

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 237 of 2001

Thursday, this the 2nd day of January, 2003

CORAM

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

1. B.S. Latha,
W/o V. Unni,
EDSV, HPO, Punalur,
residing at Bhargavi Bhavan,
Venchembu PO - 691 333Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. Head Post Master, HPO, Punalur.
2. The Supdt of Post Offices, Pathanamthitta.
3. The Chief Post Master General,
Kerala Circle, Trivandrum.
4. Union of India, represented by the
Secretary to Government of India,
Ministry of Communications, New Delhi.
5. D. Raveendran, EDMC, Keriara PO.
6. Rajendranathan Pillai,
EDMC, Vilakkuvattom PO.Respondents

[By Advocate Mr. M.R. Suresh, ACGSC (R1 to R4)]

The application having been heard on 2-1-2003, the
Tribunal on the same day delivered the following:


O R D E R

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

When the post of Extra Departmental Stamp Vendor (EDSV for short), Head Post Office, Punalur became vacant, the 1st respondent issued Annexure A4 notification. The applicant along with other candidates were sponsored by the Employment Exchange. While the process of selection was on, the 5th respondent filed

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OA No.1207/98 claiming appointment by transfer to the post of EDSV, Punalur. The Tribunal issued the interim order on 21-8-1998 (Annexure A5) that if the post was filled during the pendency of the OA, it should be provisional and subject to the outcome of the OA. As a result of the process of selection the applicant who was found to be the most meritorious candidate was selected and offered appointment as EDSV, Punalur vide Annexure A6 order dated 20-10-1998 stating that it was provisional and subject to the outcome of the OA No.1207/98. OA No.1207/98 was ultimately dismissed as withdrawn as requested by the applicant therein with liberty to make a representation to the 1st respondent who was directed to consider and dispose of the representation in the light of the dictum laid down by this Tribunal in the judgement in OA No.45/98. Pursuant to the above direction, the representation of the 6th respondent was considered and the candidature of the 5th respondent, another working ED Agent for transfer, was also considered. The 6th respondent was not selected, but the 5th respondent was selected. The appointment of the 5th respondent was challenged by the applicant in OA No.1358/99. However, the Tribunal dismissed that OA on the ground that the 5th respondent was selected in accordance with the dictum laid down in the judgement in OA No.45/98. The applicant challenged the Tribunal's order in OA No.1358/99 before the Hon'ble High Court of Kerala by filing OP No.18303/2000. The OP was dismissed by order dated 5-1-2001. The applicant moved a Review Petition before the High Court of Kerala for review of the order in the OP. While finding no reason to review the order passed, the Review Petition was disposed of directing the appointing authorities to clarify whether the appointment of the applicant was regular or not after giving a notice to the applicant. The 1st respondent has, in

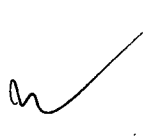


obedience to the above direction, issued the impugned order Annexure A1 dated 8-3-2001 clarifying that the appointment of the applicant as per Annexure A6 was not intended to be a regular appointment. Aggrieved by this, the applicant has filed this Original Application seeking to set aside the impugned order Annexure A1, to declare that the appointment of the applicant is a regular appointment and to direct respondents 1 to 4 not to terminate the services of the applicant and also to declare that on termination of her services, if any, the applicant would be entitled for appointment to a vacancy to which she is qualified.

2. It is alleged in the Original Application that the appointment of the applicant by Annexure A6 having been made after a due process of selection and she having been found to be the most meritorious candidate, was subject only to the outcome of the OA No.1207/98 and the applicant in OA No.1207/98 having withdrawn the OA and having been not successful in his representation, the contention taken by the official respondents in the impugned order that the applicant's appointment was not intended to be regular is unsustainable.

3. Although notices were issued to respondents 5 and 6, the 5th respondent did not appear either in person or through the counsel to contest. Although the 6th respondent was represented by a counsel initially, no reply statement was filed and none appeared for the 6th respondent when the case was taken up for hearing.


4. Respondents 1 to 4 in the reply statement and additional reply statement contend that the applicant's appointment was purely temporary and provisional and therefore, the 1st



respondent has, in the impugned order, clarified that the appointment of the applicant was not intended to be regular for the fact that although the selection was made after a notification and considering nominees of the Employment Exchange, in terms of the directions contained in the order of the Tribunal in OA No.1207/98, the appointment to the posts were to be made in accordance with the dictum laid down in the judgement in OA No.45/98. Since the 5th respondent was selected for appointment as a working ED Agent, the applicant's appointment cannot be treated as regular, contend the respondents.

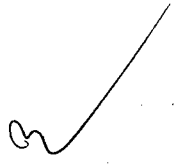
5. As stated supra, the 5th respondent has not appeared to contest this case. We are informed that the 5th respondent has already taken up appointment as adhoc Group D employee. Therefore, he may not be interested in this proceedings. Since the 6th respondent has not filed any reply statement nor is he presently represented, we find that the 6th respondent also has lost interest in this proceedings. We are informed by the counsel of the applicant that the 6th respondent has instructed his counsel not to contest the case as he is no more interest in the matter. Further, he has not challenged the selection of the 5th respondent.

6. We have heard Shri M.R.Rajendran Nair, learned counsel of the applicant and Shri M.R.Suresh, ACGSC appearing for respondents 1 to 4. Shri Rajendran Nair, learned counsel of the applicant with considerable tenacity argued that the clarification contained in the impugned order that the appointment of the applicant was not intended to be regular at all is false to the knowledge of the respondents as is evident from Annexure A6 order where the appointment has been stated to



be subject to the outcome of OA No.1207/98. According to the learned counsel, as OA No.1207/98 has become infructuous, then the appointment should be treated as regular. Shri M.R.Suresh, learned counsel of respondents 1 to 4, on the other hand, argued that although the applicant was appointed after a due process of selection, since the vacancy had to be first attempted to be filled by considering the request of working ED Agents in terms of the dictum laid down in the judgement in OA No.45/98, once the 5th respondent has been selected the appointment of the applicant has to be treated only as provisional and not regular.

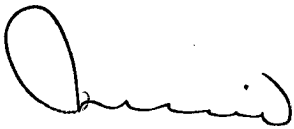
7. We do not find any merit in the argument of the respondents. If as a result of the representation of the applicant pursuant to the directions in OA No.1207/98, either the 5th respondent or the 6th respondent had been selected and appointed as EDSV, Punalur, then the appointment of the applicant by Annexure A6 would be terminable for the posting of either the 5th respondent or the 6th respondent. The 6th respondent was not selected. The 5th respondent, though selected, did not join the post. Both the 5th and 6th respondents have shown lack of interest in the offer of the EDSV. Therefore, the OA No.1207/98 has practically become infructuous. Thus the applicant, who was selected in a due process of selection but subject only to the outcome of OA No.1207/98, has to be treated as regularly selected. The decision contained in the impugned order that the appointment of the applicant was not intended to be regular at all, therefore, has to be set aside, because the applicant was admittedly selected against regular vacancy in a due process of selection and the OA No.1207/98, subject to the outcome of which the applicant was selected, has practically become infructuous.



8. In the light of what is stated above, the impugned order Annexure A1 dated 8-3-2001 is set aside, declaring that the appointment of the applicant as EDSV, HPO, Punalur has become a regular appointment. We direct the respondents 1 to 4 not to terminate the services of the applicant on the ground that the same is provisional.

9. The Original Application is allowed as above with no order as to costs.

Thursday, this the 2nd day of January, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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