

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 311/005

FRIDAY, THIS THE 11TH DAY OF NOVEMBER 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

A. Satheeshkumar S/o KV Anandan
GDS Mail Deliverer, Naruvamoodu PO
Nemom, Thiruvananthapuram-20
residing at Varuvilakathu Koprapura Veedu
Naruvamoodu, Nemom.

Applicant

By Advocate Mr.G. Sasidharan Chempazhanthiyil

Vs.

- 1 The Superintendent of Post Offices
Thiruvananthapuram South Division
Thiruvananthapuram-14
- 2 Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.
- 3 Director General
Department of Posts
New Delhi.
- 4 Union of India represented by its Secretary
Department of Posts,
New Delhi.

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant has been working as an Extra Departmental Delivery Agent re-designated as Gramin Dak Sevak Mail Deliverer (GDSMD for short) Narimanmoodu P.O. Under Trivandrum South Postal Division on provisional basis w.e.f. 8.10.1997. He completed more than 7 years as a provisional hand and applied pursuant to Annexure A4 notification for recruitment to the cadre of Postman. His claim was rejected on the ground that only service after regular appointment can be counted. According to the applicant the said rejection is opposed to the judgment in WP(C) NO. 10694 of 2004. On the plea made at the time of admission the Court directed the applicant to participate in the

examination for recruitment held on 8.5.2005 or any deferred date provisionally and subject to the outcome of the O.A. The applicant has since appeared in the examination and the results have not been published due to pendency of this O.A.

2 In the reply statement, the respondents have averred that the post of GDSMD, Narimanmoodu fell vacant w.e.f. 27.10.1997 when the regular incumbent of that post was deputed to Army Postal Service. As the GDS on deputation to APS had to be relieved on short notice, it was not feasible to make a provisional appointment to the said post as the process will involve calling for applications from open market as well as writing to Employment Exchange for nomination of suitable candidates and hence the applicant was appointed as a stop gap arrangement purely on adhoc basis. The applicant continued to work in the post in that capacity and the respondents could not fill up the post as there were instructions not to fill up the posts falling vacant due to deputation. But on 2.7.2001 he was given a provisional appointment order as per Annexure A2. The averment of the applicant that he assumed charge of GDSMD, Narimanmoodu on 8.10.1997 on the basis of Annexure A1 produced by the applicant is not true and is against his own submission. As per the eligibility condition mentioned in para 5(ii) of the notification at Annexure A4 GDS officials who are within the age limit and have completed a minimum five years of satisfactory service as on 1.1.2000 are eligible to be considered for the examination. As per para 8(iii) of Annexure A4 the length of service is to be determined with regard to the date from which the GDS is continuously working after regular appointment. Since the applicant was not a regularly appointed GDS he was not eligible to appear in the examination. This stipulation under sub para (ii) of Para 5 is to be read in conjunction with Para 8(iii). Therefore though the applicant worked for 7 years, the period cannot be treated as qualifying service as it is not a regular service. As per Annexure A6 amendment, the length of service required to take the examination was changed from 3 years regular service to 5 years satisfactory service. The Hon'ble High Court of Kerala in Annexure A-7 judgment has held that the word 'regular' has been omitted in the amended rule and that the intention of the rule making authority in omitting the word 'regular' is clear. However, the Hon'ble High

Court of Delhi and the Apex Court have repeatedly held that provisional appointees cannot seek regularisation by reason of prolonged service and mere prolonged service does not result in any claim for permanent appointment. In the light of these rulings the applicant's service cannot be regularised as GDS and the examination is a limited departmental examination meant for GDSs who are languishing without lack any promotion and it cannot be open to those who have not even been regularised while denying the chance to the regularly selected candidates. The respondents have cited the following judgments to buttress their arguments.

(i)V. Sreenivasa Reddy &Others Vs. Govt. Of A.P. & Others
JT 1994 (6) 461

(ii)Union of India &Others Vs. K.G.Radhakrishna Panicker &Others
AIR 1998 SC 2073

(iii)State of MP & another Vs. Dharam Bir
1998(6) SCC 65

(iv)State of Orissa &Another Vs. Dr. Pyari Mohan Misra
AIR 1995 SC 974

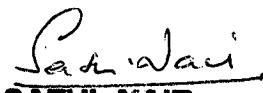
It is further submitted that the judgment in WP(C) NO. 10694 of 2004 of the Hon'ble High Court of Kerala do not apply to this case.

3 We have heard the learned counsel for both the sides and perused the records. The question before us for adjudication is whether a GDS seeking appointment to the post of Postman has to put in 5 years of regular service or only 5 years of satisfactory service, after ~~to~~ the amendment to the Postman Mail Guard Recruitment Rules 1980 notified in the Gazette on 28.2.1995 (Annexure A6). The same question was agitated before this Tribunal in O.A. 390/2004 in which it was held that service has to be regular and against this dismissal WP was preferred before the Hon'ble High Court in WP(C)No. 10-694 of 2004. The Hon'ble High Court held that the Tribunal did not consider the matter on the basils of the relevant rules and thus committed an error of law and the intention of the rule making authority was clear from the omission of the word 'regular'. Therefore only satisfactory service and not regular service was required to be considered. The respondents have not filed any SLP against this judgment and therefore this judgment has become final. All the arguments advanced by the respondents to show that such an interpretation would create an anomalous

situation of regular candidates being placed in a disadvantageous position and provisional candidates stealing a march over them etc. will defeat the very purpose of the amendment made to the proviso. The argument that such an interpretation will affect the regular GDSs who are languishing without any promotion, etc may have some merit but unfortunately it is not reflected in the rules. The respondents have not chosen to rebut the arguments of the applicant with regard to the statutory rule position which governs the filed. If the judgment has given rise to a practical problem the respondents should have taken the matter in appeal or made necessary further amendments. In the absence of any such action by the respondents we are bound by the judgment of the Hon'ble High Court and the statutory rules will have precedence over administrative arrangements. The notification issued in Annexure A-4 has not taken the amended provision of the rules into account. The stand taken by the respondents that the stipulations in paras 5 and 8 of the above memorandum are to be read together is applicable only to the contents of the notification at Annexure A-4. But the notification itself has to necessarily conform to the position provided for in the statutory rules. This inconsistency between the notification and the rules has not been explained. Therefore we are constrained to allow the prayers of the applicant to set aside Annexure A-4 to the extent of sub para (iii) of para 8 and Annexure A5 in respect of the applicant. Since the applicant has already appeared for the examination in pursuance of the interim order, what remains to be done is only to declare the results and to consider the applicant in accordance with the rules for appointment to the post of Postman on the basis of the result of the Examination. The OA is allowed as above. No costs.

Dated: 11.11.2005


GEORGE PARACKEN
 JUDICIAL MEMBER


SATHI NAIR
 VICE CHAIRMAN

kmn