

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 49/90
TAXXN9

1990

DATE OF DECISION 27-6-1990

Theyyamma Joseph Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

The Sub Divisional Inspector Respondent (s)
(Postal), Vaikam & 3 others

Mr TPM Ibrahimkhan, Advocate for the Respondent (s) 1-3

CORAM:

The Hon'ble Mr. SP. Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Shri AV Haridasan, Judicial Member)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act for a declaration that the termination of her services as E.O.S.P.M., Kurianadu without complying with the provisions of Chapter V-A of the Industrial Disputes Act is null and void and that she is entitled to continue in service as E.O.S.P.M. and for the consequential reliefs. The facts in brief as averred in the application are as follows.

2. The applicant was initially appointed as a substitute E.D.B.P.M. in the place of her Father Mr N.T.Joseph in the year 1983. When her father Mr N.T.Joseph was discharged from service on invalidation by order dated 8.7.1985 with effect from 26.7.1985, the applicant was appointed provisionally as E.D.B.P.M., Kurianadu on 26.7.1985. While she was thus working as E.D.B.P.M., Kurianadu her services were terminated w.e.f. 1.7.1987 by letter No.B-0/21 dated 30.6.1987 at Annexure-II. The applicant having passed the S.S.L.C. examination and having registered in the Employment Exchange, Palai was fully qualified to hold the post of E.D.B.P.M. Aggrieved by the termination of her services, she filed a review application before the Senior Superintendent of Post Offices, Kottayam under Rule 16 of P&T Extra Departmental Agents(Conduct and Service) Rules. The above review application was not disposed of. When the Department initiated proceedings for recruitment of E.D.B.P.M, Kurianadu, she filed OAK-147/87 challenging the termination of her services and for a declaration that she was entitled to continue in service in accordance with the provisions of the Industrial Disputes Act. This Tribunal passed an interim order directing the respondents to consider the case of the applicant also while making regular selection to the post of E.D.B.P.M. and that the results should not be declared until further orders. The OAK-147/87 was finally disposed of on 16.11.1989 directing the respondents to declare the results

of selection, if she was considered, leaving open the other questions raised in the O.A. to be agitated again if she felt aggrieved. The applicant on 8.12.1989 submitted a representation requesting for declaration of the result and praying that her candidature may be considered considering her long experience in the field and also the fact that she is a daughter of an E.D.Agent retired on the ground of medical invalidation. This representation was replied to by the S.S.P., Kottayam by memo dated 9.1.1990 at Annexure-V stating that alternate regular appointment had already been made in the post. The grievance of the applicant is that inspite of the direction from the Tribunal, the authorities did not consider her case and that the appointment of the 4th respondent to that post is therefore irregular. According to the applicant, she was entitled to the appointment on compassionate grounds since she is a daughter of an E.D.Agent who was discharged from service on the ground of medical invalidation in terms of DG, P&T's letter No.43-212/79/PEN dated 4.8.1980. It has been averred in the application that despite the direction from the Tribunal the applicant was not called for interview. It has also been averred that the termination of her services who have been continuously in service for more than one year without following the provisions of Chapter V-A of the I.D.Act is arbitrary and illegal.

3. The fourth respondent though served with notice did not appear. In the reply statement, the respondents 1-3 have contended that the provisions of I.D.Act do not apply in the

case of E.D.Agents, that the applicant was also considered for selection along with the candidates sponsored by the Employment Exchange in terms of the interim order in OAK-147/87 dated 12.8.1987, that Shri V.A.Joseph, the 4th respondent was found more suitable and that he was appointed as E.D.B.P.M. on 2.11.1987, that compassionate appointment is not available to dependent of discharged E.D.Agents and that therefore the applicant has no legitimate grievance.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. The reliefs claimed for by the applicant are for a declaration that she is entitled to the protection in Chapter V-A of the I.O.Act and that she is entitled to continue in service as E.D.S.P.M. and that Rule 6 of the E.D.Agents (Conduct & Service), Rules ^{is void} and other consequential reliefs. The applicant has in the application averred that she is entitled to compassionate appointment since she is a daughter of an E.D.Agent, who was discharged from service on the ground of medical invalidation. In support of her claim, the applicant has produced Annexure-VI, a copy of the letter of DG, P&T No.43-212/79/PEN dated 4.8.1980. As per this letter, decision was taken to offer a suitable job in E.D.cadre to one dependant of an E.D..official who dies while in service leaving the family in indigent circumstances subject to the conditions applicable to regular employees who die while in service or

retire on invalid pension. No decision is seen to have been taken for providing employment to a dependent of an E.D.Agent retired on the ground of medical invalidation. Therefore the claim of the applicant basing on compassionate appointment cannot stand. The termination of the services of the applicant by impugned order at Annexure-II is challenged on the ground that she has been in continuous service as E.D.B.P.M, Kurianadu from 26.7.1985 to 1.7.1987 and that therefore she being entitled to the protection of Chapter V-A of the I.D.Act, the respondents are not entitled to terminate her services without compliance with the provisions contained in the above Chapter. The applicant filed OAK-147/87 challenging the termination of her services and claiming protection of the provisions of Chapter V-A of the I.D.Act. This application was disposed^{of} by this Tribunal on 16.11.1989 with a direction to the first respondent to consider the claim of the applicant also for regular appointment, if she was otherwise qualified along with other persons nominated by the Employment Exchange leaving open the other issues for consideration in appropriate proceedings, if the applicant felt further aggrieved. Now the applicant has filed this application alleging that the respondents have not considered her case properly and also challenging the termination of her services on the ground that it was done in contravention of the provisions of Chapter V-A of the I.D.Act. The respondents have contended that the applicant who is an E.D.Agent is not a workman entitled to the benefits of I.D.Act and that therefore

this claim of the applicant has no legitimate basis. This Tribunal has been consistently holding the view that E.D.Agents of the Postal Department are entitled to the benefits of Chapter V-A of the I.D.Act. In the decision in OA-42/89, to which one of us(Hon'ble Shri SP Mukerji)is a party and in OA Nos.483 and 485/89, this Bench has held that E.D.Agents are entitled to the protection of Section 25-F and the other provisions of Chapter V-A of the I.D.Act and that the termination of their services without compliance with the requirements of Section 25-F is null and void. Therefore, there is no merit in the contention of the respondents that the applicant is not entitled to protection of the provisions of Chapter V-A of the I.D.Act. The applicant who had continuously worked for more than 240 days in both the years preceding the termination of her services on 1.7.1987 is entitled to the protection of the provisions of Chapter V-A of the I.D.Act and her termination without following the legal requirements of Section 25-F is illegal. The applicant is therefore entitled to be reinstated in service and to the back wages from the date of termination.

5. The applicant has challenged Annexure-V order of the respondent by which she was informed that her representation dated 8.12.1989 could not be granted and that alternative regular appointment has already been made in the post. The 4th respondent has been appointed on a regular basis as E.D.B.P.M. Kurianadu. In the application though the applicant has stated

that the respondents have not considered properly her representation to consider her candidature taking into consideration of her past service and also the fact that she is a daughter of an E.D.Agent who retired on medical invalidation, she is not specifically sought cancellation of the appointment of the 4th respondent. In the reply statement, the respondents have contended that along with six candidates sponsored by the Employment Exchange, the case of the applicant was also considered and that the 4th respondent Mr V.A.Joseph was found more suitable and that he was appointed as E.D.B.P.M. on 2.11.1987 and that formal order of appointment was issued only after the disposal of OA-147/87 since there was an interim order directing that the results should not be published. It appears that even though the results were not published, the 4th respondent was selected and appointed though formal order of appointment was given only later. But any way, since the selection of the 4th respondent has not been properly challenged in this application, we are of the view that it will be improper on our part to interfere in that selection. Anyhow, the 4th respondent can be appointed and posted only after retrenching the applicant in accordance with the provisions of the I.D.Act. Since the applicant has not been retrenched in compliance with the provisions of Section 25-F of the I.D.Act, it has to be deemed that her retrenchment did not take effect.

6. Since the termination of the services of the applicant was not under Rule 6 of the E.O. Agents (Conduct and Service) Rules the question of declaration that Rule 6 is invalid does not arise.

7. In the conspectus of facts and circumstances, we allow the application in part, declare that the termination of the services of the applicant ~~from~~ ^{from} the post of E.O.B.P.M. Kurianadu with effect from 1.7.1987 is illegal and unjustified and we direct the respondents 1-3 to reinstate the applicant in that post with full back wages. It will be open for the respondents 1-3 to terminate the services of the applicant after reinstatement, if they deem it necessary following the provisions of Chapter V-A of the Industrial Disputes Act. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


27.6.90
(SP MUKERJI)
VICE CHAIRMAN

27-6-1990

trs

The Sub Divisional Inspector
of Posts, Vaijam & others - Review Applicant/Respon-
dents in OA
-Vs-

Theyyamma Joseph - Review Respondent/
Applicant in OA

Mr.T.P.M. Ibrahim Khan - Counsel for the Review
Applicant

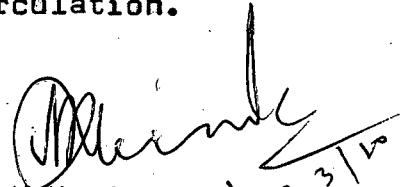
Mr.M.R.Rajendran Nair - Counsel for the Review
Respondent

ORDER

(Mr AV Haridasan, Judicial Member)

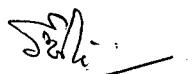
In the Original Application, by our judgement dated 27.6.1990 we declared that the termination of the service of the ~~original~~ Applicant from the post of EDBPM, Kurinadu with effect from 1.7.1987 was illegal and unjustified and we directed the respondents 1 to 3 to reinstate the applicant in that post with full back wages. It has been further held that it would be open for the respondents to terminate the services of the applicant after reinstatement, if they deem it necessary following the provisions of Chapter 5 A of the Industrial Disputes Act. The respondents 1 to 3 in the Original Application have filed this application for review praying that they may be allowed to reinstate the applicant in service without giving any back wages. It has not been stated in the application that there is any error apparent on the face of the records or any other reason justifying a review of the order exists. The review is sought on the ground that the direction to pay back wages would affect the public ex-chequer, and that the Madras Bench of the Tribunal had in some cases directed reinstatement of the applicant therein without any direction to pay back wages. The fact that Madras Bench of the Tribunal has ordered in some cases reinstatement without back wages

cannot be canvassed as a ground for review in this case because such directions are given taking into account the facts and circumstances of the individual cases. That the direction to pay back wages would result in ex-chequer to the public fund also is not a ground for review. The remedy open to the review applicants if they aggrieved by any direction contained in the judgement is to challenge the same in an Special Leave Petition before the Hon'ble Supreme Court. So If the Hon'ble Vice Chairman agrees, the application may be dismissed without notice to the respondents (original applicant) by circulation.


(A.V. Haridasan)
23/10/90
Judicial Member

Hon'ble S.P. Mukerji, Vice Chairman

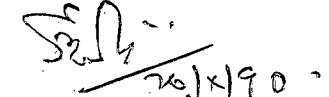
I agree. The order may be pronounced in the open court.


24.10.90

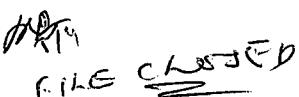
Hon'ble JM (I)

26.10.90

Order pronounced in the open court on behalf of the Bench.


(S.P. Mukerji)
Vice Chairman
26.10.90

order pronounced


FILE CLOSED