

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

O. A. No. 548/89

199

X.XX.XMx

DATE OF DECISION 16-8-1990

PV Kunjamma Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)

Secretary, Ministry of Communications,

Department of Posts, New Delhi

and 4 others

Mr TPM Ibrahim Khan Advocate for the Respondent (s) 1 to 3,

Mr UV Radhakrishnan for R-4

Mr PV Mohanan for R-5

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

AND

The Hon'ble Mr. N Dharmadan, Judicial Member

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

JUDGEMENT

Shri NV Krishnan, Administrative Member

The applicant was working as Extra Departmental Branch Post Master at Rayamangalam Post Office on a provisional basis from 3.2.86. Smt. Devaki Kunjamma, a regular appointee, who was working as EDBPM at Pulluvazhi Post Office had earlier secured an order from this Tribunal in TAK 662/87 which directed the Department to consider her request for appointment as EDBPM, Rayamangalam, alongwith others sponsored by the Employment Exchange. Accordingly, her request was considered and she was appointed as Branch Post Master, Rayamangalam Post Office with effect from 5.1.89 afternoon.

2 It is in these circumstances that the applicant approached this Tribunal on 2.1.89 in OAK 5/89 against her apprehended termination of service by the induction of Smt Devaki Kunjamma. As the Sr.CGSC who appeared for the respondents in that case submitted that the applicant could be considered for provisional appointment in the resultant vacancy at Pulluvazhi Post Office, the department was directed to consider her name also for that post.

3 Subsequently, it transpired that without considering the applicant's name for appointment on a provisional basis at Pulluvazhi Post Office, the Department had appointed Respondent-4 to that post. Thereupon, a direction was issued to the Department to appoint the applicant on a provisional basis at Pulluvazhi Post Office after replacing the 4th respondent until the disposal of this applicant's ^{ion.} She is continuing in that post on this basis.

4 The final decision dated 3.8.89 in OAK 5/89 filed by this applicant was that this applicant and the Respondent-4 should be considered for selection for the post of EDBPM, Pulluvazhi Post Office. ^{That has been done and} Respondent-4 has been selected on merit. Her induction to that post has not been possible as the applicant is continuing to hold that post by virtue of the interim order passed by us in this case.

5. The reliefs sought by the applicant are as follows:-

- (i) Declare that the retrenchment of the applicant from the post of EDBPM is null and void as violative of Section 25F of the I.D. Act and that the applicant is entitled to continue in service as EDBPM at Pulluvazhi.
- (ii) Declare that the selection to the post of EDBPM at Pulluvazhi without considering the applicant's claim under Section 25-H is null and void.
- (iii) Direct the respondents to allow the applicant to continue in service as EDBPM at Pulluvazhi or to post her at any Post Office under the 2nd respondent.

6. Respondents 1 to 3 and Respondent-4 have filed separate counters. Shri PK Ayyappankutty impleaded himself as Respondent-5 in this case. However, after hearing the parties, we had decided earlier that no orders against the interest of Respondent-5 can be passed in this case and that we would not like to interfere with his selection to the post of EDBPM at Nedungapara. Hence, he is virtually ^{not a} concerned with this ^{application} / ^{by}

7. We have heard the counsel and perused the records of the case. This is a case where an embarrassing situation arose only because of the fact that when Smt. Devaki Kunjamma was transferred from Pulluvazhi to Rayamangalam and the applicant filed OAK 5/89, the Department agreed ~~not to consider~~ to consider the applicant for provisional appointment in the resultant vacancy at Pulluvazhi. Therefore, an interim order was passed to that effect. However, such consideration was not given and hence, we were compelled to direct the respondents to ^{post her} place the applicant in-charge of the Pulluvazhi Post Office as an interim measure after replacing Respondent-4.

8 Since then, our efforts have been to find out whether the problem thus created could be settled amicably. It was suggested at the bar by the counsel of the applicant and the party respondent that it should be possible to find a solution if another vacant post is available to be utilised for the appointment of one of them. We therefore, issued an interim direction that any vacancy of Branch Post Master that may arise in the Perumbavoor Sub Division shouldnot be filled up and the post should be kept vacant pending our orders and directions in this case.

9 We were informed subsequently that a vacancy of EDBPM arose at Nellikuzhi. When the case was finally heard it was submitted by the counsel for the Respondents 1 to 3 that the applicant is not entitled to the first relief, as by the intervention of our orders she was given a posting at Pulluvazhi following her relief from the Rayamangalam Post Office. He also contended that the applicant cannot claim the benefit of Section 25-H in respect of ^{her} ~~an~~ appointment at Pulluvazhi Post Office as she ^{had} ~~had~~ not held that post at any time ⁱⁿ the past. We fully agree with this submission and we are of the view that these reliefs cannot be granted to the applicant.

10 However, we are of the view that in the special circumstance of this case the applicant is entitled to

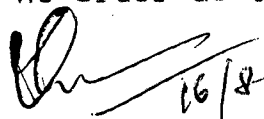
be provisionally appointed as EDBPM in a vacant post under Respondent-2. As a vacancy has arisen at Nellikuzhi, we are of the view that this case can be disposed of finally by the issue of the following orders/directions to Respondents-2 and 3 and we proceed to do so.

(i) The second respondent is directed to appoint the applicant provisionally to either the post of EDBPM, Nellikuzhi which is already vacant, or to any other post which may fall vacant in his jurisdiction. On the issue of such an order the applicant shall immediately vacate the post held by her at Pulluvazhi.

(ii) Along with the order to be issued by the second respondent in terms of (i) above, the second respondent may simultaneously appoint the 4th respondent as EDBPM, Pulluvazhi.

11 The application is disposed of with the above directions and there will be no order as to costs.


(N Dharmadan) 16/8/90
Judicial Member


16/8/90
(NV Krishnan)
Administrative Member

16-8-1990