

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.319/11

Monday this the 25th day of June 2012

C O R A M :

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Binith C.S.,
S/o.Chandran,
Gramin Dak Sevak Mail Deliverer (GDS MD-II),
Manasserry, Kunnamangalam Division, Kozhikode Dt.
Residing at Srambikkal House, Mokkam P.O., Calicut Dt.Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the Secretary
to the Government of India,
Ministry of Communications & Information Technology,
(Department of Posts), Dak Bhavan,
Sansad Marg, New Delhi – 110 001.
2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram – 695 033.
3. The Superintendent of Post Offices,
Calicut Division, Calicut – 673 003.
4. The Inspector of Posts,
Department of Posts,
Kunnamangalam Sub Division,
Kunnamangalam – 673 571.
5. Shri.Ramesh,
Gramin Dak Sevak Mail Deliverer,
Manasserry, Kunnamangalam Division,
Kozhikode District.Respondents

(By Advocate Mr.M.K.Aboobacker,ACGSC [R1-4])

This application having been heard on 25th June 2012 this Tribunal
on the same day delivered the following :-

.2.

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant, a GDS MD, has challenged Annexure A-1 by which his services were terminated on the ground that his appointment was against a vacancy created by the dismissal of one, Shri.Raju Jacob, who was subsequently reinstated by an order of the Court. According to the applicant, he responded to the notification Annexure A-2 pursuant to which selection was conducted and he was appointed. The 5th respondent was also appointed in a reserved vacancy for Scheduled Caste. It seems that the 5th respondent has resigned from the post and subsequently another person was appointed in that reserved vacancy who also subsequently submitted his resignation but it is not acted upon. According to the applicant, the appointment is made to the vacancy and not to the post and, therefore, he should be accommodated against the vacancy created by the resignation of the 5th respondent.

2. We have heard both sides. Admittedly, the applicant responded to the notification Annexure A-2 and subsequently he was appointed. He was offered appointment . Annexure A-5 is the order of appointment. Paragraphs 1 to 4 and 7 in Annexure A-5, which is relevant in the context, is extracted as hereunder :-

"1. Whereas the post of Gramin Dak Sevak Mail Deliverer II, Manassery BO has become vacant and it is not possible to make regular appointment to the said post immediately the appointing authority has therefore decided to make provisional appointment to the said post to look after the work till regular appointments is made.

DR

.3.

2. Shri.Binith C.S., Srambikkal, Muikkam PO is offered the provisional appointment to the said post. He should clearly understand that the provisional appointment is purely temporary and on contract basis and is liable to be terminated by the appointing authority at any time without notice and without assigning any reasons and that he is required to hand over the charge to the regularly selected candidate, if he is not so selected later.

3. Shri.Binith C.S., should clearly understand that the service rendered in the provisional appointment will not count towards regular service as Gramin Dak Sevak.

4. Shri.Binith C.S., should clearly understand that the appointment is subject the settlement of case against Sri.Raju Jacob.

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7. The appointment authority reserves the right to terminate the provisional appointment any time before the period mentioned in para (1) above without notice and without assigning any reasons."

3. From a reading of the above paragraphs it can be seen that the appointment was made against the vacancy created by the dismissal of Raju Jacob and the appointment of the applicant himself was provisional subject to termination, in case Raju Jacob was to be accommodated by an order of a Court. Annexure R-1 is a copy of the order of the Tribunal passed in Raju Jacob's case by which he was directed to be reinstated and subsequently reinstated. Therefore, the vacancy to which the applicant was appointed, namely, Raju Jacob's vacancy, has to be filled up by reinstating Raju Jacob to the same post. Since the offer of appointment was accepted and acted upon, the applicant cannot come around and take a different stand. He was told well in advance that his appointment was provisional and that it is liable to be terminated at any time in case Raju Jacob is to be reinstated. In clear terms he was told that his appointment

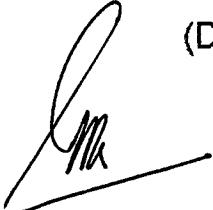


.4.

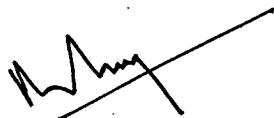
was against the vacancy created by dismissal of Raju Jacob. On reinstatement of Raju Jacob the vacancy has filled up and the applicant cannot continue thereafter. Admittedly, the applicant is a claimant against general vacancy and not against reserved vacancy.

4. In the above facts and circumstances of the case, we find no merit in the O.A and accordingly the same is dismissed. If, however, there is any general vacancy available in the Department, since the applicant was appointed against a regular selection he can make a representation to that effect and the authorities shall duly consider the same.

(Dated this the 25th day of June 2012)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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