

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.148/99

Thursday, this the 8th day of April, 1999.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR B.N.BAHADUR, ADMINISTRATIVE MEMBER

Jasmin Chandra,
W/o K Parameswaran,
Extra Departmental Sub Post Master,
Tholicode.P.O.(Terminated from service),
Nedumangad. - Applicant

By Advocate Mr Thomas Mathew

Vs

1. Inspector of Post Offices(Complaints),
Office of the Superintendent of Post Offices,
South Postal Division,
Trivandrum-695 014.
2. Sub Divisional Inspector of Post Offices,
Nedumangad Sub Division,
Nedumangad.
3. Superintendent of Post Offices,
Trivandrum South Postal Division,
Trivandrum-695 014.
4. Chief Post Master General,
Kerala Circle,
Trivandrum.
5. Union of India represented by
its Secretary,
Department of Posts,
New Delhi. - Respondents

By Advocate Mr T.C.Krishna, ACGSC

The application having been heard on 31.3.99 the
Tribunal on 8.4.99 delivered the following:

O R D E R

HON'BLE MR B.N.BAHADUR, ADMINISTRATIVE MEMBER

This is an application made by Ms Jasmin Chandra seeking
the relief from this Tribunal as follows:

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"(a) To call for the records leading to the termination of the applicant from service on the oral orders of the 2nd respondent and declare that the termination of the applicant from service with effect from the afternoon of 30.1.1999 is illegal and arbitrary.

(b) Direct the 3rd respondent to reinstate the applicant in service with all consequential benefits including back wages with effect from 31.1.1999.

(c) To grant such other reliefs which the Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case."

2. The facts of the case and averments, as put forth by the applicant, are as follows, in brief. The applicant entered service as Extra Departmental Sub Post Master at Tholicode(EDSPM for short) on 9.12.96 in a vacancy caused by promotion of the permanent incumbent. She had earlier been working as a substitute since 1984 and claims to possess all qualifications and conditions prescribed in recruitment rules for the post of EDSPM.

3. It is further averred that this fact has been brought out in an inspection report of the Sub Divisional Inspector(Annexure-A2). The applicant states that on 13.11.98, during a surprise visit by the 1st respondent, a cash shortage of Rs.1068.20 was allegedly found by him. Applicant contends that actually the shortage could have been and was indeed explained, and there was no irregularity on her part. However, in view of a recent bereavement she was disturbed, and signed a statement in compulsion, and also credited the aforesaid amount of alleged shortage under the same compulsion.

4. Further, it is stated that on 30.1.99 the 2nd respondent came to the office, and orally ordered the applicant, after making an order in the office order book, that her services have to be terminated and asked her to handover charge to the Mail Overseer

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immediately. An order in writing was denied despite request, and, as such, she had no alternative but to handover charge of her office. Aggrieved by this action, the applicant is before us in this O.A.

5. A reply statement has been filed on behalf of the respondents in which the claim of the applicant has been resisted, and allegations and averments denied. It is stated in the reply statement that the applicant was working as EDSPM from 21.11.96 as a substitute in the leave vacancy of the regular incumbent. Further from 9.12.96, when the regular incumbent extended her leave the applicant continued to work as substitute only. Thereafter, since the regular incumbent was appointed to another post of Postman, the present applicant continued to work in the same capacity.

6. It is averred by the respondents that this was a stop-gap arrangement pending selection of provisional or regular EDSPM, by following the prescribed procedure. It is contended that applicant being only a substitute was not appointed, either provisionally or regularly, as EDSPM Tholicode, and that the prescribed procedure of selection was not followed.

7. Thereafter, the respondents describe in their reply statement, how the vacancy was circulated and how 13 ED Agents applied for that post. As per the decision of this Bench of the Tribunal in O.A.39/97 the representation of the applicant was considered and rejected vide order dated 28.2.97. The respondents also aver that, as per directions of this Bench of the Tribunal in O.A.1112/97, the applicant's case was also to be considered along with others for regular selection.

8. The statement of the respondents thereafter goes on to describe to an incident relating to the shortage of cash being found during a surprise visit made by Inspector of Post Offices. The

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applicant has credited the said amount. In view of this serious irregularity committed by the applicant, her provisional appointment was terminated from 30.1.99. The respondents pray for dismissal of the application contending that it is unsustainable and devoid of merit.

9. We have heard the learned counsel on both sides, and have considered their arguments. We have also perused the documents filed by both sides.

10. The main points made by the learned counsel for the applicant are as follows, in brief:

(a) The applicant was working as a provisional appointee, and hence her services cannot be terminated in the manner that it has been done.

(b) There is no default on the part of the applicant in the shortage of cash that was found, and this shortage can be explained, and has been explained, to the authorities. No default or irregularity or misuse of fund is committed.

(c) The termination is being made on the ground of an allegation of shortage of cash and hence amounts to a punishment. This cannot be done without following the proper procedure of departmental enquiry etc.

(d) The order of termination is an oral order and is void and deserves to be quashed.

(e) The action of the respondents amounts to the replacement of one provisional appointee by another provisional appointee and is illegal in terms of the law settled in this connection by the Hon'ble Apex Court. Thus the learned

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Counsel for applicant strenuously contended that the relief sought for in the application may be provided to the applicant.

11. Arguing the case on behalf of the respondents, the learned counsel based his case on the main ground that the applicant had not been provisionally appointed but was merely working in the capacity of a substitute, in view of the circumstances as described in the written statement. He argued that this was not a case of the replacement of one provisional appointee by another and hence the Supreme Court judgement cited by the learned counsel for the applicant was not applicable to the facts and circumstances of this case.

12. Not only was the applicant a substitute appointee, it was argued, but the replacement was made by appointing a departmental official. The arrangement so made is also made in view of the fact that the process for making a regular selection has been initiated but has been delayed due to various factors as described, in detail, in the pleadings. The termination cannot be termed as an act of punishment.

13. Upon consideration of all aspects of the case and the arguments advanced by learned counsel on both sides it is seen that the applicant has not been able to substantiate his contention of being a provisional appointee through any order or documents in this behalf. It would therefore be reasonable for us to go by the averments made by the respondents to the effect that this was not a provisional appointment but an ad hoc arrangement (they have called it a stop-gap arrangement).

14. It is also observed that the reasons cited for the delay in finalisation of the selection of a regular appointee are

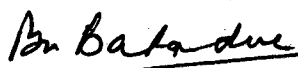
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sustainable. In the meantime, due to the reasons cited, the appointment of an official of the department has been made. No 'provisional' appointment has been made. The case of the learned Apex Court cited does not come to the help of the applicant.

15. In regard to the incident regarding shortage of cash described in some detail by both sides, it is observed that the contention of the learned counsel for applicant that the termination has come as a punishment cannot be sustained. We have not gone into the merits or demerits of the incident of shortage of cash, as there is no need to do so in the present case. That incident is evidently the immediate basis of the Department coming to a conclusion that the applicant's continuation in "stop-gap" arrangement is not desirable, and a departmental official has been put in her place, pending regular selection, by termination of the applicant. Such an assessment can be made only by the Department concerned and this cannot be any basis for providing the applicant with the relief that she seeks. Thus in short, this is a case where a substitute was in position and that arrangement has been terminated, and that too by placing a departmental official in her place.

16. In view of the reasons discussed above, we are not convinced that any case has been made before us by the applicant that would call for our interference, or in providing her with the relief/(s) that she seeks. In the result this O.A. is hereby dismissed. No orders as to costs.

Dated, the 8th of April, 1999.


B.N. BAHADUR . . . 08/4/99
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the Order:

Annexure-A2: True copy of inspection report on Tholicode EDSO on 25.7.97/8.8.97 by the 2nd respondent.