

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE: 7.10.93

O.A. 360/93

P. Chandran  
S/o Krishnan  
EDDA-I, Koyakodi P.O.  
Kuttiady Via

Applicant

vs.

Supdt. of Post Offices  
Badagara Division, Badagara

Respondents

MR. M.R. Rajendran Nair

Counsel for the  
applicant

MR. Mathew G. Vadakkel, ACGSC

Counsel for the  
respondents

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THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

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THE HON'BLE MR. S. KASIPANDIAN ADMINISTRATIVE MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The applicant is a regularly selected E.D.D.A. working at Koyakodi P.O. When a vacancy of EDSPM Mokeri, he submitted an application for transfer to that post office. Considering that request, Annexure-II order was passed by the Supdt. of Post Offices, Badagara Dn directing the applicant to resign from the present post of EDDA and produce necessary certificate. Aggrieved by the stipulation in Annexure-II pertaining to resignation, he has filed this application under section 19 of the Administrative Tribunals' Act mainly for a declaration that the applicant is entitled to be considered for provisional appointment as EDSPM, Mokeri Post Office on transfer basis without insisting on his resignation as EDDA, Koyakodi Post Office, as per Annexure-II.

2. We passed an interim order on 25.2.93 directing the respondents to consider the applicant also provisionally for appointment as EDSPM, Mokeri without insisting on his resignation from the post of EDDA, Koyakodi. On 12.4.93, we

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passed another interim order directing the respondents to maintain status quo as on that date if the respondents have not filled up the post of EDSPM, Mokeri by making fresh appointment.

3. The respondents in the reply statement submitted that pursuant to the interim order, the applicant was also considered in the selection for the post of EDSPM, Mokeri, but the selection was not finalised on account of the pendency of the original application. They also submitted that disciplinary proceedings have been initiated against the original incumbent of the post and <sup>the same</sup> is pending.

4. Since the permanent incumbent of the post is facing disciplinary proceedings and the same has not been finalised, we are of the view that no regular vacancy of EDSPM, for conducting a regular selection to fill up that post following the procedural formalities under the rules. The present proposal of the Supdt. is to fill up the post by making provisional appointment and the selection proceedings are being initiated for that purpose.

5. The learned counsel for the applicant submitted that in the selection conducted in spite of the interim order the applicant was not considered. It is seen from the minutes of the selection that the applicant was not considered because he is not a resident within the postal jurisdiction of the Mokeri post office. The stand of the respondents that the applicant cannot be considered on account of disqualification of the residential condition is against the decision of this Tribunal in O.A. 1018/90, O.A. 808/91 etc. In that view of the matter, we are of the view that the Supdt. has not fully complied with the interim order passed by this Tribunal in accordance with law laid down by the Tribunal. But it is not necessary to examine

the validity of the same at this stage for no regular vacancy has arisen in the Mokeri Post Office. Such a regular vacancy may arise depending upon the result of the disciplinary proceedings initiated against the permanent incumbent.

6. As indicated above, since the post of EDSPM, Mokeri has not become vacant for filling up after conducting regular selection, it can be filled up by considering the request of transfer made by the applicant. The learned counsel for the applicant submitted that if he is compelled to resign as indicated in Annexure-II, there is possibility of loosing his lien in Koyakodi Post Officer in which he has been regularly selected and appointed. There is some force in the submission made by the learned counsel for the applicant particularly when the applicant is prepared to resign from the post of EDDA, Koyakodi post office provided his appointment in the mokeri Post office is made on a regular basis. Under these circumstances, it is not possible to fill up the vacancy at mokeri post office before completion of the disciplinary proceedings pending against the regular incumbent on a regular basis.

7. Having regard to the facts and circumstances, the only course open to us is to dispose of the application with appropriate directions for a fair consideration of the request of the applicant for a transfer to the post of EDSPM, Mokeri. After completion of the disciplinary proceedings <sup>pending</sup> against the permanent incumbent if the Supdt. is making decision to fill up the post on a regular basis, he shall do so; but all the candidates who have participated in the interview shall be allowed to participate in the selection. The applicant may <sup>also</sup> be considered in that regular selection in accordance with <sup>19</sup> law.

8. Hence, as indicated above, we dispose of this application with the direction to the respondent to consider

the applicant for appointment on a provisional basis in the post of EDSPM, Mokeri. He may conduct regular selection if necessary as indicated above at the appropriate time.

9. It goes without saying that the Respondents may also initiate action for filling up the post of EDDA, Koyakodi Post Office also purely on a provisional basis in accordance with law.

10. The application is disposed of as indicated above.

11. There shall be no order as to costs.

*S. Kasi Pandian*  
(S. KASI PANDIAN)

ADMINISTRATIVE MEMBER

*N. Dharmadan*  
(N. DHARMADAN)

JUDICIAL MEMBER

7.10.93

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List of Annexures

1. Annexure-II : Letter No. B 3/Mokeri dated 16.2.93
- 2.