

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 380 of 2007

Friday..., this the 29th day of August, 2008

C O R A M :

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

N.G. Vigeesh,
S/o. E.V. Gopinathan,
Gramin Dak Sevak Mail Deliverer,
Kaladi S.O, Tirur Division, Tirur,
Residing at "Ellathu Valappil House",
Madur PO, Vattamkulam,
Malappuram District.

... Applicant.

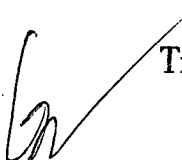
(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Superintendent of Post Offices,
Tirur Division, Tirur.
3. The Inspector of Posts,
Ponnani Sub Division, Ponnani. ... Respondents.

(By Advocate Mr. S. Abhilash, ACGSC)

The Original Application having been heard on 22.08.08, this
Tribunal on 29.08.08 delivered the following :



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

Ministry of Communication by its letter No. 14-25/91 – ED& TRG dated 29th May, 1992 informed all Chief Postmasters General, all Postmasters General, all Principals, Postal Training Centres, Director Postal Staff College, and the Controller, Foreign Post, Bombay stating that it would not be desirable to extend the scope for compassionate appointments to cover the dependents/near relatives of the invalidated EDAs. This very communication was under challenge in OA No. 220/98, and a Division Bench of this Tribunal on 28th May 2001 after verbatim quoting the above letter dated 29th May 1992, referred the matter to a Full Bench of the Tribunal with the following two questions of law to be decided:-

- (a) Whether the benefit of the scheme of employment assistance on compassionate grounds is available to the dependents / near relatives of ED agents discharged prematurely on medical invalidation; and
- (b) Whether letter No. 14-25/91 – ED& TRG dated 29-05-2002 of the Assistant Director General (Trg) Dak Bhavan New Delhi is liable to be set aside as arbitrary and unreasonable.

2. The full Bench of the Tribunal, in its order dated 8th November 2001 considered the above two questions and answered as under:-



"12. As the Scheme is intended to help the families to overcome the indigence, we find no valid reason at all to support the conclusion that it is not desirable to continue to extend the benefit of compassionate appointment to the dependents of ED Agents thrown into extreme indigence on loss of income of their bread winners by discharge on invalidation. Ed Agents it is to be noted on discharge do not get any pension, while the Government servants on retirement on invalid grounds are entitled to invalid pension. Although it is stated in the order that the decision was taken having regard to all the relevant considerations, we do find that most relevant factors have been lost sight of and, therefore, the decision is irrational and arbitrary. The same in the circumstances, in our view, is liable to be struck down on this ground alone. Once the aforesaid finding is given, it follows as a matter of sequel that the impugned order of 29th January, 1998 (Annexure A1) is also liable to be set aside.

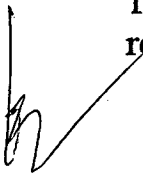
13. For the forgoing reasons, the reference is answered as under:-

Point No. (i) : Whether the benefit of the Scheme of employment assistance on compassionate grounds is available to the dependents / near relatives of ED Agents discharged prematurely on medical invalidation -- Yes.

Point No. (ii) : Whether letter No.14-25 /91-ED&TRG dated 29.05.92 of the Assistant Director General (Trg.), Dak Bhavan, New Delhi is liable to be set aside as arbitrary and unreasonable -- Yes.

14. In view of the above findings rendered, we are of the view that the O.A. itself can be disposed of now especially when the matter is one which is required to be decided without delay. The counsel also agree.

15. The applicant in the present O.A. has claimed the following reliefs :



(a) an order quashing and setting aside Annexure A-1 and A-7 and all proceedings initiated pursuant to it including steps taken to terminate the applicant's services as arbitrary and illegal.

(b)

(c)

16. In view of our aforesaid findings, the prayer clause (a) is granted....."

3. The above full bench judgment was challenged before the High Court of Kerala in OP No. 9074 of 2002 and the Hon'ble High Court in its judgment dated 28th September 2004, held, "*That the regular employees and Extra Departmental Employees are governed by different service conditions and different set of rules is also no reason to take away the benefit granted in Annexure R2 arbitrarily by Annexure A7, as rightly found by the Tribunal. Therefore, we feel that the challenge against Ex. P5 shall fail. O.P. 9074 therefore stands dismissed.*"

4. In the above case, both before the Tribunal as well as the High Court, the Director General, Department of Posts, New Delhi was a party.

5. When the Ministry of Communication gave wide circulation to the letter dated 29th May 1992 as stated in para 1 above, after the quashing and setting aside of the above letter dated 29th May 1992, the authority should

have informed all concerned about the decision of the High Court. It is not known as to whether the decision of the High Court was ever circulated at all. In our opinion it was not, as otherwise, the respondents in the instant OA, where the son of a medically invalidated GDS employee sought for compassionate appointment, would not have rejected the case by pointing out the ineligibility in accordance with the above letter dated 29th May 1992. In their counter they have also annexed a copy of the said letter dated 29th May 1992.

6. It is not known in how many cases in other Benches of the Tribunal, after the quashing of the said letter dated 29th May 1992, the respondents cited the very same dead letter and had the decision passed on the basis of this order!

7. Now, coming to the facts of the instant case, applicant's father was working as GDSMD at Kaladi Sub Post Office who was discharged on medical grounds w.e.f. 27th February, 2007 and in his place, the respondents had engaged the applicant function as GDSMD on w.e.f. 28th February 2007. While according to the applicant his engagement was provisional, it was disputed by the respondents as ad hoc. The respondents have, by

Annexure A-2 notification, invited applications for provisional appointment in the said post of GDSMD, Kaladi. The applicant's father had made a representation for appointment of his son on compassionate grounds in any GDS post available in Ponani Sub Division under Tirur Division. Annexure A-4 refers. This was rejected by the respondents, vide their letter dated 14-05-2007 (Annexure A-1) stating that compassionate appointment Scheme is not applicable to the dependents of the GDS discharged from service on medical grounds.

8. The applicant has challenged Annexure A-1 order as also Annexure A-2 order and prayed for the following main relief(s):-

- (i) To call for the records relating to Annexure A1 to A-4 and to quash A1 and A2, being illegal, arbitrary and violative of the rules relating to the subject;
- (ii) To declare that the applicant is entitled to be appointed on compassionate grounds due to the discharge of his father on medical grounds on the basis of compassionate appointment Scheme of the Department of Posts and is entitled to continue as GDSMD, Kaladi SO.
- (iii) To direct the respondents to appoint the applicant as GDSMD, Kaladi SO, or any other post on compassionate grounds at the earliest and to direct the third respondent to continue the applicant as GDSMD, Kaladi SO, till he is regularly appointed as such.

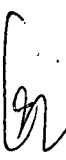


9. Respondents have contested the O.A. As stated earlier, they have relied upon the letter dated 29th May 1992 vide Annexure R-1.

10. Counsel for the applicant has submitted that the claim of the applicant is that his case should be considered for compassionate appointment in any GDS post office not necessarily in Kaladi. Challenge by the applicant of Annexure A-2 is only for consideration as to whether the applicant could be considered against the vacancy on compassionate grounds so that he could continue in the said post and further that in case the post is filled by selecting some one else, he would be disengaged, which would shatter the financial position of the family.

11. Counsel for the respondents submitted that the applicant cannot link his entitlement to compassionate appointment and the attempt by the respondents to fill up on provisional basis the vacancy at Kaladi, where the applicant is engaged as a stop gap arrangement.

12. Arguments were made and documents perused. Letter dated 29th May 1992 having been quashed and set aside, undoubtedly, the contention of the respondents relying upon the dead letter cannot be sustained. Thus, the



applicant is eligible to be considered for compassionate appointment. This is independent of his holding the post of GDSMD at Kaladi which is being sought to be filled up on provisional basis by calling for applications vide Annexure A-2 notification. The applicant has not crystallized any right to cling on to the post which he at present is holding, on the ground that he is eligible to be considered for compassionate appointment. In fact, the respondents are to consider other cases of similar nature and compassionate appointment should be against direct recruitment quota to the extent permissible under the relevant scheme and the applicant has to come in the queue of such aspirants. It is not exactly known whether he would be coming within the parameters prescribed and would be one of the most deserving cases for immediate appointment. Under these circumstances, it will not be appropriate to pass an order directing the respondents not to fill up the post of GDSMD Kaladi on provisional basis, pending consideration of the case of the applicant for compassionate appointment.

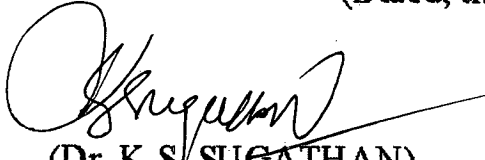
13. Thus, while Annexure A-1 order dated 14-05-2007 is quashed and set aside and respondents are directed to consider the case of the applicant for compassionate appointment, in so far as Annexure A-2 is concerned, the same holds good and the respondents may go ahead with the process of

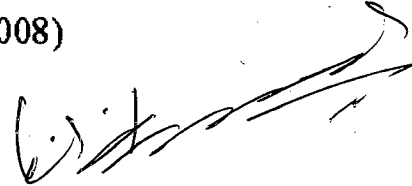
selection on provisional basis. In case the applicant has also applied to the post, respondents shall consider his application also along with others, and the fact that he has been continuing in the post since February 2007 should be kept in mind during selection. In case the applicant has not applied for the post, under the facts and circumstances of the case, he is permitted to prefer application on or before 15-09-2008 and if he so applies, his application shall be treated as having been submitted within time and the same along with others considered.

14. Before parting with the case, Respondent No.1 is advised to ensure that all the concerned authorities are informed of the quashing and setting aside by the Tribunal of the Ministry of Communication letter dated 29th May 1992 and they be advised not to rely upon the said order dated 29th May 1992 to deny compassionate appointment to the wards of medically invalidated and discharged Gramin Dak Sevaks.

15. With the above directions, the OA is disposed of. No costs.

(Dated, the 29th August, 2008)


(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER