

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. 297/07

Wednesday this the 12th day of November, 2008

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

Sreejit P.M. S/o Gopalan Nair
Gramin Dak Sevak Mail Deliverer
Chulliyode Post Office Manjeri
residing at Sreenilayam Chulligode PO
Pookkottumpadam Via
Malappuram District.

Applicant

By Advocate M/s Rekha Vasudevan and P.A. Kumaran

Vs.

- 1 Union of India represented by the
Secretary to Government of India
Ministry of Communications
New Delhi.
- 2 The Superintendent of Post Offices
Pookkottumpadam
Malappuram District.
- 3 The Assistant Superintendent of Post Offices
Manjeri Sub Division
Manjeri
- 4 The Postmaster
Manjeri
Malappuram District.
- 5 The Branch Postmaster
Chulliyode Post office.
Manjeri.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

**This Original Application having been heard on 23.10.08 the Tribunal delivered the
following:**

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

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The applicant is aggrieved by the act of the 3rd respondent in
relieving him from the post of Gramin Dak Sevak Mail Deliverer, Chulliyode

Post Office to accommodate another provisional hand.

2 According to the applicant he was appointed as GDSMD Chulliyode Post office on 23.10.2002 and he assumed charge on 23.10.2002 itself (Annexure A-1). No copy of the appointment order was served on him. According to him he was appointed as GDSMD on the post falling vacant due to the dismissal of the regular incumbent from service. Though the post was notified in 2004 the selection process could not be completed for some reasons. No regular selection has been made to the post till date. He was continuing without any break and enjoying all the service benefits like increments etc. while so, on 14.9.2006 the third respondent changed the appointment of the applicant to a stop gap arrangement (Annexure A2). On 1.4.2007 his service was terminated and his father aged 63 was engaged also as a stop gap arrangement. Since his father was unable to carry out the duties, the applicant was continuing in the post. On 12.4.2007 the 4th respondent issued Annexure A-3 memorandum ordering recovery of overpayment of Rs. 1954 paid as increment w.e.f. 1.10.2003 to 28.2.2007. The 3rd respondent on 20.4.2007 issued Annexure A-4 notification inviting applications for provisional appointment as GDSMD, Chulliyode. The service of the applicant has now been dispensed with to accommodate another provisional hand.

3 The respondents in their reply statement submitted that the post of GDSMD, Chulliyode became vacant w.e.f. 17.10.2002 due to removal of the regular incumbent. Outsiders were engaged on stopgap arrangement during the period. Applicant was engaged on a purely temporary stop gap arrangement w.e.f. 23.10.2002. The applicant was again appointed on a stop gap arrangement vide Annexure A-2 for a period of three months from

14.9.2006 to 11.12.2006. This engagement was terminated on 11.12.2006 and another outsider was engaged. Again w.e.f. 13.12.2006 the applicant was engaged on a stop gap arrangement which was terminated w.e.f. 30.3.2007. One Shri P.M. Gopalan was engaged w.e.f. 2.4.07 on stop gap arrangement. Annexure A-4 notification was issued inviting applications from open candidates to fill up the post provisionally after observing all the formalities. Aggrieved, the applicant moved this O.A. and status quo was ordered. The respondents have asserted that the applicant was appointed on a stop gap arrangement for three months and that he was granted annual increment by mistake and the mistake was ordered to be rectified by the 4th respondent. The respondents have denied that the applicant is a provisional hand selected to the post after observing all the formalities of a regular selection. Hence, he has no legal claim to continue in the post. They have also relied on the decision of the Hon'ble Supreme Court in Uma Devi Vs. State of Karnataka (2006 4 SCC 1).

4 The applicant has filed a rejoinder. He contested the averments in the reply statement that outsiders were appointed in the post at any point of time between 23.10.2002 to 14.9.2006 and that the applicant has been continuing in the post without any break. He denied that he was appointed as a stop gap arrangement. The stop gap arrangement started with Annexure A-2 order dated 14.9.06 and that an outsider has been appointed only when the applicant was on casual leave. There was no formal order appointing Shri P.M. Gopalan, the applicant's father and that the applicant was continuing to work in the said post. Apart from Annexure A-2 order no orders were issued stating that his appointment was purely a stop gap arrangement. He reiterated the stand that he is a provisional hand and therefore he is entitled to continue in service till a regular appointment is

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made.

5 We have heard Ms Rekha Vasudevan for the applicant and Ms Jisha for Shri TPM Ibrahim Khan, SCGSC appearing for the respondents.

6 The short question that arises for consideration is whether the applicant is provisionally appointed to the post of GDSMD, Chulliyode Post Office w.e.f. 23.10.2002 till 14.9.2006 and on stopgap arrangement from 14.9.2006 onwards as contended by the applicant or is appointed only as a stop gap arrangement as contended by the respondents. We find that the applicant assumed charge of the post of GDSMD, Chulliyode post office on 23.10.2002 vide Annexure A1 order and continued till 14.9.2006. He earned increments w.e.f. 1.10.2003. On 14.9.2006 onwards he was as appointed as a stopgap arrangement. The applicant accepted the stop gap arrangement without any demur.

7 As regards the appointments of GDS the Tribunal in similar case in O.A. 764/06 observed as follows:

"Time and again it has been brought to the notice of this Court that no orders are issued while making such appointments or arrangements as they are being termed, thereby leaving the arena open to interpretations, presumptions, surmises, etc. from both sides, and the courts are burdened with the task of weighing the facts and circumstances in each case which also sometimes results in conflicting orders. We do not understand the rationale of such a situation being perpetrated by the respondent department when there are clear Rules and instructions governing these posts of GDS and they are treated as civil posts, their service conditions being justiciable before the courts. We would direct the authorities to look into this matter and remedy the situation expeditiously in the interest of all the Government, the employees and the courts."

8 After going through the pleadings and having heard the learned counsel appearing on both sides, we find that the regular appointment to

the post of GDSMD is pending from 23.10.2002. Though the respondents have taken steps for regular appointment the process has not been completed so far, for reasons best known to the respondents. The applicant has been working in the post from 23.10.2002 till 20.4.2007 the date of the impugned order. From 14.9.2006 onwards the respondents issued orders for appointment for 89 days. With a break of one day, the applicant was doing the work. Therefore, the action of the respondents in discontinuing the service of the applicant and filling up of the post by another temporary hand is bad in law. The interest of justice will be met if we dispose of the O.A with direction to the respondents to make appointment to the post on a regular basis instead of engaging temporary hands on stop gap arrangement basis. Accordingly, we direct the respondents to continue the applicant in the present post of GDSMD, Chulliyode post office till a regular selection and appointment is made to the post in accordance with the extant rules. The OA is disposed of with the above direction. No costs.

Dated 12th November, 2008,


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR. K.B.S. RAJAN
JUDICIAL MEMBER

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