

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. 65/2004

FRIDAY THIS THE 22ND DAY OF DECEMBER 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

S.K.Anilal W/o Aravindakshan Nair
GDS Mail Packer Varkala
residing at Parvathy Manidram
Kilithattu Mukku, Varkala.

Applicant

By Advocate Mr. Vishnu Chempazhanthiyil

Vs

- 1 Sub Postmaster,
Varkala P.O.
- 2 Senior Superintendent of Post Offices
North Postal Division
Thiruvananthapuram.
- 3 C. Sivadasan
Senior Superintendent of Post Offices(Retd.)
North Postal Division
Thiruvananthapuram
residing at Sithara, No. 724/VII/ASS,
Kollam-1
- 4 Chief Postmaster General
Kerala Postal Circle
Thiruvananthapuram.
- 5 Union of India
represented by its Secretary
Ministry of Communications,
New Delhi.

Respondents

By Mr. TPM Ibrahim Khan, SCGSC for R 1, 2,4 & 5
By Advocate Mr. S. Krishnamoorthy for R-3

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed against the Annexure A-5 notice for termination of the service of the applicant as GDS Mail Packer, Varkala.

2 The facts are stated as under:- The applicant was working as a contingent Sweeper (part-time) for a number of years and was appointed on regular basis as a part time Sweeper w.e.f. 15.2.1999 by Annexure A-1 order dated 3.4.1999. When a post of GDS Mail Packer fell vacant under the 1st respondent, the applicant applied for the same. Since she belonged to the priority feeder category for the post of GDS, by Annexure A2 order dated 29.4.2003 she was appointed as GDS Mail Packer and assumed duty on 2.5.2003. However, the applicant was issued with a memo under Rule 8(1) of Gramin Dak Service (Conduct and Employment) Rules 2001 informing her that her services will be terminated within one month. No reason has been given in the said memo as to why the appointment of the applicant was being terminated. The applicant therefore sent a representation to the 4th respondent on 22.1.2004 Annexure A-6, and came before this Tribunal since no action has been taken on her representation. The applicant has further submitted that she and her family are depending on the income from the post she was holding and that her termination is an act of vengeance by the third respondent who had been making demands

on her to purchase a refrigerator for his residence and the applicant could not meet the illegal demands of the third respondent. She has further contended that her appointment was strictly in accordance with the existing rules and the instructions of the Director General of Post Offices letter No. 17-141/88-EDC/TRG dated 6.6.1988 and the orders of this Tribunal in O.A. 360/1999.

3 The respondents have contested her averments. It is the contention of the respondents that the appointment of the applicant as GDS, Varkala was reviewed during the annual inspection of Varkala Sub Office on 9.12.2003 and it was found that the appointment of the applicant was not in order and the same was recorded in para 31 of the Inspection Report dated 15.12.2003. Hence the first respondent was directed to terminate the services of the applicant by giving one months notice and the first respondent by the impugned order complied with the same. The respondents aver that as per DG (Posts) letter referred to above part-time Casual Labourer can be given preference in the matter of recruitment of EDA provided he/she fulfills all the conditions and have put in a minimum period of one year service and should have been sponsored by the Employment Exchange. Though the applicant had 4 years of service as part-time contingent employee she had not been sponsored by the Employment Exchange for appointment. Therefore her appointment was not in accordance with the DG(Posts') letter dated 6.6.1988. Not noting the above reason in the notice given to

the applicant for termination was an omission but on that ground the proposed termination of the service of the applicant does not become illegal or arbitrary.

4 A separate statement has been filed by the third respondent Shri Sivadasan the then Senior Superintendent of Post Offices Postal Division, Trivandrum against whom personal allegations have been raised by the applicant. According to the third respondent he had only asked the first respondent, the Sub Postmaster, Varkala Post Office to dispose of the representation given by the applicant, keeping in view the direction contained in DGP&T's letter dated 6.6.1998 but the SPM Varkala has given appointment order to the applicant as GD Mail Packer, Varkala on 9.6.2003. It was later noticed that the appointment is in violation of the DGP&T's letter to the extent that the applicant had not been sponsored as a Casual Labourer through the Employment Exchange and also had not completed 5 years of part time service as directed in O.A. 360 of 1999. Therefore, the appointment was held to be irregular in his inspection report and based on the inspection report he had issued a letter to the first respondent on 30.12.2003 to take steps to terminate the service of the applicant by giving one month's notice. He has further stated that he has retired on 31.12.2003 and the notice was actually issued 12 days after his retirement and hence his role was very limited and whatever he had done was done in accordance with the Rule position in law.

5 The third respondent has also categorically denied the allegation that he had demanded a refrigerator and stated that he had never called either the applicant or her sister to the office or had any discussion with them as alleged in the O.A. No such complaint has been made by the applicant against him and it is only after the termination that she has submitted such an allegation to the PMG.

6 The applicant then filed M.A. 696/06 for filing an interrogatory to be answered by the second respondent as to whether complaints have been received in the office of the PMG against the third respondent with regard to the recruitment to the cadre of Postal Assistant and to elicit an answer whether the SPM Varkala was called for to submit a report on the chronology of events relevant to the averments made in the O.A. However, the MA was dismissed by the Tribunal on the ground that it is not necessary to file interrogatories when the same facts can be elicited by production of documents and accordingly we directed the respondents to report whether any complaints have been alleged against the third respondent and also to produce the inspection report if any submitted by the first respondent with regard to the averments in this Application, to the third respondent. In obedience to the above direction the respondents have produced the file relating to the allegations against Shri Sivadasan Senior Supdt. of Post Offices, Trivandrum and also letter in original of the first respondent to the

third respondent dated 29.3.2004 giving the chronological events relating to the termination of the applicant.

7 We have heard Shri Vishnu Chempazhanthiyil for the applicant and Shri Rajeev on behalf of the SCGSC and have gone through the records produced by the respondents. The short question for consideration is whether the applicant's termination was in accordance with the instructions of Director General (Posts) letter 17-141/88-EDC & Trg. dated 6.6.1988 and whether it is motivated by any malafide intention on the part of the third respondent. The instruction of the DG(Posts) letter dated 6.6.1998 has been made available at Annexure A-4 of the Application. It incorporates the decision taken to give preference in the matter of recruitment to E.D posts to full time or part-time Casual Labourers provided they have put in a service of 240 days in a year and their names have been sponsored by the Employment Exchange while filling up the vacancies of Casual Labourers. The objective of these instructions therefore was to ensure the Casual Labourers are not left out from the prospects of getting absorbed later in a Group-D cadre. After the issue of the above instructions various Casual Labourers approached the Tribunals on the ground that they have been denied this preference on the basis that they have not been sponsored by the Employment Exchanges. Two such OAs of this Tribunal O.A. 366/99 and 378/2002 were disposed of in favour of the applicants holding that sponsorship by the Employment Exchange was no more

relevant in view of the decision of the Hon'ble Supreme Court in Excise Supdt. , Malkapatnam Vs. KBN Visweshwara Rao &Ors. (1996 (6) SCC 216) In O.A. 366/99 the applicant had a service of five years three months and 21days. The applicant in O.A. 378/2002 had a service of nine years. Both the OAs were disposed of on the basis that part time employees having service for long years were entitled to preference in terms of Director General (Posts) letter dated 6.6.1988 and the main ground on which the O.As were allowed was that a non-sponsorship by Employment Exchange had lost its significance due to the judgment of the Hon'ble Supreme Court and the continuance of the incumbents for a long time in a post. There was ^{no} ~~a~~ finding that an incumbent should have necessarily put in 5 years of service as interpreted by the respondents. It is seen from the records as well as the averments of the respondents in this case that the applicant's request for appointment on a vacancy arising in the said Post Office was considered on the basis of the DG(Posts) letter since she was a part-time employee appointed on a regular basis w.e.f. 15.2.1999 and had been in service for more than four years. The first respondent was asked to consider the case of the applicant in the light of the above order as also keeping in view the directions given in the case of similarly placed applicants in O.A. 360/1999 and O.A.378/2002. The appointment was given accordingly on 29.4.2003.

8 According to the respondents, on the basis of an inspection

which was conducted in December, 2003 the review of the appointment was made. But no such inspection report has been produced. The third respondent in his reply has submitted that the annual inspection was conducted on 9.12.2003 when he noticed that the appointment was given in violation of the DG(Posts) letter and based on that inspection report a letter was issued on 30.12.2003 to terminate the service of the applicant. First of all, there is discrepancy in the date of the inspection as given by the first respondent and the third respondent in their separate reply statements. The report has not been produced and hence it is not possible to verify the same. Moreover, it is not clear, when the appointment itself was made with the knowledge of the third respondent, as to what changes had taken place between April and November, 2003 for the third respondent to view the appointment from a different angle. To find an explanation for this, we have gone through the letter of the first respondent narrating the chronology of the events leading to the appointment and termination of the applicant which gives a different picture. The letter is extracted in full as under:

Copy of Letter No. Appt/GDS/Varkala/2004 dated 20.2.2004 written by the Sub Postmaster, Varkala to the SSPOs, North Division, Thiruvananthapuram

Subject: Brief history in respect of the appointment as
GDS MP Varkala

Ref: CC 3/04 dated at Tvm-I dated 16.2.04

Sir,

While Smt. J.R. Agitha was working as GDS MP

Varkala. On 3.4.2001 She tendered a resignation letter from the post due to her selection as LDC by Kerala PSC

As a result the post of GDMP was left vacant on 8.3.2003 the undersigned sought permission for filling up the vacant post.

Thereafter the application dated 10.4.2003 by the petitioner Smt. S.K. Anilalal for the post of GDSMP was forwarded by the SSPOs with endorsement to consider the case along with the DGPosts New Delhi letter No. 17-141/88-EDC&Trg dated 6.6.88, copy of OA No. 360/99andO.A. 378/2002 of the Hon. CAT Ernakulam Bench vide letter No.BC/Cont/DIG dated at TV-I the 11.4.2003

On 12.4.2003 and subsequent days the SSPOs called me on telephone and discussed the feasibility for giving appointment to the petitioner. Finally on 25.4.2003 the SSPOs instructed me through phone to issue an appointment order to the petitioner with immediate effect without any further delay. Therefore the undersigned issued appointment order PF/SK Anilalal /2003 dated at Varkala the 29.4.2003. She assumed duty on 2.5.2003 forenoon in the post.

In the month of November, 2003end the SSPOs called me on telephone and instructed met to send the recruitment file to the Divisional Office for perusal. Accordingly undersigned sent the file.

Thereafter on 1.1.2004 the file was sent back by registered post along with the letter No.BIC/Cont/Dig TVI the 30.12.2003 with the instruction to terminate the official by giving one months notice with immediate effect. In view of the instructions contained in the above letter the undersigned issued memo No. GDS/Appt/Vak dtd. 12.1.2004 to the petitioner that her service will be terminated from one month from the date of receipt of the memo. On receipt of the termination notice the petitioner approached the CAT Ernakulam for redressal of her grievance.

Yours faithfully,

Sd/-
Sub Postmaster
Varkala (LSG)
PIN -695141

9 The above narration of the events in the letter shows that the first respondent received an application dated 10.4.2003 of the applicant from the third respondent with the instruction to consider the case in the light of DG(Posts) letter and the decisions in O.A. 360/1999 and 378/2002. Subsequently the third respondent had contacted the first respondent over telephone and discussed the matter and on instruction from the third respondent the appointment letter was issued by the first respondent. Again in the month of November, 2003 the third respondent instructed the first respondent to send the recruitment file of the applicant to the Divisional Office for perusal and it was received back on 1.1.2004 with the instruction dated 30.12.2004 to terminate the service of the applicant. Therefore the contention of the official respondents and 3rd respondent in his private capacity that the irregularity in the appointment was detected during an inspection of the office by the third respondent in a routine manner and the appointment was terminated in order to comply with the instruction of the DG (Posts) letter are completely disproved. The first respondent has recorded clearly in that the month of November, 2003 itself he was instructed by the third respondent to send the particular recruitment file relating to the applicant. The submission made by the first respondent in his report clearly points to some extraneous matter which would have prompted the third respondent to call for the file and it was not a mere compliance of departmental instructions or in the course of a routine office inspection as made out. Moreover, the instructions of the DG(Posts)

had already been interpreted by this Tribunal in the above mentioned OAs holding that non-compliance with the Employment Exchange procedure should not be held against the incumbents when the Department itself had allowed them to continue for a long time and such a finding was also in tune with the decision of the Apex Court on the subject. Therefore, when the respondents had considered that the applicant was a part-time employee continuing from 1999 and when two similarly placed employees have been given such an appointment in accordance with the decision of this Tribunal, there was no question of any irregularity being discovered afresh in the case of the applicant. The interpretation being given by the respondents on the direction in O.A. 360/1999 and 378/2002 that it was applicable only to those who have more than five years of service is totally incorrect. The applicant is therefore similarly placed like the applicants in O.A. 360/99 and 378/2002 and hence we do not find any valid grounds for ^{the} abrupt notice for termination of her service by the impugned Annexure A-5 order.

10 Regarding the attribution of malafides on the part of the third respondent, there is nothing on record to show that the termination was ordered due to the failure of the applicant to meet his illegal demands nor any circumstantial evidence has been put forth but certainly, as observed above, the conduct of the third respondent in calling for the file of the applicant alone and issuing a direction for termination, when the appointment itself was in his knowledge and

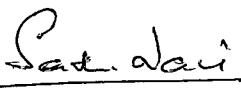
after discussion with him and also after discussing the merit of the case with reference to the directions in the earlier OAs, is certainly suspicious in intent and requires to be viewed as misconduct and misuse of authority.

11 The respondents have produced a file relating to the allegation against the third respondent, in subsequent selection to the post of Postal Assistants, it was also submitted that the case is still under consideration of the Directorate as the officer has retired from service. However, this complaint which relates to the recruitment of Postal Assistants of 2003 has no connection with the instant case, hence we are not offering any remarks on the same.

12 In the result we are of the view that there is merit in the prayer of the applicant. Annexure A-5 is quashed. The respondents are directed to continue the applicant as GDS Mail Packer, Varkala on the basis of her appointment by the Annexure A2 order dated 29.4.2003.

Dated 22.12.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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