

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 331 of 2002

Friday, this the 10th day of May, 2002

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. K.B. Muraleedharan Nair,
Ex.Gramin Dak Seva Mail Deliverer,
Chemmanathukara PO, Vaikom.Applicant

[By Advocate Mr. P.C. Sebastian]

Versus

1. The Sub Divisional Inspector of Post Offices,
Vaikom Sub Division, Vaikom.

2. The Postmaster General,
Central Region, Kochi - 682 016

3. The Union of India, represented by its
Secretary, Ministry of Communications,
Department of Posts, Dak Bhavan,
New Delhi.Respondents

[By Advocate Mr. M.R. Suresh, ACGSC]

The application having been heard on 10-5-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was a regular incumbent in the post of Extra Departmental Delivery Agent, now redesignated as Gramin Dak Seva Mail Deliverer (GDSMD for short). The applicant was placed under put off duty vide Annexure A1 order dated 22-6-1998 in contemplation of the disciplinary proceedings. Subsequently, the disciplinary proceedings under Rule 8 of the P&T ED Agents (Conduct and Service) Rules, 1964 was initiated against him and he was found guilty and the punishment of dismissal from service was imposed on him. He submitted an

appeal before the Senior Superintendent of Post Offices, Kottayam Division, which was also rejected confirming the punishment vide order dated 22-11-2001. The applicant submitted that he has filed a revision petition to the next higher authority, i.e. Director of Postal Services, under Rule 16 of the ED Rules on 24-12-2001 through proper channel. The petition was however returned to the applicant by the Senior Superintendent of Post Offices, Kottayam with a direction to submit the petition to the Postmaster General, Kochi, who is the competent revisional authority. The applicant, therefore, resubmitted the petition addressed to the 2nd respondent on 25-3-2002. True copy of the said revision petition is Annexure A2. In the meantime, the 1st respondent issued a Circular dated 31-12-2001 calling for applications from working eligible ED Agents for appointment by transfer to certain ED vacancies including the vacancy at Chemmanathukara caused by the applicant's put off duty. True copy of the said Circular is Annexure A4. Aggrieved by Annexure A4, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "(i) to call for the files leading to Annexure-A4 and quash Annexure-A4 in so far as it is concerned with the vacancy of GDS Mail Deliverer Chemmanattukara.
- (ii) to direct the 1st respondent not to fill this vacancy of GDS Mail Deliverer Chemmanattukara pursuant to Annexure-A4 or any other manner on a regular basis until applicant exhausts all departmental and judicial remedies against the disciplinary action and it is finally decided not to take him back into service.
- (iii) to grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.

(iv) to award costs in favour of the applicant."

2. Sri M.R.Suresh, ACGSC took notice for the respondents and submitted that the revision petition Annexure A2 will be disposed of by the competent authority as expeditiously as possible.

3. Learned counsel for the applicant has taken attention of this Court to the instructions issued by the Government on the subject dated 30-12-1999, which extracted in the OA reads as follows:-

"(iii) Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment."

4. Clause (iii) of the above said Circular is very relevant as far as this case is concerned. Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized, a provisional appointment may be made in the form annexed (Annexure-B). It would be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and he shall have no claim to any appointment. Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all

channels of appeal, the appointment should only be provisional and the offer of appointment should be in the form annexed thereto.

5. After the termination of the applicant the Department has issued a memo dated 1-11-1999 appointing Sri T.G.Suresh Kumar provisionally, in which it is made clear in Clause (2) that the provisional appointment is tenable till the date of rejoining duty of Sri K.B.Muraleedharan Nair (applicant herein) or the disciplinary proceedings against the applicant are finally disposed of and he has exhausted all channels of departmental and judicial appeals and petitions etc. and in case it is finally decided not to take the applicant. So, it is very clear that when disciplinary/judicial proceedings is not exhausted by the delinquent employee, no permanent posting could be done by the department to such vacancies.

6. Learned counsel for respondents submitted that in the light of the principles laid down, the 2nd respondent will dispose of the revision petition filed on 25-3-2002 and till the disposal of the revision petition, if any, the proceedings initiated by Annexure A4 to the extent of filling up of the vacant of GDS Mail Deliverer, Chemmanattukara, will be kept in abeyance.

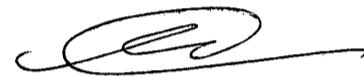
7. The submission made by the learned counsel for respondents is recorded and accordingly, the Original Application is disposed of directing the 2nd respondent to pass appropriate orders on the revision petition (Annexure A2) filed on 25-3-2002 by the applicant. The proceedings initiated as per Annexure A4 to the extent of filling up of the vacancy of

..5..

GDS Mail Deliverer, Chemmanattukara shall be kept in abeyance till the disposal of the revision petition by the 2nd respondent. There shall be no order as to costs.

8. The learned counsel for respondents undertakes to communicate this order to the concerned authorities for compliance.

Friday, this the 10th day of May, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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Appendix

Applicants' Annexures

1. Annexure A1: True copy of order dated Chemmanathukara 22.6.98 issued by the 1st respondent to applicant.
2. Annexure A2: A true copy of the petition dated 25.3.02 submitted by applicant to the 2nd respondent
3. Annexure A3: A true copy of Memo No.DA/Chemmanathukara dated 1-11-99 issued by the 1st respondent
4. Annexure A4: A true copy of letter No.GL/TPr/01 dated 31/12/01 issued by the 1st respondent

Respondents' Annexures: Nil