

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 22.12.1989

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.A.V.HARIODASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.76/89

K.P.Vincent - Applicant

Versus

1. Director of Postal Services,
Trivandrum.
2. Sub Divisional Inspector
of Post Offices,
Trichur North.
3. K Ramachandran,
Kombiyal House,
Puthurkkara,
Ayyanthole, Trichur.3.
4. Union of India rep. by
the Secretary,
Dept. of Posts & Telecommunications,
New Delhi.
5. Director of Postal Services,
Northern Region.

Mr.M.Ramachandran - Counsel for Applicant

Mr.K.Karthikeya Panicker,ACGSC- Counsel for Respondents
1, 2, 4 and 5.

Mr.PR Balachandran - Counsel for Respondent.3

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

The short question that arises for determination
in this case is whether the Director of Postal Services

is competent to cancel the selection and appointment of an Extra Departmental Agent on a complaint received from an unsuccessful candidate in the selection, without giving notice to him and without giving an opportunity of being heard. The facts of the case can be briefly stated as follows. The applicant was originally engaged as an EO Messenger at Ayyanthole in the put-off vacancy of regular incumbent. When his services were sought to be terminated, the applicant filed O.A.760/86 before this Tribunal. This Tribunal restrained the respondents from terminating the services of the applicant till a regular selection was made to the post with a direction that the applicant may also be considered for selection. Thereafter the department initiated proceedings for selection of a regular hand. The applicant who also have the requisite qualifications was considered along with others sponsored by the Employment Exchange and he was selected and appointed by order of the second respondent dated 12.8.1988. Now by the impugned order at Annexure-II the appointment of the applicant is sought to be cancelled with immediate effect. It is this order that has been challenged by the applicant. Initially there were only two respondents, the Director of Postal Services and the Sub Divisional Inspector of Post Office, Trichur North. The third respondent, is the candidate ^{unsuccessful}

who complained to the Director of Postal Services about the selection of the applicant. He has got himself impleaded. Respondents 4 and 5, the Union of India and the Director of Postal Services, Northern Region were impleaded. on the contention of the respondents 1 and 2 that the application without the respondents 4 and 5 in the array of parties would not be maintainable.

2. In the reply statement filed on behalf of the respondents 1 and 2 it has been contended that the applicant happened to be selected by the second respondent though he had got less marks in the S.S.L.C Examination than some of the other candidates because the second respondent thought that the order of the Tribunal in OA 760/86 contained a direction for selection of the applicant and that since some of the other candidates who have participated in the selection had obtained more marks than the applicant, On the complaint of the third respondent the Director of Postal Services has cancelled the selection and that this cancellation is legal and valid.

3. We have heard the arguments of the learned counsel on either side and have carefully perused the documents produced.

4. In the reply statement filed on behalf of the respondents it has been admitted that all the candidates who appeared for the interview were persons who had failed in the S.S.L.C. Examination. But it is contended that the applicant had obtained less marks when compared to some of the other candidates and that since as per norms for selection prescribed by the Post Master General in letter No. Rectt. 11/85 dated 12.8.87, if the candidates are found to possess the same educational qualification, then the marks obtained will be the criteria and that the persons who has secured the highest marks should have the chance for selection. A copy of the instructions referred to above is at Annexure-R.1. In paragraph 6 of this letter it has been stated as follows:

".....For Matriculates and candidates possessing qualification above matriculation the criteria for selection will be the percentage of marks obtained in the Matriculation/SSLC. The candidates who has secured the highest marks will have the best chance of selection, provided that candidate was found physically fit.

If there are no candidates possessing qualification of SSLC/Matriculation, preference goes to the candidate with the highest qualification. If the qualification is the same in every respect for more than one candidate among nonmatriculates the appointing authority will rationally assess the suitability of such candidate and record reasons for selecting the candidate who is ultimately selected."

It is evident from the above extracted portion of the instructions that the highest marks in the SSLC examination will be the criteria for selection in the case of Matriculates and persons possessing qualification above Matriculates and that in the case of non-matriculates if qualification remains the same in the case than one of more/candidate~~s~~ then the appointing authority has to rationally assess the suitability of the candidates and select one giving reasons for the preference. So, the contention of the respondents that in the case of non-matriculates the marks obtained in the SSLC Examination eventhough failed is the criterion for selection as per the instructions is not correct. In the case of non-matriculates if all are persons who have appeared in SSLC Examination and failed then, suitability has to be determined considering other qualifications. According to the instructions of the Post Master General, Kerala circle letter No. STA/102/6-VI/78 dated 7th November, 1978 (page 68 of Swamy's compilation) the working ED Agents if they otherwise satisfy the eligibility conditions will have to be given priority over all other catagories except retrenched ED Agents. So, since all the other candidates, were also, persons who had failed in the SSLC Examination, there appears to be nothing wrong in having selected

the applicant who is a working ED Agent.

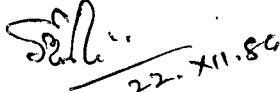
5. Even assuming that there has been some irregularity in the selection of the applicant, the cancellation of his appointment amounting to termination of the services without even giving him a notice and an opportunity to be heard offends the principles of natural justice and violates the mandates of Article 311(2) of the Constitution of India. If the third respondent had any grievance against the selection he must have challenged the selection before the appropriate forum. Without doing so, the appointment of the applicant, cannot be set aside without even a notice to him on the basis of a mere complaint by an unsuccessful competitor. The respondents 1 and 2 have no jurisdiction to cancel the appointment, which has been validly made and the validity of which has not been challenged before a competent forum. This Tribunal has in a number of cases held that cancellation of appointment of an ED Agent on the basis of complaints regarding selection without notice to the person affected is illegal and unsustainable. Some such cases are OA K-249/87, OA K-201/87 and OA 106/89. The High Court of Kerala has in OP 399/79 taken a similar view. The Calcutta Bench of this Tribunal has in Veerendra Chandra Vohora -Vs- Union of India and others 1988(7) ATC 796 held that

termination of service of an Extra Departmental Agent without issuing notice is illegal. Hence the impugned order is not sustainable in law.

6. Accordingly we set aside the impugned order dated 30.1.'89 of the second respondent (Annexure-II) cancelling the appointment of the applicant as ED Messenger, Ayynthole and declare that the applicant is entitled to continue as ED Messenger, Ayyanthole on the basis of the Annexure-I order.

7. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

22.12.1989