

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.133/2004.

Thursday this the 4th day of November, 2004.

CORAM:

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

P.Ravimohanra Dhas,
Inspector of Posts (Officiating),
RMS 'TV' 2nd Sub Division, Kayamkulam,
residing at Kayamkulam. Applicant

(By Advocate Shri.O.V.Radhakrishnan)

vs.

1. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram-33.
2. Senior Superintendent of RMS,
RMS 'TV' Division,
Thiruvananthapuram-33.
3. Union of India, represented by its
Secretary,
Ministry of Communications,
New Delhi. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 18.10.2004, the Tribunal on 4.11.2004 delivered the following:

O R D E R

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was initially recruited as Reserved Trained Pool Sorting Assistant and appointed as such on 19.4.1983, absorbed on 28.5.1990 and confirmed in the cadre of Sorting Assistant with effect from 28.5.1992. He was posted to officiate as Inspector of Posts, RMS 'TV' 2nd Sub Division, Kayamkulam on 14.2.2002 by the 2nd respondent and it was extended for a period of three months w.e.f.15.6.20002 and ever since he is continuing

as such. He has received a memo dated 19.2.2004(A3) terminating his services as Inspector with immediate effect. Aggrieved by the same, he has filed this O.A. seeking the following main reliefs:

- i) to call for the records leading to Annexure A-3 memo dated 19.2.2004 and the Circle Office letter No.ST/19/DLG dated 17.2.2004 based on which Annexure A-3 has been issued and to set aside the same;
- ii) to declare that the applicant is not liable to terminate from the post of Inspector of Posts (officiating), RMS, 'TV' 2nd Sub Division, Kayamkulam for being replaced by another official on officiating arrangement;
- iii) to issue appropriate direction or order directing the respondents 1 and 2 to allow the applicant to continue to officiate in the post of Inspector of Posts, RMS, 'TV' 2nd Sub Division, Kayamkulam without regard to Annexure A-3.

2. The respondents have filed a reply statement contending that the applicant is only officiating as Inspector of Posts, but he has not been regularised on the post, as he has not passed the qualifying examination for promotion to the cadre of Inspector of Posts. The Government of India's decision on the matter is very clear to the effect that "whenever feasible the (vacant) posts may be allowed to remain vacant until qualified candidates become available at the next examination". Therefore, there is nothing wrong in termination of officiating arrangement of the applicant. The work can be managed by alternate arrangements. It is not necessary to show the reason in the memo for terminating the officiating arrangement. Even in A-2 order it is made clear that extension of period of officiating arrangement was for three months from 15.6.2002 or till Circle arrangement was made whichever was earlier. Therefore, A-3 order is not illegal or arbitrary. The respondents had implemented Government's policy decision only. As per Annexure R-1 the vacant post is allowed to



remain vacant until a qualified candidate becomes available at the next examination. The applicant's officiating arrangement is purely on adhoc and temporary basis and this will not entitle him for continuance or promotion in the grade. Therefore, no need of serving notice or giving an opportunity to the applicant before terminating the adhoc appointment. According to Annexure R-1, officiating arrangements are not to be continued beyond a period of one year. Therefore, the respondents are justified in passing the impugned order.

3. We have heard Shri O.V.Radhakishnan, learned counsel appearing for the applicant and Shri C.Rajendran, SCGSC appearing for the respondents.

4. Learned counsel for the applicant submitted that termination order is per-se unconstitutional "since it is an attempt to replace by another official on officiating arrangement." He also submitted that the Circle Office letter No.ST/19/DLG dated 17.2.2004 mentioned in the impugned order, is not made available to the applicant. He is at a dark about the rule position which the respondents are relied on.

5. Learned counsel for the respondents on the other hand persuasively argued that, it is a prerogative of the respondents to allow the post to be remained vacant until a qualified candidate becomes available at the next examination. This is fortified by the O.M.dated 30.3.1988 (R1) that since the applicant is not qualified nor passed the examination, he is not eligible to continue as the Inspector of Posts.

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6. We have heard the learned counsel of the parties and perused the pleadings, materials and evidence placed on record. The question for consideration before this Tribunal is whether the termination order is legal; and can the applicant be replaced by another official on officiating arrangement. As per our direction, the respondents have produced a copy of letter No.ST/19/DLG dated 17.2.2004, issued by the Assistant Director(Staff) for our perusal. The operative portion of which reads as follows:

"Kindly refer to this office letter No.ST/19/Rlg/II dated 17.5.1988 communicating OM No.28036/8/87-ESTT(D) dated 30.3.1988 of the Ministry of Personnel, Public Grievances and Pension regarding revision of instructions on adhoc appointments.

As per instruction contained in para-4(i) of the above OM., the total period of appointment made on adhoc basis will be limited to one year only.

I am directed to request you to review all the adhoc appointments/promotions in your region/division in the cadre of IP/HSG-I/Postman/Group-D etc. and terminate cases which exceeds one year and send a report to this office."

The respondents have also produced a copy of O.M.No.2836/8/87-Estt(D dated 3th March 1988 of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training issued by the Department of Posts vide letter dated 17.5.1988 (Annexure R-1). In that O.M. it is specifically stated that the continuance of adhoc/temporary appointment necessarily give room for the proposals for regularisation of this appointment on the ground that "persons concerned have been working against these posts for a long time." This has led to instances where courts and Tribunals have directed the Government to fix seniority after taking into consideration the period of service rendered on adhoc basis.

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This unintended benefit of adhoc service adversely affects a large number of persons which is against the recruitment norms and these persons are to be regularised from the date of adhoc appointment by-passing the recruitment rules. In the said O.M. it is clarified that "Wherever feasible, the posts may be allowed to remain vacant until qualified candidates become available at the next examination." The said O.M. mainly deals with the restriction of adhoc appointment. But in exceptional circumstances narrated in Clause 3 of the O.M., such appointments may be permitted subject to certain conditions. The O.M. further reiterates that the total period for which the appointment/promotion may be made on adhoc basis, will be limited to one year. On going through the said circular, we find that it is in strict conformity with the above instructions of the department. Learned counsel for the applicant took us through Sub-Rule 11 of Rule 279.1 of Swamy's Compilation of P&T Manual Volume IV Rules which is re-produced as under:

"11. All vacancies, whether local, short-term or long-term, will be filled up from among approved candidates only. When, however, there is no approved candidate available and a vacancy cannot be kept unfilled, an unapproved candidate who fulfils all conditions of eligibility for appearing in the competitive examination for recruitment of Sub-Divisional Inspectors (postal)/(R.M.S.) may be appointed as a temporary arrangement with the permission of the Head of the Circle."

7. The counsel argued that, if the post is available and a candidate is eligible to appear in the examination, his services should not be terminated. To fortify this contention, learned counsel cited a decision of the Hon'ble Supreme Court reported in State of Haryana and others Vs. Piara Singh ((1992) 4 SCC 118) wherein it is held that 'a provisional hand should



not be replaced by another provisional hand'. He also cited a decision reported in EP Royappa Vs. Tamil Nadu (AIR (1974) SC 555) in which it is held that, ambit and reach of Articles 14 & 16 of the constitution are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to malafide exercise of power by the State machine. With great respect, we could say that there is no such malafides noted against the principles and the dictums laid down by the Apex Court nor we are in disagreement with the counsel's argument on the legal point. These decisions are not applicable in this case since the facts governing the subject are different.

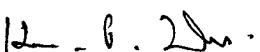
8. Admittedly the applicant has not acquired a legal right to claim regularisation on the post. Inadvertently, he was permitted to continue in a higher post for more than one year. The department has made a mistake in not terminating his services immediately after one year. This could be an inadvertant mistake. The argument of the respondents that if this unintended benefit of adhoc service is continued, the promotions of many other employees will be affected and undue service benefit could be earned by the applicant in future, has some force. If the department took a view that the adhoc promotions could be restricted to one year and any extension thereafter is only in exceptional circumstances, it cannot be said to be faulted. It is a policy decision of the Government. The specific grievance of the applicant is that the proposal of

the respondents either to remain the earlier post vacant until the candidate becomes available at the next examination or to make their own officiating arrangement to the post is not correct. The respondents contended that, since the applicant is not a qualified candidate, he cannot be permitted to continue on adhoc basis any further in view of the instructions referred to above. The work will be managed by any other alternative departmental arrangements and/ or keep it vacant until a qualified candidate becomes available at the next examination. The Apex Court has time and again reminded that, the Courts are not justified in interfearing the policy decision of the Government or the recruitment procedure. This is fortified by the decision of the Apex Court in State of Himachal Pradesh and another Vs. Jafli Devi (1995) 5 SCC 301.

9. From the facts and circumstances, we find no reason to set aside the impugned orders. Therefore none of the prayers that has been claimed in the O.A. is merited and the O.A. is to be dismissed. The O.A. is accordingly dismissed with no order as to costs.

Dated the 4th November, 2004.


K.V. SACHIDANANDAN
JUDICIAL MEMBER


H.P. DAS
ADMINISTRATIVE MEMBER

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