

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 301 of 1995

Wednesday this the 22nd day of February, 1995.

CORAM

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

P.G. Sudha,
Parayil House, Keezhoor PO,
Thalayolaparambu
working as Extra Departmental
Delivery Agent, Keezhoor PO.

... Applicant

(By Advocate Mr. S.Krishnamoorthy)

Vs.

1. The Sub Divisional Inspector (Postal)
Vaikom Sub Division,
Vaikom-686 141.

2. The Employment Officer,
Town Employment Exchange,
Vaikom, 686 141.

3. The Postmaster General,
Central Region,
Kochi-682016.

4. Union of India represented by the
Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhavan, New Delhi.

.... Respondents

(By Advocate Mr. James Kurien, ACGSC for R.1,3&4)

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant who has been working provisionally,
as an Extra Departmental Delivery Agent at Keezhoor Post
Office for a few days (since 18.1.95) seeks a declaration
that she is entitled to be considered for regular appoint-
ment to the vacancy of Extra Departmental Delivery Agent,

Keezhoor. In support of her claim applicant relies on a decision of a Bench of this Tribunal in O.A. 271/90, taking the view that a provisional appointee is entitled to weightage in consideration. We have our reservations about the correctness of this view. The same question is now pending consideration of a Full Bench.

2. It is well settled that a provisional/adhoc employee acquires no right by reason of that status. If authority is needed for this proposition it is found in State of Gujarat and another Vs. P.J.Kampavat and others AIR 1992 SC 1685, Mukeshbai Chotabai Patel Vs. Joint Agriculture Marketing Advisor and others, AIR 1995 SC 413 and Dr.Arundhathi Ajith Parqaonkar Vs. State of Maharashtra, and another, 1994(5) JT 378. When the law is that an adhoc employee acquires no right or no service benefits, it will be difficult to hold that a provisional employee, that too holding an Extra Departmental Post has a preferential right. It is true that we have been following the precedent in O.A.271/90 despite our reservations, as that decision had been applied in a large number of cases. Even then, a line must be drawn somewhere. When a person officiates for a long time in a post his case can perhaps be put on a higher pedestal. The Supreme Court has considered long and continuous officiation in a post as a circumstance mitigating the normal rigours of the rules.(for example Sri Rabi Narayan Mohapatra Vs. State of Orissa and others, AIR 1991 SC 1286,

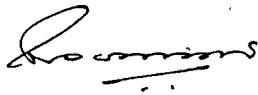
Bhaqwati Prasad Vs. Delhi State Minerals Development Corporation, 1990(1) SCC 361. However, if a provisional employee who acts in a short term vacancy for a few days is to be appointed in relaxation of rules, it would lead to a situation where the rules lose their relevance and fail in their purpose. Somewhere, a line must be drawn and discretion must be exercised on valid grounds.

3. Counsel for applicant relied on the decision in Union of India and others etc. Vs. N. Hargopal and others etc. AIR 1987 SC 1227 to contend that sponsorship by the Employment Exchange is not mandatory for getting employment. The decision must be understood with reference to the context. The question that arose for consideration in that case was whether the rigours of the Employment Exchange (Compulsory Notification of vacancies) Act would apply to all "establishments in public sector". The Apex Court held that the act does not oblige an employer to employ only persons, sponsored by Employment Exchanges. The decision turned on different facts and does not deal with the case of vacancies arising under the Government.

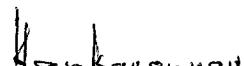
4. At any rate we do not think that this is a fit case to exercise our discretion in favour of a provisional employee (who found a berth for three weeks) in her attempt to overtake others in the long queue.

5. We dismiss the application. No costs.

Dated 22nd day of February, 1995.



S.P. BISWAS
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN