

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 104/92
XXXXXX

199

DATE OF DECISION 23.7.1992

P Mangalam _____ Applicant (s)

Mr MR Rajendran Nair _____ Advocate for the Applicant (s)

Versus
The Superintendent of Post Offices
Ottapalam Division _____ Respondent (s)
and another

Mr C Kochunni Nair, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. PS Habeeb Mohamed, Administrative Member

and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ye*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

Shri N Dharmadan, J.M

The applicant while working as EDBPM, Kalluvazhy P.O., her services were terminated as per Annexure-I order dated 14.1.1992, under Rule 6 of the ED Agents (Conduct and Service) Rules, 1964, without giving any notice.

2 The applicant was regularly appointed as EDBPM, Kalluvazhy Post Office with effect from 22.3.1991 and she was continuing in that post. The appointment was made after proper selection in accordance with law. There was no complaint against the applicant as she was discharging duties to the full satisfaction of the higher authorities. It is under this circumstance, the impugned order was passed by the Superintendent of Post Offices by which her services were terminated. No reason is mentioned in the order.

3 Respondents have filed counter affidavit in which they have stated that they cancelled her selection due to the fact that the certificate produced by her was not sufficient for establishing the source of income. According to the respondents, the applicant has not specified the independent income after appointment. Hence, the selection was found to be not in order. The Postmaster General directed the Superintendent to make a fresh selection after calling for nominations from the Employment Exchange and also after terminating the services of the applicant under Rule 6 of the ED Agents (Conduct & Service) Rules, 1964.

4 We have heard the counsel of both parties. The selection appears to have been cancelled by the Superintendent under instructions from the Postmaster General, who was not satisfied with the selection. If there is any irregularity in the selection and the respondents are invoking the provisions of the rule-6, it is incumbent upon them to issue a notice and ^{give} an opportunity of being heard to the applicant.

5 Recently, more or less a similar issue came up for consideration before this Tribunal in OA 197/92. We have considered the judgment of the Kerala High Court and other decisions ~~deadly~~ dealing with the issue and held as follows:

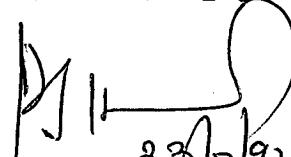
"If the termination is sought to be justified on the basis of this rule, in that case, this rule cannot be invoked in terms of the Kerala High Court's decision in PV Madhavan Nambiar and another Vs. D.V. Radha Krishnan [1990 (1) SLR 757] which clearly states that Rule 6 cannot be invoked for curing an irregularity in the appointment, but it can be invoked on any administrative ground which has come into existence after the appointment. This decision has been followed by the C.A.T. Patna Bench in Vikram Kumar Vs. Union of India and others and Ashok Kumar Yadav, Vs. Union of India and others [1990 (14) ATC 367] to which one of us, PS Habeeb Mohd. was a party. However, on this last point about any possible use of Rule 6, we are not giving any specific finding, in that, there is no reference to Rule 6 in the reply."

6 Accordingly, we follow the above judgment and set aside the impugned order dated 14.1.92 at Annexure-I. It is, however, submitted that the applicant is continuing in the present post on the basis of the interim order passed by this Tribunal on 20.1.92 and thereafter extended from time to time and this order will not stand in the way of the respondents taking any action against the applicant, if so advised in accordance with law.

7 The application is allowed. There will be no order as to costs.


23-7-92
(N Dharmadan)
Judicial Member

23-7-1992


23-7-92
(PS Habeeb Mohamed)
Administrative Member