

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.326/2003

MONDAY THIS THE 5TH DAY OF DECEMBER, 2005

CORAM

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

K.Santhosh Kumar,
S/o C.G.Krishnan Kutty Nair
aged 32 years, GDSMD/MC, Kallunkal PO
Thiruvalla, residing at
Thelachirakuzhiyil Puthenveedu,
Vallamkulam PO, Thiruvalla. ...Applicant

(By Advocate Mr.MR Rajendran Nair (Sr) and MR Hariraj)

V.

- 1 Union of India, represented by its
Secretary to Government of India,
Ministry of Communications,
Department of Posts,
New Delhi.
- 2 The Chief General Manager,
Kerala Circle, Trivandrum.
- 3 The Superintendent of Post Offices,
Thiruvalla Division,
Thiruvalla.
- 4 The Assistant Superintendent of Post Offices,
Thiruvalla Sub Division,
Thiruvalla.Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC)

The application having been heard on 25.11.2005, the Tribunal on
5.12.2005 delivered the following:

2

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant filed the present O.A aggrieved by the Annexure.A.1 notice directing him to submit representation, if any, against the proposed cancellation of the earlier orders of provisional appointment and regular appointment issued to him posting him as GDS-MD/MC, Kallumkal Branch Post Office. The post of GDS-MD/MC at Kallumkal Branch Post Office fell vacant on 23.10.98 consequent on the vacancy caused due to the put off duty of the incumbent Shri M.R.Chandran. The applicant was appointed provisionally against the said post with effect from 24.10.98 and later on, regularized with effect from 31.7.02. In the impugned notice, it has been stated that on review of the appointment of the applicant, it was seen that the vacancy was not notified and no requisition was made to the employment exchange for sponsoring candidates and therefore, the provisional appointment and subsequent regular appointment was not done after observing the Recruitment Rules for the post in question.

2 The respondents in their reply has stated that the incumbent of the post was removed from service earlier with effect from 12.7.01 as a penalty. The said penalty has been modified as that of debarring him from appearing for the examination for recruitment to the post of Postman for a period of three years. Thereafter he was reinstated in service. Since the applicant has already been continuing as GDS – MD/MC, Kallumkal on the interim orders of this Tribunal, Shri MR. Chandran on his reinstatement in service was appointed as GDS-MD, Karakkal with effect from 24.7.04 in an existing vacancy.



3 The applicant in the present O.A has sought to quash Annexure.A1 notice dated 2.4.03 and also to grant such other reliefs as may be prayed for as this Tribunal deem fit to grant in the facts and circumstances of the case.

4. We have heard the learned counsels on either side. The issue raised in the present OA is fully covered by the judgment dated 1.3.2005 of the Hon'ble High Court of Kerala in **W.P(C) No.17727/04 - V.Jayachandran Nair Vs. Sub Divisional Inspector of Post Offices and others.** The operative part of the said judgment is reproduced here for the sake of convenience:

"14 We do not think that a restricted view as above is necessary since it was on the basis of orders of the competent authority that the petitioner had been able to continue as a provisional employee. There is no challenge about the orders passed by the Tribunal, in the matter of grant of admissible allowance and certain other allowances. The only question is as to the manner in which the Department has to proceed with the regular filling up of the post concerned. The procedure is that notification is to be made, persons are to be sponsored by the District Employment exchange. But before that a termination is to be made. The moment the termination is made, the petitioner becomes entitled to be included in the priority list, and this insulates him with protection that he has a priority to be accommodated to the posts against any other open market candidates. In the present case it is asserted that there are no other claimants.

15 Although normally, for filling up the post of GDSM Carrier (formerly GDMC) such a procedure was to be followed, we are of the view that the petitioner will be entitled to the benefits of the regulations, by virtue of his continued and long service. Only for the reason that he was permitted to continue on the strength of the orders passed by the Central Administrative Tribunal, we are not prepared to accept the contention of the learned counsel for the respondent that such service has to be ignored for any purpose.

16 The post needs to be filled up, on a regular basis,



with a rider that the petitioner is entitled to priority, as a purposive interpretation of the order warrants. In other words, in so far as the petitioner has been in service for more than three years, as a provisional hand, it has to be presumed that he will be entitled to the benefits arising from the circulars. If there are no other claimants in such list maintained by the Department, petitioner is to be given automatic priority for claiming appointment to the abovesaid post. Therefore, it may not be necessary that a full process of selection is carried out. The documents made available indicate that the petitioner had been continuing for almost seven years in the post, and no others have any superior claim. He is to be considered as an approved candidate for all purposes.

17 In the said circumstances, we direct that expeditious steps are to be taken so as to see that the benefit of the regularization is granted to the petitioner, without delay. This regularization should be deemed as to have become operative from 25.12.2000. It may not be possible for the petitioner however to claim seniority, as rights of others are involved. Therefore, for the purpose of seniority, date relevant will be the date of order of the regularization and such proceedings are to be issued within two months from today.

18 As regards the claim for bonus, sufficient materials have not been placed before this court. Because of the direction for regularizing him, as above made, the petitioner will have the right to claim the benefit of bonus and other monetary entitlement as might be admissible. It will be appropriate that such claims are dealt with expeditiously. The order of the Tribunal, therefore, will stand set aside. Writ Petition is disposed of on the above terms.

5 In the present case the applicant has been working as GDS-MD/MC with effect from 24.10.98 and he has put in more than 7 years of service, out of which the service with effect from 31.7.02 is on regular basis. As held by the Hon'ble High Court in the case of V.Jayachandran Nair (supra) the moment the applicant is terminated, he becomes entitled to be included in the priority list and it would insulate him for protection of priority appointment to the post against any other open market candidates. In the

9

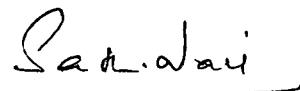
present case also we are informed that there are no other claimants senior to the applicant. It is, therefore, a futile exercise to terminate the services of the applicant first in terms of the impugned Annexure A1 notice dated 2.4.03 and undergo the procedure of notifying the vacancy to the employment exchange inviting candidates from them and consider the applicant on priority basis in preference to the candidates from the employment exchange and appoint him if he considers suitable.

6 In the aforesaid circumstances, we quash and set aside the impugned notice dated 2.4.03 and allow the applicant to continue in the present post as the incumbent of the post has already been accommodated in another Post Office in a similar post. The OA is allowed. There is no order as to costs.

Dated this the 5TH day of December, 2005



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

S.