

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~T. A. No.~~

197/92

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DATE OF DECISION

13/7/92

V.K.Sabu

Applicant (s)

Mr.M.R.Rajendran Nair

Advocate for the Applicant (s)

Versus

Asst. Supdt. of Post

Respondent (s)

Offices, Changanacherry Sub Division
and another.

Mr. A.A.Abul Hassan

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

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

1. Whether Reporters of local papers may be allowed to see the Judgement? **No**
2. To be referred to the Reporter or not? **No**
3. Whether their Lordships wish to see the fair copy of the Judgement? **No**
4. To be circulated to all Benches of the Tribunal? **No** **W**

JUDGEMENT

P.S.Habeeb Mohamed, AM

In this O.A. Shri V.K.Sabu, EDDA, Vakathanam, has
challenged the orders issued by the first respondent in
(Annexure-I)
Memo No.DA/SO/21 dated 20.1.92/which reads as follows:

"Notice is hereby given to Shri V.K.Sabu, EDDA,
Vakathanam that his services shall stand terminated with
effect from the date of expiry of a period of one month
from the date of delivery of this notice, or as the case
may be, tendered to him, since the selection was found
irregular on review by higher authority."

2. He has prayed for the issue of directions by the
Tribunal quashing the aforesaid Annexure-I and declaring
that he is entitled to be continued in service as EDDA,
Vakathanam; he has also prayed for other incidental
reliefs.

3. The facts as stated in the application are that the applicant is a member of the Scheduled Caste community; has been working as EDDA from 17.3.90 in the vacancy left by one Shri U.M.Raju, ^{and} was also selected and appointed by ^{of the 1st respondent} the order No. DA/SO/21 dated 1.9.90 (Ann.II)/which reads as follows:

"Shri Sabu V.K. son of Shri Kuttan, Valiaparampil, Vakathanam is hereby appointed as EDDA, Vakathanam with effect from 1.9.90 forenoon. He shall be paid such allowances as admissible from time to time.

2. Shri Sabu V.K. should clearly understand that his employment as EDDA, Vakathanam shall be in the nature of a contract liable to be terminated by him or the undersigned notifying the other in writing and that his conduct and service shall also be governed by the P&T E.D. Agents (Conduct and Service) Rules, 1964 as amended from time to time."

He states that he is not aware of any ^{alleged} irregularity as stated in the impugned order (Annexure-I) and the finding had been arrived at by the departmental authorities without giving him an opportunity of being heard. Being aggrieved, he has filed this O.A. with the prayers as mentioned earlier.

4. By the orders on interim relief, issued by the Tribunal on 6.2.92, the applicant is still in service.

5. The stand of the respondents in the reply is that the applicant was first working as a substitute EDDA in place of one Raju who submitted his resignation from the post on 18.4.90. The first respondent requested the local Employment Exchange for a list of ^{names} ~~nomination~~s. Though the Employment Officer informed him that it could be submitted

within a few days after the stipulated period of 30 days, the first respondent called for direct applications, on which certain persons had applied. Taking into account the list sent by the Employment Officer as well as the direct applications called for by the first respondent, a selection was made and the applicant had been appointed. But during a vigilance check by the Director of Postal Services, certain irregularities were noticed, which are listed in the reply, and an order was given at the appropriate level that the selection of the candidate, not sponsored by the Employment Exchange, should be cancelled and the impugned orders have been issued in pursuance of this direction of the Director of Postal Services, P.M.G.

6. The impugned order is sought to be sustained on the grounds--

(i) That the order has been made at the instance of the P.M.G. and the superior officer has the right to correct the action or decision of his subordinate officer. In this connection, the respondents have referred to Rule 16 of the E.D.A (Conduct and Service) Rules, which reads as follows:

"16. Review of Orders:

Notwithstanding anything contained in these rules,

- (i) the Central Government, or
- (ii) the Head of the Circle, or
- (iii) an authority immediately superior to the authority passing the orders,

may at any time, either on its own motion or otherwise, call for records of any enquiry or

disciplinary case and review any order made under these rules, reopen the case and after making such enquiry as it considers necessary, may

(a) confirm, modify or set aside the order,

or

(b) pass such orders as it deems fit:"

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It is also stated that even the very terms of appointment of the applicant vide Annexure-II gave the power to the appointing authority to terminate the services at appropriate time.

7. There is a rejoinder filed by the applicant.

8. We have also heard the learned counsel on either side who relied on the respective stands taken in the application and the reply.

9. We find after perusal of the papers and after hearing the counsel on either side that the impugned order cannot be sustained for the following reasons:

(i) Though Rule 16 of the EDA (Conduct and Service) Rules has been ^{invoked} ~~evoked~~, there has been no examination of the point whether this Rule in the context in which it appears is meant for only a review of orders in disciplinary cases or meant for even orders of appointment by the competent authority.

(ii) The applicant was working in the post of EDDA from 17.3.90 as a substitute in place of U.M.Raju and thereafter as a provisional EDDA from 1.9.90 upto the date of his proposed termination ^{his} (this continuance in the

post has been as a result of the stay orders issued by the Tribunal). Since he has continued by virtue of the orders of appointment vide Ann.II for a period of 4 months in the year 1990 and throughout the year in ¹⁹⁹¹~~1990-91~~, ^b it ^{should} ~~could~~ have been examined whether ^{his} ~~the~~ services should be terminated as he is obviously a workman under the Industrial Disputes Act in terms of the decisions of this Tribunal in R.Padmanabhan Nair v. Supdt. of Post Offices & Another (to which one of us, Shri N.Dharmadan, was a party) [ATR 1990(1)CAT 215-221] and also the decision of this Tribunal in P.N.Valsamma V. Senior Supdt. of Post Offices and Others (to which also one of us, Shri N.Dharmadan, was a party) [ATR 1990(1) CAT 224-227].

(iii) Whatever be the reasons for the proposed termination, the principles of natural justice required that notice should have been given to the party, indicating the nature of irregularity said to have been committed by the appointing authority, which was sought to be corrected on review and the applicant should have been given a full opportunity to explain his stand with reference to the proposed termination. A mere specifying in the impugned order that his services shall stand terminated after the expiry of one month cannot be considered to be a proper notice as required under the principles of natural justice, since the impugned order ^{seems} ~~seems~~ to foreclose the issue of the alleged irregularity in his appointment about which no

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details are given, ⁱⁿ the impugned order,
^{in the counter}

(iv) There is no reference to Rule 6 of the EDA

(Conduct and Service) Rules, which reads as follows:

"6. Termination of Services:

The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice."

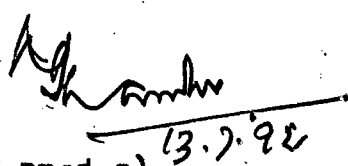
If the termination is sought to be justified on the basis of this rule, in that case, this rule cannot be invoked in terms of the Kerala High Court's decision in P.V. Madhavan Nambiar and another Vs. D.V. Radha Krishnan [1990 (1) SLR 757] which clearly states that Rule 6 cannot be invoked for curing an irregularity in the appointment, but it can be invoked on any administrative ground which has come into existence after the appointment. This decision has been followed by the C.A.T. Patna Bench in Vikram Kumar Vs. Union of India and others and Ashok Kumar Yadav Vs. Union of India and others [1990 (14) ATC 367 - to which one of us, P.S. Habeeb Mohd. was a party]. However, on this last point about any possible use of Rule 6, we are not giving any specific finding, in that, there is no reference to Rule 6 in the reply.

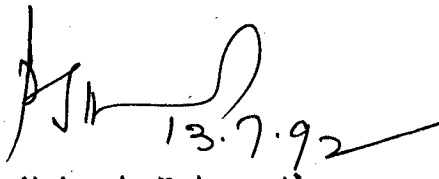
10. The ^{impugned} order is unsustainable on the above grounds.

In the circumstances, we do not see any reason to sustain the impugned order which is accordingly quashed. The

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applicant will have ^{1/2} a right to continue in service till
any other action is proposed, to be taken in respect of the
applicant in accordance with law. There will be no
order as to costs.


(N. Dharmadan)
Judicial Member


(P. S. Habeeb Mohamed)
Administrative Member