

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No. 189/99

Tuesday, this the 25th day of September, 2001.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER  
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.J. Philomina, W/o P.T. George,  
Extra Departmental Packer,  
Mulavukad Post Office.  
Residing at Puthukudy House,  
Ponnarimangalam,  
Mulavukad P.O.

Applicant

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. The Assistant Superintendent of Post Offices,  
Ernakulam Sub Division.
2. The Senior Superintendent of Post Offices,  
Ernakulam Division.
3. The Postmaster General,  
Central Region, Kochi.
4. The Chief Postmaster General,  
Kerala Circle, Trivandrum.
5. Union of India represented by  
the Secretary to the Government of India,  
Ministry of Communications,  
New Delhi.

Respondents

By Advocate Ms S. Chithra, ACGSC

The application having been heard on 25.9.2001, the  
Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER


Applicant seeks to quash A-1 and to direct the  
respondents to allow her to continue in service as ED Packer,  
Mulavukad.

2. Applicant was working as a Part-time Sweeper in the  
Mulavukad Post Office with effect from 1986. She was  
subsequently appointed on regular basis as ED Packer, Mulavukad  
with effect from 8.3.97 as per A-3. She is served with A-1

order terminating her services with effect from the date of expiry of one month from the date of service of the order. There is no reason warranting termination of her services under Rule 6 of ED Agents (Conduct & Service) Rules, 1964. There is no infirmity in her appointment as ED Packer.

3. Respondents resist the O.A. contending that the applicant was regularly appointed as ED Packer, Mulavukad, by the recruiting authority i.e., the first respondent in an arbitrary manner violating the rules on the subject. Termination notice was issued, as selection of the applicant was irregular in terms of R1(a). Higher authorities are vested with powers to review appointment made by subordinate authorities and to pass appropriate orders in case of irregular selection as per R1(b).

4. A-1, the impugned order, dated 1.2.99 is issued under Rule 6 of ED Agents (Conduct & Service) Rules, 1964. Respondents in the reply statement specifically say that A-1 was issued in terms of R1(a). R1(a) is dated 1.1.99. It says that in accordance with the provisions contained in DG(P) letter No. 19-23/97-ED & TRG dated 13.11.97, the Senior Superintendent has reviewed the selection file of EDP, Mulavukad in which the applicant was appointed by the Assistant Superintendent of Post Offices, Ernakulam Sub Division with effect from 8.3.97. The letter of DG(P) dated 13.11.97 relied on in R1(a) is R1(b). R1(b) says that in regard to appointment made in contravention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules, instructions whether statutory or administrative/executive as otherwise, it would amount to



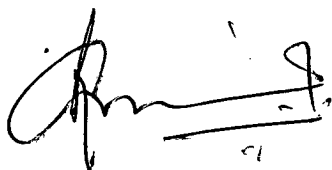
perpetuation of the mistake and would be detrimental to the larger interests of Government, and in these cases the principles of natural justice should be complied with by giving a show cause notice and opportunity to be heard before passing any order adversely. It further says that there is no need to invoke ED Agents (Conduct & Service) Rules while passing final orders in such cases.

5. In R1(a) it is stated that ASP, Ernakulam Sub Division as the competent appointing authority in the case is directed to terminate the said irregular appointment of the applicant, after serving a show cause notice and after observing all prerequisites for termination. R1(a) is based on R1(b). R1(b) stipulates of issuing a show cause notice to the party concerned in compliance of the principles of natural justice. In such case, there cannot be a direction in R1(a) terminating the irregular appointment by serving a show cause notice, since serving a show cause notice in such case is nothing, but a an empty formality. It appears that R1(a) has been issued by the second respondent without understanding R1(b) and A-1 has been issued by the first respondent without understanding R1(a) and R1(b). When R1(b) specifically says there is no need to invoke ED Agents (Conduct & Service) Rules, while passing final orders in such cases, the first respondent for reason best known to him has issued A-1 under Rule 6 of ED Agents (Conduct & Service Rules, 1964. It is suffice to say that it has been done in a wrong way. As such, A-1 is not sustainable.

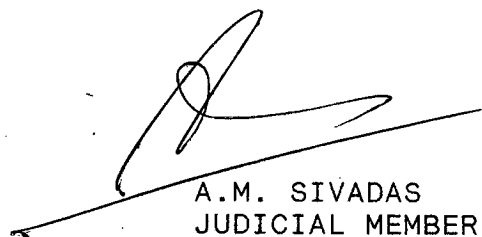
6. Accordingly, A-1 is quashed. We make it clear that

this will not stand in the way of the respondents from taking any proceedings against the applicant, in accordance with law.

7. O.A. is disposed of as aforesaid. No costs.



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

P.

APPENDIX

1. Annexure A1: Copy of the Memo dated 1.2.99 No.EDP/Mulavukadu, issued by the 1st respondent.
2. Annexure A2: Copy of the representation dated 7.2.97 submitted by the applicant to the 1st respondent. (alongwith its English Translation).
3. Annexure A3: Copy of the Order of Appointment dated 6.3.97 No.EDP/Mulavukadu issued by the 1st respondent.
4. Annexure A4: Copy of the representation dated 12.2.99 submitted by the applicant to the 1st respondent.
5. Annexure R1(a): True copy of the Memo No.B-5/Rew at Kochi-11 dated 1.1.1999.
6. Annexure R1(b): Copy of the order No.19-23/97-ED & TRG dated 13.11.1997 of Director General of post.

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