

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 356 OF 2011

TUESDAY...., this the 13th day of September, 2011.

CORAM:

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

Thomas Abraham
GDS MD, Pantha Branch Post Office
Kattakada S.O.,
Thiruvananthapuram.

.... **Applicant**

(By Advocate Mr. Vishnu S. Chempazhanthiyl)

Versus

1. The Assistant Superintendent of Post Offices
Nedumangad Sub-Division
Nedumangad – 695 541.
2. The Superintendent of Post Offices
Thiruvananthapuram South Postal Division
Thiruvananthapuram – 695 001.
3. Union of India, represented by its
Chief Post Master General
Kerala Circle,
Thiruvananthapuram – 695 001.

.... **Respondents**

(By Advocate Mr. Pradeep Krishna, ACGSC)

The application having been heard on 17.08.2011, the Tribunal
on .../3-09-11..... delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A was provisionally appointed as Extra
Department Delivery Agent (EDDA), Pantha Branch Post Office with effect
from 01.08.1997. A notification was issued to fill up the post (GDSMD) the
applicant is holding. He filed O.A. No. 170/2009 which was allowed by this

Tribunal holding that he is a provisional hand and entitled to the benefit of DG Posts letter dated 18.05.1979 whereby he is eligible to be included in the wait list of discharged E.D. Agents. As the respondents proceeded with the notification for the above post, O.A. No. 897/2010 was filed by the applicant which was disposed of directing the respondents to include the applicant in the list of discharged ED Agents on notional basis for the limited purpose of considering him for alternative employment. As the selection proceedings are going ahead with the interview scheduled on 20.04.2011, this O.A. has been filed by the applicant for the following reliefs :

- (a) Direct the respondents to consider appointing the applicant as GDSMD, Pantha Branch Post Office;
- (b) Declare that the action of the respondents in proceeding with the direct recruitment without notionally including the applicant in the list of discharged ED Agent for the limited purpose of alternative employment, is illegal and arbitrary;
- (c) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice;
- (d) Award the cost of these proceedings to the applicant.

2. The applicant submitted that he has been working for the last 13 years as provisional GDS official. No steps have been taken to notionally discharge the applicant and include him in the list of discharged ED Agents for the limited purpose of considering him for alternative employment. Without complying with the direction of this Tribunal, the respondents have scheduled interview for the above post on 20.04.2011. This action is a direct infringement of the direction of this Tribunal in O.A. No. 897/2010.



3. The respondents in the reply statement submitted that the direction of this Tribunal can be complied with only after a regular selection is held for the post of GDSMD, Pantha Branch Post Office and a regular hand is appointed. They have no case that they will not comply with the direction of this Tribunal in O.A. No. 897/2010. They are willing to include his name in the waiting list of ED Agents and to give him appointment in the subsequent arising vacancy. However, he cannot insist that he should be allowed to continue in the same post where he is working now. The issue has already been settled by this Tribunal in M.A. No. 586/2010 in O.A. No. 471/2009 vide order dated 05.01.2011 (Annexure R-1). This Tribunal has referred to the scheme of alternate employment in its order dated 18.01.2011 in O.A. No. 897/2010 and observed that if there is such a scheme, the non inclusion of his name in the register of discharged provisional ED Agent need not stand in the way of considering him in the said alternate scheme. This cannot be said to be a direction to continue him in the said post which would amount to a claim for regularisation. The respondents are ready and willing to keep the applicant in the waiting list of ED Agents and he can be given alternate employment in the next arising vacancy. Therefore, they may be permitted to proceed with the selection process as notified.

4. We have heard Mr. Vishnu S. Chempazhanthiyil, learned counsel for the applicant and Mr. Pradeep Krishna, learned ACGSC for the respondents and perused the records.



5. This is the 3rd round of litigation by the applicant. Vide order dated 07.04.2010, O.A. No. 170/2009 was allowed to the extent of getting applicant's name registered in the waiting list of ED Agents discharged from service as prescribed in D.G.P&T, letter No. 43-4/77-Pen dated 23.02.1979 and consequential benefits arising therefrom, and as reiterated in D.G.,P&T, letter dated 18.05.1979.

6. O.A. 897/2010 filed by the same applicant was disposed of by this Tribunal on 18.01.2011 as under :

"The applicant is a provisional GDS employee who approached this Tribunal earlier by filing O.A.170/09 which resulted in Annexure A-3 final order dated 7.4.2010. That O.A was allowed to the extent of getting his name registered in the waiting list of ED Agents discharged from service as prescribed in D.G.P&T, letter No.43-4/77-Pen dated 23.2.1979 and consequential benefits arising therefrom. It is submitted that he is still actually continuing as provisional GDS MD. Since he is not discharged he is not included in the register as directed. He has approached this Tribunal again seeking the benefit of Annexure A-4 judgment of the WPC No.17727/04.

2. We have gone through the said judgment. It was subsequent to that in the case of casual employee the Hon'ble Apex Court in Uma Devi's case held that the benefit of confirmation or regularisation is a one time scheme as per the notification referred to in that case. Therefore, the law as settled by the Apex Court and the subsequent decision of the Apex Court governs the field. However, we feel that the non inclusion of the applicant's name in the register of discharged provisional ED Agents need not stand in the way of considering him if the respondents have got any scheme for alternate employment or regularisation as the case may be. On the other hand, if his inclusion in the register is a condition precedent for continuing him in the alternate employment, then in the factual situation when he has been continuing for a long, they can even consider him to be included in the register notionally for the limited purpose of enabling the applicant to be considered for alternate employment along with discharged persons. At the time of admission this Tribunal has stayed the process of selection. In view of the final order now passed, the final selection will stand deferred so as to enable the respondents to consider the direction as above and then proceed in accordance with the law. The O.A is disposed of accordingly."

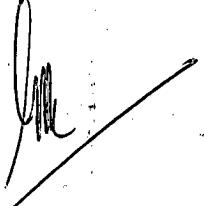


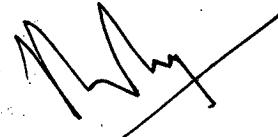
7. The present O.A. Has been filed by the applicant for consequential action as per order of this Tribunal in O.A. No. 897/2010. The stand of the respondents is that upon discharge of the applicant only, on the appointment of regular hand for which selection process is set in motion, he can be considered for alternate appointment. The applicant will be placed in the waiting list and will be given alternative employment. For this, they should be permitted to proceed with the selection process. They have relied on the decision of this Tribunal in M.A. No. 586/2010 in O.A. No. 471/2009. A careful reading of the order of this Tribunal in O.A. No. 897/2010, we find that consideration of alternate employment for the applicant should take place before filling up the post of GDSMD, Pantha Branch Post Office, by direct recruitment. The direction to the respondents is to consider the applicant as included in the register of discharged provisional ED Agent notionally. For giving notional benefit, actual discharge cannot be insisted upon. This benefit is granted to the applicant in the peculiar factual situation of O.A. No. 897/2010. The decision of this Tribunal in O.A. No. 897/2010 is distinguishable from the order in M.A. No. 586/2010 in OA No. 47/2009, in as much as, in the factual situation of O.A. No. 897/2010 without insisting on a technical discharge, the respondents are directed first to give alternate employment to the applicant and then to fill the post of GDSMD, Pantha Branch Post Office by direct recruitment, if necessary. For this purpose, without discharging the applicant, they will have to enter his name in the register of wait listed discharged ED Agents. Once his name is registered, he will be eligible for consequential benefits. If there is no senior in the said register, he will be given alternate employment in the available vacancy which need not be necessarily be at Pantha Branch Post Office, if there are other vacancies.

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8. In the light of the above, the respondents are directed to consider the applicant for alternate appointment in terms of the order of this Tribunal dated 18.01.2011 in O.A. No. 897/2010. The O.A is disposed of accordingly with no order as to costs.

(Dated, 13th September, 2011)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.