

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.398/2010

Dated this the 15th day of July, 2010

C O R A M

**HON'BLE MR.JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

V.S. Jyothishkumar
N.V House,Chirappathi
Panavoor PO.

..Applicant

By Advocate Mr. Vishnu S. Chempazhanthiyil

Vs.

1 The Superintendent of Post Offices
 South Postal Division
 Thiruvananthapuram-14

2 Union of India represented by
 the Chief Postmaster General
 Kerala Circle,
 Thiruvananthapuram.

Respondents

By Advocate Mr. Pradeep Krishna, ACGSC

The Application having been heard on 15.7.2010 the Tribunal delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The grievance of the applicant is that the respondents are not considering him as a discharged ED Agent.

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2 According to the applicant, he is working as a Provisional GDS Mail Deliverer-II at Panavoor Post Office from 12.5.2006 onwards in the vacancy of Shri Babukuttan Nair who was appointed as Group-D. Since he has completed more than three years service he made a request to regularise him in the post or to include his name in the list of discharged ED Agents. However, the respondents have now notified the post of GDSMP-II Panavoor Post Office for regular open market recruitment (A-2). Apprehending termination of his service, he has filed this O.A to extend the benefits of orders of this Tribunal in identical cases in O.A. 429/2005 and O.A. 170/2009 to him and for a direction to consider his representation in the light of judgments

3 The respondents filed reply statement opposing the O.A. They denied that the applicant was appointed on provisional basis and submitted that he is only a substitute of the regular incumbent. They stated that the Sri Babukuttan Nair, the regular incumbent of the post of GDS MD Panavoor while officiating as Group-D, as is the practice, nominated the applicant as his substitute, that Shri Nair was subsequently appointed as regular Group-D as per orders of this Tribunal in O.A. 266/06 w.e.f. 6.10.2005 and that during this period two more substitutes other than the applicant were also engaged by Shri Nair. They further stated that after regular appointment of the regular incumbent as Group-D, they decided to fill up the post on regular basis by open notification. They denied that the averment that he was continuously appointed. They distinguished the applicant's case with that of the applicant in O.A. 429/2005 and 170/2009 who were provisional appointees for more than 10 years while the applicant is only a substitute who worked intermittently. They relied on the judgment of the Apex Court in Secretary, State of Karnataka Vs. Umadevi (2006) 4

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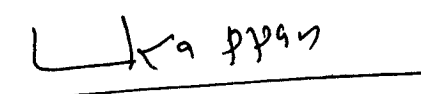
SCC 1) They have also produced Ext. R -2 series to show the nomination of different substitutes by the regular incumbent.

4 We have heard learned counsel for the parties and perused the records produced before us.

5 The contention of the applicant is that he has completed more than three years' service as provisional GDS, therefore he is entitled to be included in the waiting list of ED Agents discharged from service in accordance with DG P&T letter dated 18.5.79 (A-2). The applicant has not produced any material in support of his contention. On a perusal of the various leave applications of the regular incumbent produced by the respondents at Ext. R-2 series, we find that whenever the regular incumbent took leave, on account of his officiation as Group-D in the Department, he had nominated either Ratheesh Kumar V.S or Jyothish Kumar VS (the applicant) as his substitute. Therefore, the contention of the applicant that he is a provisional hand and worked continuously in the post of GDS MD-II, Panavoor is proved wrong. We therefore, hold that the applicant has worked intermittently only as a "substitute" of the regular incumbent. As such, he has no legal right to claim the benefit under DG's letter dated 18.5.79. In this view of the matter, the orders of the Tribunal relied on by the applicant are also not applicable to him. Accordingly, the O.A is dismissed. No costs.

Dated 15th July, 2010


K. NOORJEHLAN
ADMINISTRATIVE MEMBER


JUSTICE K. THANKAPPAN
JUDICIAL MEMBER