

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.596 OF 2002

Wednesday this the 15th day of September, 2004

CORAM

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

N.Suresh S/o V.Sivadasan Nair,  
aged 35 years, Postman,  
Mannur, Palakkad-678641  
residing at Leela Sadan,  
Edathara, Palakkad-678 611. ....Applicant

(By Advocate Mr.M.R.Rajendran Nair)

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1. The Superintendent of Post Offices,  
Palakkad Division, Palakkad.
2. The Chief Postmaster General,  
Kerala Circle,  
Trivandrum.
3. The Union of India, represented by its  
Secretary, Government of India,  
Ministry of Communications,  
Department of Posts,  
New Delhi. ....Respondents

(By Advocate Mr.M.R.Suresh, ACGSC

The application having been heard on 6.8.2004, the Tribunal  
on 15.9.2004 delivered the following:

O R D E R

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

The applicant had been working as Extra Departmental  
Delivery Agent (EDDA) Edathara with effect from 8.4.1985.  
He claims to be meritorious in football and to have  
represented Kerala Postal Circle in All India Postal  
Football Meet, 1994, and proved his skill. He was  
considered for appointment as Postman in recognition of his  
achievements as was the practice, in relaxation of the

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Recruitment Rules and was by Annexure.A2 order dated 22.3.2000 appointed as Postman. The applicant's appointment as Postman was never challenged by anybody and he has been discharging his duties as Postman effectively and continuously. While so he was served with Annexure.A.1 notice by the first respondent alleging that the second respondent had issued order dated 29.7.20002 cancelling the sports quota appointments approved by order dated 29.2.2000 in obedience to the judgment of the Ernakulam Bench of the Central Administrative Tribunal in OA 361/2000 filed by one P.Prahladan, holding that selection under sports quota was invalid and informing the applicant that it was proposed to terminate his services with immediate effect and giving him 10 days time to submit representations, if any, against the proposed termination. The applicant submitted Annexure.A.3 representation explaining that his appointment having not been challenged by anyone and he was not a party to the OA 361/2000 there was no justification for the proposal to terminate his services. Apprehending termination of his services the applicant has filed this application seeking to set aside the impugned order Annexure.A.1.

2. Respondents contend that in view of the judgment of the Ernakulam Bench of the Central Administrative Tribunal in OA 361/2000 quashing the order dated 29.2.2000 of the second respondent approving appointment of three Postman and two Group D, which included the appointment of the applicant in this case as Postman, the second respondent had to issue

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order cancelling the approval and therefore, the impugned action is unexceptionable.

3. Shri M.R.Hariraj, the learned counsel of the applicant referred us to the decision of the Ernakulam Bench of the Central Administrative Tribunal in OA 361/2000, based on which the impugned notice has been issued. Referring to the cause title to the OA 361/2000 counsel submitted that the applicant not being a party to that OA the judgment in that case would have no effect on his appointment. The learned counsel then referred us to the reliefs sought in OA 361/2000 which read thus:

(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 to set aside Annexure.A.14 letter dated 27.3.2000.

(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.A8 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.A8 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.  
(emphasis added)

Shri Hariraj further took us through the entire judgment in OA 361/2000 to demonstrate that the apple of discord in that case consisted in comparative merits of the applicant and the fifth respondent therein only and there was not even a whisper of challenge against the merits or appointment of the applicant or anybody else and argued that in the factual backdrop the quashing of the order dated 29.2.2000, Annexure.A.10 in that case, would effect the appointment of the fifth respondent in that case only and therefore, the impugned notice is not warranted or justified. The learned Additional Central Government Standing Counsel Shri M.R.Suresh referred us to Para 17 of the judgment in OA 361/2000 which reads as follows:

"17. In the light of the detailed analysis as above, we set aside and quash 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."

and submitted that since the Tribunal has quashed Annexure A.10 the approval of appointment of three Postmen and two Group D the respondents have no option but to cancel that order and redo the selection terminating the services of these five persons. The counsel submitted that the Review Application filed by the respondents to review the order in

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OA 361/2000 has been rejected by the Tribunal.

3. We find that the respondents are in a very embarrassing position. If the order of the Tribunal in OA 361/2000 setting aside order dated 29.2.2000 (Annexure.A.10 in that case) is construed as quashing the entire appointments to the five posts which were approved, then the respondents have no alternative but to cancel all the appointments and redo the selection. In the nature of the contention in OA 361/2000, can it be said that the setting aside of Annexure.A.10 in that case would affect the selection and appointment of anybody other than the fifth respondent in that case as Postman especially when no challenge has been made against the method of selection in general and nobody other than the fifth respondent among those selected and appointed had been made a party? We are of the considered view that the answer can only be in the negative. Going through the entire pleadings in OA 361/2000, we find that the applicant in that case had challenged the appointment of the fifth respondent as Postman on a claim of his alleged superior merit over the fifth respondent and prayed for appointment as Postman in the place of the fifth respondent. In the reliefs claimed at Sub Para 1 of Para 8 of the OA 361/2000 setting aside Annexure.A.10 was sought only to the extent of approval of the appointment of the fifth respondent as Postman. The Tribunal had no occasion to consider the correctness of the selection of any other person or even the method of

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selection in general, because there was no case that the method of selection was vitiated and the whole selection was liable to be quashed. Even before OA 361/2000 was filed, the applicant in this case had already been appointed by order dated 22.3.2000 (Annexure.A.2). The applicant in OA 361/2000 had not sought cancellation of the appointment of the applicant in this application. The Tribunal would not have intended to adjudicate the valuable rights of persons like the applicant in this case who had already been selected and appointed when their selection had not been challenged without they being arrayed as parties and without giving them an opportunity to place their cases.

4. In the conspectus of facts and circumstances, we are inclined to hold that the setting aside of the order dated 29.2.2000 of the second respondent approving the appointment of three Postmen and Two Group D (Annexure.A.10 in OA 361/2000) was intended only to the extent of appointment of the fifth respondent in that case as Postman. The liberty granted to the official respondents to take action to fill up the posts according to the extant rules and instructions also should be understood and acted upon accordingly to the limited extent as stated above.

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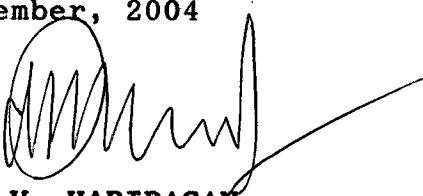
5. In the result in view of the above discussion we allow this application and set aside the impugned order Annexure.A.1. We direct the parties to suffer their respective costs.

Dated this the 15th day of September, 2004



H.P.DAS  
ADMINISTRATIVE MEMBER

(s)



A.V. HARIDASAN  
VICE CHAIRMAN