

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.241/07

Tuesday this the 18th day of December 2007

C O R A M :

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

M.Shuhurdeen,
Gramin Dak Sevak Mail Deliverer,
Kallayam Branch Post Office,
Kudappanakunnu, Thycaud H.O., Trivandrum. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

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 Post Master 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. ...Respondents

(By Advocate Mr.M.M.Saidu Muhammed,ACGSC)

This application having been heard on 18th December 2007 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN

The applicant is aggrieved by Annexure A-5 order dated 10.1.2007 by which the respondents have notified the examination for recruitment to the cadre of Postman/Mail Guard for the vacancies for the year 2005 particularly the stipulation regarding the length of service in sub para (iii) of paragraph 8 thereof which reads as under :-

" The length of service will be determined with reference to the date from which the GDS officials is continuously working after regular appointment to the post ignoring all spells of absence. Unauthorised absence, if any, will constitute a break in service and only the service after the break in service will count for determining the length of service."

2. According to the applicant, he was selected as Extra Departmental Delivery Agent (re-designated as Gramin Dak Sevak Mail Deliverer) at Kallayam Branch Post Office under Trivandrum South Postal Division after due process of selection conducted on 16.10.2001 and he joined duty on 24.10.2001. The applicant has passed SSLC examination and has secured 305 marks. He has been holding the post since 24.10.2001. While so, Annexure A-5 has been issued. According to sub para (ii) of paragraph 5 of Annexure A-5 for GDS officials, the eligibility condition for taking the examination is that he/she should have completed a minimum of 5 years satisfactory service as on 1st January 2007. As the applicant had rendered a satisfactory service of 5 years 2 months and 8 days as on 1.1.2007 he had applied in the prescribed form for taking the recruitment examination. As the applicant did not get hall permit he made enquiries at the office of the 2nd respondent from where it has been ascertained that the length of service is determined after regular appointment and as such applicant will not be permitted to take the examination. The grounds urged by the applicant are that this eligibility condition imposed by the respondents is highly illegal and arbitrary and in terms of sub para (ii) of paragraph 5 a satisfactory service of 5 years only is required and there is no stipulation regarding regular service. Therefore the provision of sub para (iii) of paragraph 8 introduced by the respondents has no validity. It is further contended that the subject matter of this O.A is covered by the decision of the Hon'ble High Court of Kerala in W.P.(C) No.10694/04 and

the decisions of this Hon'ble Tribunal in O.A.No.220/05 produced as Annexure A-8 and Annexure A-9. The following reliefs have been prayed for by the applicant :-

1. Quash Annexure A-5 to the extent it determines the length of service after regular appointment appearing at sub para (iii) of paragraph 8.

2. 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) paragraph 5 of Annexure A-5 and direct the respondents to consider the applicant for appointment to the cadre of postman.

3. Direct the respondents to admit the candidature of the applicant to the examination for recruitment to the cadre of Postman to be held on 22.4.2007.

3. Respondents have filed reply statement stating that the applicant was appointed on provisional basis as the original incumbent to the post of GDS MD, Kallayam had been kept under put off duty with effect from 31.7.2000. His appointment was also subject to the outcome of the O.A.No.955/01 filed by one Shri.V.K.Vinod. The post of GDS MD, Kallayam fell vacant on regular basis only on 28.11.2003 and the period of service of the applicant cannot be counted as service rendered on regular basis as he was appointed on a provisional basis only. Permission has been sought to fill up the post on regular basis and the prospect of giving him regular appointment from 28.11.2003 has to be considered after the permission to fill up is granted. Hence the statement made by the applicant that he has been holding the post of GDS MD, Kallayam is a misleading statement as he had been appointed only as a provisional candidate as a temporary measure to manage the work during the pendency of the disciplinary proceedings against the original incumbent who was actually removed from service with effect from 28.11.2003.

For this contention, the respondents have relied on the order of the C.A.T. Ahmedabad Bench in O.A.No.114/04. Respondents also seeks to distinguish the facts in O.A.No.220/05 as the applicant in the said O.A had been appointed provisionally against a vacancy caused by deputation whereas in this case the vacancy has arisen against a put off vacancy.

4. In the rejoinder the applicant has submitted that the claim made by him is not for regularisation but for a declaration that the service prescribed under the Recruitment Rules is only satisfactory service and not regular service and this matter has been settled by the Hon'ble Tribunal as well as by the Hon'ble High Court. Paragraph 8 of sub para (iii) of Annexure A-5 has already been quashed by the Tribunal and this view has been confirmed by the Hon'ble High Court. Hence the rule position is quite clear. The respondents are bound to treat the applicant's service from 24.10.2001 as satisfactory service and consider him for appointment to the post.

5. We have heard the counsel and perused the records. Limited issue here is not whether the provisional service of the applicant under put off vacancy can be counted as service on regular basis but whether for determining the eligibility for appearing in the examination of Postman, 'regular' service is necessary or not when the rules prescribed only 'satisfactory' service. This question is no longer res-integra as contended by the applicant as it has been settled by this Tribunal's order in O.A.No.220/05 dated 21.7.2005 which has followed the order of the Hon'ble High Court of Kerala in W.P.(C) No.10694/04 dated 27.9.2004 wherein the Court observed as under :-



" 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'."

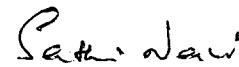
6. All the contentions of the respondents now raised in the reply statement regarding the nature of appointment of the applicant against the put off vacancy and the orders of the Ahmedabad Bench in O.A.No.114/04 confirmed by the Hon'ble High Court of Gujarat etc. are extraneous and irrelevant to the point of issue. Sub para (iii) of paragraph 8 has already been quashed by the Tribunal in the earlier cases and Annexure A-5 in this O.A to that extent is again quashed. The applicant is declared to be entitled to take the examination in terms of the eligibility condition prescribed at sub para (ii) of paragraph 5 of Annexure A-5 and we direct the respondents to consider the applicant for appointment to the cadre of Postman. The applicant was permitted by our interim order dated 12.4.2007 to sit for the examination. The respondents shall, therefore, consider the applicant with reference to the result of the examination and in accordance with the other provisions of the Rules and inform him of the action taken. The O.A is accordingly allowed.

(Dated this the 18th day of December 2007)



K.B.S.RAJAN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN