

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 134 199 2.

DATE OF DECISION 12.2.93

B. Aravindan Pillai Applicant (s)

Mr. O.V. Radhakrishnan Advocate for the Applicant (s)

Versus

Sub Divisional Inspector of Respondent (s)
Post Offices, Karunagappally Sub Division, Karunagapally & other

Smt. K.B. Subhagamani, ACGS C Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

The Hon'ble Mr. R. RANGARAJAN ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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

MR. N. DHARMADAN JUDICIAL MEMBER

The applicant who worked as E.D. Packer in the post office at Chavara South is aggrieved by his termination on account of combining of the two posts of E.D. Packer, Chavara South and EDMC, Vadacumbhagam post Office for accommodating another person Shri Raju considering his request for transfer from the post of EDMC, Vadacumbhagam to E.D. Packer, Chavara South Post Office.

2. According to the applicant, he has worked as E.D. Packer, Chavara South Post office from 31.8.91 to 27.11.91 against the put off vacancy of the regular incumbent Shri K.K. Narayanadas. On 28.11.91 without assigning any reason the applicant was directed by the first respondent to relinquish the charge of the post of ED Packer, Chavara South Post Office and accordingly he has relinquished the

charge as per Annexure R-2(a). The applicant further submitted that the induction of Shri Raju in the post of E.D. Packer Chavara South Post Office and permission to continue as EDMC, Vadacumbhagam Post Office, ~~xxxx~~ is illegal and contrary to Annexure A-3 instruction of the DGP&T vide letter dated 18.8.73. The relevant portion of the letter is extracted below:

"It has also been noticed by the Madan Kishore Committee that mails are conveyed in a large number of cases over small distances and the time taken for the work is quite small particularly when cycles can be used. In pursuance of the recommendation of the committee, it has been decided in such cases the work of mail conveyance may be combined with that of ED Delivery Agent subject to the condition that the total work does not exceed five hours. In cases where the work cannot be combined with that of the ED Delivery Agent, it may be entrusted to the BPM or any other E.D. Agent subject to the condition that the total work hours for an ED Agent do not exceed five hours per day."

3. He further submitted that if the competent authority had taken a decision to conduct a regular selection to the post of E.D. Packer, Chavara South P.O., he could also have been considered. He also submitted that he may be reinstated in the post of E.D. Packer since the combining of the two posts is against ^{of this Tribunal and Annx.A-3.4} ~~the judgment~~ With these allegations he has filed this application under section 19 of the Administrative Tribunals Act with the following prayers:

- "i) to declare that the combination of duties of the post of E.D. Packer, Chavara South P.O. and EDMC Vadacumbhagam Post Office ordered by the 1st respondent is without authority or law, illegal and inoperative;
- ii) to direct the 1st respondent to admit the applicant to duty as ED Packer, Chavara South Post Office and to allow him work as such till replaced by a regular hand or till the post is abolished by the competent authority in accordance with law;
- iii) to direct the respondents to disburse to the applicant the allowances due to him for the period he was kept out of duty unlawfully;
- iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case."

4. The respondents have filed a reply statement and addl. statement and submitted that the applicant only worked as a substitute E.D. Packer at Chavara South Post Office for short spell of 89 days. On his termination from service one Shri Raju who has been working as EDMC Vadakumbhagam submitted application for transfer to Chavara South P.O. expressing willingness to discharge the duties of E.D.M.C. Vadakumbhagam and E.D. Packer Chavara South P.O. Accordingly this was accepted and he was posted as E.D. Packer on 28.11.91. ~~Consequently~~, he is discharging the duties of EDMC, Vadakkumbhagam post office and E.D. Packer, Chavara South P.O.

5. The applicant has filed a rejoinder and addl. rejoinder denying the statement contained in the reply and addl. reply filed by the respondents. He submitted that if the two posts of E.D. Packer, Chavara South P.O. and the EDMC, Vadakumbhagam P.O. are combined, the working hours will exceed the limit of 5 hours permissible under Annexure A-3.

6. We have heard learned counsel for both sides. The main question arising for consideration in this case is the authority or jurisdiction of the respondents 1 & 2 to combine the post of EDMC, Vadkumbhagam and E.D. Packer, Chavara South P.O. No orders have been produced by the respondents to support their case that respondents 1 & 2 ²Annex.A-3 does not confer any unconditional authority to have power to combine the two posts. On the other hand, the ^{Deptt}Annexure R-1(b) produced along with the addl. reply discloses that the working hours of E.D. Packer in the Chavara South Post office itself comes to 5 hours 2 minutes. If that post is also combined with EDMC, Vadakumbhagam, necessarily the time will exceed the limit permissible under Annexure A-3. letter of the DGP&T. In fact, this Tribunal in O.A.883/90 considered the question of powers and the authority to combine two E. D. posts. We have recently in O.A. 1126/92 followed the judgment in O.A. 883/90 as clarified in RA 13/92. The

relevant portion in the judgment is extracted below:

" He admitted that there is no provision under the rules for a combined post of EDDA and EDMC and for making a regular selection to such a post. There was no order from the superior authority to conduct such a selection by combining those posts. Under these circumstances, it appears that the regular selection made in this case is not in accordance with law." (O.A. 883/90)

"We have heard the parties. In the judgment we have only considered the rights of the respondents to conduct regular selection in respect of a combined post of EDDA cum EDMC. Since the respondents have not produced any rule or authority to conduct such selection we have observed in the judgment that such selection already made to the combined post was not in order as it is not permissible under law. But this decision would not stand in the way of the respondents in conducting separate selections for either of the posts of EDDA or EDMC. The present documents in Annexure R-11(a) and (b) do not contain any rule or order permitting the respondents to conduct a regular selection to the combined post. Hence, we see no relevance of them in the disposal of the case. Nevertheless it is seen that in the last para of the judgment we have omitted to mention that the selection can also be made for the post of EDDA. The respondents are free to make regular selection to the post of EDDA or EDMC as the case may be ." (RA 13/92 in OA 833/90)

7. In this case, the respondents have not produced any order or circular authorising respondents 1 & 2 to combine these two posts. Hence, we are of the view that the action taken by the respondents to permit Shri Raju to work in the combined posts of ED Packer and EDMC is not in accordance with law. In this view of the matter, it is for the third respondent to take a final decision as to whether it is permissible under law to combine the posts of E.D. Packer Chavara South Post Office /application./ On the facts and circumstances of the and the E.D.M.C. Vadakkumbhagom P.O. for future /case/ we hold that the decision of the first respondent to combine the two posts and permit Shri Raju to discharge the duties of both the posts is illegal and direct the respondents to conduct a regular selection to the post of E.D. Packer, Chavara South Post Office separately, ^{strictly} in compliance of the statutory formalities. This shall be done within a period of six weeks

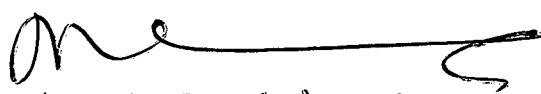
from the date of receipt of a copy of this order. It goes without saying that in the regular selection, the applicant shall also be considered in accordance with law.


8. The learned counsel for the respondents submitted that since Shri Raju was not impleaded in this case, any decision about the selection ^{one} to/ of the posts will adversely affect him and such a decision should not be rendered in this case.

9. We have also considered that question. It is clear from the files that Shri Raju has not been transferred from the post of EDMC, Vadakkumbhagam to the post of ED Packer Chavara South P.O. No order to that effect has been produced for our perusal. Annexure R-1(a) produced along with the reply is a letter submitted by him on 28.10.91 for getting addl. charge of E.D. Packer, Chavara South Post Office while he was working as EDMC, Vadakkumbhagam Post Office. On receipt of the aforesaid letter ^{stated to} from Shri Raju, an order ^{to} have been passed by the SDI on 30.10.91 directing Shri Raju to work as E.D. Packer, Chavara South Post Office while retaining him in his original post of EDMC, Vadakkumbhagam Post Office. This is contrary to the instructions issued by the DGP&T and no order has been produced before us to sustain this decision. In this view of the matter, we are of the view that Shri Raju has no legal right to hold the charge of E.D. Packer, Chavara South Post Office. Hence, we do not think it necessary to implead Shri Raju as a person affected for being heard in this case.

10. The application is disposed of as above.

11. There shall be no order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


(N. DHARMADAN)
JUDICIAL MEMBER

12.2.93