

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 99 of 2002

Thursday, this the 1st day of July, 2004

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. M.J. Philomina,
W/o P.T. George,
Gramin Dak Sevak Mail Packer
(under orders of termination),
Mulavukad PO, Ernakulam,
residing at Puthukudy House,
Ponnarimangalam, Mulavukad PO.Applicant

[By Advocate Mr. M.R. Hariraj]

Versus

1. Assistant Superintendent of Post Offices,
Ernakulam Sub Division.

2. The Senior Superintendent of Post Offices,
Ernakulam Division.

3. Union of India, represented by the
Secretary to the Government of India,
Ministry of Communication,
Department of Posts, New Delhi.

4. M.S. Vijayalakshmi,
working as GDSMP, Mulavukad PO,
Ernakulam.Respondents

[By Advocate Mr. C.B. Sreekumar, ACGSC (R1 to R3)]

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Part Time Sweeper in Mulavukad Post Office with effect from 1986 and subsequently was regularly appointed as ED Packer with effect from 8-3-1997 vide Annexure A5. After two years of regular service the applicant was served with a memo issued by the 1st respondent stating that her services would be terminated within one month. She made Annexure A7 representation and approached this



Tribunal in OA.No.189/99 contending that the memo was without jurisdiction. This Tribunal vide Annexure A8 order dated 24-2-1999 quashed the said memo. In the reply statement filed in that OA the respondents have taken a plea that the appointment was not regular and the review was based on the letter of the DG (Posts). The preference given to the applicant who was a part time contingent employee was based on mistake interpretation of "Directory Guideline of DG Posts" and willingness from other casual labourers were not ascertained before appointing the applicant. This Tribunal quashed the impugned order therein granting liberty to the respondents in taking any further proceedings in accordance with law. Thereafter, the applicant was served with a show cause notice and the applicant made Annexure A-13 representation dated 1-12-2001 and also appeared for personal hearing. She has not done any irregularity and prayed that her appointment may not be cancelled. During the personal hearing she submitted a representation dated 21-12-2001. One Smt.M.S.Vijaya Lakshmi working as Substitute in the Head Post Office, Ernakulam was asked to relinquish charge immediately and substitute the applicant. She was asked to assume charge on 1-2-2002. Aggrieved by Annexure A1 order dated 31-1-2002 of the 2nd respondent and Annexure A2 order dated 1-2-2002 of the 1st respondent terminating the services of the applicant, the applicant has filed this OA seeking the following reliefs:-

- "i. Quash Annexure A1 and Annexure A2..
- ii. Direct the respondents to reinstate the applicant with all consequential benefits including continuity, seniority and all backwages.
- iii. Grant such other relief as may be prayed for and the Tribunal may deem fit to grant; and



iv. Grant the costs of this Original Application."

2. Respondents have filed a reply statement contending that the post of Gramin Dak Sevak Mail Packer, Mulavukad was previously designated as Extra Departmental Packer (ED Packer) Mulavukad, which fell vacant from 1-2-1997 and as per the practice the 1st respondent should have notified the vacancy among the serving ED Agents for giving them a chance to apply for the post by way of transfer. Instead of that, the applicant was straight away appointed with effect from 8-8-1997 by one Shri P.V.Mohandas, the then incumbent of the 1st respondent, on consideration of Annexure A3 representation of the applicant. Shri P.V.Mohandas who had made several grave irregular appointments of ED Agents was subsequently compulsorily retired from service. The 2nd respondent reviewed the selection and appointment of the applicant under Annexure A-10 order and directed the 1st respondent to terminate her irregular appointment after serving a show cause notice and after observing all prerequisites for termination. In furtherance Annexure A6 notice was served on the applicant. This was done invoking Rule 6(a) of the ED Agents (Conduct and Service) Rules, 1964. These were challenged in OA.No.189/99 before this Tribunal and by way of an interim order the applicant was allowed to continue in service. Finally, the said OA was disposed of by Annexure A-11 order quashing the notice of termination holding that it was issued in a wrong way. As per the liberty granted to the respondents to proceed further as per law, the 2nd respondent reviewed the case and issued Annexure R-1 order dated 15-11-2001. The 1st respondent issued Annexure A-12 notice also to the applicant against which she submitted Annexure R-2 representation on 1-12-2001. After considering the case and granting a personal hearing, the 2nd



respondent passed Annexure A1 order. Pursuant to this the 1st respondent terminated the services of the applicant with effect from 1-2-2002 by Annexure A2 order. The 4th respondent was engaged for managing the day-to-day work of the GDS Mail Packer. Since the appointment granted by the 1st respondent is regular, the applicant should not have any grievance. The applicant was never recruited and appointed as Sweeper of Mulavukad Post Office. Her mother had been the part time casual labourer and the applicant was worked as substitute for her mother from 1-10-1986 onwards when the latter fell ill. The applicant's mother passed away in 1991 and the applicant continued as Sweeper. Annexure R-3 corroborates these facts. Shri P.V.Mohandas, the then Assistant Superintendent of Post Offices, Ernakulam Sub Division should have first ascertained whether the applicant was a casual labourer recruited through the Employment Exchange. According to Annexure R5 circular, preference in ED appointments is admissible to such of the casual labourers who were recruited through the agency of Employment Exchange. This was enjoined in the OM dated 7-5-1985 of the Ministry of Personnel and Training and such persons should be considered before 7-5-1985 for appointment as Group D as a one time measure. The applicant was not recruited before 7-8-1998 as she was only her mother's substitute upto 1991 and she managed to continue in the post. One time measure is not applicable in a case which was decided in 1997. Her services were actually terminated and the substitute assumed charge in that place. The 2nd respondent is empowered to review the selection and appointment under Annexure A9 orders. While passing Annexure A1 order, the 2nd respondent followed the guidelines strictly as outlined in Annexure A9. Annexure A-12 was issued pursuant to Annexure A1 and therefore it is not



an empty formality. Annexure A1 and A-12 orders were issued strictly as per Annexure A9. The applicant was given full opportunities of making representations and of being heard in person. The action, therefore, cannot be said arbitrary, unjust, unfair and violative of Articles 14 and 16 of the Constitution.

3. The applicant has filed a rejoinder contending that there is no procedure for appointing a casual labourer as a substitute. After engaging the applicant as a casual labourer for long time, it is arbitrary to insist that she should be sponsored by the Employment Exchange for consideration to the post of ED Packer.

4. Respondents have filed an additional reply statement reiterating the contentions in the original reply statement and contending that the impugned actions were taken as per rules and instructions on the subject and after following the principles of natural justice.

5. We have heard Shri M.R.Hariraj, learned counsel for the applicant and Shri C.B.Sreekumar, learned ACGSC for the respondents.

6. Learned counsel for the applicant argued that the reasons stated in Annexure A1 to find the selection illegal is not reflected in Annexure A-12, which is not a proper show cause notice because it is not issued by the authority who took the decision and the reasons given in both these orders are different. There is no procedure prescribed for granting opportunity to other ED Agents in such appointment. The claim



of the applicant as a Part Time contingent employee stands on a better footing than that of any other ED Agent and calling for willingness from other contingent employees also is not as per procedure. The contention that the applicant was not sponsored by the Employment Exchange for her original appointment is not sustainable. Her preferential claim being a Part Time contingent employee cannot be negated.

7. Learned counsel for the respondents, on the other hand, specifically argued that the appointment of the applicant was irregular, since one Shri P.V.Mohandas, the then Assistant Superintendent of Post Offices, Ernakulam Sub Division, had not followed the recruitment procedure nor ascertained the fact that the applicant was a casual labourer recruited through the Employment Exchange. Therefore, the applicant has no case.

8. We have heard the learned counsel for the applicant and given due consideration to the materials, evidences and documents placed on record. The applicant had approached this Tribunal in OA.No.189/99, wherein Annexure A1, the impugned order therein, issuing a show cause notice to the applicant for termination was challenged. The reason stated for issuance of that notice was that the appointment made was irregular and after reviewing the selection by the Senior Superintendent of Post Offices it was justified that as per the executive/administrative instructions the competent authority is authorized to rectify an earlier erroneous appointment, since it will perpetuate the mistake and would be detrimental to the larger interests of the Government. But, this Tribunal

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found that the impugned order therein was not in conformity with the procedure and rules and therefore quashed the same with the following observations:-

"... It appears that R1(a) has been issued by the second respondent without understanding R1(b) and A-1 has been issued by the first respondent without understanding R1(a) and R1(b). When R1(b) specifically says there is no need to invoke ED Agents (Conduct & Service Rules, while passing final orders in such cases, the first respondent for reason best known to him has issued A-1 under Rule 6 of ED Agents (Conduct & Service) Rules, 1964. It is suffice to say that it has been done in a wrong way. As such, A-1 is not sustainable.

6. Accordingly, A-1 is quashed. We make it clear that this will not stand in the way of the respondents from taking any proceedings against the applicant, in accordance with law."

9. The contention taken by the respondents in the above said OA is the same as that is taken in this OA as well. The main argument of the respondents seems to be that it is based on the relevant order issued by the DG(Posts), New Delhi dated 6-6-1998 which envisages that the concession is admissible to such casual labourers who were recruited through the Employment Exchange. In the impugned order it is reiterated that as per the extant Recruitment Rules, for appointing a full time or part time casual labourer it is mandatory for the appointing authority to obtain a list of nominees of the local employment exchange. Since the applicant was not nominated by the Employment Exchange nor was any application invited and she has not undergone any selection process, she is said to be appointed irregularly and this initiative was taken to terminate her services. Respondents admit that from 1991 onwards the applicant is working simultaneously as ED Packer on temporary basis and on some occasions in leave vacancies and she succeeded in getting appointment as ED Packer with effect



from 8-3-1997. According to the respondents, this appointment was granted by one Shri P.V.Mohandas, the then Assistant Superintendent of Post Offices, Ernakulam Sub Division, who is said to be involved in several such illegal appointments and therefore was compulsorily retired from service. In this context, we do not understand the observations of the respondents in the impugned order that appointment of the applicant is to be treated as irregular. The facts that vacancy was not notified, engagement was not through the Employment Exchange and one official was compulsorily retired for this impugned action, etc. were not at the instance of the applicant. The applicant was not responsible for her engagement not being sponsored by the Employment Exchange or other formalities. Admittedly, having extracted work from the applicant as a part time Sweeper for the last so many years without any complaint, it is unjust and illegal for the respondents to contend that she would not be entitled to the benefit which flows from a long service. The Hon'ble Supreme Court in the case of Excise Superintendent, Malkapatnam, Krishna District (A.P) vs. K.B.N. Visweshwara Rao and Others [(1996) 6 SCC 216] has declared that "restricting the selection only through the Employment Exchange" is not proper. This decision was followed by this Tribunal in a catena of decisions declaring that the appointment not through the Employment Exchange cannot be a reason for termination of service [(1) M.Murugesan vs. Ministry of Communications, 1989 (9) ATC 357 (Madras) and (2) OA 818/2000 - Shibu K Samuel vs. Sub Divisional Inspector of Post Offices & Others (18-12-2000)(Ernakulam)]. The applicant is a part time Sweeper and as per the DG(Posts)'s letter dated 6-6-1998, casual

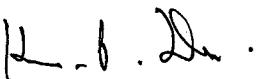


labourers should be preferred for ED posts. Having regularized the engagement in 1997 considering her past service, it cannot be said that she came through the back door.

10. In the conspectus of the facts and circumstances, we are of the view that the impugned orders Annexure A1 and Annexure A2 are not sustainable and liable to be set aside. We do so accordingly with a direction to the respondents to grant all consequential benefits including continuity and seniority in service notionally. However, considering the entire aspects, the applicant is not entitled to any backwages for the period she had not worked.

11. The Original Application is disposed of as above with no order as to costs.

Thursday, this the 1st day of July, 2004


H.P. DAS
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

A.