

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

OP (CAT).No. 189 of 2015 (Z)

OA. NO.66/2013 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

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PETITIONER/APPLICANT IN O.A.:

**SMITHA. K.M., D/O. K.V. MURALI,
AGED 39 YEARS, WORKING AS GDSMD,
KD PLOT P.O., KALAMASSERY, KOCHI -683 104,
RESIDING AT KALATHIPARAMBIL HOUSE,
MULAVUKADU, KOCHI- 682 504.**

**BY ADVS.SRI.NIRMAL V NAIR,
SRI.P.A.KUMARAN,
SRI.ANEESH JOSEPH,
SRI.RILGIN V.GEORGE.**

RESPONDENT(S):

- 1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF COMMUNICATIONS, DEPARTMENT OF POSTS,
NEW DELHI -110 001.**
- 2. CHIEF POSTMASTER GENERAL,
KERALA CIRCLE, THIRUVANANTHAPURAM-695 033.**
- 3. POSTMASTER GENERAL,
CENTRAL REGION, KOCHI -682 020.**
- 4. SENIOR SUPERINTENDENT OF POSTS,
ERNAKULAM DIVISION, KOCHI -682 011.**
- 5. ASSISTANT SUPERINTENDENT OF POST OFFICES,
ERNAKULAM SUB DIVISION, KOCHI -682 011.**

BY ADV. SRI.N.NAGARESH, ASSIST. S.G. OF INDIA.

**THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 25-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 A TRUE COPY OF THE FINAL ORDER DATED 07-08-2015 O.A. 66/2013 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- EXHIBIT P2 A TRUE COPY OF THE ORIGINAL APPLICATION ALONG WITH THE ANNEXURES.
- EXHIBIT P3 A TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS ALONGWITH THE ANNEXURES.
- EXHIBIT P4 A TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER.
- EXHIBIT P5 A TRUE COPY OF THE MISCELLANEOUS APPLICATION FOR PRODUCTION OF DOCUMENT ALONGWITH THE ANNEXURE A9.
- EXHIBIT P6 A TRUE COPY OF THE FINAL ORDER DATED 26-08-2013 IN O.A. 534/2012 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- EXHIBIT P7 A TRUE COPY OF THE JUDGMENT DATED 03-02-2014 IN O.P(CAT). 16/2014 ON THE FILES OF THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K. SURENDRA MOHAN & SHAJI P. CHALY, JJ.

O.P(CAT) NO. 189 OF 2015

Dated this the 25th November, 2015.

JUDGMENT

Surendra Mohan, J.

The petitioner in O.A.66/2013 of the Central Administrative Tribunal ('CAT' for short) is before us challenging Ext.P1 order dismissing the application. The petitioner had applied for selection and appointment to the post of Gramin Dak Sevak Mail Deliverer ('GDSMD' for short). The qualification prescribed was a pass in VIII standard. It was also specified that preference will be given to persons who have passed SSLC or an equivalent examination. After the selection process, the petitioner was selected and appointed with effect from 8.7.2011. She had also worked as a GDSMD pursuant to her appointment. However, on 11.9.2012, her

appointment was cancelled. The reason for cancellation of her appointment was that, the same had been granted overlooking another candidate by name Aneesh K.K who had scored higher marks at the selection than the petitioner. The said person had passed THSLC, scoring 70.33 marks. The fifth respondent, the appointing authority had committed a mistake by not considering the said person. The fifth respondent was under the impression that THSLC was not equivalent to the SSLC Examination. It was on realising the mistake, the appointment of the petitioner was cancelled. Though the petitioner had submitted a representation against cancellation of her appointment the representation was rejected on 21.1.2013, upholding the decision to terminate her. Thereupon, the petitioner had filed O.A.66/2013. On the strength of interim orders issued by the CAT, she has been continuing to work.

2. According to the counsel for the petitioner, the petitioner has been working continuously ever since her

appointment with effect from 8.7.2011. She has not been terminated yet. She had also produced before the CAT an affidavit sworn to by Shri. Aneesh K.K intimating that he had no objection to the appointment being given to the petitioner. In spite of the above the CAT had, as per the impugned order directed the fifth respondent to first offer the appointment to Shri. Aneesh K.K and to appoint the petitioner only if he declines the offer. The said direction according to the learned counsel for the petitioner is absolutely uncalled for and liable to be set aside. In the alternative, the counsel also points out that, there are 31 vacancies of GDS available, to one of which, she could be accommodated. Reliance is placed on the service rules of Post Gramin Dak Sevaks. According to the learned counsel, as per the D.G.P & T letter No: 43-4/77-Pen dated 18.5.1979 and Circular dated 30.12.1999 the respondents are bound to give alternative employment to Extra Departmental Agents who are appointed provisionally and subsequently discharged from service. He seeks the

benefit of the said provision in the case of the petitioner also.

3. The Assistant Solicitor General Shri. N.Nagaresh opposes the contentions of the counsel for the petitioner. According to the learned Assistant Solicitor General of India, the termination of the petitioner was fully justified in the facts and circumstances of the case. She had been appointed by mistake and her termination was necessitated for the purpose of honouring the rightful claim of Shri. Aneesh K.K. Therefore, it is contended that she cannot have any complaint against her termination. In view of the above the learned Assistant Solicitor General of India seeks dismissal of this petition.

4. Having heard the respective counsel at length, we do not find any infirmity in the order of the CAT warranting an interference therewith. However, considering the fact that the petitioner had been working for more than four years, it is only appropriate that the respondents consider whether she could be provided with alternative employment, if there are

vacancies and such a course is permissible in accordance with the rules.

This original petition is dismissed, with the above observation.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

jj

/True copy/

