

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 27/ 2008

Tuesday, this the 30th day of September, .2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

Sobhana V.K.
Ag. GDS Branch Postmaster,
Santhinagar.P.O.,
Residing at Padinhare Mooshisseri,
Koodathai.P.O.
Thamarassery-673 573.Applicant

(By Advocate Mr PC Sebastian)

v.

1. The Senior Superintendent of Post Offices,
Calicut Division,
Calicut-673 003.
2. The Post Master General,
Northern Region, Calicut.
3. Union of India represented by
the Secretary to Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 30.9.2008, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This is the second round of litigation by the applicant seeking a declaration that she is eligible and entitled to be considered for appointment as Gramin Dak Sevak Branch Postmaster (GDSBPM for short) in Santhinagar Post Office.



2. According to the applicant, she was engaged as a substitute to the GDSBPM in Santhinagar Post Office under the control of the Senior Superintendent of Post Offices, Calicut Division with effect from 9.1.2004. While so, the first respondent issued Annexure A-2 notification No.B3/462 dated 20.10.2006 inviting applications to the post of GDSBPM in Santhinagar Post Office on a Time Related Continuity Allowance of Rs.1600-40-2400 on purely temporary basis and the Annexure A-3 memo No.B3/462 dated 20.10.2006 making the engagement of the applicant as GDSBPM in Santhinagar Post Office as a stop gap arrangement for 89 days from 2.10.2006 to 29.12.2006 or till provisional appointment is made, whichever period is shorter stating that it will not count towards regular service. Applicant has also applied for the said post pursuant to the abovesaid Annexure A-2 notification. Aggrieved by the aforesaid Annexure A-3 memo, she has also filed O.A.831/2006 seeking a declaration that she was entitled to continue as GDSBPM in Santhinagar till a candidate is regularly selected and to quash further selection proceedings in terms of Annexure A-2 notification. Applicant later on withdrew the said O.A and accordingly the same was closed vide Annexure A-4 dated 14.11.2007. Thereafter, she made the Annexure A-6 representation dated nil to the respondents requesting them to appoint her as GDSBPM in Santhinagar Post Office in terms of the DG Posts letter No.17-141/88-EDC & Trg. dated 6.6.1988 (Annexure A-5), relevant part of which reads as under:

"(28) Preference to casual labourers in the matter of appointment as ED Agents – According to the prevalent Recruitment Rules governing the cadre of Group'D', the order of preference among various segments of eligible employees is as under-

- (a) Non test category
- (b) Casual labourers
- (c) Casual labourers
- (d) Part time casual labourers.



2. Since the number of vacancies of Group D is limited, and the number of ED employees eligible for recruitment as Group D is comparatively large, the casual labourers and part time casual labourers hardly get any chance of their being absorbed as Group D. Thus majority of casual labourers with long service are left out without any prospect of their getting absorbed in Group D cadre.

3. Keeping the above in view, a suggestion has been put forth that casual labourers, both full and part time should be given preference for recruitment as Extra Departmental Agents, in case they are willing, with a view to afford the casual labourers a chance of ultimate absorption as Group D.

4. The suggestion has been examined in detail and it has been decided that casual labourers, whether full time or part time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts, provided they fulfil all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange."

Thereafter, she filed the present O.A seeking the following reliefs:

- (a) Declare that the applicant is eligible and entitled to be considered for appointment as GDS BPM, Santhinagar in preference to open market candidates in terms of Annexure A-5 standing instruction and in the light of Annexure A-7 order of this Tribunal.
- (b) Direct the 1st respondent to consider applicant's claim as put forth in her Annexure A-6 representation.

She has also relied upon an order of this Tribunal in O.A.129/2005 dated 4.6.2007 – **K.Nazar v. Union of India & others** in which the applicant therein was declared entitled for preference in consideration to the post of GDSMD, Kalpetta as he possessed the minimum qualification and fulfilled the conditions prescribed in DG Posts letter dated 6.6.1988. The operative part of the said order is as under:

"9. The second ground on which the applicant has based his claim is that as per the DG Posts letter dated 6.6.1988 casual labourers who are willing to be appointed as GDS may be given preference,



provided they applied for the post and they fulfill all the prescribed conditions. The respondents have denied that the applicant was a casual labourer appointed after a due process of selection nor was he sponsored by the Employment Exchange and therefore he was not entitled for preference as per Annexure A-2. This Tribunal had also considered this question of preference in ED Appointments and in a number of decisions held that casual labourers cannot be denied the preference for consideration to ED appointment on the ground that initial appointment was not through Employment Exchange. In OA 360/99 cited by the applicant it was held as follows "if her initial recruitment as part time casual labourer was not through Employment Exchange it was not her fault but the fault of the authority who engaged her as a part time casual labourer and the Department which permitted her to continue for a period as long as six years. After having retained the applicant as part time casual labourer for six years the respondents cannot be now permitted to turn around and say that she is not entitled for the benefits which other part time casual labourers would have for the reason that her engagement was not through Employment Exchange." In an another decision this Tribunal in O.A 62/05 had taken a similar stand which has been upheld by the Hon'ble High Court in W.P.(C) No.3373/05. In yet another recent decision in O.A.56/06, it has been held that such casual labourers have to be given preference following the earlier decision and as confirmed by the Hon'ble High Court. Therefore, in the light of the above orders of this Tribunal which have become final and the legal position having been settled by the Hon'ble High Court that having been appointed and having gained experience such casual labourers cannot be prevented from participating in the selection and appointment solely on the ground that they were not originally appointed through Employment Exchange, the case of the applicant falls under the same category and has to be allowed.

10. We, therefore, declare that the applicant is entitled to preference in the consideration to the post of GDS MD, Muttill, Kalpetta as he possesses the minimum qualification and fulfills the conditions prescribed in DG Posts letter dated 6.6.1988. The respondents are accordingly directed to consider the applicant for the post of GDS MD as per Annexure A-3 order of the DG Posts against the existing vacancies and to appoint him if he is otherwise eligible to be appointed. Only if the applicant is found to be ineligible for appointment the respondents can notify the posts for direct recruitment for filling up through outside candidates. Since Annexure A-1 notification is quashed, fresh notification will have to be issued in case it is decided to appoint outsider. With these directions, the O.A is allowed."

3. The respondents in their reply have denied her contentions and stated that she herself had admitted that she was working as a leave substitute and as per GDS Rules, a person can work in a GDS post as leave substitute but the leave substitute thus engaged by the original incumbent is not entitled for regular appointment. Her subsequent engagement was also on stop gap arrangement




and not as a casual labour. They have also clarified that engagement as stop gap arrangement would not give any entitlement for appointment to the post, unless he/she gets through the proper procedure of selection to the post along with others. They have also denied the contention of the applicant that she was a casual labourer to be entitled for the benefits under the DG, Posts letter dated 6.6.1988 referred to above. They have further submitted that on the basis of Annexure A-2, 5 candidates were short listed on the basis of merit i.e according to marks obtained by them in SSLC examination. Accordingly, one Shri K.N.Mujeeb Rahman who secured highest marks (412/600) among the candidates has been selected and appointed to the post with effect from 30.1.2008, subject to the outcome of this O.A. As regards the applicant was concerned, she got only 245 marks out of 600 and she did not come within the short listed candidates as candidates are selected only on the basis of verification of documents and there are no interviews for GDS post. As regards O.A.129/2005 relied upon by the applicant is concerned, the respondents have submitted that the same was challenged before the Hon'ble High Court of Kerala vide W.P.No.37518/2007 and the same is still pending. On the other hand, they have relied upon an order of this Tribunal in O.A. 50/2003 decided on 3.3.2003 – **Shaju Thomas v. Union of India & others**. The Tribunal found that the applicant therein was a substitute and held that it is the settled position of law that a substitute or provisional EDA is neither entitled to regularisation nor for any weightage in the matter of selection. Accordingly, the said O.A was dismissed.

4. We have heard the counsel for the parties. Undoubtedly, the applicant was initially engaged as a substitute on 9.1.2004. Later on, her engagement was converted into a stop gap arrangement till regular selections are made. As already held by this Tribunal, a substitute is not entitled for any regularisation in



service. Same is the position with the persons engaged as stop gap arrangement. They do not come through regular selection and have to compete with others from the open market to be appointed on merit. The contention of the applicant that she a casual labourer and is entitled for the benefits under DG, Posts letter dated 6.6.1988 is absolutely unfounded. As regards the applicant in O.A.129/2005 (supra) is concerned, he was locally engaged by the respondents as part time Sweeper. Later he was provisionally appointed as BPM with effect from 1.5.1995 and as BPM, Muttill, Kalpetta from 1.4.2004. It was in this background that Tribunal has held that he was eligible to be considered for appointment under the aforesaid letter of the DG, P&T dated 6.6.1988 referred to above. Applicant's case is not covered by the aforesaid order of this Tribunal. Moreover, the applicant was also a candidate for the post of GDSBPM, Santhinagar. Admittedly, she did not secure the highest marks as compared to the person who has been selected. As held by the Apex Court in **Om Prakash Shukla v. Akhilesh Kumar Shukla** [1986 Supp. SCC 286: 1986 SCC (L&S) 644], after participating in the selection, a candidate cannot challenge the selection process when it is found that he/she was not successful in the examination. In the above facts and circumstances of the case, the O.A is devoid of merit and the same is dismissed. There shall be no order as to costs.

Dated, the 30th September, 2008.


DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER