

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Dated Friday the twenty ninth day of September Nineteen
eighty nine

PRESENT

Hon'ble Shri S.P. Mukerji, Vice Chairman
and

Hon'ble Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION No.106/89

K.V. Sudhakaran : the applicant

v.

1. The Sub Divisional Inspector)
of Posts & Telegraphs, Trichur-1)
2. The Director of Postal Services,) THE RESPONDENTS
Northern Region, Calicut.)
3. The Union of India, represented)
by the Secretary, Ministry of
Telecommunications, New Delhi.)

M/s. M. Ramachandran & P. Rama-) the applicant's
Krishnan) counsel

Mr. K. Karthikeya Panicker, ACGSC) the respondents'
counsel

JUDGMENT

Hon'ble Shri N. Dharmadan, Judicial Member

The petitioner was taken as an ad hoc Extra
Departmental Messenger at Pazhanji from 01.07.1984 as
per memo dated 25.07.1984 of the Sub Divisional Inspector,
Trichur. While he was working in that post ever since
the appointment, steps were being taken for appointment
of a regular hand in that post. The vacancy was notified

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to the Employment Exchange. Accordingly, Employment Exchange has forwarded a list of candidates for selection and the petitioner was selected. He was also appointed as Extra Departmental Messenger, Pazhanji with effect from 12.8.1988 by Annexure-I order and he was discharging the duties to the entire satisfaction of the superiors. But in the meantime some persons who had competed with the petitioner submitted a complaint and presumably on the basis of that complaint, Annexure-II order was passed by the first respondent cancelling the appointment of the petitioner with immediate effect and accordingly he was relieved.

2. It is this order, Annexure-II, of cancellation that is challenged by the petitioner in this case raising the contentions that the same is violative of the provisions of Article 311(2) of the Constitution of India and also Chapter V-A of the Industrial Disputes Act, 1947. The learned counsel for the petitioner also brought to our notice a decision of the High Court of Kerala in O.P.399/79L and submitted that a similar order was quashed in that case. The

learned Central Government Counsel supports the impugned order placing reliance on the provisions of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 and the Post Master General, Kerala Circle letter No. Rectt/11-1/85-II DATED 12.8.1987 (Annexure-R.I) and contended that the petitioner was only appointed as an ad hoc employee subject to the condition that regular selection to the post of Extra Departmental Messenger and as such a selection and appointment the petitioner's service would be terminated. Annexure R.I is the Post Master General, Kerala Circle letter prescribing the method of recruitment of Extra Departmental Agents, which prescribed the criteria for selection. According to it, selection will be on the basis of the percentage of marks obtained in the matriculation/SSLC. The candidates who have secured the highest mark will have to be considered, provided that candidate was found physically fit. According to the Government counsel nine candidates were sponsored by the Employment Exchange. The Exhibit R-2 is the tabulation sheet of the above named candidates. As per the above tabulation sheet petitioner was given only fifth rank.

So, on the basis of the complaint by other eligible candidates who lost their opportunity on account of the posting of the petitioner, the Director of Postal Services who has the power to rectify the irregularities committed by the subordinate officers, cancelled the selection of the petitioner made by the first respondent since the selection and appointment was not proper and in accordance with the department rules.

3. The contentions of the learned counsel for the respondents will not stand judicial scrutiny and we are unable to accept the same. In this case the petitioner was working as E.O. Messenger even though on ad hoc basis from 1.7.1984 onwards. Later the competent authority in pursuance of notification and after complying the procedure and formalities of selection, selected and posted the petitioner as per Annexure-I. Accordingly, he started discharging the official duties to the complete satisfaction of the superior authorities. If anybody who competed with him has any grievance against the selection, he should have ^{to} challenged the order at Annexure-I before the appropriate forum. Without challenging the order in the legally recognised manner the appointment of the

petitioner cannot be set aside without notice to the petitioner merely on the basis of a complaint. The respondents have no jurisdiction to cancel the appointment without giving an opportunity of being heard to the petitioner who is working on the basis of a valid appointment order Annexure-I.

4. This Tribunal has already ~~been~~ taken the same view in O.A.K.201/87 and held that such cancellations of the appointments cannot be held valid. The relevant portion reads as follows:

"It has also to be pointed out that if as a matter of fact it emerged that there was some irregularity in the selection warranting the termination of the service of the selected candidate, the principles of natural justice dictate that before doing so, an opportunity should have been afforded to the applicant of being heard. In this context we would refer to the decision of a Bench of this Tribunal to which one of us was a party (Hon'ble Shri G. Sreedharan Nair) in V.P. Tressaia V. Sr. Superintendent of Post Offices (O.A.K.249/87) decided on 28.2.1989 where the proposal to terminate the service of a selected candidate as the applicant in the instant case, behind her back without affording her an opportunity of being heard, on receipt of complaint about the selection, was deprecated and it was held that in case action is to be taken to the prejudice of the applicant therein, due notice shall be given to her. We affirm the principles laid down therein."

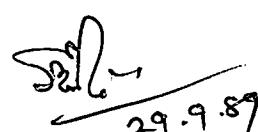
The cancellation of an order of appointment on the basis of a complaint of a person who has competed with the person who was selected cannot be entertained to the disadvantages such person for if such pleas are allowed to succeed without resorting to the normal avenues for challenging these orders, there will develop a tendency to bypass the same very often which may result in gross injustice. A person who is objecting the selection on the basis of the complaints about the procedure should have objected the selection in fairness without participating in the selection process and availing of his chances of being selected. But here in the instant case we can allow the petition on the short point of violation of principles of natural justice, following the decisions referred to above and the decision reported in Veerendra Chandra Vohra V. Union of India and others, 1988 (7) ATC 796 in which the Calcutta Bench of the Tribunal held that termination of service of an Extra Departmental Agent without issuing the notice is illegal and to be set aside. The learned counsel for the petitioner also brought to our notice a decision of the Division Bench of the Kerala High Court in O.P. 399/79 in which considering a similar case quashed the order terminating the service of the petitioner in that case. But it is

not necessary to examine the same.

5. Accordingly, we accept the case of the petitioner and he is entitled to succeed in this case and continue in service as per the appointment order Annexure-I. We hereby quash Annexure-II, the order cancelling the appointment of the petitioner and make it clear that the petitioner is entitled to be reinstated ^{in service as 25} to the post of Extra Departmental Messenger with all resultant benefit from the date of Annexure-II.

6. The petition is allowed and there is no order as to costs.


(N. DHARMADAN)
Judicial Member


(S.P. MUKERJI)
Vice Chairman

29.09.1989

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