

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No.387 of 2012

Monday this the 15<sup>th</sup> day of September 2014

**C O R A M :**

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER  
HON'BLE Mr.P.K.PRADHAN, ADMINISTRATIVE MEMBER**

P.K.Anilkumar,  
Mail Guard, HRO RMS 'TV' Division,  
Thiruvananthapuram – 695 001.  
Residing at Shiva Vilasom, Anakottur,  
Ezhukone, Kollam – 691 505. ...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

**V e r s u s**

1. The Senior Superintendent,  
RMS TV Division, Thiruvananthapuram – 695 036.
2. Union of India represented by Chief Postmaster General,  
Kerala Circle, Thiruvananthapuram – 695 033. ...Respondents

(By Advocate Ms.Deepthi Mary Varghese,ACGSC)

This application having been heard on 9<sup>th</sup> July 2014 the Tribunal on 15<sup>th</sup> September 2014 delivered the following :-

**O R D E R**

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER**

Applicant is a Mail Guard who was recruited and appointed after departmental examination held on 8.11.2009 for the vacancy which arose in 2008. After passing the departmental examination he was deputed for training from 15.12.2009. On 23.12.2009 he was appointed as Mail Guard. On 2.5.2012 he was served with Annexure A-4 memo by the 1<sup>st</sup> respondent



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intimating that the Circle Office has directed to terminate his services due to a mistake occurred in the selection process. Applicant made Annexure A-5 representation which was rejected by the 2<sup>nd</sup> respondent vide Annexure A-9. Hence, he has approached this Tribunal with the present OA seeking the following reliefs :-

1. Call for the records leading to the issue of Annexure A-4 and set aside Annexure A-4.
2. Direct the 2<sup>nd</sup> respondent to consider and pass orders on Annexure A-5 representation of the applicant and keep Annexure A-4 in the abeyance till consideration of Annexure A-5.
3. Direct the respondents to consider permitting him to continue as a Mail Guard.
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings.
6. Call for the records leading to the issue of Annexure A-9 and set aside Annexure A-9.

2. In the reply respondents state that after appointing applicant as Mail Guard vide Annexure A-3 memo, a complaint regarding discrepancies in the recruitment of Postman in Kollam Postal Division for the vacancies of the year 2009 was received. Hence respondents decided to review the selection of Postmen/Mail Guards in all the Divisions under Southern Region of Kerala Postal Circle for the vacancies of 2008 and 2009 and thereupon it was found that in Thiruvananthapuram Division where applicant is posted, the two vacancies for the post of Mail Guard/Postman were under departmental quota, for unreserved category. Applicant belongs to GDS



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category. Although he had secured the highest marks amongst the candidates who appeared for the departmental competitive examination held for those posts, Shri.J.Balachandran Nair, Mail Guard, who was a departmental candidate had secured qualifying marks but was not selected. Therefore, it was noted that the applicant - who was appointed along with another departmental candidate - was not eligible as both the posts were under the departmental quota for unreserved category. Details of the candidates who have attended the examination and the marks obtained by them are :

<i>Sl.No.</i>	<i>Roll No.</i>	<i>Name and Designation</i>	<i>Marks obtained (out of 50)</i>			<i>Total marks obtained (out of 150)</i>
			35	34	33	
1	K/TV-2	EK Shahabdeen, MM	35	34	33	102
2	K/TV-3	A Anilkumar, GDSMM	40	26	36	102
3	K/TV-4	PK Anilkumar, GDSMM	48	28	44	120
4	K/TV-5	G Sivasankara Pillai, MM	20	20	34	74
5	K/TV-6	J Balachandran Nair, MM	32	31	38	101
6	K/TV-7	K Sreekumar, GDSMM	0	1	20	21

3. Respondents further state that candidates at Sl.Nos.4 & 6 did not secure the minimum qualifying marks of 45% in each paper and they were disqualified. Accordingly, appointment of the applicant was ordered to be cancelled after observing the usual formalities and Annexure A-4 memo was issued to him. Applicant submitted Annexure A-5 representation to 2<sup>nd</sup> respondent which was disposed of vide Annexure R-1 (Annexure A-9). According to the respondents, applicant can be given notional appointment



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as Group D with effect from the date from which his immediate junior in the GDS seniority list was appointed as Group D, thereby there will be no injustice to the applicant. The respondents further state that the competent authority has the right to review the selection/appointment at any point of time and the respondents decided to do so in the fitness of things to give way for an eligible candidate who had qualified in the examination but omitted to be selected erroneously.

4. A rejoinder was filed by the applicant reiterating his contentions in the OA and also stating that even if the applicant is reverted back as GDS his juniors in the GDS category have already been appointed as Group D in 2010 itself. He further state that the change in the employment will have repurcussions in his financial condition including an irredeemable impact on the repayment of the loan he has availed of from P & T Co-operative Society for constructing a house.

5. We have heard Shri. Vishnu S Chempazhanthiyil, learned counsel for the applicant and learned counsel for the respondents. We have carefully gone through the records of the case. Applicant impugnes Annexure A-4 communication which is indeed a show cause notice informing him the proposal of the department to terminate his services as Mail Guard. After narrating the circumstances which lead to such a proposal, the 1<sup>st</sup> respondent in Annexure A-4 states as follows : 

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" .....Therefore, as per the directions contained in Circle Office Letter No.VIG/23/HQ/180/2012 Pt dated 4.4.2012, it is proposed to terminate your service as Mail Guard immediately and to select Shri.J.Balachandran Nair, MM SRO Kollam as Mail Guard in the place presently occupied by you.

You are hereby given an opportunity to submit any representation that you may wish to make against the proposal within 15 days of receipt of this letter, failing which, action will be taken as if you have nothing to state in this regard.

Sd/-  
M.Mohandas  
Senior Superintendent."  
(cmphasis added)

6. According to the applicant, Annexure A-4 communicates a concluded decision on the part of the respondents to terminate his services. Therefore, he contends that the aforesaid decision by the respondents was made without giving him prior notice, violating the principles of natural justice. This argument may sound attractive; but on a closer examination it can be seen that the same is fallacious. The fallacy of this argument will be exposed when one looks at the aforequoted portion of Annexure A-4 which in unambiguous terms states that, in the circumstances as stated, there is a proposal to terminate applicant's services as Mail Guard and to select Shri.J.Balachandran Nair, MM in his place. The above extract further shows that applicant has been given opportunity to submit representation he may wish to make against the said proposal. This means, Annexure A-4 - although styled as a memo - is indeed a show cause notice, satisfying the requirements of principles of natural justice, issued before a final decision was taken by the respondents.



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7. It is pertinent to note that no case has been made out by the applicant to establish that respondents have taken the decision to terminate him in a *malafide* manner or with ulterior motive to do undue favour to any other person. It appears from the pleadings of the applicant that he seems to accept the realities and acknowledges the judicious decision of the respondents. It is the contention of the respondents that during the selection process in which the applicant was selected and appointed, due to an error occurred, one departmental candidate and one GDS candidate were happened to be appointed without advertizing to the fact that both the vacancies had to be filled by departmental candidates. Admittedly the applicant belongs to the GDS category. It is not disputed by the applicant that Shri.J.Balachandran Nair, to whom the respondents propose to give employment in his place, is a departmental candidate who also had obtained qualifying marks in the departmental examination conducted.

8. Respondents in their reply had unambiguously stated that on his eventual reversion to GDS he would be given Group D posting, notionally placing him above his immediate junior in the GDS who had become a Group D employee by now. The applicant seems to be not satisfied with the aforesaid offer. It appears that the applicant is mainly aggrieved by the sudden reversion from the post of Mail Guard/Postman which is a Group C post, upsetting his financial plans.

9. Now the question which looms large is whether respondents had the right to terminate the services of applicant after he was posted as Mail Guard/Postman and after he had continued in that post for nearly 2 ½ years. In this context it is worthwhile to have a look at Annexure A-3 order dated 23.12.2009 appointing him as Mail Guard :

“ Shri.P.K.Anil Kumar who has been selected for appointment to the cadre of Mail Guard in RMS 'TV' Division on the basis of merit in the Departmental examination held on 8.11.2009 and who has completed the prescribed course of training is appointed as Temporary Mail Guard in PB I Rs.5200-20200 + 2000 GP in the existing vacancy at SRO, RMS 'TV' Division, Kollam.

The appointment will come into effect on the date of joining and the official will be on probation for two years from the date of joining. He is also informed that the new restructured defined contribution pension system, which has come into effect from 1.1.2004 will be applicable to him.

The appointment is purely on temporary basis and will not confer on him any title for permanent appointment. The other condition of the service will be governed by relevant rules and order in force from time to time.”

(emphasis added)

10. In *Arun Kumar Chatterjee v. South Eastern Railway and others* 1985 SCC (L&S) 465; (1985) 2 SCC 451 the Apex Court had an occasion to examine the meaning of the word 'temporary appointment'. The Apex Court held :

“.....the word 'temporary' usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary ie. for the time being, with no right to the post.”

11. In *Indian Council of Agricultural Research and another v. T.K.Suryanarayan and others* reported in (1997) 6 SCC 766 Hon'ble Apex Court held :

"8. ....Even if in some cases, erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory service rules in law courts. Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective on 1.10.1975 should not be adhered to because in some cases erroneous promotions had been given....."

12. This decision was followed by the Apex Court in *Union of India and another v. Narendra Singh* reported in (2008) 2 SCC 750. The Apex Court observed thus :

"32. ....But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In *ICAR v. T.K.Suryanarayan* it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules."

13. Thus, one can see that the post in which applicant was appointed was purely on temporary basis, which empowers the appointing authority to reconsider or cancel the appointment on valid grounds. It has to be further noted that such cancellation of appointment was made by the respondents not in a stigmatic manner, not at a too distant point of time from the date of his appointment in the new post. Had the applicant in that post continued for a very long time, for example, 8 to 10 years, equity would come to play in his favour by forbidding the respondents from cancelling of such appointment.

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14. We are unable to see any reason to hold that the respondents were not justified in terminating the applicant's services. We take notice that the respondents expressed willingness to make amends to the misfortune occurred to the applicant - for no fault of his - by offering him to be posted as Group D notionally above his junior in the GDS cadre who had now become a Group D employee. We consider that this offer by the respondents is quite just and proper.

15. In the facts and circumstances of the case, we are of the opinion that the applicant is not entitled to the relief of cancellation of Annexure A-4 and Annexure A-9 orders. Accordingly, the OA is dismissed. While doing so, we order the parties to suffer their own costs and we do hope and trust that respondents would fulfil their promise of offering the post of Group D to the applicant by posting him notionally above his junior who had already become a Group D.

(Dated this the 15<sup>th</sup> day of September (2014))



P.K.PRADHAN  
ADMINISTRATIVE MEMBER



U.SARATHCHANDRAN  
JUDICIAL MEMBER

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