

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.367/99

Tuesday this the 17th day of July, 2001

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

E.S.Suresh Babu,
Extra Departmental Sub Post master,
Mattathur E.D.S.O
Via. Kodakara,
Thrissur.

....Applicant

(By Advocate Mr. OV Radhakrishnan)

V.

1. Superintendent of Post Offices,
Irinjalakuda Division,
Irinjalakuda.
 2. Postmaster General,
Central Region, Kochi.
 3. Director General of Posts,
Dak Bhavan, New Delhi.
- ...Respondents

(By Advocate Mrs. A.Rajeswarai, ACGSC)

The application having been heard on 17.7.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, an Extra Departmental Sub Postmaster, Mattathur E.D.S.O has filed this application aggrieved by rejection of his candidature for appointment to the post of Postman/Mailguard examination by the impugned order (A9) dated 3.3.99 on the ground that he did not have five years regular service after regular selection and appointment. It is alleged in the application that the applicant being sponsored by the Employment Exchange pursuant to a notification dated 27.5.92 was selected and appointed as

EDSPM, Mattathur with effect from 3.2.93, that his appointment was challenged by Smt. Jaya Jose in OA 1777/92, that the Tribunal directed the Post Master General, Kochi to consider the correctness of the selection and appointment of the applicant, that the Post Master General by order A6 dated 9.3.94 after detailed enquiry affirmed his selection and appointment and that as per the Recruitment Rules for appointment to the post of Postman/Mailguard the eligibility criteria for E.D. Agents being only five years satisfactory service the rejection of the candidature of the applicant is irrational and unsustainable in law. With these allegations the applicant has filed this application seeking the following reliefs:

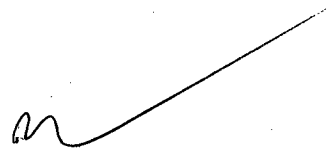
(a) to call for the records relating to Annexure., A9 letter dated 3.3.1999 of the 1st respondent and to set aside the same;

(b) to declare that the applicant is eligible and entitled to appear for the Departmental test for recruitment to the cadre of Postman/Mail guard for the year 1999 without regard to Annexure.A9;

(c) to issue appropriate direction or order directing the 1st respondent to permit the applicant to appear for the Departmental Test for recruitment to the cadre of Postman/Mail guard for the year 1999 scheduled to be held on 11.4.1999 or on any defetred date and to appoint him to the post of Postman/Mail guard on the basis of the result of above examination;

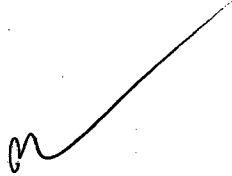
(d) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case and to award costs to the applicant.

2. The respondents in the reply statement contend that the applicant's appointment was only provisional as the



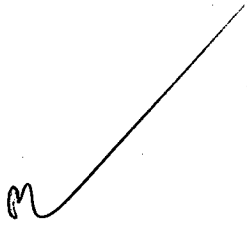
incumbent on the post was on long leave without allowance, that he having been regularly appointed only in the year 1999 the applicant as per the rules is not eligible to take the examination.

3. We have carefully gone through the entire pleadings and the annexures appended thereto and the reply statement and have heard the learned counsel for applicant Shri OV Radhakrishnan and Smt.A.Rajeswari, learned ACGSC for the respondents. The contention of the respondents that the applicant's appointment on the post of EDSPM, Mattathur from 3.2.93 was only provisional does not appear to be convincing at all. The only straw on the basis on which the argument is raised is that in the order at Annexure.A4 of appointment dated 9.12.92, it was stated that the applicant had been provisionally selected for appointment. It is not stated in the order that the vacancy was not permanent or regular, or that the appointment was provisionally made pending a regular selection and would be tenable only for a particular term. Annexure. A1 notice, A2 communication of the Supdt.of Post Offices and the A3 call letter for interview all would lead to the irresistible conclusion that the selection was being made for a regular appointment. The word 'provisional' employed in Annexure.A4 qualifies only the selection meaning thereby that the appointment could still be called off on certain eventualities namely ineligibility or disqualification which might emerge subsequently. Merely for the reason that it is stated that provisionally



selected, it cannot be held that the appointment of the applicant was not a regular appointment. The Post Master General after an enquiry found that the selection and appointment was made properly. Once the appointment had taken effect and it was affirmed the provisional nature seizes to exist especially when the selection and appointment was not made as a temporary or stop gap arrangement pending a regular appointment. The fact that the respondents have issued the order Annexure.A11 appointing the applicant as EDSPM, Mattathur with effect from 7.5.99 which appears to be innocuous order the appointment of the applicant in the year 1993 cannot be held to be provisional. Therefore, the contention of the respondents that the applicant does not have five years of service after regular appointment and therefore, he is not entitled to take the examination for appointment to the post of Postman/Mailguard has no subsistence at all.

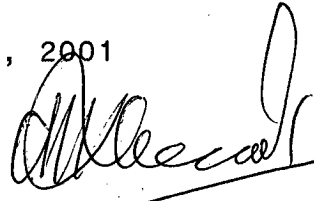
4. Even otherwise, the Tribunal has in OA 118/98 considered the question whether for eligibility to appear for the Postman/Mailguard examination it is required to have five years of service after regular appointment or whether total service including provisional service of five years would be sufficient. The Tribunal after considering the provisions of the Recruitment Rules held that there is no such requirement of having five years of service after regular appointment.



5. In any case, in the light of what is stated above, we are of the considered view that the applicant is entitled to succeed in this application. In the result, the application is allowed, the impugned order A9 is set aside. It is declared that the applicant is entitled to take the examination for the post of Postman/Mailguard. The applicant having allowed to appear provisionally on the basis of the interim order of the Tribunal, we direct the respondents to proceed further on the basis of the result of the examination. No costs.

Dated the 17th day of July, 2001


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

(S)

List of annexures referred to above:

Annexure.A1: True copy of the Notice No.0/11/92 dated 27.5.92 of the Employment Officer, Irinjalakuda.

Annexure.A3: True copy of the letter No.EDSO/3 dated 12.11.92 of the 1st respondent.

Annexure.A4: True copy of the Memo No.EDSO/13 dated 2.12.92 of the 1st respondent.

Annexure.A9: True copy of the Letter No.B2.Rectt/Postman/99 dated 3.3.99 of the 1st respondent.

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