IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. ~~xxxxx~~ 495 of 199 2.

DATE OF DECISION 06.07.1992

A. Girijamma _____ Applicant (s)

Mr.Thomas Mathew _____ Advocate for the Applicant (s)

Versus

Sub Divl. Inspector of Post Offices, Neyyattinkara Sub Divn. and others _____ Respondent (s)

Mr.K.A.Cherian, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.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 ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 24.3.1992 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Extra Departmental Post Master (EDBPM) Payattuvila Post Office has challenged the impugned notice dated 16.3.92 by which her services were proposed to be terminated on administrative grounds unconnected with her conduct and has prayed that the respondents be directed to allow her to continue as E.D. B.P.M. Payattuvila P.O.

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2. The brief facts of the case are as follows. Having been sponsored by the Employment Exchange for selection to the post of ED BPM, Payattuvila, the applicant was provisionally selected for the post and after successfully completing the prescribed training, appointed as ED BPM, Payattuvila with effect from 1.10.91. She received a further communication dated 7.11.91 at Annexure A.IV stating that her employment as EDBPM shall be in the nature of a contract liable to be terminated and her conditions of service shall be governed by Extra Departmental Agents (Conduct and Service) Rules, 1964. By the impugned memo dated 16.3.92 at Annexure-V she was given one month's notice for termination of her service. She has argued that having been sponsored through the Employment Exchange and duly selected, her services cannot be terminated without specifying any reason and without giving any opportunity to her to show cause against the proposal to terminate her services. Once appointed to the post, the contractual nature of her appointment cannot take away her rights and obligations as a holder of a civil post.

3. In the statement filed by the learned counsel for the respondents, it has been stated that pursuant to a complaint of irregularity in the appointment, the selection of the applicant was reviewed by the Chief Post Master General and the appointment was found to be irregular. The candidate who had secured more marks than the applicant was not selected and that is why the show cause notice Memo at Annexure.A.V was issued. It

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is also stated that after receiving the notice at Annexure.A.V the applicant has not submitted any representation.

4. In the rejoinder the applicant has argued that her appointment having been made by the competent authority, the Chief Post Master General cannot intervene on the basis of a frivolous complaint. Reference has been made to the Judgment of this Tribunal in O.A.753/91 in which such termination on a complaint of the competing candidate was frowned upon.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. A more or less identical case was decided by the Ernakulam Bench of the Tribunal in O.A. 753/91 by its judgment dated 31.3.92. The following extracts from that judgment would be relevant:

> "After hearing the arguments of the learned counsel for both parties, we have perused the records. A reading of the impugned order though it is couched as a notice, makes it clear that it cannot be considered as a notice inviting objection from the selected and appointed candidate. It appears that the CPMG has conducted an ex-parte enquiry and came to the conclusion to terminate the service of the applicant. The procedure adopted in this case cannot be upheld. In this view of the matter, we are of the opinion that the impugned Annexure-I is really an order of termination and it is violative of the principles of natural justice. This Tribunal has repeatedly held that the complaints from the candidates who competed with the selected candidate should not be entertained unless the Deptt. is satisfied that there is grave injustice is caused in the matter of selection. No such injustice is caused to anybody in this case. The applicant has quoted the relevant portion from the judgment in O.A.K.201/87 in this application. The same is extracted below:
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> > "It has also to be pointed out that if as a matter of fact it emerged that there was some irregularity in the selection warranting the termination of the service of the selected candidates, the principles of natural justice dictate that before doing so, an opportunity should have been accorded to the

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"applicant of being heard. In this context we would refer to the decision of a Bench of this Tribunal to which one of us was a party (Shri G.Sreedharan Nair) in T.P.Tressia Vs. Sr.Supdt. of Post Offices (O.A.K.249/87) decided on 28.2.89 where the proposal to terminate the services of a selected candidate as the applicant in the instant case, behind her back without affording her an opportunity of being heard on receipt of complaint about the selection was deprecated and it was held that in case action is to be taken to the prejudice of the applicant therein, due notice shall be given to her. We affirm the principle laid down therein."

"This decision was again followed by us in O.A.1519/91.

"7. The respondents have taken the view that the termination can be affected under rule 6 of the E.D. Agents Conduct and Service Rules. That Rule reads as follows:

"6. Termination of Services:

The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without any notice."

The appointing authority is defined in Section 3. The learned counsel for the applicant argued that the Chief Postmaster General who conducted ex-parte enquiry and decided to terminate the service of the applicant, has no authority/jurisdiction under the rules to conduct such an enquiry and take an action for termination of the services of the applicant. It can only be taken by the competent authority namely the appointing authority (the first respondent). According to the learned counsel, the first respondent has not conducted any enquiry nor has he taken any decision to terminate the services of the applicant. From the facts it is clear that the first respondent has not taken any independent decision to terminate the service. He passed the order as directed by the superior authority. Having regard to the facts and circumstances of the case, the order cannot be sustained."

6. We respectfully agree with the views expressed in the aforesaid judgment.

7. The learned counsel for the respondents has relied upon a contrary ruling given by the Patna Bench of the Tribunal in Umesh Rai vs. Union of India and others, in the judgment dated 30th October, 1986. (1986) 1 ATC 774. Since the judgment in O.A 753/91 dated 31.3.92 is a later judgment, the same can be relied upon more. Besides, the majority judgment of the five

Judge Bench of the Hon'ble Supreme Court, in Delhi Transport Corporation vs. D.T.C.Mazdoor Congress and others, ATR 1991(1) SC 1 supports our view that the principles of natural justice should be followed even in the case before us. The constitutionality of a provision in the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations permitting termination of service with one month's notice was struck down by the majority opinion on the ground that such a provision by conferring arbitrary, unguided and unrestricted and uncanalised power without any guidelines on the authority to terminate the services of an employee without conforming to the principles of natural justice and equality is unconstitutional. Following the same ratio, we are inclined to hold that Rule 6 of the EDA(Conduct and Service) Rules authorising the respondents to terminate the service of an E.D Agent who has not rendered more than three years of continuous service, at any time without notice, is unconstitutional. The argument of the learned counsel for the respondents that the appointment under these conditions being.contractual, the applicant cannot claim protection under the constitutional rights is not very convincing. In the aforesaid D.T.C case, the Hon'ble Supreme Court in the majority judgment held that a clause in the terms of appointment about termination of service even with notice and without recording any reasons or without giving any opportunity of hearing to the employee affect large sections of the public and was injurious to the public interest and being opposed to public policy, is void under Section 23 of the Contract Act. The following observations made in the majority opinion will be pertinent:-

> " In other words the Service Regulations or Rules framed by them are to be tested by the touchstone of Article 14 of Constitution. Furthermore the procedure prescribed by their Rules or Regulations

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must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), therefore, confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised. It is now well settled that the 'audi alteram partem' rule which, in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Morever, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regulation 9(b) does not expressly exclude the application of the 'audi alteram partem' rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month's notice under Regulation 9(b) or pay in lieu thereof without recording any reason in the order and without giving any hearing to the employee to controvert the allegation on the basis of which the purported order is made."

8. In the light of what has been stated above, we set aside the impugned notice at Annexure A.V and direct

that the applicant should be continued in service as if the impugned order at Annexure.A.5 had never effect. The respondents, however, will be at liberty to take appropriate action in accordance with law if so advised in case they are satisfied that there has been grave irregularity in the procedure or gross injustice has been done in the selection procedure. There will be no order as to costs.

(A.V.Haridasan)
Judicial Member

6.7.92
(S.P.Mukerji)
Vice Chairman

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