CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOs. 450/01, 475/01, 479/01 & 502/01

Thursday, the 18th September, 2003.

C O R A M

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K. V. SACHIDANANDAN, JUDICIAL MEMBER

O.A. NO. 450/2001

M.A.Jessy D/o M.A. Antony
Extra Departmental Delivery Agent
Mulavukad
residing at Mankuzhythundil House
Vyttila P.O.

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. The Assistant Superintendent of Post Offices
Ernakulam Sub Division
Edapallly,
Kochi-24.

2. The Senior Supreintendent of Post Offices
Ernakulam Division, Ernakulam.

3. Chief Post Master General,
Kerala Postal Circle,
Trivandrum..

4. Union of India represented by
Secretary to Govrnment of India
Department of Posts,
New Delhi.

Respondents

By Advocate Mr. P. Vijayakumar, ACGSC

O.A. 475/2001

P. R. Ramachandra Das S/o KP.K. Raman
Extra Departmental Delivery Agent
Thiruvankulam
residing at Padinjare Venmelil House
Thekkumbhagam
Trippunithura P.O.

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. The Sub Divisional Inspector of Posts,
Tripunithura Postal Sub Division,
Ernakulam.

2. The Senior Suprintendent of Post Offices
Ernakulam Division, Ernakulam.

3. The Chief Post Master General,
Kerala Postal Circle,
Trivandrum..

4. Union of India represented by
Secretary to Govrnment of India
Ministry of Communications,
Department of Posts,
New Delhi.

Respondents

By Advocate Mr. C. Rajendran, SCGSC

O.A. No. 479/2001

K.E. Pushkaran S/o Ittachan
Extra Departmental Messenger
Kakkanad P.O. Kochi-30.
residing at Kizhippally House, Ponnurunni
Thammanam P.O. Kochi.

Applicant

By Advocate Mr. M. R. Rajendran Nair

Vs.

1. The Assistant Superintendent of Post Offices
Ernakulam Sub Division
Ernakulam.

2. The Senior Supreintendent of Post Offices
Ernakulam Division, Ernakulam.

3. Chief Post Master General,
Kerala Postal Circle,
Trivandrum..

4. Union of India represented by
Secretary to Govrnment of India
Ministry of Communications,
Department of Posts,
New Delhi.

Respondents

By Advocate Mr. M.R. Suresh, ACGSC

O.A. No. 502/2001

A.R. Balakrishnan
Extra Departmental Delivery Agent
Eroor P.O. residing at
Kalapurayil House
Eroor West P.O
Eroor.

Applicant

By Advocate Mr. P.C. Sebastian

Vs.

1. The Sub Divisional Inspector of Post Offices
Tripunithura Sub Division
Triunithura.

2. The Senior Supreintendent of Post Offices
Ernakulam Division, Kochi-11.

3. Post Master General,
Central Region,
Kochi-16.

4. Union of India represented by
Secretary to Government of India
Ministry of Communications,
Department of Posts,
New Delhi. Respondents

By Advocate Ms P.Vani, ACGSC

The Applications having been heard on 19.6.2003 the Tribunal delivered the following on 18.9.2003.

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The above four Original Applications have been filed by the concerned applicants aggrieved by the impugned orders terminating the services of the respective applicants on the ground that investigation was conducted regarding certain allegations of corruption and malpractices in the recruitment of Extra Departmental Agents in Ernakulam Division and the appointing authority was found to be involved in malpractice in appointing these applicants and on the said basis the termination orders were issued. Since the above OAs are off shoots of such an enquiry wherein the applicants were not parties, the learned counsel for the applicants and respondents agreed that these OAs may be disposed of by a common order. Therefore this common order is passed.

O.A. 450/2001(M.A.Jessy)

2. The short facts in this case is that by Annexure A1 order dated 23.5.2001 the second respondent directed termination of the services of the applicant. This was followed by a further order Annexure A2 dated 24.5.2001 terminating the services of the applicant. It is averred in the O.A. that the applicant was submitted to a regular selection process on being sponsored by the Employment Exchange and due to administrative reasons a memo was issued under Annexure A4 dated 31.12.1997 stating that her services shall stand terminated with effect from the date of expiry of one month. She made a representation Annexure A5 against A4 memo and also filed O.A. 125/98 apprehending her termination before this Tribunal and the Tribunal directed that the service of the applicant shall not be terminated based on Annexure A4. Annexure A6 is the true copy of the order of the Tribunal. In the reply statement Annexure A7 it was contended that the review was based on the letter of the Director General dated 13.11.1997. The impugned action is based on an investigation conducted regarding certain allegations of corruption and malpractices in the recruitment of Extra Departmental Agents in the Ernakulam Division and Annexure A8 enquiry report dated 16.10.97. This was without notice to the applicant and the applicant never participated in the said enquiry. It is based on a submission made by one Sri Bhadran whom the applicant does not know. According to the applicant he is a resident of far away place and has

never complained of being overlooked. No opportunity was granted to any one to cross examine the said Bhadran. Pending Annexure A5 and A9 representations this Tribunal directed not to terminate the services of the applicant. By final order dated 13.11.1997 (Annexure A7) A5 representation was made before understanding actual grounds on which A4 notice was issued. it was specifically urged that the applicant was unable to make an effective representation since the reasons were not disclosed to her. No further opportunity to make representation was granted to her. The request for assistance of a counsel and personal hearing by representation dated 19.2.2001 (A-12) was not acceded to, the counsel was not even allowed to enter the second respondent's room. Applicant submitted that she has not done any irregularity and prayed that her appointment may not be cancelled without any further notice. Thereafter A1 and A2 were issued and respondent NO. 1 served A1 and A2 on her and she was also told that she need not go for any beats and was asked to sign a charge report (A-13) dated 24.5.2001 and the applicant heard the first respondent orally instructing the Post Master to engage an outsider. Aggrieved by the action of the respondents by Annexure A1 and A2 termination orders, the applicant has filed this O.A. seeking the following reliefs.:

(i) To quash Annexure A and A2 and direct the respondents to reinstate the applicant with full backwages, continuity of service and such other consequential benefits.

(ii) Alternatively to direct the respondents to consider the applicant for alternate employment considering her long service as EDDA

(iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and

(iv) Grant the cost of this Original Application.

O.A. 475/2001 (P.R. Ramachandra Das)

3. The short facts of the case is that aggrieved by order dated 28.5.2001 from the second respondent directing the first respondent to terminate the services of the applicant by A order dated 28.5.2001 and termination of the services of the applicant by A2 order dated 30.5.01, the applicant has filed this O.A. He commenced service as EDDA, Marythazham Post Office on 26.2.97 appointed after following regular selection procedure and on her being sponsored by Employment Exchange while working at Marythazham he was transferred as EDDA, Thiruvankulam by Annexure A3 order dated 26.2.97. He was served with notices stating that his services will be terminated at the expiry of one month due to administrative reasons by A4 memorandum dated 19.12.97 made a detailed representation and submitted that he has not done anything illegal or unethical and there was no infirmity in the selection or appointment. Apprehending termination the applicant approached this Tribunal in O.A. 22/98 and this Tribunal directed the respondents the service of the applicant shall not be terminated based on Annexure A4 memo by its order dated 7.1.98 (A6). In the reply statement of that O.A. the respondents took the contention that Annexure A7 dated 13.11.97 which was at the instance of Director General of Posts on investigation conducted regarding serious allegations of corruption and malpractice in recruitment of ED Agents in Ernakulam District by A8 inquiry report dated 16.10.97 it is averred that the report was the result of an

enquiry made without notice to the applicant the applicant was not given an opportunity to participate in the enquiry. The findings regarding the non delivery of of the interview letters is not due to the fault of the applicant. High mark was not a criterion for selection of EDAs during 1997. Candidates should attend when called for interview. In; the enquiry report also there was no finding that the applicant was not eligible otherwise. The alleged non delivery of letters is taken as a background to conclude that applicant's appointment is irregular. Fraud on the part of the applicant is not proved in any inquiry much less that enquiry was conducted without notice to the applicant. The applicant alone attended the interview for the selection. The supplementary representation was permitted to be submitted to the third respondent by this Tribunal in the orders in O.A. 22/98 (A9) and the third respondent was directed to consider the same and it was also directed services of the applicant shall not be terminated till disposal of the representation. Applicant submitted supplementary representation on 12.9.2000 (A-10). Annexure A and A2 orders were issued thereafter and served on the applicant on 30.5.2001 and aggrieved by the said termination order the applicant at that stage is most arbitrary, unreasonable and unfair and hence he filed the O.A. seeking the following reliefs.

(i) To quash Annexure A and A2 and direct the respondents to reinstate the applicant with full backwages, continuity of service and such other consequential benefits.

(ii) Alternatively to direct the respondents to consider the applicant for alternate employment considering her long service as EDDA

(iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and

(iv) Grant the cost of this Original Application.

O.A. 479/2001 (K.E. Pushkaran)

4. Aggrieved by orders dated 28.5.2001 (A) and 24.5.2001 (A2) of the second respondent terminating the services of the applicant the applicant has filed this O.A. Applicant commenced service as Extra Departmental Messenger, Kakkanad Post Office by order dated 8.2.97, he was appointed after a regular selection procedure and on he being sponsored by Employment Exchange and passed SSLC. While working as ED Messenger, Kakkanad he was served with a notice stating that his service will stand terminated at the expiry of one month due to administrative reasons by Annexure A4 memo dated 31.12.97. On receipt of A4 memo he made a detailed representation and apprehending termination of his service he has filed O.A. 126/98 contending that that power of review cannot be exercised unless it is conferred by statutory provisions. This Tribunal directed not to terminate the services of the applicant based on Annexure A4. In the reply statement respondents contended that the review was based on the directions of he Director General of Posts letter d'ated 30.11.97 (A7) based on an investigation conducted regarding serious allegations of corruption and malpractice in recruitment of ED agents in Ernakulam District. It was submitted that Annexure A8 enquiry report was the result of an enquiry made without notice to the applicant. Applicant never participated in the enquiry, there was no reason to

disbelieve the finding of the appointing authority that one Mr. M.K. Balan had declined to accept the employment. He may not have any interest in accepting low profile ED appointment. His present attempt to fish in troubled waters is to be seen cautiously. He has not denied his employment in the construction company. High mark was not only the criterion for selection of Extra Departmental Agents, candidates should offer themselves for the employment when called for interview. A person with less marks if he fulfills all other criteria could be selected as a ED Messenger. In the inquiry report there was no finding that applicant is not eligible otherwise. There is no justification whatsoever to hold that the applicant's appointment was illegal. Fraud on the part of the applicant is not proved in any inquiry much less in an inquiry with notice to the applicant. This Tribunal disposed of O.A. 126/98 by A9 order dated 3.11.2000 permitting the applicant to submit a supplementary representation. Applicant submitted a supplementary representation on 17.11.2000 (A10) He submitted that he has not done any irregularity and prayed that his appointment may not be cancelled. Aggrieved by the termination of his service the applicant has filed this Original Application seeking the following reliefs:

> (i) To quash Annexure A and A2 and direct the respondents to reinstate the applicant with full backwages, continuity of service and such other consequential benefits.
>
> (ii) Alternatively to direct the respondents to consider the applicant for alternate employment considering her long service as EDDA
>
> (iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and

(iv) Grant the cost of this Original Application.

O.A. 502/2001 (A.R. Balakrishnan)

5. Aggrieved by the orders dated 28.5.2001 (A1) and 11.6.2001 (A2) issued by the second and first respondents respectively terminating the services of the applicant the applicant has filed this O.A. The applicant was originally appointed as E.D. Messenger, Mulanthuruty by an order of the 1st respondent dated 19.2.97 on being sponsored by the Employment Exchange and selected through a regular selection procedure. While working at Mulanthuruty he was transferred on request to the post of EDDA Eroor by order dated 7.4.97 and is working there since 9.7.97 and; that has been continuously working in the post discharging his duties without any adverse remarks as regards his work and conduct. He was served with notice dated 19.12.97 stating that his services will be terminated against which he has made a representation dated 23.12.97 and further apprehending the termination of his service he has filed O.A. 67/98 before this Tribunal contending that the impugned notice was issued under direction from the superior authority who has no power to make review of the appointment made by the competent authority as per the prescribed procedure and by interim order of this Tribunal in the said O.A. the applicant is continuing in the said post. In the reply statement filed in that O.A. the respondents contended that the applicant's appointment was reviewed in accordance with the instructions of Director General (Posts) dated 13.11.97 and based on

certain allegations of corruption and malpractices in the recruitment of ED Agents in the Ernakulam Division and investigation was undertaken and in the said report dated 16.10.97 some appointments including that of the applicant was found to be irregular and recommended their cancellation. The applicant submitted that he was not associated with the said investigation by the Asst. Postmaster General nor was he informed of the inquiry nor supplied with a copy of the said investigation report eventhough he was questioned by the CBI. No adverse notice nor any adverse action was taken against him. He was not supplied with any memo or chargesheet. He came to know about this only from the reply statement in O.A 167/98. The alleged termination by Annexure A7 was result of an enquiry made behind the back of the applicant without notice to him. He never participated in the enquiry nor was questioned by the Investigating Officer. The applicant contended that there was no finding that he was in any way responsible for the alleged irregularity and there was nothing wrong in applicant's transfer to another post. There was no justification to hold that applicant's appointment was illegal. As per orders of this Tribunal in O.A. 67/98 the Tribunal directed the respondents to consider and pass appropriate orders on the representation that to be submitted by the applicant. Against she order of the Tribunal the applicant filed O.P. No. 27916/2000 before the Hon'ble High Court of Kerala which was disposed of by judgment dated 3.10.2000 directing the 3rd respondent to pass appropriate orders on merits after hearing the petitioner. Pursuant to A9 order the second respondent called the

applicant for a personal hearing on 16.2.2001. Applicant submitted a detailed representation dated 16.2.2001 before the 2nd respondent wherein it was contended that the termination done under Rule 6 of P&T ED Agents (Conduct & Service) Rules is ultravires and illegal since the administrative reason for which it has been invoked is a reason that arose in connection with his appointment and hence squarely against the law laid down by the Hon'ble High Court of Kerala in the case of Postmaster V. Usha (1987 (2) KLT 705) The applicant further submitted that he became ill due to lung infection and breathing problems on 29.5.2001 and submitted a leave application to the 1st respondent supported by medical certificate. On expiry of leave applicant reported for duty on 8.6.2001 but he was not allowed to rejoin duty by the Sub Postmaster stating that there are directions from the 1st respondent to do so. Applicant could meet the 1st respondent on 11.6.2000 when he was served with Annexure A and A2 orders. Therefore aggrieved by the said action, the applicant has filed this O.A. seeking the following reliefs:

> (i) to quash Annexure A, A2 and A5 and direct the respondents to reinstate applicant with full back wages and continuity of service.
>
> (ii)to grant such other reliefs which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in that facts and circumstances of the case.
>
> (iii) to award costs of this Original Application

6. Respondents in all these cases have filed separate detailed reply statements contending that the termination

orders of the applicants Annexure A1 and A2 are speaking and well considered orders issued in accordance with the rules and the same do not suffer from any legal flaw. Admittedly there is no allegation of malafide. Under these circumstances it is not permissible for the applicants to challenge Annexure A1 or A2. Some of the appointments of ED agents including that of the applicants under Ernakulam Division were found to be tainted with fraud on enquiry conducted by the competent authority pursuant to the direction of Hon'ble High Court of Kerala in O.P.No. 13169/97 and finding that the applicants were offered employment overlooking the legitimate claim of others, the appointment of applicants are vitiated with illegality and fraud, they cannot claim to continue in the post. The Applications are clearly bad for non-joinder of necessary parties as the applicants omitted to implead the affected parties who have not been offered employment but eligible for the same. The selection of the applicants as well as other ED staff were assailed as illegal and vitiated with corrupt practices. The Hon'ble High Court directed Postmaster General, Kochi to conduct a proper inquiry into those allegations of corruption and malpractices. True copy of the judgment is produced as Annexure R1. The fact finding enquiry into the allegation of corruption and fraud was conducted by the Assistant Postmaster General when it was revealed among other things that the applicants were offered appointment overlooking the legitimate claim of others. The statements of the aggrieved persons were submitted before the Inspector of Post Offices and their depositions in the course

of enquiry are produced. The allegation that the applicants were not granted opportunity to take part in the enquiry and to cross examine the witnesses are not sustainable and it is not open to the applicants to sustain their appointment when their appointments were done overlooking the legitimate claims of more meritorious persons. The appointment of the applicants were irregular and ab initio void. The allegation of violation of principles of natural justice cannot be pressed into service to perpetuate an illegality. The appointments were sought to be cancelled as they were found to be vitiated for non-observance of correct procedure. The allegation of absence of further opportunity to substantiate their cases is frivolous and unsustainable. They should have sought proper reliefs from this Tribunal in the respective OAs or they could have supplemented representations at the time of personal hearing offered to them. The assistance of a counsel cannot be claimed as a matter of right nor any prejudice is really caused to the applicants on this count in the absence of any illegality. The representations were given a fair disposal after hearing the applicants and the impugned orders of termination have been decided according to law finding that the appointments of the applicants were illegal and more meritorious candidates deserved to be appointed in their place. Annexure A2 has become a faith accompli. The impugned orders of termination cannot be faulted only for being issued promptly on receipt of Annexure A1. The applicants cannot complain about the violation of the principles of natural justice since a personal hearing was offered to them. The requirement of Rule 6 has been

complied with by giving notice to the applicants . The termination orders were passed after due consideration of the respective representations of the applicants. It is borne out in Annexure R-1 inquiry report regarding the corruption and malafide while appointing the Extra Departmental Agents of Ernakulam Division it is revealed that more meritorious claim of other candidates were overlooked while appointing the applicants. There is nothing illegal or wrong in cancelling the appointments issued by the errant officers. The applicants' appointments being found irregular they cannot aspire for the benefit of fruits of an illegality. The applicants cannot have any legitimate right to deprive the legitimate right of another person who is found to be more meritorious. All other eligible candidates were found to be more meritorious than the applicants. Annexure A8/(R1) is a fact finding report obtained pursuant to the direction of the High Court cannot be legally faulted. Apart from Annexure A8 the uncontroverted background would also show that others rank above he applicants. The grounds alleged in the O.As are without merit and considering that these cases does not need a disciplinary proceedings against the applicant but only an case of irregularity in the appointment which were complied after giving opportunity to the applicants, the situation deserved. The allegation of denial of effective opportunity to the applicants was also unsustainable. The applicants are not entitled to any reliefs and the OAs are liable to be dismissed.

7. Shri M.R. Rajendran Nairand Mr. M.R. Hariraj appeared for the applicants in O.A. No. 450/01, 475/01 and 479/01 and Shri P.C. Sebastian appeared for the applicant in O.A. 502/01. Shri P. Vijayakumar, ACGSC in O.A. 450/01, Shri M.R. Suresh ACGSC for O.A. 479/01, Shri C. Rajendran, SCGSC in O.A. 475/01 and Smt. P.Vani, ACGSC in O.A. 502/01 appeared for respondents.

8. We have carefully gone through the pleadings and the materials placed on record. The learned counsel for the respondents had filed separate reply statements with slight variations on the facts of the case but the grounds alleged and the arguments advanced are one and the same.

9. The learned counsel for the applicants vehemently argued that the impugned action of the respondents by terminating the services of the applicants are not justified. Since it is clear violation of the principles of natural justice and without proper notice. He also submitted that the termination orders were contrary to Rule 6 of the Extra Departmental Agents Conduct and Service Rules even assuming that Rule would apply in such cases. When regular appointment is being granted, the applicants lost further opportunity to compete for other employment. To take away the appointment at this distance of time for no fault on their part is unreasonable, arbitrary and unjust and even disproportionate. The impugned orders of termination reflects non-application of mind and reliance is on Annexure A8/(R1) inquiry report and so far as it relates on an enquiry

behind the back of the applicants is in gross violation of the principles of natural justice. Personal hearing granted is only a hoaz and not a fair hearing. Comments of the applicants on Annexure A8 was not sought. Documents and statements of witnesses relied on against the applicants is not even shown to the applicants. Much less opportunity was not granted. The principles of natural justice is sine qua non of any administrative action resulting in civil consequences and it has received only lip service in Annexure A1. The impugned actions are arbitrary, unfair out of tune with rule of law and made in utter disregard to the constitutional mandates under article 14 of the Constitution of India and in the absence of a statutory rule review power cannot be exercised by such an authority and it has been made clear in this case that it was passed under dictation.

10. The learned counsel for the respondents on the other hand vehemently argued that the source for such action was based on an enquiry dated 16.10.97 directed by the Hon'ble High Court. The Assistant Postmaster General finding the selection and appointment of the applicants irregular and suggestive of fraud committed by the Shri K. Narasimha Naicken, Sub Divisional Inspector of Posts, Tripunithura Postal Sub Division, the appointing authority in the case of the applicant. The manipulations done by the said SDI in the selection and appointment of the applicants are discussed in the impugned orders and thereafter the Superintendent of Post Offices reviewed the applicants' cases in accordance with the instructions and found that the appointments have been done

flouting the instructions and directed to cancel the appointments. Considering the merit position, the applicants do not top the list and they got the appointments in fraudulent method adopted by the appointing authority who was proceeded under Rule 14 of the CCS CC(A) Rules and was awarded penalty. The irregular selection and appointment of the applicants were one of the charges against the delinquent officer Shri Narasimha Naicken. When glaring irregularities are reflected in the selection process of the applicants by adopting irregular and illegal methods the applicants cannot take advantage. The contention of the applicants that they are not responsible for the irregularities in the selection cannot be accepted. The counsel further submitted that the O.As have no merit and are liable to be dismissed.

Shri P. Vijayakumar, ACGSC, appearing on behalf of the respondents in O.A.No. 450/2001 further contended that the direction given in Annexure A/1 is in accordance with law and after conforming to the guidlines for fair enquiry given in Annexure A/7 letter dated 13.11.1997 which postulates that the appointment to an ED post if found erroneous, should be decided by an authority next higher than the appointing authority , which is followed in this case. A personal hearing was also afforded to the said applicant. Since the eligible person was not given appointment , there is no locus standi nor any legitimate claim for the applicant to continue on the post. Therefore, it was cancelled which does not mean that any victimisation nor any legal injury is caused to the applicant. The learned counsel vehemently argued for the dismissal of the Original Application.

Hon'ble High Court which is borne out in Annexure A8 dated 16.8.97. Alleging that the Enquiry Officer is also part of the so called caucus and as such the responsibility of investigation might not be entrusted to him. But the Enquiry Officer proceeded with the enquiry on the ground that since the enquiry was over by that time the objection was not taken into cognisance. The applicants' appointments were called in question and enquiries were conducted. In the enquiry report though there was a finding that applicants' appointments were not inconformity with the rules nothing to show the actual involvement of the applicants have been found. In other words the involvement of the applicants in the light of irregularity or malpractice is not brought out by the respondents. Having found the appointing authority was involved in fraudulent activities and misconduct and applicants' appointments were irregular and based on extraneous consideration, the Enquiry Officer invariably should have given an opportunity for the applicants to contest the matter. In the said enquiry it appears from the provisions and the finding is only a fact finding aspect of the malpractices and irregularities committed by the officials who has appointed these applicants and others who were involved in the same proceedings. It is also clear from the enquiry that the acceptance of the bribe or the offer on the part of the applicants for getting such a favour in appointment is not brought in evidence though there are some vague hearsay evidence that is available on record. The contention of the applicants that, had they been given an opportunity to cross examine the witnesses they would have really brought out the truth by discrediting the version of

11. We have heard learned counsel for the applicants and the respondents and meticulously perused the records produced before us. Though the facts of each case has some slight difference, the main question to be decided in these cases will be based on whether the impugned termination of the services of the applicants are justified and whether the grounds which led to the passing of such orders are in conformity with the rule position and whether it violates the principle of natural justice and the Extra Departmental E.D. Agents Conduct and Service Rules. The entire case derived when a compliant was preferred before the Hon'ble High Court of Kerala by a third party in O.P.No.13160/97 seeking a direction to the Postmaster General to conduct an enquiry on the irregularities committed in the appointment of EDAs in Ernakulam Division wherein the applicants were appointed in the said selection. The Hon'ble High Court of Kerala in the said order dated 23.8.97 directed PMG, Kochi to take action on petition dated 23.6.97 and to conduct detailed investigation into the allegations especially those pointed out in Ext P2 as well as other malpractices of corruption by the officials including cancellation of the illegal appointments in Kochi Region of the Postal Department. In furtherance of the orders of the Hon'ble high Court and even according to the applicants before the Court direction, the Postmaster General ordered to investigate the case by Shri P.M. Sankaran, Assistant Postmaster General, office of the PMG who was assisted by Shri N.V Krishnan, ASP(Vigilence). In his Annexure A8 report after detailed enquiry finding has been arrived at which was submitted on 16.8.97. The complainant one V.N. Krishnankutty filed OP before the

the witnesses examined in the proceedings and would have proved their innocence and the contention of the applicants that an opportunity was not given to them atleast to participate in the enquiry totally denying them an opportunity to contest. In a decision or report however incriminating that may be against the applicants is only hearsay and not binding on them. The cross-examination is the strong weapon in all procedures including departmental enquiry which will help one to establish the case or otherwise. On going through the records we cannot find any incriminating involvement of the applicants directly attributable to the applicants' misconduct for which an enquiry was conducted. But we find that certain implications or some witnesses involved the applicants cannot be used against them without giving them an opportunity. Therefore we are of the view that the decision taken on the basis of an enquiry in which the applicants are not given notice, opportunity to cross examine the witnesses is devoid of rational. What is contemplated in an enquiry proceedings is that opportunity to take part in the proceedings. The procedures which was initiated for the purpose of fact finding aspect of the malpractice or irregularity or fraud committed by the appointing authority cannot be made use against the applicants which is faulted.

12 We are not evaluating the evidence and we are also aware of the limitation of the Tribunal's review jurisdiction. This Court is not sitting as an appellate authority while exercising the power of review to evaluate

the evidences of the enquiry. The Hon'ble Supreme Court has time and again held in many decisions including the decision reported in Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 that in judicial review only the decision making process and not merit of the decision itself is reviewable as Courts/Tribunals does not sit as an appellate authority while exercising the power of review. Unless the action is vitiated by arbitrariness/irregularity the courts generally will not intervene with the decision of the administration.

13. In these cases it is quite clear that the evidence finding of an enquiry conducted against the appointing authorities for their fraudulent act has been made use of to take action against these applicants wherein, they have not even made a party and given an opportunity much less chance for cross examination of the witnesses. Therefore we are of the view that making use of the Annexure A8 enquiry against the applicant for initiating proceedings, in which they were not a party nor permitted to be participated is a clear violation of natural justice and we are of the view that proper process of procedure is not followed and therefore the impugned orders are liable to be set aside.

14. On going through the order of the Senior Superintendent of Post Offices, which has led to the issuance of Annexure A2 termination order it is very clear that:

> "Thus it is clear that the Asst. Supdt. should have selected the said N.K.Bhadran and appointed to the post. It may be pointed out here that Sri P.V. Mohandas, the delinquent Asst. Supdt. was proceeded

under Rule 14 of the CCS(CCA) Rules 1965 for the above misconduct and compulsorily retired from service. Thus there is clear administrative reason to terminate the services of the candidate who got the illegal appointment. I desist from making any comments whether Smt. Jessy had employed any unethical means to secure the appointment.

In pursuance the Sr. Supdt. of Post Offices directing the appointing authority to terminate the services of the applicants, according to the applicant is the dictation given by the Head of the Department and there is no application of mind as such. On going through the impugned orders of the Senior Superintendent of Posts Offices, it is clear that the investigation based on the the report of the Post Master General is the basis for such order. When the applicants have questioned the show cause notice issued to them for termination which in fact had not made any reason for such termination which according to the applicants were taken by surprise, is clear indication that the Department should have made separate enquiries before such a decision is taken. The ED Agents Conduct and Service Rules does not specifically prescribe certain circumstances when an enquiry is required. We also find reason for the arguments advanced by the learned counsel for the applicant that the impugned orders terminating the services of the applicants is a decision taken by the `dictation of others'. No proper application of mind seem to have been made nor any separate evidence is available for the alleged termination of the services of the applicants. In a decision in 1989 SCC 505 State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh, the Hon'ble Supreme Court held that administrative action if surrendered to external body or power would be vitiated by no

application of mind. The operative portion of the judgment is as follows:

> Exercise of power of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion. In exercising that power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistant with with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority...."

In these cases it is very clear that the impugned orders are result of extraneous consideration contracted by some other authorities which is quoted in the impugned orders i.e. an investigation report of the PMG as discussed above. An independent application of mind is not seen in these impugned orders and therefore the impugned orders are passed not in good taste of procedure/law.

15. The E.D.Agents are special categories of employees working as part-timers and for whom regular condition of services have been laid down by law and rules which existed more than five decades and their duties and responsibilities are very much comparable with regular departmental staff and Conduct and Service Rules of the ED Agents has been codified on the basis of Justice Talwar Committee's report and these orders have been accepted by the Govt. and rules have been formulated by giving statutory requirement. These rules are

known as Service Rules for Postal E.D. Staff. Rule 6 of the E.D. Agents Conduct and Service Rules deals with termination of services of an employee who has not already rendered not more than 3 years on the date of termination, are liable to be terminated by giving notice either by employee to the the appointing authority or by the appointing authority to the employee. It is taking shelter of these rules in these cases the Department has proceeded to terminate the services of the applicants. It is needless to say that the charges reflected in the impugned orders which resulted in the termination of the employees is called misrepresentation and corruption. The case of the respondents is that the applicants were also instrumental in giving bribe to the appointing authorities in getting employment. These are very serious charges and the normal case Rule 6(iii) stipulate that no reasons to be attributed to any order of termination in all these cases but Rule 6(4) is very specific that if misconduct is attributable against an employee the practice of invoking Rule 6 proceedings should be discontinued. The relevant rule and instructions are quoted below:

> (4) Rule 6 not to be invoked for dealing with specific acts of misconduct- It has been observed that some Divisions are invoking Rule 6 of ED Agents (C&S) Rules to short circuit Rule 8, when specific acts of misconduct committed by an ED Agent who has less than three years' service, come to surface. The practice should be discontinued forthwith.
>
> (PMG Madras Letter No.STCS/5-18/80 dated the 29th April, 1983)
>
> Initiation of regular disciplinary proceedings is necessary, if specific irregularity comes to surface in view of the safeguard afforded to ED Agents under Article 311 of the Constitution
>
> (DG, P&T letter No. 151/2/78-Disc. II, dated the 19 April, 1979)

16. If that is the case we are of the view that ED Agents of the Postal Department have been holders of Civil Service within the meaning of Article 311 of the Constitution of India (The Superintendent of Post Offices etc. etc. Vs. P.K. Rajamma etc. etc. 1977 SCC 1677) It was held by the Hon'ble Supreme Court that they will squarely come under the definition. Therefore we are of the view that the provisions of Article 311 of the Constitution of India to the effect that such an employee could be removed or reduced in rank except after enquiry in which he has been informed of the charge against him, given reasonable opportunity of being heard should have been followed. If that is so the termination of the services of the applicants which have been based on specific misconduct which seems to be punitive, Rule 6 is not attracted. They came under Rule 311(3) of the Constitution of India. Though the learned counsel for the respondents vehemently argued that the applicants are temporary Government servants. Article 311(2) of the Constitution will not apply to the applicants. That an argument cannot be accepted on the ground that it is devoid of any merit in view of the case of Purushothamlal Digra Vs. Union of India (1958 SCR 828) the Supreme court has observed " no exact proposition could be laid down ....." In view of the above we are of the opinion that the order of termination is not sustainable. If that is the case the decision of the Hon'ble High Court of Kerala reported in 1987 KLT 705 in Postmaster Vs. Usha is squarely applicable in this case. The Hon'ble High Court has made it clear that it could only be on administrative ground. Therefore Rule 6 proceedings is not applicable in these cases since allegation of misconduct and fraud is involved. A regular disciplinary proceedings as

contemplated in ED Agents Conduct and Service Rules should have been followed. We are of the view that the proper procedure is not followed.

17. It is also worthwhile to quote the decision of the Hon'ble High Court of Kerala reported in Postmaster Vs. Smt. Usha reported in 1987 (2) KLT 705 dealing with Rule 6 termination of service. The High Court has made it clear that the termination of service contemplated by Rule 6 is not a ground or reason that arises after the appointment. Termination cannot be done under Rule 6 as there cannot be any administrative ground or reason which has arisen after the appointment of the employee and Rule 6 should not have been pressed into service. Obviously the very case of the respondents is that the termination of the applicant necessitated on an enquiry conducted against the appointing authority and other officials in adopting faulty selection process by accepting bribe and irregular procedure. In the impugned orders though the respondents have quoted many sequences and evidences that was brought in that enquiry making use of the same and for that reason the applicants' services have been terminated. Therefore, the reason for termination arise on an enquiry which occurred subsequent to the selection process. If that is so as per the principle laid down in the judgment quoted supra will squarely apply in these cases and the termination of the services of the applicants considering the fact of fraud before appointment is pressed into service and made a reason for termination is faulted and not sustainable. The plea of the applicants consistently is that the selection process has been made in accordance with law. Their contention is that they are not party to any malpractices or fraud involving the applicants.

Even though some of them do not come under merit in terms of marks, the persons having higher marks did not turn up for the selection and therefore applicants' candidature has been considered and have been given appointment through due process of selection cannot be taken away. However, these are all matters which has not been reflected in annexure A8 enquiry report. Some abstract and hearsay evidences have been brought in to proceed against the applicants without any opportunity of being heard. We wanted to make it clear that relying on an enquiry report against some third party without giving an opportunity to the applicants will be `just putting the cart before horse'.

18. We have also perused the entire records submitted by the respondents and we are convinced that there is no direct evidence incriminating the applicant nor any evidence regarding their involvement in the corrupt practice alleged to have been undertaken by the appointing authority is available as per the enquiry report and, therefore, relying on such evidence and thereby terminating the services of the applicants is not justified. Moreover, having found the appointing authority guilty in the enquiry report, he was given punishment of compulsory retirement and the applicants were to be terminated from service. This is of no good equation on punishment and it appears to be a pre-conceived decision. In the circumstances, we are of the view that the impugned orders in the above Original Applications are not sustainable and are liable to be set aside and quashed.

19. In the conspectus of the facts and circumstances we set aside and quash Annexure A1 dated 23.5.2001 and Annexure A2 dated 24.5.2001 in O.A. No. 450/2001, Annexure A1 dated 28.5.2001 and A2 dated 30.5.2001 in O.A. 475/2001, Annexure A1 dated 23.5.2001 and A2 dated 24.5.2001 in O.A. 479/2001 and A1 dated 28.5.2001, A2 dated 11.6.01 and A5 dated 19.12.1997 in O.A. 502/2001. However, we make it clear that as serious charge of misconduct, fraud and bribe are alleged in these cases, if the respondents are so desirous, they are at liberty to proceed against the applicants in accordance with the procedure laid down as per rule by holding a separate enquiry. The O.As are allowed and the impugned orders are set aside and quashed. In the circumstances we direct the parties to bear their costs.

(Dated, the 18th September, 2003)

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

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