

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.166/2002

Monday, this the 11th day of March, 2002.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Rafeeka Beevi.R.
Gramin Dak sevak Sub Post Master,
Pachallur, Trivandrum. - Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. The Superintendent of Post Offices,
Trivandrum South Division,
Trivandrum.
2. The Director of Postal Services(SR),
O/o the Chief Post Master General,
Kerala Circle,
Trivandrum.
3. Union of India represented by the
Secretary to Government of India,
Ministry of Communications,
New Delhi.
4. Vijayalakshmi,
Extra Departmental Packer,
Kudappanakkunnu Post Office,
Trivandrum. - Respondents

By Advocate Mr C.B.Sreekumar, ACGSC (for R.1 to 3)

The application having been heard on 11.3.2002 the Tribunal on
the same day delivered the following:

O R D E R

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

The applicant, Gramin Dak Sevak Sub Postmaster,
Pachallur, has filed this application challenging the
legitimacy of the show cause notice (A-1) dated 25.2.2002

issued by the Director of Postal Services, the second respondent, proposing to cancel her appointment as Extra Departmental Sub Post Master, Pachallur made by the 1st respondent on 11.2.2002.

2. The facts are as follows: When the post of Extra Departmental Sub Postmaster, Pachallur fell vacant, the 4th respondent who was working as E.D.Packer, Kudappanakkunnu.P.O. made a request to the first respondent for appointment by transfer to that post in accordance with the instruction contained in the letter of D.G., Post dated 12.9.1998, the request was turned down. While the 1st respondent was taking steps to make recruitment to the post from open market, the 4th respondent filed O.A.1346/98 challenging the order of the 1st respondent and for a direction to consider the 4th respondent by transfer. During the pendency of the O.A., the first respondent proceeded with the recruitment process from open market. The applicant who applied was called for interview making it clear that the selection and appointment, if made, would be subject to the outcome of O.A.1346/98 filed by the 4th respondent. The applicant being the most meritorious candidate was selected and appointed by order dated 22.2.1999 wherein it was made clear that the appointment was subject to the result of O.A.1346/98. O.A.No.1346/98 was allowed as the respondents in that case ultimately stated that they have decided to consider the transfer of the applicant in that case and was not therefore contesting the O.A. directing the respondents to consider the request of the applicant for transfer as EDBPM, Pachallur along with similar requests

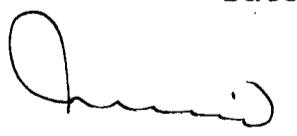
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already made by other ED Agents and that only if the applicant and other working ED Agents are found ineligible and unsuitable, recruitment from open market should be resorted to. The applicant in this case challenged the order of the Tribunal, filing O.P.10495/2001 which was disposed of permitting the applicant to move the Tribunal by a Review Application. The R.A. filed by the applicant was rejected. Aggrieved by that, the applicant filed O.P.20573/2001 before the Hon'ble High Court of Kerala which was disposed of with a direction to the respondents that they should consider the representation to be made by the applicant while considering the request of the 4th respondent. The applicant, pursuant to the above order (A-7), made a representation to the 1st respondent who issued A-8 order dated 11.2.2002 appointing the applicant as EDBPM, Pachallur on regular basis. The 4th respondent moved this Tribunal by Contempt Petition(Civil) No.18/2002. While so, the second respondent issued the show cause notice dated 25.2.2002 (the impugned show cause notice) stating that the appointment of the applicant ignoring the claim for transfer of the 4th respondent appeared to be irregular and affording her an opportunity to submit a representation against the proposed action within 15 days from the date of receipt of the Memo. It is challenging the show cause notice that the applicant has filed this application, mainly on the ground that the show cause notice has been issued by an incompetent authority, that it was issued under a mistaken notion that A-8 order is against the spirit of the Tribunal's order and the order of the Hon'ble High Court and that it is issued without due notice.

3. We have perused the application and all the connected papers. We have heard the learned counsel of the applicant and the Additional Central Government Standing Counsel appearing for respondents 1 to 3. The contention that the second respondent is incompetent to review the appointment made by the 1st respondent is only to be mentioned and rejected at the outset as instruction empower the 2nd respondent, the higher authority, to review order of selection and appointment made irregularly. That the impugned order is violative of principles of natural justice is also untenable, for show cause notice is issued to afford an opportunity to show cause against the proposed action. Therefore, the principles of natural justice is being followed. In the wake of the Tribunal's order in O.A.1346/98 which has not been interfered with by the Hon'ble High Court in O.P.20573/2001 it cannot be even prima facie, held that the issue of show cause notice was on the basis of a mistake. The impugned memo being only a show cause notice which affords the applicant an opportunity to represent against the proposed action, we find that judicial interference at this stage is not called for. We therefore refuse to exercise jurisdiction.

4. The O.A. is therefore, rejected under Section 19 of the Administrative Tribunals Act, 1985.

Dated, the 11th March, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

APPENDIX

Applicant's Annexures:

1. A-1: True copy of the Memo No.Gen/CC-5/94/2001 dated 25.2.2002 issued by the 2nd respondent.
2. A-2: True copy of the notification dated nil issued by the 1st respondent.
3. A-3: True copy of the memo dated BIC/123 dated 27.1.1999 issued by the 1st respondent.
4. A-4: True copy of order No.BIC/123 dated 22.2.1999 issued by the 1st respondent.
5. A-5: True copy of the final order dated 11.1.2001 in OA 1346/1998 of this Hon'ble Tribunal.
6. A-6: True copy of the final order dated 22.6.2001 in RA 19/2001 on the file of this Hon'ble Tribunal.
7. A-7: True copy of final order dated 18.10.2001 in OP 20573/2001 on the file of the Hon'ble High Court of Kerala.
8. A-8: True copy of order No.CC/15/01 dated 11.2.2002 issued by the 1st respondent.
9. A-9: True copy of representation dated 10.3.2002 to the 2nd respondent.

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