

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 561 1989
~~W.A.C.No.~~

DATE OF DECISION 22-03-1991

Shri Sasidharan Pillai P.R. Applicant (s)

Shri S. Abdul Razack Advocate for the Applicant (s)

Versus

The Senior Supdt. of Post Respondent (s)
Offices, Quilon and 3 others

Shri T.P.M. Ibrahim Khan Advocate for the Respondent (s)
ACGSC for r 1, 2 and 4
Smt. K. Usha for R-3.

CORAM:

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

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

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? *do*

JUDGEMENT

N. Dharmadan M(J)

The applicant, by this application, approaches the Tribunal for the second time. The applicant earlier filed an application on 12th August 1988 (OA K-394/88) for quashing a notification inviting candidates to interview for selection and appointment as Extra Departmental Branch Post Master (EDBPM for short), Cheppara Post Office Quilon District and also for a direction to appoint the applicant as EDBPM Cheppara considering his past experience. It was disposed of by Annexure A-2 judgment dated 22-6-89 with directions to consider the

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the applicant along with other candidates and allow the applicant to continue in the present post till a regular selection and appointment to the post of EDBPM is made.

2. The applicant, in the present application, challenges Annexure A-6 order passed by the 2nd respondent appointing the third respondent as EDBPM Cheppara after observing the formalities of regular selection. He has also sought for a declaration that his termination as unlawful and violative of the principles of natural justice and the provisions of Industrial Disputes Act 1947. Hence he is entitled to be reinstated with all consequential benefits.

3. The relevant facts ^{case} of the run as follows: The applicant was originally appointed as a substitute EDBPM Cheppara with effect from 4-12-1987 by one Smt. Sarasamma who was later promoted and posted as Postman. His appointment was approved by the Postal department as per Annexure A-1 order dated 15-5-1986 as a Substitute. While the applicant was continuing as such, the first respondent took steps to make a regular selection without considering the preferential right of the applicant. He filed OAK394/88 and obtained an interim order of stay of termination of his services on 16-12-88, That case was disposed of with directions on 26-9-89 by Annexure A-2 judgment. This

Tribunal made it clear that the applicant shall be allowed to continue in the present post till selection and regular appointment in accordance with the above directions.

4. After the judgment the first respondent interviewed the applicant alone on 28-7-1989 and appointed the third respondent who had been interviewed before Annexure A-2 judgment along with others, sponsored by the Employment Exchange, as per the impugned order Annexure A-6 dated 7-9-89. Consequently, the applicant was ousted without any separate order or prior notice of termination. This was issued on the eve of the Onam holidays which commenced on 9th of September and continued up to 17-9-89. So the applicant was compelled to hand-over charge without approaching the Tribunal. However, he filed this application on 25-9-89 with a prayer for an interim relief to stay the approval of appointment of the third respondent as EDBPM, Cheppara Post Office.

5. On the pleadings two questions arise for consideration viz. (i) whether the termination of the applicant from service as EDBPM, Cheppara is legal and valid ? (ii) whether the regular selection and appointment of the third respondent as EDBPM can be sustained ?

6. As regards the first question, the applicant

when approached this Tribunal apprehending termination and filed OAK 394/88, it was directed in the Annexure A-2 judgment that suitability of the applicant should also be considered along with the other candidates, sponsored by the Employment Exchange and he should be appointed to the post of EDBPM if he is found fit and proper for the regular appointment in the regular vacancy. The respondents shall also allow the applicant to continue in the present post of EDBPM till regular selection and appointment is made. The allegations of the applicant is that after Annexure A-2 judgment the interview for regular selection was not conducted by the first respondent as directed by the Tribunal. But he issued Annexure A-4 notice to the applicant fixing interview on 28-7-89 at 10.00 AM. When he appeared on 28-7-89 the first respondent asked only the name of the applicant and his father and closed the matter. No other candidate was [✓] neither called for interview [✓] nor xxxxxxxxx, interviewed on that date as directed by the Tribunal. According to the applicant the first respondent only conducted the interview as a formality to ^{make it} appear that the applicant was also interviewed [✓] and complied with the directions of the Tribunal. The first respondent denied the allegations but admitted that on 28-7-89 the applicant [✓] alone was interviewed as the interview of the other candidates, sponsored by the Employment Exchange was already over. There existed no need to do it again because the very purpose of interview

was only to assess the general fitness of the candidates. The selection invariably depends on the marks of the candidates in S.S.L.C.. The applicant got only 235 marks in S.S.L.C. while the third respondent scored 265 marks. It being the highest, the third respondent was selected and there is no illegality in the selection and appointment of the third respondent as regular EDBPM.

7. Accepting all the arguments of the first respondent that the selection of the third respondent is valid as he had complied with the directions and conducted the selection of candidates in accordance with law. We have to examine on the facts of this case whether the termination of the services of the applicant by simply passing Annexure A-6 order posting the third respondent in his place as regular EDBPM Cheppara is valid. The respondents have strictly implemented the later portion of the direction in Annexure A-2 judgment that the applicant should be appointed if he is found fit for appointment as regular EDBPM and allow him to continue till such regular appointment. Admittedly, in the regular selection, the applicant was not found fit for appointment. On the basis of the observation in Annexure A-2 judgment the applicant's service is liable to be terminated for accommodating regularly selected candidate viz. the third respondent. The question which emerges for

consideration is ~~xxxx~~ whether it is obligatory on the part of the 1st respondent to issue notice to hear the applicant and pass orders of termination or comply with the statutory formalities under Chapter V-A of the Industrial Disputes Act 1947 before appointing the third respondent in terms of the Annexure A-2 judgment.

8. The directions of this Tribunal in Annexure A-2 judgment is clear and unequivocal. It is extracted below:

"..consider the suitability of the applicant for appointment as EDBPM at Cheppara along with other candidates sponsored by the Employment Exchange.....The respondents shall allow the applicant to continue in the present post till selection and regular appointment is made in accordance with the above directions."

By this judgment of this Tribunal applicant's right is crystalised and taken out of the purview of the statutes and contract. They are substituted by the pronouncement of the Tribunal inter parties. Since the applicant has been found unfit for regular selection his right to continue as EDBPM comes to an end on the wordings of the judgment. The Tribunal did not observe that the termination of the applicant should be in accordance with law, in which case the first respondents cannot accommodate the duly selected candidates without putting an end to the services of the applicant in a legal manner either following the provisions of Chapter V-A of the I.D. Act or satisfying the requirement of the principles of natural justice under the general law. Since the applicant approached

this Tribunal and invited a decision in his favour he is bound by the wording and terms incorporated in the judgment.

9. Under these circumstances we have to specifically examine whether the termination of the services of the applicant is a retrenchment at all because the only point urged by the learned counsel Shri S.A. Razack is that the termination of the applicant is against the section 25F of the I.D. Act and that he is entitled to the protections of section 25H of the same Act. Admittedly, the Postal department is an industry and workers therein come within the purview of Industrial Disputes Act 1947 (See M.A. Bukhari V. Union of India, ATR 1989 (1) CAT 162 para 4).

10. Retrenchment is defined in Section 2(00) of the I.D. Act and there is a catena of decisions of the Supreme Court, High Courts and Tribunals interpreting this term. The key words in Section 2(00) to be adverted to in this connection are "termination by the employer of the services of a workman for any reason whatsoever" (See Sundaramany's Case, AIR 1976 SC 1111). In Sundaramany's case the Supreme Court said that the termination of a service of a ^{servant engaged} temporary ~~only~~ for certain number of days under the contract of employment would constitute 'retrenchment'. The phrase "for any reason whatsoever" was interpreted so wide as not admitting any exception. Chinnappa Reddy. J further explained the same phrase in Santhosh Gupta's

case (AIR 1980 SC 1219) and held:

"...About the width of sec.25F, there cannot be any doubt that the expression 'termination of service for any reason whatsoever' now covers every kind of termination of service except those not expressly included in 25F or not expressly provided for by other provisions of the Act such as Sec.25FF and 25 FFF..."

That was a case of a discharge of employee for his failure to pass departmental test for confirmation. In Rober D' Souza's case (1982 (1) SCC 645) it was observed that:

"....Once the case was not fall in any of the exempted categories, the termination of service even if it be according to automatic discharge from service under agreement would nevertheless be retrenchment within the meaning of the expression in sec 2(00). So that if the name of the workman is struck off the rolls that itself would constitute retrenchment..."

Later justice Khalid quoted with approved the statement of law laid down in Sundaramany's case, in H.D. Singh V. Reserve Bank of India (AIR 1986 SC 132) that:

"...We reach the conclusion that if the workman swims into the harbour of Sec.25F, he cannot be retrenched without payment, at the time of retrenchment compensation computed as prescribed therein read with Sec.25B(2)..."

11. A Constitution Bench of the Supreme Court very recently considered the scope and ambit of the definition of the term extensively in the light of all decided cases on the subject in Punjab Land Development & Reclamation Corporation Ltd V. Presiding Officer, Labour Court, 1990 (3) SCC 682 and held as follows:

"...For the purpose of harmonious construction it can be seen that the definitions contained in section 2 are subject to these being anything

repugnant in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of the Act, we hold that 'retrenchment' means the termination of the employer of the services of the workman for any reason whatsoever except these expressly excluded in the section.."

12. In the light of settled principle of law a common sense assessment of the fact in this case is sufficient to dispose of the claim of the applicant. The applicant approached this Tribunal at an earlier occasion and obtained a decision in his favour making the position very clear that his right to continue in service until the selection and appointment of a regular hand. In case he is not found fit and suitable for regular appointment he shall yield place for accommodating the person found fit and suitable for regular appointment without any demour. It is a decision binding on him and the first respondent. Admittedly, the applicant was not found to be 'fit and suitable for regular appointment' after Annexure A-2 judgment. He cannot under these circumstances clutch at the provisions of I.D.Act and cling on to the post of EDBPM creating embarrassment both to the respondents 1 and 3. In fact in the light of the latest pronouncement of the Supreme Court on the

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subject the provisions of Sec.25F are not attracted in the controversy in the context' of the wordings in Annexure A-2 judgment. It was never intended by the judgment Annexure A-2 that the applicant can continue as EDBPM on technical plea of failure of notice or any other ground such as non-compliance of statutory provisions of I.D. Act in case he is not found fit for regular appointment. This Tribunal purposefully avoided specific mention of termination of his service according to law, in the judgment. Thus it is to be presumed that on the fact and circumstances of this case there is an automatic termination of the service of the applicant when the first respondent declares that the third respondent is fit person for a regular appointment as EDBPM, Cheppara Post Office. Retrenchment as defined in the Act does not take in an automatic termination in terms of the wording of the judgment at Annexure A-2 in the context explained above. The only obligation for the first respondent under the directions in the judgment is to consider the case of the applicant also along with others and decide as to

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who is the fit and suitable person to the appointed as a regular EDBPM, Cheppara Post Office and till then allow the applicant to continue in that post. These directions have been carried out and nothing further remains to be complied with. No further notice is necessary to snap the existing relationship of the applicant with the department. Presumably because of the fulfilment of the directions that he has issued Annexure A-6 order without issuing any separate notice or order terminating the appointment of the applicant. In this view of the matter, we answer the first question in the affirmative and against the applicant. But in fairness, the respondents should have given one month salary and compensation due to the applicant for the period during which he had worked before his services were actually terminated even if the provisions of the I.D. Act do not strictly apply on the facts of this case.

13. Regarding the second point the learned counsel for the applicant did not raise any serious contentions except stating that there was no consideration of the claim of the applicant for regular appointment along with the other candidates sponsored by the Employment Exchange as directed by the Tribunal in Annexure A-2 judgment. The third respondent was

interviewed earlier and after the judgment.

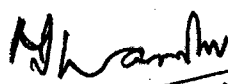
The applicant alone was interviewed on 28-7-89 and the first respondent declared that the third respondent is the fit person for regular appointment. He further submitted that the competent authority had not issued the order of appointment and hence the order Annexure A-6 is illegal and liable to be quashed. Both these contentions are satisfactorily countered in the reply statement. Since there was no need to conduct a fresh interview in respect of candidates sponsored by the employment Exchange after the earlier interview conducted by the first respondent, he interviewed the applicant along on 28-7-89. No marks or weightage will be given for the interview and it is intended only to assess the physical and general fitness of the candidates under the relevant rules. The real criterion for the selection is percentage of marks scored by the candidates in the matriculation/SSLC and the candidate who had scored the highest marks will have the best chance for the selection. The third respondent got the highest of 235 marks and hence he was selected. The respondents 1 to 3 in the reply statement submitted that the appointment of the third respondent was made under the directions of

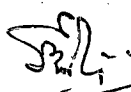
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the competent authority as per letter No.B3/BO
Cheppara dated 2-9-89 and hence there is no
illegality of her appointment as per the impugned
order Annexure A-6. In the light of these statements
of the respondents we see no merit in the contentions
of the applicant in the second ground also. This
question is also answered in favour of the
department.

14. After bestowing our dispassionate
considerations on this matter, we found ourself
left with no other alternative but to dismiss the
application making it clear that the applicant is
entitled to the payment of the amount indicated
in para 12 supra.

15. There will be no order as to costs.


(N. Dharmadan) 22.3.91
Member (Judicial)


22-3-91
(S.P. Mukerji)
Vice Chairman

22-3-1991