

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.590/2001.

Friday, this the 19th day of September, 2003.

C O R A M

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

1. Deepa Vinod,
D/o. Shri A.Gopi, aged 25 years,
Extra Departmental Branch Post Master,
Vatanappally Beach BO,
Residing at Kannikulangara House,
Anthikkad PO, Thrissur District.

..Applicant

[By Advocate Mr. O.V.Radhakrishnan]

Versus

1. Senior Superintendent of Post Offices,
Thrissur Division, Thrissur : 680 001
2. Postmaster General,
Central Region, Kochi
3. Union of India represented by its
Secretary, Ministry of Communication,
Sanchar Bhawan, New Delhi.

..Respondents

[By Advocate Mrs. P.Vani, ACGSC]

O R D E R

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

The applicant is presently working as EDBPM, Vatanappally Beach Branch Office under the first respondent. She was selected in response to a notification issued by the first respondent and appointed on the aforesaid post through a regular selection process. The applicant submitted that she has passed SSLC with 387 marks. She is having independent personal income from a business concern of which she is a partner. Annexure A/1 is the Partnership Deed dated 26.7.1995. She also submitted an income certificate (Annexure A/2) dated 7.11.2000 issued by the Tahsildar, Taluk Office, Thrissur, certifying her annual personal

income as Rs. 18,000/-. Therefore, she claims that she was fully eligible and qualified for selection and appointment as EDBPM, Vatanappally Beach Branch office. Considering the highest marks in the Matriculation examination and satisfying all other eligibility conditions, she was selected for appointment as EDBPM, Vatanappally Beach Branch Office vide Annexure A/3 dated 16.01.2001. After completion of all pre-appointment formalities, the applicant was appointed for the aforesaid post and she assumed the charge of the said post vide charge report dated 25.01.2001 (Annexure A/4). The applicant has been continuing on that post sine then. Subsequently, she got title and possession over 5.2 cents of land in R.S.No. 78/2 in Oorakam village as per registered settlement deed dated 25.5.2001. Therefore, the applicant is deriving income from landed property also. While so, the applicant was served with a Memo dated 5.6.2001 (Annexure A/5) from the first respondent informing her that the reviewing authority has held her selection as erroneous on the ground that the independent income is not derived from landed or immoveable property and as such, she did not fulfil the preferential condition for appointment and hence, it was proposed to terminate the services of the applicant. She submitted a detailed representation dated 8.6.2001 (Annexure A/6) pointing out that the reason shown in the memo is untenable. The sole reason shown in the Memo is that the independent income of the applicant is not derived from landed and immoveable property. As per the instruction of the Director General of Posts, New Delhi, circulated vide letter No. 17-104/93-ED & Trg. dated 6.12.1993, in the case of appointment of Extra Departmental Sub Post Master, preference may be given to those candidates whose "adequate means



of livelihood" is derived from landed property or immovable property. The applicant contended that such instructions are non est and inoperative in terms of the order (Annexure A/7) of this Tribunal in O.A. No. 1514/97 dated 3.9.1999. The ground for termination of the applicant is no longer available for the respondents in view of setting aside the preferential condition for appointment as EDBPM based on the independent income derived from landed and immovable property, as per the order of this Tribunal referred to above. Therefore, Annexure A/5 Memo proposing to terminate the services of the applicant has no legal backing and is the one issued without authority of law and is void and non est. Aggrieved by the impugned Memo Annexure A/5, the applicant has filed this O.A. praying for the following reliefs:

- (i) To call for the records relating to Annexure A5 Memo dated 5.6.2001 and to quash the same;
- (ii) to declare that the 1st respondent has no power to recall or review the selection already made by him and to terminate the appointment consequent to such review, suo-motu or as dictated by any higher authority;
- (iii) to issue appropriate direction or order directing the respondents not to proceed with Annexure A5 and allow the applicant to continue in the post of EDBPM, Vatanappally Beach BO, without regard to Annexure A5;
- (iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and
- (v) to award costs to the applicant."

2. On behalf of all the respondents, the first respondent has filed a detailed reply statement contending that the applicant was ranked 4th in the merit list of eligible candidates applied



for the post of Branch Postmaster, Vatanappally Branch. The first three candidates did not satisfy the mandatory condition of having independent income and was, therefore, not considered. The applicant has shown the independent income and hence the appointing authority finalised the selection in her favour. As per the letter Annexure R/1 dated 13.11.1997 issued by the DG Posts, New Delhi, the appointment of ED Posts can be reviewed by the authority higher than the appointing authority if the appointments are made in contravention of the instructions. But before doing so, the concerned ED Agents should be issued with a show cause notice and his/her representation, if any, is to be forwarded to the next higher authority for consideration before passing the final orders. While reviewing the selection to the post of EDBPM, Vatanappally Beach BO, the higher authority found that the appointing authority had erred in deciding that the income derived by the selected candidate from immovable property as share in a firm and the same cannot be taken as an income from immovable property. As per DG Posts, New Delhi, letter dated 18.9.1995 (Annexure R/2), the date of acquisition of property should be before the last date fixed for receipt of application in the office of the appointing authority to become eligible for fulfilling the landed property qualification. Vide Annexure R/3 dated 6.12.1993, preference for EDBPM/EDSPM selection has to be given to the candidates with adequate means of livelihood derived from landed property or immoveable assets. In the present case, the applicant produced copy of a deed showing that she is partner of the firm named "Pleasant Food Products" and also an income certificate showing that she is deriving an annual income of Rs. 18000/- from the said firm. The appointing authority mistakenly

decided that the income derived by the applicant from the firm is an income from immovable property. Therefore, the applicant was selected for the post and joined the service with effect from 25.01.2001. It is contended that the landed property acquired by the applicant subsequently cannot be considered as per Annexure R/2. As per letter Annexure R/1, the higher authority to the appointing authority is competent to review the appointment made in the cadre of ED Agents and to pass appropriate remedial orders after following the prescribed procedure. The selection of the applicant was irregular and thus, the reviewing authority has exercised its power as per Annexure R/1 letter and directed to take further remedial measures. The respondent No. 2 issued letter dated 18.05.2001 (Annexure R/4) on the point. Based on Annexure R/4, the impugned order Annexure A/5 was issued. It is stated that the representation of the applicant dated 8.6.2001 is under consideration. The order Annexure A/7 in O.A. No. 1514/1997 is under challenge before the Hon'ble High Court of Kerala in O.P. No. 28419/99 and has been stayed. The matter is subjudice and the applicant cannot claim the benefit of A7 order. Therefore, there is no merit in the O.A. and it deserves to be dismissed.

3. The respondents have also filed additional reply statement reiterating the points urged in the original reply and further averred that the Annexure A/7 order has been now upheld by Hon'ble High Court of Kerala in O.P.No. 28419/99 and one of the qualifications for appointment to the post of ED Agents, viz. independent income from immovable property is no more in existence. The applicant was ranked 4th in the merit list of in



the merit list of eligible candidates applied for the post in question. The first three candidates did not satisfy the mandatory condition of having independent income from immovable property and was, therefore, not considered. The applicant has shown independent income and hence the appointing authority finalised the selection in favour of the applicant. Now the Hon'ble High Court has confirmed the A7 order and the meritorious candidate from among the first three rank holders will get the appointment and not the applicant. The marks and the income/property of the first four candidates as on date of the application are as under:

	<u>Name & Address of the candidate</u>	<u>Marks in S.S.L.C.</u>	<u>Income and property qualifications</u>
1.	P.Raji, Pandoli House, Vatanapally	413/600	NIL
2.	K.G.Krishnakumari Kizhekkut House, Venginissery, P.O.Paralam	410/600	Income Rs.12000/- (salary from job in medical wholesale Co.). Income from landed property is not shown.
3.	A.D.Reetha Chiriyankapdath, Pavaratty.	389/600	Rs.10800/- from tuition. Income from landed property is not shown.
4.	Deepa Vinod The Applicant in O.A.	387/600	Rs.18000/- share of the property in business. She is one of the partners in a firm named "Pleasant Food Products".

4. It is stated that the applicant does not have highest marks in SSLC as alleged by her. The contention that the reviewing authority has no right to issue A5 order also will not sustain. As per the order dated 13.11.97, the reviewing authority has every power to issue A5 order. They submitted that



the O.A. does not have any merit and is liable to be rejected.

5. The applicant has filed a rejoinder contending that the reply statement to the effect that the applicant had shown the independent income and hence the appointing authority finalised the selection in her favour runs counter to the statement in Annexure A/5 notice dated 5.6.2001 that the selection of the applicant as EDBPM, Vatanappally Beach BO was found to be erroneous by the reviewing authority on the ground that the independent income is not derived from landed or immovable property and as such she did not fulfil the preferential condition for appointment. Rule 16 of the Post & Telegraph Extra Departmental Agents (Conduct & Discipline) Rules, 1964, deals with review of orders and the power of review is confined to call for records of any inquiry or disciplinary case and review any order made under those rules. The said provision does not take in the power to review the selection made by the appointing authority and Annexure R/1 cannot modify, outstep or override the provisions contained in the Rules. Therefore, Annexure A/5 notice is clearly ultra vires and the one issued without authority of law. Annexure A/5 is only reduced to an empty formality and the appointing authority cannot take independent decision on the basis of the representation filed by the applicant in response to Annexure A/5 contrary to the decision of the higher authority indicated therein. The reviewing authority has not given any opportunity of being heard to the applicant before he took the decision that the selection of the applicant was erroneous. Therefore, the whole procedure initiated for terminating the services of the applicant is illegal and is

vitiated by arbitrariness and unreasonableness. The contention of the respondents that the applicant is not eligible for the post in question is hit by estoppel since it was after her selection and the authority cannot attack its own order as a respondent to this case. Therefore, the impugned order Annexure A/5 is illegal and non est and is liable to be set aside.

6. Shri O.V. Radhakrishnan, learned counsel, appeared for the applicant and Mrs. P. Vani, ACGSC, appeared on behalf of the respondents.

7. We have carefully perused the pleadings, evidence and the material placed on record. and have given anxious consideration to the arguments advanced by the learned counsel for the parties.

8. The learned counsel for the applicant argued that the impugned Annexure A/5 Memo was not issued under any rule, executive order of any binding instruction which has the force of law and the ground for terminating the services of the applicant from the post of EDBPM, Vatanappally Beach BO in the face of Annexure A/7 order of this Tribunal (which was upheld by Hon'ble High Court of Kerala) declaring the preferential condition based on independent income from landed or immovable property as unconstitutional, ultra vires and void. Therefore, the Annexure A/5 order is the one issued without authority of law and is liable to be declared so for rendering preventive justice and it attracts the mischief of Articles 14 and 16(1) of the Constitution of India. The learned counsel for the respondents on the other hand, vehemently argued that the first three

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candidates in the merit list did not satisfy the mandatory condition of having independent income and, therefore, their names were not considered. As per Annexure R/1, the appointment of ED posts can be reviewed by the authority higher than the appointing authority if the appointments are made in contravention of the instructions. In this case, the applicant was ranked as 4th with less marks in SSLC whereas all the other three candidates had obtained more marks than the applicant and, therefore, exercising the power conferred in Annexure R/1 that the authority higher than the appointing authority can review the appointment of ED posts, the steps were taken in the case on hand.

9. The letter of DG Posts dated 18.9.95 (Annexure R/2) stipulating a crucial date for determining eligibility on the basis of proof of income of ownership of property and the letter of DG Posts dated 6.12.1993 (Annexure R/3) wherein it has been stipulated that preference should be given to those candidates whose adequate means of livelihood is derived from landed property or immovable assets for appointment to the post of EDBPM and EDSPM, if they are otherwise eligible. The applicant has only produced the income certificate and she was ranked as 4th in the merit list of the eligible candidates for the post in question. The first three candidates did not satisfy the mandatory condition of having independent income and, therefore, their candidature was not considered in preference to the applicant. The fact that the applicant was at serial No.4 in the merit list in terms of the marks obtained in the matriculation examination is not disputed. It is also an admitted fact that

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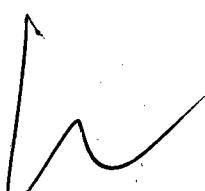
the first three candidates in the merit list were not considered because they did not produce the evidence in connection with the mandatory condition of having independent income. The applicant has not produced any certificate showing that she is deriving income from immovable property. But she has produced a certificate showing that she is deriving an annual income of Rs.18000/- from a partnership firm. In other words, she has no income from immovable property at the appropriate time. Therefore, the question involved in this case is whether the following stipulation contained in DG (P) letter No. 170104/93 ED & Trg. dated 6.12.93 is a condition precedent or not for consideration of selection:

"It is not necessary to quantify 'adequate means of livelihood'. However, it may be laid down that in the case of appointment of ED Sub Postmasters/Branch Postmasters preference may be given to those candidates whose "adequate means of livelihood" is derived from landed property or immovable assets if they are otherwise eligible for the appointment. Heads of Circles may be asked to issue suitable instructions to the appointing authorities on these lines so that they could follow these while making appointments to the posts of EDSPM/EDBPM. In respect of other EDAs, the present 'adequate means of livelihood' will hold good."

10. This Bench of the Tribunal had an occasion to examine this question in O.A.No. 1514/1997, decided on 23.09.1999, in which the aforesaid instructions were declared as ultra vires and unconstitutional and was quashed. The Hon'ble High Court of Kerala also upheld the above decision in O.P. No.28419/1999 reported in 2002 (1) KLT 554, Director General of Post Offices vs. Central Administrative Tribunal, Ernakulam Bench. Therefore, the legal position as on the date of selection was that this condition/stipulation of independent income derived from landed and immovable property was not required to be taken

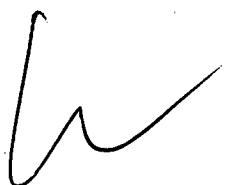


into consideration. Had it not been taken into account, what would have been the position is a matter to be looked into by the respondents separately. Having found that the department had committed irregularity, they sought rectification of the same by issuing Annexure A/5 Memo. In a celebrated decision reported in AIR 1995 SC 705, Chandigarh Administration and Another vs. Jagjit Singh and Another, Hon'ble Supreme Court has laid down that the error committed by the administrative authority cannot be allowed or compelled to repeat that illegality over again and again. Admittedly, in this case when the selection process had taken place, the above condition was not there. In other words, the order of the Tribunal in O.A. No. 1514/1997 dated 23.09.1999 was in existence though it was stayed by the Hon'ble High Court for the time being. In such circumstances, the respondents should mention in the order that the appointment made on the post in question shall be subject to outcome of the appeal. In this case, this has not been done. On this point, various decisions of Hon'ble Supreme Court and Hon'ble High Courts are available. In 1984 (2) SLR 731, Roshan Jagdish Lal Duggal and Others vs. The Punjab State Electricity Board (judgement of Punjab and Haryana High Court) and also in Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 3 SCC 1, Hon'ble Supreme Court has held that the stay of operation of the order by the Apex Court does not mean that the principle laid down in that order cannot be followed. In other words, the stay order does not mean that the said order has been wiped out from existence. Therefore, the order of the Tribunal in O.A.No. 1514/1997 was in existence at that time and the selection should

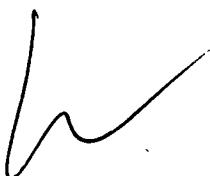


have been made in conformity with the principles laid down in that decision. The question of having landed or immovable property has been declared unconstitutional and the same should not have been taken into consideration while selection and if any selection is made on that basis, it is faulted and will not stand in the eye of law. We are also unable to accept the contention of the applicant that the selection has become final and since the orders were issued in favour of the applicant, it cannot be reviewed in supersession of Rule 16 of the EDA (Conduct and Service) Rules, 1964. In this context, it is pertinent to note that the EDA (Conduct and Service) Rules is a codification of rules, regulations, orders and instructions in the matter. In the case of The Superintendent of Post Offices etc. etc. vs. P.K. Rajamma etc. etc. reported in AIR 1977 SC 1677, it is well settled that the Extra Departmental Agents connected with the Postal Department whose conditions of service are governed by the Rules of 1965 hold civil posts under the Union of India as contemplated by Article 311.

11. Here, it is a clear case that though there were meritorious candidates available than the applicant (applicant was 4th in rank), the applicant was selected for the post in question on the basis that she was having independent income derived from landed or immovable property, which in our view is not correct. The selection was not made in the true spirit abiding by the provisions of law and procedure on the subject. Then the question comes whether the respondents can make review of its order. Annexure A/5 is only a show cause notice against the proposed action for termination of the applicant from service



giving an opportunity to her to make representation within ten days. One of the contentions of the respondents was that before filing this application no other alternate recourse has been adopted by the applicant administratively and, therefore, this O.A. is premature, which has some force. Regarding the authority of the respondents to review the order, the respondents have produced Annexure R/1 instructions dated 13.11.1997 clarifying on the subject whether the appointments made to ED posts can be reviewed by the authority higher than the appointing authorities and appropriate remedial action ordered, if any appointment is found to be in contravention of the instructions. Annexure R/1 has been issued by the Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi. The contention of the applicant was that such an instruction cannot be issued by the Assistant Director General on behalf of the Government of India on the ground that it is in contravention of Rule 16 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964. This argument cannot be accepted for the reason that the aforesaid Rule 16 has also been issued by the said authority and any supersession or modification, the said authority is competent to do so, which is binding on the respondents. Annexure R/1 also specifies that during the course of periodical inspections and on receipt of complaints in this regard, the higher authorities come across cases of irregular appointments of ED Agents and in some cases, the appointments are found to have been made erroneously. To set right the irregular appointments, the superior or reviewing authorities have to pass orders requiring the appointing authorities to cancel such irregular appointments and make fresh appointments. Finally, it

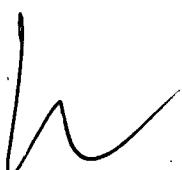


was observed that an authority which is higher than the appointing authority, in accordance with established principles, enjoys supervisory powers to revise the administrative orders of the subordinate authorities for good and sufficient reasons and pass appropriate remedial orders after following the procedure indicated below:

- (i) The question whether appointment of a particular ED Agent to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing appointments.
- (ii) In regard to appointment which was made in contravention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/instructions whether statutory or administrative/executive, as otherwise, it would amount to perpetuation of the mistake and would be detrimental to the larger interests of Government. However, in these cases, the principles of natural justice should be complied with by giving the ED Agent a show cause notice and opportunity to be heard before passing any order adversely affecting him. There is no need to invoke ED Agents (Conduct and Service) Rules, 1964, while passing final orders in such cases.
- (iii) Cases of erroneous appointments should be viewed with serious concern and suitable disciplinary action should be taken against the officers and staff responsible for such erroneous appointments.

4. While complying with the directions given by the next higher authority, the appointing authority will ensure that a proper show cause notice is issued to the ED Agents concerned and his representation, if any, is forwarded to the next higher authority for taking it into account before passing the final orders."

12. From the above, it is clear that the order Annexure R/1 has been passed to set right the irregular appointments made on extraneous consideration or otherwise and this will have



transparency in the regular procedure. We cannot side line this order for want of jurisdiction or authority in view of our finding as above. Abundant precaution has been taken by empowering the higher authority as reviewing authority, which will have a cross-check on all appointments. In fact, the question which has been decided in O.A. No. 1514/1997, V.P. Praseetha vs. Superintendent of Post Offices, Kannur Division and Others, appears to be similar to the facts of the present case. The distinction between these two cases is that in that O.A. the applicant was meritorious in rank in terms of the marks obtained in the Matriculation examination but she could not produce the income certificate whereas in the case on hand, the applicant was 4th in rank, but she had produced the income certificate. In O.A. No.1514/1997, this Bench of the Tribunal after declaring the condition regarding possession of immovable property as ultra vires and unconstitutional, directed the first respondent to review the order and if the applicant was found eligible and suitable for appointment, she should be appointed on that post. In the interest of justice, we are of the view that such an order will suffice in the circumstances of the present case.

13. In the conspectus of the facts discussed above, we dispose of this application with a direction to the second respondent to consider the applicant alongwith other candidates who applied for the said post afresh with relative merits and other conditions as observed above and pass a speaking order with reference to the legal and factual position and if the applicant is found eligible and suitable for appointment, she may be appointed to the post of



EDBPM, Vatanappally. This exercise shall be done within three months from the date of receipt of a copy of this order. Till then, the applicant shall be permitted to continue in the post of EDBPM, Vatanappally Beach Branch Office.

14. In the circumstances, there shall be no order as to costs.

(Dated, the 19th September, 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

cvr.