**CENTRAL ADMINISTRATIVE TRIBUNAL**
**ERNAKULAM BENCH**

**O.A. No. 393 of 2006**

Tuesday, this the 13th day of February, 2007.

**CORAM :**

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**
**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

P.C.Roy,
S/o M Cherian,
Gramin Dak Sevak Mail Deliverer/
Mail Carrier,
Thekkan Marady B.O.,
Muvattupuzha. : Applicant

(By Advocate Mr. Shafik M.A. )

v.

1. Union of India
Chief Postmaster General,
Kerala Circle,
Trivandrum.

2. The Sub Divisional Inspector(Postal),
Muvattupuzha Sub Division,
Muvattupuzha .: Respondents

(By Advocate Mr. Varghese P Thomas, ACGSC

The application having been heard on 6.2.2007, the Tribunal on 13.2.2007 delivered the following :

**O R D E R**

**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

1. This O.A. is filed by Shri P.C.Roy, Gramin Dak Sevak Mail Deliverer/Mail Carrier(GDSMD/MC), aggrieved by the apprehended termination of his appointment, in the wake of efforts being made by the respondents to commence the recruitment process.

2. The applicant was appointed against a put off vacancy as the GDS MD/MC of Thekken Marady Branch Post Office created in consequence of disciplinary proceedings against the previous incumbent and has been working as

such with effect from 19.8.2005. He claims to be in possession of all qualifications prescribed for the post under the Recruitment Rules. The respondents issued A-1 notification dated 1.5.2006 calling for candidates for provisional appointment. Apprehending such provisional appointment would cause prejudice to him, he submitted A-3 representation dated 22.5.06. His points therein were that he was selected to the post provisionally and as per the decisions of the Hon'ble High Court that a provisional appointee cannot be terminated to appoint another provisional appointee, he was willing to continue in his post till the proceedings against his predecessor were completed, he be allowed to continue in the said post till such completion and the notification be cancelled. No response was given thereto and efforts are on to pursue the recruitment process initiated in pursuance of A-1. Aggrieved by this, he has approached this Tribunal. In the interests of justice, it was ordered by this Tribunal, directing the respondents to refrain from taking further action on A-1.

3. The applicant seeks the relief of quashing A-1 and of declaring his entitlement to continue till a regular appointment is made. The following grounds are relied upon:

i) A provisional employee cannot be replaced by another provisional employee in terms of the decision of the Hon'ble Apex Court in AIR 1992 SC 430.

ii) There are covering cases of this Tribunal in O.A.494/2002, 1194/2000 etc.

4. The respondents oppose the application. According to them:

a) The applicant is working on a stop-gap arrangement and not as a provisional employee as claimed by him in A-3 representation.

b) Such arrangements are made without following requisite formalities of a provisional appointments like nomination from employment exchange/open notification etc.

c) The applicant is free to apply for the post in pursuance of A-1 notification.

d) Vide R-2 judgment of the Apex Court, no right of absorption accrues to a temporary employee continued for a time beyond his term of appointment.

5. Heard the parties and perused the documents. The learned counsel for the applicants brought to our notice the orders of this Tribunal in OA 494/2002

6. The first question to be decided is what is the nature of appointment of the applicant. According to the respondents, his engagement is only a stop gap arrangement. The applicant claims it is a provisional appointment. The respondents have elaborated the process of engagement in their additional reply statement. Accordingly, there are three modes of filling up the posts of GDS against vacancies (i) making stop gap arrangement, (ii) provisional appointment and (iii) regular appointment. The first two are resorted to when it is not possible to regularly fill up the post. Except his repeated assertion that he is a provisional employee, no other evidence is forthcoming from the applicant. The applicant says he is not in possession of the order of appointment. But, even after filing this O.A, he could have obtained a direction from this Tribunal to the respondents, to produce a copy of the same. He did not exercise this right or utilise the opportunity. Besides, a perusal of the orders of this Tribunal in O.A.494/2002 shows that a reference is made to the observations of Hon. Apex Court in the case of Rudrakumar Sain and others v. Union of India and others [2000 SCC (L&S) 1055], wherein it has been observed as follows:

> *"If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then and to meet this contingency an appointment is made it can be appropriately called as stop-gap arrangement and appointment to the post is adhoc appointment."*

Under these circumstances, we have to record that the engagement of the applicant was only a stop gap arrangement.

7. The second question that engages our attention is whether the applicant, as a stop gap engagee can be replaced by a provisional candidate. The applicant has referred to the orders of this Tribunal in O.A.494/2002. In that O.A, the applicant was a provisionally appointed candidate on the put off vacancy of the incumbent of the post. Against the said vacancy, the third respondent therein was provisionally appointed. The applicant had sought for a declaration that he was entitled to continue as a provisional hand, till a regular appointment was made. The respondents' contention therein was that the applicant therein was not a provisional hand but a stop gap engagee and by virtue of an earlier decided case in O.A.564/2000, a stop gap engagee cannot nurse a grievance against a provisional appointment. In O.A.564/2000, the applicant had been engaged as a temporary measure as Extra Departmental Stamp Vendor without going through the process of selection. He had challenged an order issued by the Sub Divisional Inspector of Post Offices directing the Post Master to change him. After going through the facts and circumstances of the case the Tribunal passed the following order:

> *"Merely making ad hoc and provisional appointment to tide down the emergent situation without a process of selection does not confer on such appointee any right to continue if the superior authority decides to make appointment in accordance with law. Even provisional appointment to ED posts are to be made on the basis of a selection. The direction in the impugned order is only to do that. We, therefore do not find any legitimate cause of action of the applicant which calls for redressal."*

Making reference to the decision referred to above, this Tribunal had observed in O.A.494/2002 that the facts therein were not identical to those in O.A.564/2000. In the former, the applicant was appointed on 7.9.99 and the respondents did not take any steps to make a selection for the provisional appointment for more than a year.

No clear idea was available to the respondents about the appointment of a suitable candidate from the category of retrenched ED Agents. The Tribunal held that it cannot be a stop-gap arrangement to tide over an emergent situation but was an appointment till a regular selection was made. The Tribunal also held that the situation in this case was covered by the ruling of the Apex Court in State of Haryana v. Piara Singh and others [AIR 1992 SC 2130]. Under these circumstances, the orders of appointment of the provisional hand who was respondent No.3 were set aside and the applicant was allowed to continue till a regular selection. The applicant's counsel in this O.A would persuade us to grant similar benefit to the applicant based upon the above mentioned ratio. However, there are certain important differences between the facts of O.A.494/2002 and those of this O.A. First, the applicant has not been able to advance sufficient evidence to prove that he was a provisional hand. On that basis, we have already found him to be a stop-gap engagee. The non-availability of the orders of appointment has proved to be of a significant handicap to divine the intention of the respondents on the circumstances of such engagement. The applicant was engaged on 19.8.2005 and the impugned notification was issued on 1.5.2006, viz, within a year of such engagement. Secondly, even assuming that the appointment was provisional, such appointments are covered in terms of the DG, P&T letter No.43-4/77-Pen. Dated 18.5.79 (R-1 document) Annexure-B to the above letter is the offer of appointment issued to the prospective employees in duplicate; one of the copies should be signed by the employee in token of receipt of the same, retaining the other copy. Under these circumstances, it is difficult to accept the contention of the applicant that he is not in a position to produce the copy of the appointment order since he is not given the order till date. Thirdly, the applicant claims that he is entitled to continue till the completion of the disciplinary proceedings of the previous incumbent. This in fact has been envisaged under clause 2 of the Annexure-B. But clause 4 of the Annexure reading,

"4. *The.....(Appointing Authority) reserves the right to terminate the provisional appointment any time before the period mentioned in para 2 above*

*without notice and without assigning any reason."* nullifies the assurance of clause 2. For the above mentioned reasons, the applicant appears to be disentitled to the perceived benefits of a provisional appointment. Most important difference between the two O.As is a fact that the earlier O.A.394/2002, someone had already been appointed provisionally whereas in this O.A., only a notification has been issued calling for names from eligible candidates. The respondents also say that the applicant is at liberty to participate in the selection process. It is not known as to why the applicant is not very keen to participate therein, especially when he claims to be in possession of all the prescribed qualifications. Viewed in this context, this application appears to be premature.

8. The applicant places reliance on the dictum of the Hon. Apex Court in the Piara Singh's case referred to above. Paragraph 25 is of the judgment extracted here below:

> *"25. Before parting with this case, we think it is appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.*
>
> *The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.*
>
> *Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee;he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.*
>
> *Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook*

*delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.*

*An unqualified person ought to be appointed only when qualified persons are not available through the above processes.*

*If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.*

*The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.*

*So far as the work charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years-a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to work-charged employee as well as casual labour.*

*We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of ad hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.*

*These are but a few observations which we thought it necessary to*

*make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein."*

The applicant argues that in terms of the above dictum, no ad hoc employee should be replaced by another and hence the proposed notification vide A-1 is hit by the dictum of the judgment as shown above. The extent of applicability of the dictum has been well delineated in the judgment rendered by the Hon. High Court of Madras in 2006 (1) M Saravanakumar v. Secretary to Government, Education Department, Chennai. Adverting precisely to the above mentioned dictum of the Hon. Apex Court, the Hon. High Court said:

"25. *Keeping the peculiar facts of the case in State of Haryana v. Piara Singh, AIR 1992 SC 2130 (supra), in mind we may now consider the observations made by the Supreme Court in para 25 of its judgment, namely, that one ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee.*

*26. It may be noted that the Supreme Court has specifically stated that it has made this observation only to prevent arbitrary action on the part of the appointing authority hence, it follows that if there is no arbitrariness on the part of the appointing authority in replacing one ad hoc or temporary appointee by another ad hoc or temporary appointee there will not be any illegality.*

*27. Hence, there cannot be any absolute rule or principle taht one ad hoc or temporary appointee can never be replaced by another ad hoc or temporary appointee. It all depends upon the facts of each case. To take a hypothetical example, a temporary appointee in service may totally be incompetent whereas another person who is not in service may be very competent and eligible. We see no reason why the competent person cannot be appointed in place of the incompetent person, even if both appointments are ad hoc or temporary in nature. For instance, there may be a stenographer working in a temporary capacity who does not know shorthand or typing properly. In our opinion, he can certainly be replaced by a competent stenographer, who is very good in typing and shorthand, even if the latter is appointed in a temporary or ad hoc capacity. After all,*

*without a competent stenographer an officer or Judge may find it difficult to work.*

*28. xxx xxx xxx*

*29. Thus, the aforesaid observation in para 25 of the decision of the Supreme Court in State of Haryana v. Piara singh, AIR 1992 SC 2130 does not, in our opinion, lay down any absolute rule that one temporary or ad hoc appointee can never be replaced by another temporary or ad hoc appointee. It all depends upon the facts of each case. If, however, it can be demonstrated that such replacement of one guest lecturer by another guest lecturer is wholly arbitrary, then of course, this Court can interfere, but no absolute rule can be laid down in this connection that one guest lecturer can never be replaced by another guest lecturer."*

This, we find is an apt interpretation of the orders of the Supreme Court in Piara Singh's case. In the present O.A, it is more or less certain that the applicant was not selected through any known selection process. The impugned notification on the other hand seeks to publish an open notice calling for candidates for provisional appointment. The said public notice is being sent to the following recipients

1. GDSBPM, Thekkenmarady.
2. SPM Muvattupuzha Market.
3. Secretary, Marady Grama Panchayat.
4. Village Officer, Marady Village.
5. Secretary Pampakuda Grama Panchayat.
6. SPM, Pampakuda.
7. Employment Officer Muvattupuzha Town Employment Exchange.

This is an transparent process as opposed to any arbitrary action to fill in posts in a clandestine manner. Inasmuch as the applicant has no claim that he was provisionally appointed in an identical transparent process, the process as envisaged in A-1 notification is both fair and transparent. More importantly, the applicant is also free to participate in the said selection process, as pointed out by the respondents. This again adds one more element of transparency to the selection process, which is anathema to arbitrariness. The applicant cannot be heard to contest such a transparent process, that too at a premature stage.

9. Under these circumstances, we find that the applicant has not made a convincing case. The stay ordered by this Tribunal is vacated. The respondents may pursue the selection process initiated by A-1 and the applicant may duly participate in that. The applicant is allowed to continue till a selection is made and the selected candidate duly joins.

10. With these directions, the O.A is disposed of. No costs.

Dated, the 13th of February, 2007.

**N.RAMAKRISHNAN**
**ADMINISTRATIVE MEMBER**

**K.B.S.RAJAN**
**JUDICIAL MEMBER**

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