

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.595/2002

Monday..this the 16th day of August, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

C.Damodaran S/o Choolan,
aged 37 years, Group D, Kottakkal,
Malappuram-676503,
residing at Chembat House, Atteeri PO
Puthur,Kottakkal,
Malappuram.676503.Applicant

(By Advocate Mr.MR Rajendran Nair)

v.

1. The Sub Postmaster, Kottakkal.
2. The Chief Postmaster General,
Kerala Circle,Trivandrum.
3. Union of India, represented by its
Secretary, Government of India,
Ministry of Communications,
Departemnt of Posts,
New Delhi.Respondents

(By Advocate Mr. Rajendrakumar M. ACGSC)

The application having been heard on 6.8.2004 the Tribunal
on 16.8...2004 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who was working as Extra Departmental
Delivery Agent (EDDA for short), Othukkungal represented the
Kerala Circle in All India Postal Football Meets since 1994.
His team got championship in 1996 at the All India Postal
Football Meet, 1996, was Runner up Team in 1997 and had
third position at other meets. As an outstanding sports
person he was appointed on a Group D post in relaxation of
the normal rules by order dated 25.3.2000 (A2). On
satisfactory completion of probation he was confirmed on a

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Group D post in the scale Rs. 2550-3200 by Annexure.A3 order dated 24.7.2002. While so he was served with Annexure.A.1 notice stating that the Ernakulam Bench of the Central Administrative Tribunal in its order in OA 361/2000 filed by Sri P.Prahladan having quashed the selection on the basis of which the applicant was appointed on a Group D post appropriate action would follow. The applicant was not a party to OA 361/2000 nor was his selection and appointment challenged by anybody. The applicant, therefore, immediately submitted Annexure.A.4 dated 10.8.2003 reply to the first respondent requesting to refrain from taking any action prejudicial to the applicant. Apprehending that his services would be terminated the applicant has filed this Original Application seeking to quash Annexure A.1 notice and for appropriate relief.

2. The respondents seek to justify the impugned notice on the ground that the Ernakulam Bench of the Tribunal in its order in OA 361/2000 having quashed the order dated 29.2.2000 of the second respondent approving the appointment of three E.D.Agents as Postmen and two E.D.Agents as Group D the second respondent cancelled the approval of appointment and issued Annexure.R.1(c) letter directing the Division to issue notice of termination of service and therefore the action taken was perfectly in order.

3, Shri Hariraj, the learned counsel of the applicant argued that the appointment of the applicant having not been challenged in OA 361/2000 and was not a matter in issue in

that case the proposal to cancel the applicant's appointment is wholly unjustified. He argued that the applicant who is a confirmed Group D employee is entitled to continue in service and the order of the Tribunal in OA 361/2000 has no consequence as far as his appointment and continuance in service is concerned. Shri Rajendrakumar, the learned Additional Central Government Standing Counsel appearing for the respondents argued that since the approval by the second respondent of appointment of three E.D.Aagents as Postmen and two E.D.Aagents as Group D by order dated 29.2.2000 having been set aside by the Tribunal in its order in OA 361/2000 the respondents cannot be faulted for issuing Annexure.A.1 notice in accordance with the Tribunal's order.

4. The only point that arises for consideration is whether the respondents are justified in issuing Annexure.A.1 notice proposing to terminate the services of the applicant. The reason for issuing Annexure.A.1 notice according to the respondents is that the order of the second respondent approving appointment of three E.D.Aagents as Postmen and two E.D.Aagents as Group D dated 29.2.2000 has been set aside by the Tribunal in its order in OA 361/2000 and therefore the applicant having been appointed on the basis of the order dated 29.2.2000 his appointment has to be cancelled. We have gone through the judgment in OA 361/2000. OA 361/2000 was filed by one Prahladan. The prayers in that OA reads follows:

(i) To call for the records relating to Annexure.A.10 and to set aside the same to the extent it appoints and approves the appointment of the 5th respondent to the cadre of Postman and also set aside Annexure.A.14 letter dated 27.3.2000.

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(ii) To issue appropriate direction or order directing the respondents 1 and 2 to appoint the applicant to the cadre of Postman in the place of the 5th respondent considering his qualification and superior preferential right for appointment under Sports Quota in terms of Annexure.A.8 OM dated 4.5.95.

(iii) To declare that the 5th respondent, who has no preferential qualification for appointment to Group C and D under Sports Quota in terms of Annexure.A.8 in relaxation of the Recruitment Rules, is not entitled to be considered under Sports Quota on the basis of performance in the Postal Departmental Athletic Meets.

(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.

The fifth respondent in that case was K.C.Prabha.

5. A careful reading of the entire order in OA 361/2000 clearly shows that A.10 in that case i.e., the order of the second respondent approving the appointment of Three Extra Departmental Agents as Postmen and two Extra Departmental Agents as Group D was challenged only to the extent of appointment of the 5th respondent in that case as Postman. Not only that the appointment of the applicant in this case as Group D was not challenged there was no challenge to any appointment of Group D or to appointment of any other persons than the 5th respondent as Postman. The relative merits of the applicant and the fifth respondent alone were stated and the case of Shri Prahladan, the applicant was only that he should have been appointed in the place of the fifth respondent. The Tribunal had no occasion to consider the validity or otherwise of appointment of any one other than the 5th respondent in that case because

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Annexure.A.10 order ie., the order dated 29.2.2000 to the extent it approved the appointment of K.C.Prabha the 5th respondent in that case alone was challenged. That case alone was considered, discussed and decided by the Tribunal. Adjudication of the issue of validity or otherwise of the selection and appointment of any one other than the 5th respondent in that case was neither necessary nor proper mainly because there was no challenge in the Original Application against Annexure.A.10 approval in its entirety as the challenge was specifically confined to the approval of appointment of the 5th respondent and also because apart from 5th respondent no one whose appointment was approved was party to the Original Application. It is a well accepted guiding principle that courts will decide matters which directly arise from the pleadings in the litigation and what are incidental thereto only. However in paragraph 17 of the order in OA 361/2000 it was stated thus:

"In the light of the detailed analysis as above, we set aside and quash Annexures.A.10 and A.14 giving liberty to the respondents to take action in accordance with the extant instructions and norms laid down by the Government of India for recruitment to fill up three posts of Postman and two posts of Group D against Sports Quota."

It was on account of this observation that the respondents issued Annexure.A.1 notice. On the face of what is contained in para 17 of the order it would appear that the entire appointments approved by Annexure.A.10 in that case were set aside. However, since two persons appointed as Postmen and one person appointed as Group D, the

applicant in this case, were not parties to the OA 361/2000 and their appointments were not even remotely assailed in that application, any order in that case would not be binding on them including the applicant herein. It therefore, has to be held that the setting aside of Annexure.A.10 order in OA 361/2000 was only to the extent of approval of appointment of the 5th respondent therein as that was the only issue in that case. The applicant in this case had been appointed on a Group D post before filing OA 361/2000 and the appointment of the applicant was not challenged. There is no direction in the order in OA 361/2000 to cancel all the appointments made on the basis of Annexure.A.10 in that case, whereas liberty was given to the respondents to take any action in accordance with law, norms and instructions. We, therefore, hold that the applicant's appointment remain unaffected by the order of the Tribunal in OA 361/2000.

6. In the conspectus of the facts and circumstances and in the interests of justice we allow this application and set aside Annexure.A.1 notice and direct the respondents to allow the applicant to continue as a Group D on which post he had been confirmed. There is no order as to costs.

Dated this the 16th day of August, 2004



16.8.2004

H.P.DAS
ADMINISTRATIVE MEMBER

(s)

A.V. HARIDASAN
VICE CHAIRMAN