

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 326 of 1998.

Tuesday this the 10th day of August, 1999.

CORAM:

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

Omana T.K.,  
Puthukulathil House,  
Kaipathur P.O.,  
Arakkunnam,  
Ernakulam District.

.. Applicant

(By Advocate Shri O.V. Radhakrishnan)

Vs.

1. Senior Superintendent of Post Offices,  
Ernakulam Division, Kochi-11.

2. Post Master General,  
Central Region, Kochi.

3. Director General of Posts,  
Department of Posts, New Delhi.

4. Member (Personnel),  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi.

.. Respondents

(By Advocate Shri M.H.J. David J., ACGSC)

The application having been heard on 10th August, 1999,  
the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to set aside A5 & A6, to declare  
that working Extra Departmental Agents are entitled to preference  
to outsiders for transfer and appointment to other Extra  
Departmental posts falling vacant in the same office or in the  
same recruitment unit, to issue appropriate direction or order  
to the first respondent to consider her for transfer and posting  
as Extra Departmental Branch Postmaster, Kaipattoor, in preference  
to outsiders sponsored by the Employment Exchange and to direct

the first respondent not to resort to direct recruitment through Employment Exchange for appointment to the post of Extra Departmental Branch Postmaster (EDBPM for short) Kaipattoor before considering the claims of working ED Agents who offered for transfer and posting to the above post.

2. The applicant is working as EDDA, Edakkattuvayal Branch Post Office in account with Arakunnam Sub Office. She was appointed as Extra Departmental Delivery Agent (EDDA for short) with effect from 7.10.96 as per memo dated 8.10.96 of the Sub Divisional Inspector (Postal) Tripunithura Sub Division. A vacancy of EDBPM, Kaipattoor arose in December 1997. The applicant submitted a representation dated 12.1.98 to the first respondent requesting to transfer and appoint her to the post of EDBPM, Kaipattoor or Amballur. A-2 Medical Certificate was produced in support of her request for the said transfer and appointment. The applicant has got the requisite qualification. A-4 is a copy of the letter issued by the Director General of Posts. A5 and A6 issued by the 4th respondent are not in tune with A-4. The applicant says that the 4th respondent is not competent to take the view expressed in A-5 and A-6.

3. Respondents have filed a reply statement raising various contentions. In the last, but one paragraph it is stated: "The grounds raised by the applicant and the relief claimed are legally sustainable." If that is the case, the O.A. is only to be allowed. The learned counsel for the respondents submitted that in the said sentence there is some typographical mistake. We are sorry to say that the respondents have taken the whole matter in a very light way.

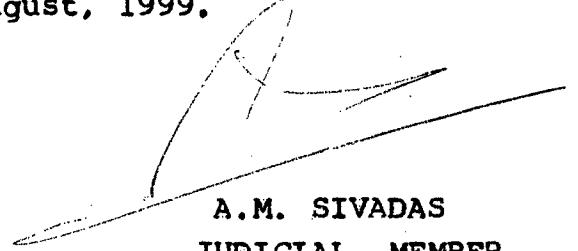
4. Irrespective of the admission rightly or wrongly contained in the reply statement, the learned counsel appearing for the respondents fairly conceded that the matter is squarely covered by the ruling in O.A. 45/98 of this Bench of the Tribunal. An identical question was considered by this Bench of the Tribunal in O.A. 45/98 and the said O.A. was allowed.

5. We are bound to follow the ruling in O.A. 45/98 and do follow.

6. Accordingly, the application is allowed. A-5 and A-6 are set aside. It is declared that the applicant, as a working EDDA in the same unit is entitled to be transferred and appointed as EDBPM, Kaipattoor, if she is eligible and qualified in preference to outsiders. Respondents are directed to consider the case of the applicant for transfer and appointment accordingly. This order shall be complied within a period of one month from the date of receipt of a copy of this order. No costs.

Dated the 10th day of August, 1999.

  
J.L. NEGI  
ADMINISTRATIVE MEMBER

  
A.M. SIVADAS  
JUDICIAL MEMBER

rv

LIST OF ANNEXURES REFERRED TO IN THE ORDER

1. Annexure A2: A certificate dated 23.2.98 attesting the applicant's illness, issued by Dr.EK Lilly, Civil Surgeon, Community Health Centre, Piravom.
2. Annexure A4: True copy of the letter dated 28.8.1996 No.17-60/95 ED & TRG of the Asstt. Director General (ED & TRG), New Delhi.
3. Annexure A5: True copy of the letter No.19-72/96-ED & TRG dated 14.2.1997 of the 4th respondent.
4. Annexure A6: True copy of the letter No.CC/2-85/96 dated 16.10.1997 of the 2nd respondent.

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. Nos. 326/98 & 720/99

Monday, this the 20th day of December, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. No. 326/98

Omana T.K.,  
Puthukulathil House,  
Kaipathur P.O.,  
Arakkunnum,  
Ernakulam District.

..Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Senior Superintendent of Post Offices,  
Ernakulam Division, Kochi - 11.
2. Postmaster General,  
Central Region, Kochi.
3. Director General of Posts,  
Department of Posts, New Delhi.
4. Member (Personnel)  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi.
5. K.P. Sindhu,  
Branch Postmaster,  
Kaipattur Branch Post Office.

..Respondents

By Advocate Mr. M.H.J. David J, ACGSC for R-1 to 4

By Advocate Mr. G. Mohan for R-5

O.A. No. 720/99

K.P. Sindhu,  
D/o. Prabhakaran,  
Extra Departmental Branch Post Master,  
Kaipattur Branch Post Office,  
Ernakulam.

..Applicant

contd..2/-

By Advocate Mr. P.N. Santhosh

Vs.

1. The Senior Superintendent of Post Offices, Ernakulam Division, Ernakulam.
2. The Sub Divisional Inspector, Postal Department, Sub Divisional Office, Thrupunithura, Ernakulam.
3. The Post Master General, Central Region, Kochi - 16.
4. Omana T.K., W/o. P.A. Madhavan, Puthukulathil House, Kaipattoor P.O., Arakkunnam, Ernakulam.

.. Respondents

By Advocate Mr. T.C. Krishna, ACGSC for R-1 to 3  
By Advocate Mr. O.V. Radhakrishnan for R-4.

The applications having been heard on 20.12.99, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

Both these applications were heard together and are disposed of by a common order in the light of the judgement of the High Court of Kerala in O.P. No.22298/99.

2. The applicant in O.A.No. 326/98 seeks to set aside A-5 and A-6, to declare that working Extra Departmental Agents are entitled to preference to outsiders for transfer and appointment to other Extra Departmental posts falling vacant in the same office or in the recruitment unit, to issue appropriate direction or order to the 1st respondent to consider her for transfer and posting as Extra Departmental Branch Postmaster, Kaipattoor in preference to outsiders sponsored by the Employment Exchange and

contd.. 3/-



to direct the 1st respondent not to resort to direct recruitment through Employment Exchange for appointment to the post of Extra Departmental Postmaster, Kaipattoor before considering the claim of working Extra Departmental Agents who offered for transfer and posting to the above post.

3. The applicant is working as Extra Departmental Delivery Agent (EDDA for short), Edakkattuvayal Branch Post Office in account with Arakunnam Sub Office. She was appointed as EDDA with effect from 7.10.96 as per Memo dated 8.10.96 of the Sub Divisional Inspector (Postal), Tripunithura Sub Division. A vacancy of Extra Departmental Branch Postmaster (EDBPM for short) arose in December, 1997. She submitted a representation dated 12.1.98 to the 1st respondent requesting to transfer and appoint her to the post of EDBPM, Kaipattoor or Amballur. A-2 medical certificate was produced in support of her request. She has got the requisite qualification. A-4 is the copy of the letter issued by the Director General of Posts. A-5 and A-6 issued by the 4th respondent are not in tune with A-4. The 4th respondent is not competent to take the view expressed in A-5 & A-6.

4. In the reply statement filed by the official respondents, it is contended that the applicant was selected and appointed to the specific post of EDDA, Edakkattuvayal Branch Office. Her appointment as EDDA, Edakkattuvayal Branch Office is not transferrable.

5. In the reply statement filed by the supplemental respondent who got impleaded after the pronouncement of the order

contd..4/-

of the High Court in O.P. No.22298/99, it is contended that she was appointed as a Postmaster with effect from 22.12.97 at Kaipattoor Branch Post Office on a leave vacancy when the Postmaster entered on leave. The appointment was provisional on leave vacancy. Thereafter, when the Postmaster who entered on leave got promotion and left the job, a permanent vacancy arose in Kaipattoor Branch Post Office. She is continuing in the vacancy from the date of her initial appointment on 22.12.97. She apprehended that a fresh regular appointment was to be effected in the said permanent vacancy where she was working. As she expected that a fresh regular appointment is to be effected in her place, she put in an application on 7.6.99 before the Sub Divisional Inspector, Tripunithura requesting him to consider her to be appointed in the regular vacancy of Postmaster, Kaipattoor Branch Post Office. The order passed in O.A. No. 326/98 is unsustainable in law. Based on the ratio laid down in O.A. No. 45/98, she is more eligible and more qualified to be appointed to the post of Branch Postmaster, Kaipattoor.

6. The applicant in O.A. No. 720/99 claims to be working as EDBPM, Kaipattoor Branch Post Office on provisional basis and seeks to declare that she is entitled to be appointed in the vacancy of EDBPM, Kaipattoor Branch Post Office on a regular basis and to direct the respondents to consider her for regular appointment as EDBPM, Kaipattoor Branch Post Office.

7. According to the applicant, she was appointed in the leave vacancy at Kaipattoor Post Office as EDBPM. She learnt that steps

contd..5/-



are being taken to make regular appointment to the post in which she is working. If regular appointment is made without considering her claim, it will cause irreparable injury and loss to her.

8. O.A. No. 326/98 was disposed of by this Bench of the Tribunal on the 10th of August, 1999 allowing the application by setting aside A-5 and A-6, declaring that the applicant as a working EDDA in the same unit is entitled to be transferred and appointed as EDBPM, Kaipattoor if she is eligible and qualified in preference to outsiders and directing the respondents to consider her case for transfer and appointment accordingly. O.A. No. 720/99 was disposed of by this Bench of the Tribunal on 25th of June, 1999 on the basis of the submission made by the learned counsel for the respondents that the applicant has not right to claim for a declaration as prayed for but as and when recruitment is made to the post in question on a regular basis, if the applicant makes an application, her candidature shall also be considered subject to her eligibility and suitability.

9. Subsequently, the applicant in O.A. No.720/99 preferred O.P. No.22298/99. That O.P. was disposed of by the High Court as per judgement dated 29th of September, 1999. In the judgement in the said O.P., the High Court has stated thus:

" We feel it appropriate to direct the Tribunal to hear both, Sindhu and Omana, to adjudicate the question regarding the entitlement of either of them or none to be posted as Extra Departmental Branch Postmaster. To

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avoid unnecessary delay, the parties are directed to appear before the Tribunal on 11.10.1999 so that a suitable date can be fixed for disposal of the case. In view of this direction, the earlier order passed by the Tribunal to give posting to the applicant, Omana, shall not be given effect to. We make it clear that we have not expressed any opinion regarding the acceptability of the stand of either Sindhu or Omana."

10. This Bench of the Tribunal has not passed any order to give posting to Omana. The direction was to consider the case of Omana for transfer and appointment only in the light of the declaration that she, as a working Extra Departmental Agent in the same unit is entitled to be transferred and appointed as EDBPM, Kaipattoor if she is eligible and qualified in preference to outsiders.

11. The applicant in O.A. No.720/99 admittedly started working as EDBPM, Kaipattoor when the regular hand entered on leave for ten days from 22.12.97. Thereafter, when the regular hand subsequently left the post of EDBPM, the applicant continued. The applicant has specifically stated in the O.A. that when one Mr.P.M. Kumaran entered on leave for ten days from 22.12.97, she was posted in that leave vacancy but at the same time, the applicant says that the vacancy in which she is presently working has become a regular vacancy with effect from 22.12.97. It is not known when it is the admitted case that she started working as EDBPM in the leave vacancy of Mr. P.M. Kumaran for ten days, how that vacancy has become a regular vacancy. From the applicant's pleadings, it is clear that she was a substitute to start with. When Mr. P.M. Kumaran got appointed as Group 'D' and left the post of EDBPM, Kaipattoor, she continued. She continued only because of the order of this Bench of the Tribunal in O.A. No.

326/98 as the respondents were directed not to fill the said post on regular basis.

12. There is no order of appointment in favour of the applicant. As the applicant continued in the post of EDBPM when Mr. P.M. Kumaran left it only on the basis of the interim order of this Bench of the Tribunal, she cannot claim that she was appointed by the respondents as temporary EDBPM at Kaipattoor Post Office.

13. This Bench of the Tribunal in O.A. No. 45/98 has held that if a working Extra Departmental Agent in the same office or in the same place prefers to work against a post which has fallen vacant, he can be appointed if he is eligible and qualified to be appointed to that post without subjecting him for a selection along with outsiders.

14. The learned counsel appearing for the applicant O.A. No. 720/99 argued that the applicant being a working Extra Departmental Agent is entitled to preference to outsiders and is liable to be considered along with the applicant in O.A. No. 326/98. This contention could be accepted only if the applicant is a working Extra Departmental Agent. The applicant was only a substitute to start with and later on continued on the strength of an interim order by this Bench of the Tribunal. Whether a person holds a particular post in a substantive capacity or is only temporary or ad hoc is a question which directly relates to his status. It all depends upon the terms of appointment. It is not

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open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, therefore, there is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service (See (1998) 6 SCC 165).

15. As far as the applicant in O.A. No. 720/99 is concerned, there is no order of appointment. No provision of any statutory rule is brought to our notice by the learned counsel for the applicant in O.A. No. 720/99 to show that she could be considered as a working Extra Departmental Agent. In the absence of any statutory rule being stated in the O.A. or brought to our notice while submitting the arguments across the bar, the applicant is only to be taken as a substitute. That being so, the applicant in O.A. No. 720/99 is not entitled to any of the reliefs.

16. As far as the applicant in O.A. No. 326/98 is concerned, the stand of the respondents that the post is not transferrable cannot be accepted in the light of the order in O.A. No. 45/98. The learned counsel appearing for the respondents fairly conceded that the matter is squarely covered by the ruling in O.A. No. 45/98 of this Bench of the Tribunal and we are bound to follow that ruling.

contd..9/-

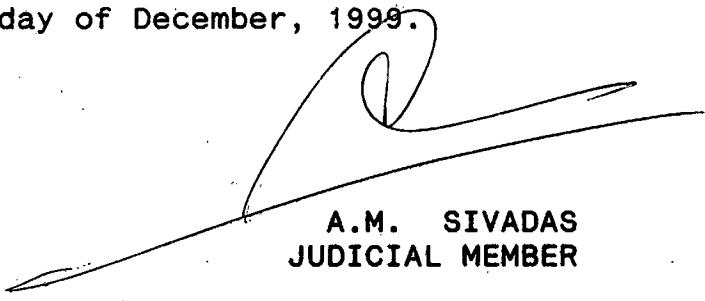


17. Accordingly, O.A. No.720/99 is dismissed. O.A.No.326/98 is allowed. A-5 and A-6 are set aside. It is declared that the applicant, as a working EDDA in the same unit is entitled to be transferred and appointed as EDBPM, Kaipattoor if she is eligible and qualified in preference to outsiders. Respondents are directed to consider the case of the applicant for transfer and appointment accordingly. This order shall be complied with within a period of one month from the date of receipt of a copy of this order. No costs.

Dated this the 20th day of December, 1999.



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

nv/211299

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

O.A. 326/98

1. Annexure A-2: A certificate dated 23.2.98 attesting her illness issued by Dr.E.K. Lilly, Civil Surgeon, Community Health Centre, Piravom.
2. Annexure A-4: True copy of letter dated 28.8.1996 No,17-60/95 ED & TRG of the Asstt. Director (General ED & TRG), New Delhi.
3. Annexure A-5: True copy of the letter No.19-72/96-ED & TRG dated 14.2.1997 of the 4th respondent.
4. Annexure A-6: True copy of the letter No.CC/2-85/96 dated 16.10.1997 of the 2nd respondent.