

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 188 of 1992.

DATE OF DECISION 26-5-1993

P M Abida _____ Applicant (s)

M/s M R Rajendran Nair _____ Advocate for the Applicant (s)

The Superintendent of
Post Offices, Alapuzha and
others. _____ Respondent (s)

Mr George Joseph, ACGSC _____ Advocate for the Respondent (s) 1-3
Mr PS Biju _____ for Respondent-4

CORAM :

The Hon'ble Mr. N Dharmadan, Judicial Member
and

The Hon'ble Mr. R Rangarajan, Administrative Member

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

JUDGEMENT

Shri R Rangarajan, A.M.

The applicant having been aggrieved by the termination of her services from the post of E.D.S.P.M., Naduvathunagar, has filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 praying for the following reliefs:-

- "(i) To declare that the termination of applicant's services from the post of EDSPM Naduvathunagar is null and void and that she continued in service and to quash Annexure-I, IV, VI and VIII, in so far as those orders affect the applicant.
- (ii) To declare that the selection of the 4th respondent as EDSPM Naduvathunagar is illegal as the applicant was denied selection without considering her claim in accordance with law by giving weightage/preference.
- (iii) Grant the cost of this Original Application."



The brief facts of this case are as follows:

2 The regular EDSPM, Naduvathunagar, Shri PA Sadhique was promoted and posted as Postman with effect from 18.1.91. The applicant, wife of Shri PA Sadhique worked against this vacancy from that date as per Annexure-II. While action was initiated for selection of a regular candidate through the Employment Exchange, the applicant filed O.A. 576/91 and obtained interim orders that she should also be considered alongwith other candidates sponsored by the Employment Exchange. An interim order Annexure-III dated 12.4.91 was issued by this Tribunal; accordingly she was considered. As per the interim order at Annexure-III she should also be continued in the post until she is replaced by a regular appointee. In the meantime, another O.A. No.1182/91 was filed by one Smt MS Beena relating to the same post and in that O.A. this Tribunal directed that further action in the selection for the post of EDSPM, Naduvathunagar should be kept in abeyance. However, the Sub Divisional Inspector-Postal, Shertallai, the 2nd respondent in this case posted the 4th respondent on a provisional basis as per Annexure IV dated 5.8.91. The applicant submitted representation to the 1st respondent stating that the provisional appointment of the 4th respondent as per Annexure IV is contrary to the interim order dated 12.4.91 (Annexure-III) and requested that the applicant may be allowed to continue till regular appointment is made. This representation is at

Annexure-V. On 8.8.91 the respondent informed the applicant that the selection to the post of EDSPM, Naduvathunagar is in accordance with the interim order of the Tribunal and that she should hand over charge to the 4th respondent failing which action will be initiated against her. The above said instruction may be seen at Annexure VII. The applicant, thereafter filed an MP No.953/91 praying for a direction to the respondent to re-engage the applicant as EDSPM, Naduvathunagar forthwith as the appointment of 4th respondent is in violation of the interim order in OA 576/91 and OA 1182/91. The Tribunal issued an interim order, Annexure-VIII instructing the 1st respondent to appear before the Tribunal with a statement to the effect that the appointment of the been made 4th respondent has inadvertently. The 1st respondent did comply with the order of the Tribunal and reinducted the applicant which can be seen from Annexure IX.

3. In the final order in OA 576/91, this Tribunal has permitted the 1st respondent to reinduct the 4th respondent with immediate effect as he was a regularly selected candidate and the O.A. 1182/91 was also withdrawn in the meantime. This order of the Tribunal at Annexure XII had given the liberty to the applicant to file a fresh application challenging the selection in case the applicant is not selected and also challenging the mode of termination in pursuance of the Tribunal's order for reinducting the selected candidate, terminating



the service of the applicant. Against this background, the present D.A. has been filed. The applicant challenges the selection of the 4th respondent and also her termination without following the extant rules.

4 The respondents in their reply statement denied the fact that the applicant has been working as EDSPM, Naduvathunagar in a provisional capacity. The respondents emphatically state that the applicant was only a leave substitute and was ~~not~~ continuing in service on the strength of interim orders issued by the Tribunal. They had reinducted the 4th respondent as per the orders of this Tribunal replacing the applicant. The applicant managed to work as per interim orders of this Tribunal and she was not appointed by a competent authority. They further aver that the applicant was also considered alongwith others for the post of EDSPM, Naduvathunager, but she did not qualify in the selection. Inadvertently, the applicant was replaced by the 4th respondent without following the interim orders of this Tribunal, but was set right when it was brought to their notice. Finally, she was replaced by the regularly selected candidate as per the final judgment of this Tribunal dated 9.1.92. Under these circumstances, the respondent submits that there has been no violation of any law under the Constitution of India. Hence, they pray for the dismissal of this D.A. as it is devoid of any merits.



5 In the rejoinder, the applicant contends that the provision of Chapter V-A of the ID Act was not followed. On the date of her termination, she had more than 1 year of continuous services and hence, the respondents were bound to comply with Chapter V-A of the ID Act. The applicant also submits that, as per Annexure XII, the Tribunal has specifically indicated that it would be open to the applicant to challenge the selection of the 4th respondent and also the mode of her termination from service. She further submits that by giving no weightage ~~✓~~ for her past services as EDSPM, Naduvthunagar, to the applicant / the respondents have committed serious error in the selection process and for that reason the selection proceedings are illegal. She further contends that her continuance in the post is in accordance with rules, as no regular appointment would have been made till withdrawal of OA 1182/91. She further contends for purpose of calculating continuous service or applicability of provisions of ID Act, no distinction can be made on the ground that the applicant was continuing on the basis of interim orders passed by this Tribunal.

6 We have heard the learned counsel on both sides and also perused the records carefully produced before us. The first point to be examined in our opinion is in regard to the legality of the selection wherein the 4th respondent was selected. The Examination of this selection procedure will provide the necessary key whether the termination is legal or not. Before scrutinising the selection records, it is essential to come to a conclusion whether the applicant

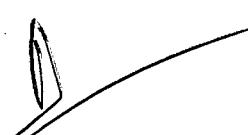


was working from 18.1.91 onwards as a substitute or ~~on~~ ~~on~~ provisional capacity. The applicant was initially appointed as a substitute on 3.10.90 and worked upto 6.10.90 for 4 days. Thereafter, she worked from 17.11.90 upto 16.1.91 for 60 days. On 18.1.91 when the regular incumbent who happened to be her husband vacated the post on being appointed as a Postman in Shertallay Division, she was appointed as per Annexure-II. She was continuing as such except for a short period wherein she was replaced by the 4th respondent from 6.8.91 to 13.9.91 for reasons mentioned above. She worked as EDSPM, Naduvathunager from 18.1.91 till her date of termination, namely 19.12.91 as per Annexure-I. These facts have not been contradicted by the respondents. As a matter of fact, the respondents in their reply statement have submitted that Shri VA Sadhique, the regular EDSPM, Naduvathunager when he was posted as a Postman went on leave to assume charge as Postman with effect from 18.1.91 engaging his wife as EDSPM, Naduvathunager. Though the respondents say that it is on substitute capacity it does not stand to reason as to how a substitute can work in a regular vacancy as Shri VA Sadhique was regularly selected and posted as a Postman with effect from 18.1.91. The respondents have not made any regular appointment at that time and allowed the applicant to continue in that post of EDSPM, Naduvathunagar. As the post is vacant, the continuation of the applicant in that capacity cannot be termed as substitute. Further,



the Annexure-II charge report does not indicate that the relieving official is appointed on a substitute capacity. If the Department felt that it was on a substitute capacity, it could have set right the position by issuing a proper order. But the respondents have failed to do so. Even in the various interim orders of this Tribunal nowhere it has been brought on record that the applicant is working only in a substitute capacity. Even in the order dated 13.9.91 when the applicant was reinducted replacing the 4th respondent (Annexure IX), it has not been stated that the reinduction was on a substitute basis. Hence, we come to the conclusion that the appointment of the applicant as EDSPM, Naduvathunagar is on provisional basis and not on a substitute capacity.

7 Having concluded that the applicant is a provisional EDSPM, Naduvathunager, we set out to scrutinise the selection proceedings, to see whether she has been adjudged in the selection giving due weightage for her experience as a provisional hand. This Tribunal is consistently taking the stand adverting to the dictum laid down by the Full Bench that prior experience as a provisional hand should be given due weightage while considering the qualification of the candidates in a selection. This view is taken in a number of other O.As also previously and whenever due consideration is not given those selections were also



squashed by this Tribunal. With this dictum in mind, we examined the selection proceedings dated 11.7.1991.

The remark in the proceedings against the applicant reads as below:

"(6) As per the directions of Hon'ble CAT, Smt PM Abeeda was also considered for regular selection. As she has secured only 220 marks in the SSLC examination in the first chance, not selected."

The remark in the selection proceeding against the selected candidate namely, the 4th respondent reads as below:

"(7) Shri PA Sadique who has secured 234 marks in the SSLC examination in first chance selected. He is the only candidate who has secured highest marks in SSLC in first chance."

Even in the Tabulation attached to the proceedings, no remark is made regarding prior experience. From the above, we come to the firm conclusion that no consideration has been given by the selecting official in regard to the prior experience gained by the applicant as a provisional EDSPM, Naduvathunagar.

8 The said proceedings indicates that the selection was solely made only on the basis of marks secured in the SSLC Examination and no other consideration has been given for experience etc. Non-consideration of the prior experience is against the dictum laid down by the Full Bench and consistently followed by this Tribunal. In view of what is stated above, we have no other alternative except to set aside this selection for non-consideration of prior experience of the applicant. Accordingly, we do so.



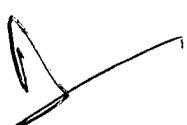
9 In the result, the application is disposed of with the following orders/ directions:-

(i) We declare that the selection for the post of EDSPM, Naduvathunagar is inoperative and null & void.

(ii) The applicant is declared to have continued in service as EDSPM, Naduvathunagar from the date of reinduction of the 4th respondent in that post and is eligible to get full back wages from the date of termination of her service. These directions will be complied with in a period of three months from the date of receipt of the judgment.

(iii) However, it is made clear that this judgment of the Tribunal will not stand in the way of respondents conducting fresh selection in accordance with law. It goes without saying that till a final selection is made and selected candidate is appointed, the applicant shall continue to hold the post. It also goes without saying that if the termination of the applicant is necessitated after the completion of the selection, it will be done in accordance with law.

10 In view of the disposal of the application as above, default and failure to follow the questions pertaining to the / the provision of the ID Act and violation of the same do not arise as the selection itself has been held null and void. However, as the learned counsel for the applicant strenuously argued also the need to give directions to the respondents in regard to violation of ID Act, we thought it fit to give our opinion in regard to dealing of cases which involves for the violation of ID Act. In this connection, learned counsel/applicant



has quoted a number of cases dealt by the Tribunal wherein such directions have been given. As the time of this Tribunal is limited, it is only proper for this Tribunal to entertain such cases only sparingly using its discretion and not necessary to deal with all cases if the Tribunal is of the opinion that it can be dealt with other appropriate forum. In this connection the observations made in OA 1868/92 are reproduced below:-

"17. The Full Bench of the Central Administrative Tribunal, Hyderabad Bench, in A. Padmavally & Ors. Vs. CPWD, 1990 (14) ATC 914 elaborately dealt with the question as to whether this Tribunal has concurrent jurisdiction to deal with the question arising under Industrial Disputes Act. The Full Bench was of the view that merely because the Industrial Tribunal could be moved in a given matter, this Tribunal's jurisdiction is not ousted because this Tribunal is discharging the duties of High Court which is vested with discretionary powers with extraordinary jurisdiction under Article 226 of the Constitution of India. But ordinarily this Tribunal would not entertain a petition if the grievance covered by the same could be raised by the aggrieved parties before the Labour Court or the Industrial Tribunal. But, of course, it is a matter of exercise of discretion taking into consideration the grievance of the party approaching the Tribunal. The Tribunal being a substitute of the High Court in every respect, it can grant the same relief which the High Court could have granted. The Full Bench held as follows:-

"18. Further the machinery under the I.D. Act is not compelled to decide matters by applying law. They have got wide powers to give awards on issues referred to them, creating some times new rights to the parties. If such a matter is brought to the Tribunal, this Tribunal cannot give such reliefs. It is also to be noted that in respect of matters which are in the nature of a collective dispute, there will be a temptation for those concerned to have a case filed individually as a test-case and obtain an order from this Tribunal without the latter having any opportunity of gauging the amplitude of the dispute and the consequences of its order on the concerned undertaking.

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"22. If aggrieved persons are allowed to approach this Tribunal directly, matters which are in the nature of mere computation

of rights accruing out of awards and settlements, under Section 33-~~34~~ of the ID Act will also come before this Tribunal which is empowered to scrutinise the very legality and regularity of the award. This will lead to an unacceptable and absurd situation of a superior forum acting as an agent of execution of an order of an inferior court. Therefore, the provisions of the Central Administrative Tribunals Act should not be interpreted in a manner leading to absurd situations and therefore the concurrent jurisdiction of both the Tribunal and the machinery under the I.D. Act is repugnant to a reasonable construction of the Act.

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"26. For the reasons given in the preceding paragraphs, the view in the order or reference that introduction of Section 28(b) means that the Industrial Tribunal/ Labour Court continues to have jurisdiction for grant of relief under the I.D. Act is correct. Further, by virtue of deletion of Section 2(b) in the A.T. Act, jurisdiction is conferred on the Administrative Tribunal so as to bring it on par with the High Court exercising jurisdiction prior to the coming into force of the A.T. Act. This interpretation lends itself to the more plausible and reasonable construction than the view taken in Sisodia case that the Administrative Tribunal has concurrent jurisdiction in all matters covered by the I.D. Act. We are, therefore, with respect, constrained to differ with the dicta laid down in Sisodia case that the Administrative Tribunal is a substitute not only for the courts (other than the Supreme Court) but for other authorities constituted under the I.D. Act, 1947.

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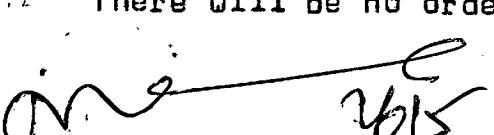
"41..... In our view, one such situation would be where the competent authority ignores statutory provisions or acts in violation of Article 14 of the Constitution. Further, where either due to admissions made or from facts apparent on the face of the record, it is clear that there is statutory violation, we are of the opinion, that it is open to the Tribunal exercising power under Article 226 to set aside the illegal order of termination and to direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. To this extent we are of the view that alternative remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226.

" 43. To sum up, our conclusions are as follows:-

- (1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in Administrative Tribunal for adjudication. The decision in the case of Sisodia which lays down a contrary interpretation is, in our opinion, not correct.
- (2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.
- (3) The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries.
- (4) The interpretation given to the term "arrangements in force" by the Jabalpur bench in Rammoo case is not correct."

11 In view of what is stated above, the violation of I.D. Act will be entertained by this Tribunal only in cases where the Tribunal is of the view that it is very essential and inescapable to interfere with such violation. In all other cases, we are of the view that the proper course of action for the applicant is to resort to remedies available under the Industrial Disputes Act, 1947 by approaching Labour Courts and Industrial Tribunals.

12 There will be no order as to costs.


(R. Rangarajan)
Administrative Member

26-5-93


(N. Dharmadan)
Judicial Member

26.5.93

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JUDGEMENT

Shri R Rangarajan, A.M

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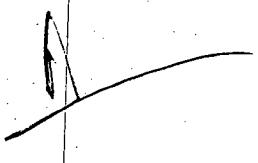
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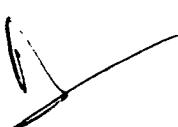
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(iii) However, it is made clear that this judgment of the Tribunal will not stand in the way of respondents conducting fresh selection in accordance with law. It goes without saying that till a final selection is made and selected candidate is appointed, the applicant shall continue to hold the post. It also goes without saying that if the termination of the applicant is necessitated after the completion of the selection, it will be done in accordance with law.

10 In view of the disposal of the application as above, ~~✓~~ default and failure to follow the questions pertaining to the ~~✓~~ the provision of the ID Act and violation of the same do not arise as the selection itself has been held null and void. However, as the learned counsel for the applicant strenuously argued also the need to give directions to the respondents in regard to violation of ID Act, we thought it fit to give our opinion in regard to dealing of cases which involves for the violation of ID Act. In this connection, learned counsel/applicant



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" The Full Bench of the Central Administrative Tribunal, Hyderabad Bench, in A. Padmavally & Ors. Vs. CPWD, 1990 (14) ATC 914 elaborately dealt with the question as to whether this Tribunal has concurrent jurisdiction to deal with the question arising under Industrial Disputes Act. The Full Bench was of the view that merely because the Industrial Tribunal could be moved in a given matter, this Tribunal's jurisdiction is not ousted because this Tribunal is discharging the duties of High Court which is vested with discretionary powers with extraordinary jurisdiction under Article 226 of the Constitution of India. But ordinarily this Tribunal would not entertain a petition if the grievance covered by the same could be raised by the aggrieved parties before the Labour Court or the Industrial Tribunal. But, of course, it is a matter of exercise of discretion taking into consideration the grievance of the party approaching the Tribunal. The Tribunal being a substitute of the High Court in every respect, it can grant the same relief which the High Court could have granted. The Full Bench held as follows:-

"18. Further the machinery under the I.D. Act is not compelled to decide matters by applying law. They have got wide powers to give awards on issues referred to them, creating some times new rights to the parties. If such a matter is brought to the Tribunal, this Tribunal cannot give such reliefs. It is also to be noted that in respect of matters which are in the nature of a collective dispute, there will be a temptation for those concerned to have a case filed individually as a test-case and obtain an order from this Tribunal without the latter having any opportunity of gauging the amplitude of the dispute and the consequences of its order on the concerned undertaking.

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"41..... In our view, one such situation would be where the competent authority ignores statutory provisions or acts in violation of Article 14 of the Constitution. Further, where either due to admissions made or from facts apparent on the face of the record, it is clear that there is statutory violation, we are of the opinion, that it is open to the Tribunal exercising power under Article 226 to set aside the illegal order of termination and to direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. To this extent we are of the view that alternative remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226.

" 43. To sum up, our conclusions are as follows:-

- (1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence, all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in Administrative Tribunal for adjudication. The decision in the case of Sisodia which lays down a contrary interpretation is, in our opinion, not correct.
- (2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.
- (3) The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries.
- (4) The interpretation given to the term "arrangements in force" by the Jabalpur bench in Ramtoo case is not correct."

11 In view of what is stated above, the violation of I.D. Act will be entertained by this Tribunal only in cases where the Tribunal is of the view that it is very essential and ^{inevitable} to interfere with such violation. In all other cases, we are of the view that the proper course of action for the applicant is to resort to remedies available under the Industrial Disputes Act, 1947 by approaching Labour Courts and Industrial Tribunals.

12 There will be no order as to costs.

(R Rangarajan)
Administrative Member

(N Dharmadan)
Judicial Member

26-5-93