

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 616 of 1999

Thursday, this the 16th day of August, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. Annamma M.K,
Extra Departmental Delivery Agent,
Arpookara East PO, Kottayam.Applicant

[By Advocate Mr. P.C. Sebastian]

Versus

1. The Sub Divisional Inspector of Post Offices,
Kottayam West Postal Sub Division,
Kottayam - 696 001

2. The Postmaster General,
Central Region, Kochi - 682 016Respondents

[By Advocate Mrs. S. Chithra, ACGSC]

The application having been heard on 16-8-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1, to declare that she is entitled to continue as Extra Departmental Delivery Agent, Arpookara East in terms of A2 appointment order till the regular incumbent is taken back into service or a regular appointment is made to the said post.

2. The applicant is presently working as Extra Departmental Delivery Agent, Arpookara East Post Office on a provisional basis with effect from 16-10-1998 against the put off vacancy of the regular incumbent. She has passed SSLC and her residence is within the delivery area of the said post office. As per A2 he has been appointed on a provisional basis and is entitled to continue till disciplinary proceedings

against the regular hand are finally disposed of and has exhausted all channels of departmental and judicial remedies. The 1st respondent as per A1 notification has invited applications for selection for appointment of another provisional hand to the post held by her. It is with a view to replace her by another provisional hand. A1 notification is illegal. A provisional hand shall not be replaced by another provisional hand.

3. Respondents resist the OA contending that as per Director General, P&T, New Delhi letter No. 41-286/87-P.E-II dated 14-12-1987 the provisional arrangement in an Extra Departmental post should be made only after calling nominees of Employment Exchange. The said letter also refers to the letter dated 4-9-1982 which prescribes the mode of recruitment of ED Agents. On the basis of the instructions on the subject, the Sub Divisional Inspector, Kottayam West Sub Division, who is the appointing authority, has issued A1 notification. Applicant's name was not sponsored by the Employment Exchange. The applicant has also not submitted any application.

4. The learned counsel appearing for the applicant drew our attention to the order in OA No. 172/99 passed by this Bench of the Tribunal and submitted that the facts herein also being identical, this OA is to be allowed.

5. In the order in OA No. 172/99 it is stated that:

"If the respondent did not take recourse to calling for nominations from the employment exchange before making the selection and appointment of the applicant on provisional basis, the mistake was committed by the respondent. The applicant who accepted the offer is entitled to continue on provisional basis until a regular appointment takes place or until he is removed for valid reasons after a due process of law."

6. We have carefully gone through the said order. Respondents here are relying on R1 and R2 very heavily. R1 is the letter of Director General, Department of Posts, New Delhi No. 41-286/87-PE-II dated 14-12-1987. From R1 it is seen that in some Circles on the spot provisional appointments are made by Sub Divisional Inspectors or Divisional Superintendents without going through the prescribed process of recruitment, that the provisionally appointed substitute may not be a nominee of the Employment Exchange and such persons appointed may continue for long on provisional basis and that the appointment should be only in accordance with the procedure prescribed. R2, the copy of the letter of DG P&T No. 45-22/71-SPB-I, Pen dated 4-9-1982, says that it has been decided that the employment of ED Agents should be made through Employment Exchanges, that for the said purpose the concerned recruiting authority should send a requisition to the local Employment Exchange having jurisdiction over the area requesting nomination of suitable candidates for the post, having the prescribed qualifications, within a period of 30 days from the date of sending the requisition to the Employment Exchange for nomination of candidates to the concerned authority and that the conditions laid down there should be satisfied.

7. While disposing of OA No. 172/99 by this Bench of the Tribunal, R1 and R2 were not considered. So, it is clear that the order passed in OA No. 172/99 is without advertizing to R1 and R2 which have direct bearing with regard to the question involved herein.

8. There is no material to show that appointment of the applicant as per A2 was made after following the prescribed procedure. The learned counsel for the applicant to our query

submitted that appointment of the applicant was not in compliance with the procedure prescribed. So, the position is that the appointment of the applicant is dehors the prescribed procedure. In such circumstances, it is needless to say that it takes away the opportunity available to other qualified candidates to apply for the post. The principle of equality cannot be allowed to be nullified by an appointing authority by making appointment flouting the prescribed procedure.

9. In Nazira Begum Lashkar & Others vs. State of Assam & Others [2001 (2) SLJ 328], a three Judges Bench of the Apex Court has held that:

"Since the appointments to the posts are governed by a set of statutory rules, and the prescribed procedure therein had not been followed and on the other hand appointments have been made indiscriminately, immediately after posts were allotted to different Districts at the behest of some unseen hands, such appointments would not confer any right on the appointee nor such appointee can claim even any equitable relief from any Court."

10. In Ashwani Kumar & Others vs. State of Bihar & Others [1997 (2) SCC 1], it has been held that as the appointments had been made illegally and contrary to all recognised recruitment procedures and were highly arbitrary, the same were not binding on the State of Bihar. The Apex Court in that case further held that the initial appointments having been made contrary to the statutory rules, the continuance of such appointees must be held to be totally unauthorised and no right would accrue to the incumbent on that score. It cannot be said that principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were recalled and terminated.

11. In this case there is no termination and on the basis of A1 notification, if the applicant is qualified, she can also

apply. Since the appointment of the applicant as per A2 has been made contrary of all recognised recruiting procedure, it is illegal and on the basis of that illegal order no right would accrue to the applicant.

12. Thus the position is that in the light of the judgements of the Apex Court, this Original Application is only to be dismissed.

13. Accordingly, the Original Application is dismissed. No costs.

Thursday, this the 16th day of August, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of notification under Memo No. EDDA/Arpookara East dated 3-5-1999 by the 1st respondent.
2. A2 True copy of Memo No. DA-I/BO/2 dated 26-10-1998 issued by the 1st respondent.
3. R1 True copy of Director General P&T letter No. 41-286/87/PE-II dated 14-12-1987.
4. R2 True copy of Director General P&T letter No. 45-22/71-SPB-I dated 4-9-1982.