

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 354 of 2006

Friday, this the 16th day of November, 2007

C O R A M :

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

K. Anil Kumar,
Working as GDS Mail Packer,
Kottiyoor P.O., Peravoor,
Kannur District. ... **Applicant.**

(By Advocate Mr. M.C. Nambiar)

versus

1. The Union of India, represented by
The Secretary to Government,
Ministry of Communication, New Delhi.
2. The Director General,
Department of Posts, New Delhi.
3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram..
4. The Superintendent of Post Offices,
Thalassery Division, Thalassery – 2
5. Sub Divisional Inspector,
Manathavady Sub Division,
Department of Posts India,
Manathavady ... **Respondents.**

(By Advocate Mrs. Aysha Youseff, ACGSC)

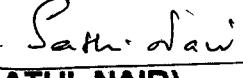
**The Original Application having been heard on 16.11.07, this
Tribunal on the same day delivered the following:**

O R D E R
HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

On the last two occasions, the adjournment was given at the request of the applicant. When the case was taken up today, none is present on behalf of the applicant. The O.A. is, therefore, dismissed in default.

(Dated, the 16th November, 2007)


(GEORGE PARACKEN)
JUDICIAL MEMBER


(SATHI NAIR)
VICE CHAIRMAN

cvr.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 354 of 2006

Friday, this the 11th day of April, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

K. Anil Kumar,
Working as GDS Mail Packer,
Kottiyoor P.O., 'Anil Nivas',
Thondiyil Post, Peravoor,
Kannur District. ... Applicant.

(By Advocate Mr. PV. Mohanan & Mr. M.C. Nambiar)

versus

1. The Union of India, represented by
The Secretary to Government,
Ministry of Communication, New Delhi.
2. The Director General,
Department of Posts, New Delhi.
3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. The Superintendent of Post Offices,
Thalassery Division, Thalassery – 2
5. Sub Divisional Inspector,
Manathavady Sub Division,
Department of Posts India,
Manathavady ... Respondents.

(By Advocate Mrs. Aysha Youseff, ACGSC)

The Original Application having been heard on 07.4.08, this
Tribunal on 11.4.08, delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Father of the applicant, functioning as postman was medically invalidated
and under the provisions of Compassionate appointment, the applicant made an

application for the same. It was after a spate of O.A.s filed by him that the respondents have offered the applicant the post of GDS, vide Annexure A-5 order dated 21-10-2005. As the applicant initially applied for such compassionate appointment in 1997, his claim in this OA is for giving retrospective effect to his appointment. For, according to the applicant, he was entitled to be considered and appointed to the post of GDS/other posts and that vacancies were in plenty at the material point of time. In support of his claim, the applicant had referred to his earlier OA No. 229/03, wherein he had prayed for retrospective appointment. In the order dated 24.03.2005 in the said O.A. the fact of applicant's attempt since 1997 for appointment on compassionate grounds had been echoed.

2. Respondents have contested the O.A. According to the counsel, there is no question of grant of compassionate appointment with retrospective effect as Rules do not indicate that such appointment can be given retrospective effect.

3. Counsel for the applicant took the Tribunal through the earlier order wherein it has been held as under:-

"10. From the above details as to the vacancy position, it is clear that there were vacancies from 1999 onwards and had the applicant's case considered at the appropriate time he would have surely had a chance of appointment. This was not done in this case and therefore, there is no logic to say that the circular considering and giving importance on fresh cases in preference to the old one, especially when the said circular has no retrospective effect.

11. By the impugned order A-11 since the respondents had already circulated the name of the applicant for employment assistance on compassionate grounds in other department is an indication that the Relaxation Committee had already approved the name of the applicant and since he cannot be accommodated in the same department towards Group 'D' and 'C' posts, his name was circulated among other departments. *This shows that the eligibility of the applicant has been*

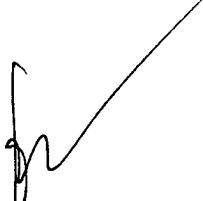
confirmed. The question to be considered is whether there is any vacancy. In the decision cited *supra*, the Full Bench has held that "**Extra Departmental Agents (EDAs for short) are entitled to the benefit under the Compassionate Appointment Scheme even on medical invalidation.**" It is well settled law that even assuming the applicant's father was not a GDS, the applicant could be considered for GDS posts on compassionate ground. I am of the view that none of the reasons given in Annexure A-11 impugned order stand to reason and it is to be set aside.

12. In the conspectus of facts and circumstances, I set aside and quash Annexure A-11 and direct the respondents to consider the case of the applicant for appointment in the GDS post on compassionate grounds as expeditiously as possible in any case, *within three months from the date of receipt of a copy of this order.* In the interest of justice, he may be permitted to continue in the GDS post, if he is already holding the post till the decision is taken".

4. Counsel for the respondents submitted that appointment on compassionate grounds is admissible to the needy and not to the greedy. As the applicant has already been granted compassionate appointment as GDS, no relief is admissible to the applicant.

5. Arguments were heard and documents perused. The above order would make it clear that appointment was sought to be made available only from prospective date. No rule or practice has been shown to the Tribunal where an individual was given compassionate appointment with retrospective effect. In the above decision, when there was a specific prayer for appointment from 1997, the relief granted to the applicant is as under:-

"12. In the conspectus of facts and circumstances, I set aside and quash Annexure A-11 and direct the respondents to consider the case of the applicant for appointment in the GDS post on compassionate grounds as expeditiously as possible in any case, *within three months from the date of receipt of a copy of this order.* In the interest of justice, he may be permitted to continue in the GDS post, if he is already holding the post till the decision is taken".

A handwritten signature in black ink, appearing to be a stylized 'J' or a similar mark, is positioned at the bottom left of the page.

6. In other words, the relief sought for by the applicant in that OA for retrospective appointment was declined at least impliedly. Under these circumstances, the present application is hit by the principles of *res-judicata*.

7. Again, there is no vested right for any compassionate appointment. Retrospective appointment is not at all contemplated in the Scheme. That there were vacancies and the Tribunal held that had the applicant been considered at the relevant point of time, he would have been appointed etc., as attempted to be canvassed by the counsel cannot create any vested right with the applicant for such retrospective appointment as claimed by the applicant. In fact, the fact that the respondents had tried to accommodate him in other Ministries and later on appointed him as GDS would go to show that they had been highly sympathetic to the applicant.

8. In view of the above, the applicant having not made out any case, the O.A. is dismissed. No costs.

(Dated, the 11th April, 2008)



(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER