

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.188/96

Monday, this the 11th day of March, 1996.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

KK Ramakrishnan,
Extra Departmental Delivery Agent,
Mukkoottuthara.P.O.
Kottayam District. - Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. The Post Master General,
Central Region, Kochi.
2. The Sub Divisional Inspector(Postal),
Mundakkayam Sub Division,
Mundakkayam.
3. EK Vijayan,
Extra Departmental Mail Carrier,
Edakkadathy.B.O.
Mukkoottuthara. - Respondents

By Advocate Mr PR Ramachandra Menon, Additional Central
Government Standing Counsel(for R.1&2)

By Advocate M/s OV Radhakrishnan and Thomaskutty MA

The application having been heard on 5.3.96 the
Tribunal delivered the following on 11th March, 1996:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who was an Extra Departmental Delivery Agent became an Extra Departmental Packer when the Post Office in which he was working was upgraded in 1967. A post of Extra Departmental Delivery Agent(EDDA for short) fell vacant on

1.12.94 and the applicant was appointed as EDDA against that vacancy. By A3 letter the Superintendent of Post Offices stated that after examining the case, the transfer of applicant to the post of EDDA was approved. This was challenged by the third respondent in O.A.1178/95. The O.A. was disposed of stating that the third respondent herein(who was applicant in that O.A.) could take up the matter with the competent authority for such action as that authority may deem fit to take. The third respondent approached the first respondent upon which the first respondent examined the matter in detail and issued the impugned order A4 dated 31.1.96.

2. Applicant challenges the impugned order on the following grounds:

(i) First respondent does not have any power to cancel the order of appointment issued by the statutory authority who is the second respondent.

(ii) No notice was given to the applicant before passing the impugned order and this violates principles of natural justice.

(iii) The qualification of EDDA was revised with effect from 1.4.93. Though the vacancy to which the applicant was appointed arose after 1.4.93, the revised qualification should not be made applicable to the applicant since he is not appointed as a direct recruit, but only by transfer. The applicant had been appointed as EDDA under the old rules under which he was fully qualified.

3. Applicant relies on the decision of the Tribunal in O.A.652/94 to support his first ground of lack of jurisdiction. It is not in dispute that under the rules governing EDDAs, the appointing authority is the second respondent. Respondents 1&2 have contended that the first respondent is the highest in the hierarchy of officers in the region in which the second respondent is the appointing authority. As such, he(the first respondent) has powers of control and supervision over the "entire affairs in the region" and has all the powers which the subordinates have without which such supervision and control would be 'redundant'. Respondents 1&2 also cite R1(A) letter dated 16.12.94 issued by the Government of India, Ministry of Communications, Department of Posts, to support the contention that first respondent is expected to take immediate action to rectify irregular appointments made by the appointing authority in cases of EDDAs. According to respondents 1&2, the decision of the Tribunal in O.A.652/94 does not apply to this case since there, the Tribunal had only observed that the discretionary powers of the authority were exercised in a misguided manner and that is not the case here. The third respondent in his reply has stated that according to Rule 16 of the Posts & Telegraphs Extra Departmental Agents (Conduct and Service) Rules, the Post Master General of the region may call for the records of any enquiry and review any order and that power of such review is not confined to disciplinary cases alone.

4. We are unable to agree with the argument that Rule 16 extends beyond disciplinary cases. A plain reading of Rule 16 clearly shows that it refers only to enquiry or

disciplinary proceedings and not to administrative orders such as appointment orders. Even the letter R.1(A) on which respondents 1 and 2 rely clearly states:

"You are, therefore, requested to ensure that the instructions issued by this office from time to time governing appointments to ED posts are strictly complied with by all the appointing authorities concerned. If it is found that the same have been violated deterrant action may be taken against the officers responsible for the same. It may also be ensured that such irregular appointments are not allowed to continue for long period, and immediate action is taken to rectify the irregularity."

(emphasis added)

Thus what is envisaged in the above order is that action should be taken against the officers responsible for the irregularity and also to rectify the irregularity, but it is not envisaged that the Chief Postmaster General or the Postmaster General himself can pass orders superseding the orders passed by a statutory appointing authority. In O.A.882/94 and O.A.652/94 the Tribunal stated:

"An opinion different from that of the appointing authority, entertained by the Postmaster General (who has no statutory authority in the matter) is no ground in law to overturn an appointment."

(emphasis added)

Applicant has also stated two decisions in support of this contention regarding jurisdiction. In Anirudhsinhji Karansinhji Jadeja and another Vs State of Gujarat, JT 1995(6) SC, 146 a three judge bench of the Supreme Court, which included AM Ahmadi, Chief Justice of India stated:

"This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A(1) was not exercised by the DSP at all.

12. Reference may be made in this connection to Commissioner of Police V Gordhandas Bhanji, 1952 SCR 135, in which the action of Commissioner of Police in cancelling the permission granted to the respondent for construction of cinema in Greater Bombay at the behest of the State Government was not upheld, as the concerned rules had conferred this power on the Commissioner, because of which it was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass.

13. It has been stated by Wade and Forsyth in 'Administrative Law', 7th Edition at pages 358 and 359 under the heading 'SURRENDER, ABDICATION, DICTATION' and sub-heading "Power in the wrong hands" as below:

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The power authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who made them.."

"Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise.."

(emphasis added)

In State of Gujarat & another Vs M/s Krishna Cinema and others,
AIR 1971 SC 1650, at page 1653, the Supreme Court stated:

"It was urged on behalf of the State Government that under R.5(2) in Ch.II the State Government has absolute discretion to grant permission for the issue of a "no objection certificate" to the applicant. Under the act the District Magistrate and not the State Government is the Licensing Authority. Granting that the State Government may validly control the exercise of power by the Licensing Authority - on that question we express no opinion - the

State Government cannot rely upon the Rules to assume to itself the jurisdiction of the Licensing Authority to issue the license.
Power to control the Licensing Authority under S.5 is not the power to supplant the Licensing Authority."

(emphasis added)

In this case it is not in dispute that the appointing authority is the second respondent. The impugned order issued by the first respondent who is not the statutory authority states:

"..I direct that Shri EK Vijayan be appointed to the post of EDDA.."

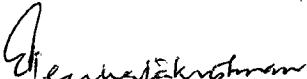
(emphasis added)

It is clear in the light of the settled law that higher authority cannot usurp the powers of the statutory authority which might be lower in the administrative hierarchy. Power under the statutes or statutory rules can be exercised by an authority only if it is conferred on him by the statute or statutory rule. Powers of administrative supervision available to the higher levels of administration do not by implication confer on such higher levels the statutory power which is exercisable by lower levels. Nothing prevented the legislature from conferring the powers of the appointing authority on the 1st respondent instead of the 2nd respondent, if, as R1(A) implies, the powers of appointment are not being properly exercised at the level of the 2nd respondent or from conferring revisional or review powers by appropriate rules in this behalf on an authority higher than the 2nd respondent. The impugned order is without jurisdiction and on that ground cannot be sustained, and is accordingly quashed.

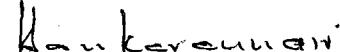
5. Since we are quashing the impugned order on the ground of lack of jurisdiction, we do not consider it necessary to go into the validity or otherwise of the other grounds raised by the applicant.

6. Application is allowed as aforesaid. No costs.

Dated the 11th March, 1996.


PV VENKATAKRISHNAN

ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN