

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.233/2003

Wednesday this the 18th day of June, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.P.Jose
S/o Mr. K.V.Paulose
GDS Mail Deliverer
Neeleswaram EDSO, Kaladi
Residing at Kanjookkaran House
Naduvattom
Neeleswarm, Kaladi.

Applicant.

(By advocate Mr.O.V.Radhakrishnan)

Versus

1. Assistant Superintendent of Post Offices
Aluva Sub Division
Aluva 683 101.
2. Postmaster General
Central Region, Kochi.
3. Union of India represented by
its Secretary
Ministry of Communication
New Delhi.

Respondents.

(By advocate Mr.K.R.Raj Kumar, ACGSC)

The application having been heard on 18th June, 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant was appointed as a Gramin Dak Sevak Mail Deliverer, Neeleswarm EDSO, Kaladi on provisional basis by A-2 order 18.10.2001 pending disciplinary proceedings against one C.V.Babu, the original incumbent on the post. He is aggrieved that the respondents have notified a temporary vacancy in that post again for being filled up on provisional basis by A-3 notification. It is alleged in the application that the applicant was appointed on provisional basis till the departmental proceedings and judicial remedies are exhausted by C.V.Babu and the present action on the part of the respondents in

initiating the process for fresh selection for provisional appointment is unwarranted. wholly unjustified and opposed to the dictum laid down in the decision of the Hon'ble Supreme Court in the State of Haryana Vs. Pyara Singh reported in (1992) 4 SCC 118. The applicant, therefore, seeks to set aside the impugned A-3 notification.

2. The respondents contend that the applicant was appointed provisionally making it clear that the provisional service could be terminated any time without assigning any reason, and that as C.V.Babu, although removed from service, has filed an appeal, it is necessary to make a selection in which the applicant also would be allowed to participate, that till the selection is made, the applicant can continue and that, therefore, there is no real grievance to the applicant. Since both sides agreed, we heard the counsel for a final disposal of the OA.

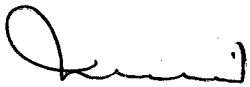
3. The sole question is whether the respondents are justified in initiating the process of selection for making temporary/provisional appointment to the post of Gramin Dak Sevak Mail Deliverer, Neeleswarm Post Office, the post which the applicant is holding on provisional basis. From Annexure A-3 notification itself, it is evident that the idea is to make temporary or provisional appointment. The learned counsel for the respondents informed us that C.V.Babu has filed a departmental appeal. It is possible that C.V.Babu may file a revision and in case he is unsuccessful he may resort to legal remedy before appropriate forum. By A-2 order, the appointment of the applicant was to be tenable till the case against C.V.Babu is finally disposed of and he has exhausted all channels of

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departmental and judicial appeal, petitions etc. The contingency that was envisaged in A-2 has not taken place so far, for, C.V.Babu is at the stage of appeal in the departmental proceedings. We do not find any need for the respondents to make another provisional appointment and we find no reason why the applicant is not allowed to continue till the contingency envisaged in A-2 occurs. The Apex Court in the State of Haryana Vs. Pyara Singh (Supra) condemned the practice of replacing a provisional employee by another provisional employee.


4. In the light of what is stated above, we are of the considered view that the applicant is bound to succeed. We allow the application, set aside the impugned notification A-3 and direct the respondents not to make any provisional appointment to displace him from the post of GDS MD, Neleswaram EDSO, Kalady. Dated 18th June, 2003.

Dated 18th June, 2003.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

aa.



A.V. HARIDASAN
VICE CHAIRMAN