

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 17/90
XXXXXX

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DATE OF DECISION 28-6-1990

R. Malathi _____ Applicant (s)

M/s OV Radhakrishnan, K Radhamani Amma &

N Nagaresh _____ Advocate for the Applicant (s)

Versus

Sub Divisional Inspector of Respondent (s)
Post Offices, Harippad & 3 others

Mr TPM Ibrahimkhan _____ Advocate for the Respondent (s) 1-3

Mr KP Dandapani & K Janu Bau for Respondent No.4

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Shri AV Haridasan, Judicial Member)

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The facts of the case is in a narrow compass. In an interview conducted on 20.6.1989 by the second respondent for selection and appointment to the post of Extra Departmental Branch Postmaster, Erickavu Post Office in which the applicant, the 4th respondent and some others were invited to participate. The applicant who had passed the SSLC examination and had registered with the Employment Exchange, Kayamkulam was provisionally selected for appointment by memo dated 27.6.1989. As required in memo dated 5.7.1989, the applicant underwent

a practical training before the Sub Postmaster, Karthigappally. Thereafter on remitting the first premium for fidelity bond as directed, the applicant was directed to work as E.D.B.P.M., Erickavu w.e.f. the forenoon of 12.7.1989 as per memo issued on that date. This memo was issued subject to the approval of the second respondent. The applicant also provided accommodation for housing in the Post Office. Thereafter, the second respondent issued order dated 20.7.1989 at Annexure-A3 provisionally appointing the applicant as E.D.B.P.M., Erickavu with effect from 12.7.1989. It was mentioned in the above order that the above appointment would be governed by the provisions of E.D. Agents (Conduct and Service) Rules, 1964. While the applicant was thus working as E.D.B.P.M., Erickavu she was served with the impugned order ~~at Annexure-A4~~ dated 19.9.1989 at Annexure-A4 by the second respondent which runs as follows:

"Under Rules 6 of ED Agents (Conduct & Service) Rules, 1964, the services of Smt. R. Malathi, ED BPM Erickavu, who was provisionally appointed vide this memo of even No. dated 20.7.1989 is hereby terminated with immediate effect".

The impugned order seems to have been issued as the Post Master General reviewed the selection file on the basis of a complaint made by the 4th respondent in regard to the manner of selection though this fact was not mentioned in the impugned order. The applicant was relieved from the post on 20.9.1989. Thereafter by memo dated 25.9.1989 the applicant was directed to appear for an interview before the second respondent on 12.10.1989. Thereafter the 4th respondent

was selected to the post of Branch Post Master, Erickavu and she was deputed for training. The applicant has filed this application under Section 19 of the Administrative Tribunals Act challenging the termination of her services and the selection of the 4th respondent and for a direction to the respondents to reinstate her in service as E.D.B.P.M., Erickavu on the basis of the Annexure-A3 appointment order. It has been contended that the termination of her services on the basis of a bald complaint purporting to act under Rule 6 of the E.D. Agents (Conduct & Service) Rules without giving her an opportunity to be heard is illegal and unjustified and that the 4th respondent has been appointed solely by reason of political pressure.

2. The respondents 1-3 in their reply statement has justified the impugned order of termination at Annexure-A4 on the ground that the order was necessitated on account of certain alleged irregularities revealed on a review of the selection proceedings by the Post Master General, pursuant to a complaint made by the 4th respondent and also on the ground that as the applicant was only provisionally appointed, it is within the powers of the appointing authority to rescind the order of appointment. The 4th respondent also has filed a reply affidavit justifying the termination of the services of the applicant. The 4th respondent has further contended that since the applicant has participated in the interview held on 12.10.1989 without demur, she cannot be heard to contend that

the selection based on that interview is not proper.

3. We have heard the learned counsel for the parties and have also perused the documents produced. The learned counsel for the applicant argued that the impugned order at Annexure-A4 is liable to be struck down as illegal and void since the second respondent cannot terminate the services of the applicant who has been validly appointed after regular selection process without following the principles of natural justice enshrined in Article 311(2) of the Constitution of India. He further argued that while Rule 6 of the ED Agents (Conduct & Service) Rules empowers the authorities to terminate the services of an E.D.Agent on any administrative ground or any ground unconnected with the conduct of the incumbent, it does not authorise them to terminate the appointment on any ground that had arisen before or in regard to the appointment. In this context, the learned counsel invited our attention to the decision of the Hon'ble High Court reported in 1987(2) KLT, 705. He further argued that since the applicant, an E.D.Agent was holding a civil post, the termination of her services without giving her an opportunity to be heard violates the provisions of Article 311(2) of the Constitution of India. The learned Central Government Standing Counsel appearing for respondents 1-3 and the learned counsel for respondent-4 vehemently argued that termination of services of a provisional employee is perfectly justified under Rule-6, and that Rule 6 does not contemplate giving the employee an

opportunity to be heard and that therefore the impugned order at Annexure-A4 is perfectly in order. In Kunhiraman Nair V. Superintendent of Post Offices reported in 1984 KLT, 456 it has been held that the termination of services of E.O.B.P.O. though appointed provisionally purporting to act under Rule 6 of the E.O.Agents(Conduct & Service) Rules without disclosing the administrative reasons for doing so and without giving the affected party an opportunity to be heard violates the principles of natural justice enshrined in Article 311(2) of the Constitution and is therefore void. A similar view was taken by the Kerala High Court in 1987(2) KLT, 705 wherein it was held that Rule 6 of the E.O.Agents (Conduct and Service) Rules cannot be invoked for dispensing with the services of an E.O.Agent for any reason which arose prior to or at the time of appointment. The validity of a termination of the appointment of an E.O.Agent under Rule 6 of the E.O.Agents(Conduct & Service) Rules basing on a complaint by an unsuccessful candidate regarding the method of selection came up for consideration before the Allahabad Bench of the Tribunal in Surya Bhan Gupta V. Union of India and others(1988(7) ATC, 226). Allowing the application and striking down the termination of the appointment/^{as} null and void, the Bench observed:

"Hence in our view the respondents ought to have complied with the principles of natural justice especially the principle of 'audi alteram partem' enabling the applicant to represent against the proposed cancellation of his appointment. We need not say whether that would have led the Sr. Superintendent of Post Offices to a different conclusion but one cannot

be oblivious to the fact that the Sr. Superintendent of Post Offices has proceeded on the assumption that the applications by respondent 4 and three other persons were submitted in the Employment office on 26-3-1985 and the same could not be delivered to the Sub Divisional Inspector (PO) either on 26 or 27-3-1985 because he was not available in his office. Surely, it would have been open to the applicant to challenge the veracity/correctness of this assumption and prove that the applications were in fact received by the Employment office on 28-3-1985. Any how the point for consideration is that justice and fair play in action demanded that before the applicant was deprived of his valuable right by cancellation of his appointment, he should have been afforded an opportunity to show a cause against the same. That not having been done, the impugned order has to be quashed as being illegal and invalid.....".

In reaching this conclusion, the Bench sought support from the decision of the Division Bench of Allahabad High Court in Girish Chandra V. Union of India(1985 UPLBEC 22). That was a case where the termination of the services of an E.D.Mail man under Rule 6 was challenged. Their Lordships observed:

"Since the petitioners had been appointed after their selection and they had been working for more than two years, they had acquired a right to continue in service unless the same was terminated in accordance with service rules. If there was any irregularity committed in the selection and if the authority proposed to cancel the selection, the petitioners should have been given opportunity of hearing. Admittedly, no opportunity was given to the petitioners as a result of which principle of natural justice was clearly violated. An order passed in breach of the principles of natural justice is rendered null and void, and it is not necessary to demonstrate any prejudice".

We are in respectful agreement with the dicta laid down in the above mentioned decisions. It is well settled that principle of natural justice should be observed even in administrative orders which involve civil consequences. (See State of Orissa V. Dr.(Miss)Binapani Dei & others (AIR 1967 SC, 1269) ^{the 'audi alteram partem'} is a basic concept of principles of natural justice, it is an unjust and illegal to condemn/individual without hearing him.

Therefore we are of the view that the impugned order at Annexure-A4 terminating the services of the applicant who has been validly appointed under a regular selection process without giving her an opportunity to show cause against such termination has to be struck down as illegal and void. The learned counsel for the respondents argued that as the appointment of the applicant was only purely provisional, it is liable to be terminated without assigning any reason or giving a notice. The applicant was selected for a regular post as E.O.B.P.M. pursuant to a notification of that vacancy. Therefore the mere fact that the word provisional was written in the order does not clothe the authorities with a right to terminate the appointment without assigning any reason. Therefore, the above argument of the learned counsel for the respondents also has to be rejected.

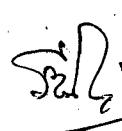
4. The learned counsel for the respondents No.4 argued that in view of the fact that the applicant has participated in the second interview dated 12.10.1989 without demur, she cannot be heard to challenge the selection and also the termination of her services having understood that she had no chance of being selected. In support of this argument, the learned counsel invited our attention to the decision of the Supreme Court in Dr.G Sarana V. University of Lucknow and others(AIR 1976 SC, 2428) and Om Prakash Shukla V. Kumar Shukla & others(AIR, 1986 SC, 1043). If the applicant was

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challenging only a selection being unsuccessful, it can be said that she is estopped from challenging the method of selection. But the second interview dated 12.10.1989 could be held only on account of the cancellation of the appointment of the applicant under the impugned order at Annexure-A6. The applicant is challenging the cancellation of her appointment under Annexure-A4. We have held that the impugned order at Annexure-A4 is null and void. The result is that the termination of her services is set at ~~naught~~ and therefore the second interview and selection would automatically go. Therefore it cannot be said that the applicant is estopped from challenging the order of her termination. The applicant has filed the application not very late after her services were ~~xxx~~ terminated. Hence this argument also has to be rejected.

5. In the conspectus of facts and circumstances of the case, we allow the application, set aside the impugned order of termination of the services of the applicant at Annexure-A4 and direct the respondents 1-3 to reinstate the applicant in service as E.O.B.P.M., Erickavu with full back wages. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

28-6-1990

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The Sub Divisional Inspector of Post Review
Haripad and three others - Applicants

-Vs-

R.Malathi, Erickavu.P.O., Review
Karthigapally - Respondents



(Mr.A.V.Haridasan, Judicial Member)

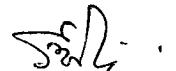
The Original Application was filed under Section 19 of the Administrative Tribunals Act challenging the termination of the applicant's services as Extra Departmental Branch Post Master, Erickavu and praying for a direction to the respondents to reinstate her in service with continuity of service and attendant benefits. The respondents resisted the application and after careful consideration of the rival contentions we held that the termination of the services was unjustified and set aside the order of termination. We directed the respondents 1 to 3 to reinstate the applicant in service as EDBPM with full backwages. The respondents have now filed this application for review praying that the order passed by us in the Original Application may be reviewed and an order be passed allowing the respondents to reinstate the applicant in service without paying ^{her} backwages and with the liberty to terminate the services of the applicant after reinstatement invoking provisions of Chapter 5A of the Industrial Disputes Act if so advised. No error apparent on the face of record or any other infirmity in the order or circumstances warranting a review of the order has been even mentioned in the application. It has been mentioned in the application that in certain other cases reinstatement has been ordered without any liability to pay backwages. The sole ground canvassed by the applicants to review the order in question is that in this case as well a similar course should have been

adopted. Reliefs in different cases are moulded taking into consideration the facts and circumstances of individual cases. In this case we have consciously held that the interest of justice demands directing to the respondents to reinstate the applicant and to pay her full back wages. There is absolutely no ground for review of this order which is a well considered one. The review applicants i.e. original respondents are not entitled to seek a review and modification of the order without showing any grounds warranting such a course. If they are aggrieved by the order, it is open for them to challenge the correctness of the order before the Hon'ble Supreme Court. Therefore, I am of the view that the review application has only to be dismissed without issuing any notice. If the Hon'ble Vice Chairman agrees, it can be done so.

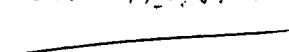

(A.V.Haridasan)
Judicial Member
9-10-1990

Hon'ble Mr.S.P.Mukerji, Vice Chairman

I entirely agree. The order be pronounced in open court.



Hon'ble Shri A.V.Haridasan


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