about to be inducted to the post of GDSMS, Kodakkal, where the applicant was working. This action was against the existing rules since the TRCA of both the posts are different. At that point of time, the applicant approached this Tribunal in O.A. No. 802/2004 which was finally dismissed vide A/9 order. Aggrieved, the applicant has filed Writ Petition (C) No. 36951/2004 before Hon'ble High Court of Kerala which was disposed of vide A/10 judgement with a direction to the second respondent to consider and dispose of his representation in the light of A/6 order. Despite the directions of Hon'ble High Court, the respondents terminated the services of the applicant from the post of GDSMC, Kadakkal on 8.1.2005. The respondents permitted the applicant back to duty on 4.2.2005 only after a contempt notice was issued and now A/1 order has been passed in purported compliance of the said judgement. While passing the said order, the respondents did not consider any of the facts and similarity between the applicant and the said Sri Seby Kuriakose. The O.A. deserves to be accepted.

3. The respondents have filed a detailed reply statement contending that the applicant is not a regularly or provisionally appointed GDSMC recruited after



undergoing any regular selection process as per the Recruitment Rules. There are specific criteria stipulated for their selection which are different from those applicable to the regular Government employees. Therefore, the Sports quota, which is applicable to the recruitment of certain categories of regular Government employees is not applicable in the case of GDS. Shri Haridas is one among the senior GDS in Kollam Division and, therefore, he was offered a chance to work in the vacant post of Group 'D', Chavara, on extra cost remuneration whereas the applicant worked as GDSMD as a substitute nominated by the permanent incumbent of the post while the incumbent was on leave. The applicant worked in his leave arrangement on different spells and has not worked in the post continuously for three years as a substitute. Some other substitutes were also engaged in the post during different spells. When Mr. Haridas has rejoined his permanent post on 23.5.2004, the substitute arrangement ceased automatically. Meanwhile, the GDSMD post of Kadakkal MDG fell vacant on 17.7.2004 owing to the promotion of the incumbent to the cadre of Postman. For want of sanction, that post came to be unfilled by a regular incumbent. Therefore, the applicant was engaged as an outsider temporarily in the vacant post for doing the work during the spells from 17.7.2004 to 14.10.2004 and from 18.10.2004 to 6.11.2004. While so, the post of GDSMC, Karimpinpuzha, got to be abolished with effect from 7.11.2004 and the incumbent who was retrenched from the said post, has been accommodated in the vacant post of GDSMD, Kadakkal S.O by terminating the temporary services of the applicant. As per the interim order in O.A. No. 802/04, the applicant was continued to work in the said post for some time till



disposal of that O.A. Finally, the said O.A. was dismissed and then the matter was agitated before Hon'ble High Court through W.P (C) No. 36951/04. Vide judgement A/10 dated 20.12.2004, Hon'ble High Court disposed of the above writ petition directing the respondents to pass appropriate orders on A7 representation annexed in that OA, which was ultimately rejected vide A/1 impugned order. It is further averred that the Sports quota vacancies are being notified separately and the applicant will be at liberty to apply as and when notified. There is no provision in GDS (Conduct & Employment) Rules, 2001, which governs the terms and conditions of conduct and employment of GDS for using proficiency in Sports as a basis for appointment as GDS. The O.A. does not have any merit and is liable to be dismissed.

4. Learned counsel for the applicant has filed rejoinder opposing the averment made by the respondents that there is no provision for appointment in Sports quota. In fact, the Department has been recruiting meritorious Sports person to GDS posts in the past and a number of Sports persons have been appointed as ED and GDS agents. The second respondent issued notification dated 27.3.1998 (A/11) calling for applications from meritorious Sportsmen in the disciplines of Football, Kabaddi and Volleyball for appointment as Extra Departmental Agents. It is further contended that No GDS can be given a transfer or placement in a higher post carrying higher emoluments. Therefore, the contention of the respondents that a retrenched GDS Mail Carrier was accommodated against a post of GDS Mail Deliverer which the applicant was holding, is against the

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judicial pronouncements. The applicant who is having more service than the said Seby Kuriakose, is being made to run from pillar to post for consideration of appointment and is being discriminated.

5. The respondents have filed additional reply statement reiterating the contentions made in the original reply and further adding that, as directed by this Tribunal as to the vacancy position, Shri Haridas is working as GDSMD, Kollayil and Shri R.Balakrishna Pillai is working as GDSMD, Kadakkal and other GDSMD posts lying vacant in the Division are being ascertained. All these posts are now being managed by the temporary hands, like the applicant and the applicant cannot be accommodated in the said posts without ousting them. In the case of Sebi Kuriakose, it was urged that he was a provisional appointee and have completed three years on the same capacity. The applicant is only a substitute nominated by the permanent incumbent of the post at different spells and, therefore, his engagement cannot be equated with that of provisional appointment given to Mr. Sebi Kuriakose.


6. The applicant filed additional rejoinder claiming that certain GDS posts are still lying vacant, viz., (i) GDSSV, Kadakkal, (ii) GDSMD, Ilampazhanoor, (iii) GDSBPM, Ambalakara, (iv) GDSBPM, Kura and (v) GDSMD, Vettikavala, and the applicant's candidature has to be considered for any one these vacancies.

7. We have given due consideration to the pleadings, arguments and the

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material placed on record. Learned counsel for the applicant strenuously argued that having made use of his skill in the field of Volleyball by the department and continuing him as a provisional GD Sewak without regular appointment is highly depreciable and is sheer colourable exercise of power. Such exercise not only denies his livelihood in violation of the guarantee contained in Article 21 of the Constitution but also shuts out his career as a player. The respondents department being a model employer, cannot stoop to any level to defeat the rights available to an official, who has been consistently adding feathers in the Department's cap by high achievements in the Volleyball Court. The applicant is entitled to be considered for any GDS posts considering his valuable contribution to the Department. Learned counsel for the respondents, on the other hand, persuasively argued that the applicant was a substitute nominated by the permanent incumbent of the post in his leave arrangements on different spells and that he has not worked in the post continuously for a period of three years and, therefore, he has no legal right to be appointed to the post regularly. It was also urged on behalf of the respondents that there is no provision in GDS (Conduct & Employment) Rules, 2001, which governs the terms and conditions of conduct and employment of GDS for using proficiency in Sports as a basis for appointment as GDS.

2. It is an admitted fact that the applicant is a Volleyball player and the respondents had in many occasions utilised him for representing the Postal Department, Kerala Region/Circle. It is also an undisputed fact that while he was



working as GDSMD, Kollayil, he has been selected to the Coaching Camp to represent the Kerala Postal Circle in Volleyball for the 17th All India Postal Volleyball Tournament held in Jaipur during 5.3.2002 to 8.3.2002 and also selected to the team of Regional Sports Board of Kerala representing the Postal Department and participated in the All India Civil Services Volleyball Tournament 2002-2003 in New Delhi. Again he was selected to the Volleyball team for the All India Postal Tournament held in Saharanpur in 2003 and he has been granted special paid duty leave for participating in the said Tournament and has become runners up in that event. In regard to appointment under Sports quota, though the respondents have contended that there is no provision in GDS (Conduct and Employment) Rules, 2001, for using proficiency in Sports as a basis for appointment as GDS, our attention is invited by the learned counsel for the applicant to Annexure A/11 notification dated 27.3.1998 vide which applications from meritorious Sportsmen (Football, Kabaddi and Volleyball) were called for, for appointment as ED Agents in the Department of Posts. It was also urged on behalf of the applicant that the said notification was issued when the old rules was in existence in which also no provision for preferential appointment for Sportsman was indicated. There was no rebuttal by the respondents on this point. Therefore, the argument of the respondents in this regard is unacceptable. The further contention of the respondents was that though the applicant's skill in the field of Volleyball has been utilised on various occasions, his candidature cannot be considered for any GDS post since he has not been subjected to regular process of selection as also he has not completed three years of regular service,

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which is very essential for appointment as GDS as per the extant rules. In the case of appointment of one Sibi Kuriakose, it was contended by the respondents that he was provisionally appointed for the post through a process of selection and he was not a substitute as that of the applicant. When the applicant approached this Tribunal earlier, this Tribunal rejected his claim finding that he was a substitute working on stop-gap arrangements. But in the judgement dated 20.12.04 (A/10) in W.P.(C) No. 36591, Hon'ble High Court has given a direction to the respondents to dispose of the representation of the applicant and ultimately, vide impugned order A/1, his claim has been rejected by the competent authority. Since one of the points put forth by the applicant before the Hon'ble High Court was that a similarly placed person, namely Sebi Kuriakose, has been granted the relief, the respondents should have taken note of the same while considering his request. The contention of the respondents that Shri Seby Kuriakose was a provisional appointee is not seemingly correct. In the order (A/7) granting appointment to the said Shri Seby Kuriakose, it is made clear that "*the petitioner was originally engaged in a stop-gap arrangement of GDSMC, Vettur Kumbazha B.O. On 11.01.01, where he continued to work till 31.5.2001. Thereafter, the same petitioner was engaged to work in another stop-gap arrangement of GDSMC Athirumkal from 1.6.2001 from 1.6.2001. In September, 2002, the appointing authority decided to make regular appointment to the post of GDSMC, Athirumkal, as per EDS Recruitment Rules in vogue. But the petitioner challenged the recruitment and managed to get a stay order from the CAT, Ernakulam, in OA No. 156/2003 against the selection process. The CAT in its judgement dated*

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4.8.04 directed the petitioner to submit a detailed representation to the undersigned for consideration with due sympathy and in accordance with law taking into account the fact that the petitioner has been working as GDSMC for about three years and in his expertise in the field of Volleyball has been utilised by the Department." Considering his expertise in the field of Volleyball and other reasons as mentioned above, the competent authority found Shri Seby Kuriakose fit for appointment as GDSMC and accordingly directed to regularise his appointment in the post of GDSMC, Athirumkal B.O in Pathanamthitta Division.

9. On going through the facts of the case and the material placed on record as also the judgement of Hon'ble High Court of Kerala in Writ Petition (C) No. 36591 of 2004, we are of the considered view that the applicant is also an identically placed person like that of Shri Seby Kuriakose. In the impugned order A/1 dated 15.3.2005, it was admitted that (i) the Department had utilised applicant's skill in the field of Volleyball on various occasions and (ii) he had worked as a substitute for more than three years in the post of GDSMD, Kollayil P.O. with effect from 29.12.1999 till 2003 on different spells. Therefore, we are at loss to understand how the same authority (or even same person) who passed the A/7 order, had passed the A/1 impugned order in the present case. In these circumstances, it can safely be said that the impugned order was passed without proper application of mind. In this view of the matter, we are of the view that the applicant is also entitled to the relief as claimed for. In the additional

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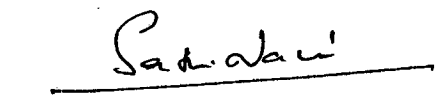
rejoinder submitted by the applicant, it was submitted that certain posts are still lying vacant, viz., GDSSV, Kadakkal P.O., GDSMD, Ilampazhanoor, GDSBPM, Ambalakara, GDSBPM, Kura and GDSMD, Vettikavala.

10. In the result, the O.A is allowed. The respondents are directed to verify the vacancy position and consider the applicant for regular appointment in any of the vacant posts in GDS cadre and pass appropriate order within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated, the 12 th day of July, 2005)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvt.