

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. NO. 1758/98 and O.A. NO 214/99.

Tuesday this the 31st day of August, 1999.

CORAM:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. 1758/98.

R.P. Sreedharan,
Working as E.D.M.C.,
Nediyanga, Sreekantapuram,
Kannur District, residing at:
Ramapuram, Parakkunnu P.O.,
(Via) M.M. Bazar, Kannur District-
670 306. Applicant

(By Advocate Shri M.R. Rajendran Nair)

Vs.

1. The Sub Divisional Inspector (Postal)
Thaliparambu Sub Division,
Thaliparambu. Respondents
2. The Superintendent of Post Offices,
Kannur. Respondents

(By Advocate Shri P.M.M. Najeeb Khan, ACGSC)

O.A. 214/99.

C. Sadanandan,
Chemmaroth House,
Kottoor, Srikandapuram P.O.,
Kannur District. Applicant

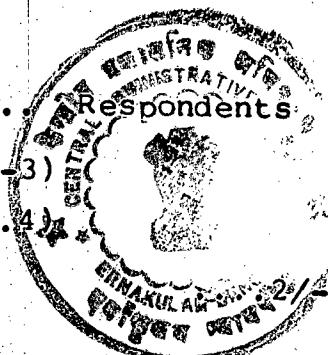
(By Advocate Shri O.V. Radhakrishnan)

Vs.

1. Sub Divisional Inspector of post
Offices, Thaliparamba Sub Division,
Thaliparamba.
2. Superintendent of Post Offices,
Kannur Division, Kannur.
3. P.M.G. (Northern Region),
Calicut-673 011.
4. K.P. Sreedharan,
Extra Departmental Mail Carrier,
Nediyanga, Sreekandapuram,
Kannur District, Residing at:
Ramapuram, Parakkunnu P.O.,
(Via) M.M. Bazar,
Kannur District.

(By Advocate Mrs. S. Chitra, ACGSC (for R.1-3)

(By Advocate Mr. M.R. Rajendran Nair (For R.4))



These applications are having been heard on 31st August, 1999, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

These two applications are being heard together as the facts and question of law involved are identical. In O.A. 1758/98 the applicant has impugned the show cause notice dated 18.11.98 proposing to terminate the services of the applicant as Extra Departmental Mail Carrier (EDMC for short), Nediyanga P.O., alleging that he filed a false declaration dated 25.6.98. In O.A. 214/99, the applicant who was one of the candidates along with the applicant in O.A. 1758/98 for selection and appointment to the post of EDMC, Nediyanga P.O., has challenged the selection and appointment of the applicant in O.A. 1758/98. The facts in brief are as follows:-

2. Being nominated by the Employment Exchange on the basis of a requisition made by the Sub Divisional Inspector (SDI for short), Postal, Thaliparambu Sub Division, the applicant, Sri R.P. Sreedharan in O.A. 1758/98 was called for an interview on 25.6.98 for selection to the post of EDMC, Nediyanga P.O. Sri. Sadanandan-the applicant in O.A. 214/99, was a candidate who had applied direct and was directed to be considered by the orders of the Tribunal in O.A. 918/98 (A-2). At the time of interview, as the SDI told Sri. R.P. Sreedharan that he had to relinquish the Life Insurance Corporation (LIC for short) agency for being eligible for appointment as an ED Agent, he immediately gave a letter to the SDI relinquishing his LIC agency with immediate effect. On the next date i.e. on 26.6.98, he submitted a letter to the Branch Manager, LIC at Payyannur, stating that as he has been considered for appointment as EDMC and has been advised that 'one cannot simultaneously function as an LIC agent as also an EDMC, he is relinquishing the agency with effect from 25.6.98. Sri. R.P. Sreedharan was found more meritorious than any other among the eligible candidates,

was selected and appointed as EDMC with effect from 19.8.98 (By A2 order in O.A. 1758/98). While Sri Sreedharan was functioning as EDMC, he was served with the impugned order in O.A. 1758/98 dated 18.11.98(A-1), wherein it was stated that the applicant had in column 12 of the application form, suppressed the material facts that he was holding the LIC agency, that he had thereafter, made a declaration that he has relinquished the agency with effect from 25.6.98, that it had come to the notice of the first respondent on a reference to the Branch Manager of the LIC that applicant's agency was current and in force, that, therefore, the applicant being guilty of suppression of material facts, he was called upon to show cause why his services should not be terminated. The applicant pursuant to the above notice, submitted an explanation dated 19.12.98 that he did not suppress any material facts/information that as LIC agency was not considered as a post, he did not know that it had to be mentioned in Column 12 of the application form, that on the very date on which he was interviewed viz., 25.6.98 he had disclosed to the SDI that he was a holder of LIC agency, that the SDI had advised him that he has to relinquish the agency which was accepted and acted upon by the applicant by sending his letter of relinquishment to the Branch Manager, LIC that it was only subsequent to 25.6.98 that he had filled up the application form that, being an LIC agent, cannot be treated as disqualification for being considered for appointment as EDMC and that in any case as he was not guilty of suppression of material facts, the proposed action to terminate the services of the applicant was unjustified.

3. Apprehending that the respondents would, without considering the representation in the proper perspective, terminate the services of the applicant, the applicant has filed O.A. 1758/98 seeking to have the impugned show cause notice A-1 set aside and for a direction to the respondents to allow the applicant to continue in service as EDMC, Nediyanga p.o.



4. The applicant in O.A. 214/99 who was one of the candidates who had also considered for selection as EDMC at the interview held on 25.6.99, has challenged the appointment of the applicant in O.A. 1758/98 on two grounds. (1) That as Sri. Sreedharan the applicant in O.A. 1758/98 had a current agency on the LIC, he was not entitled to be considered as a candidate according to the instructions issued by the DG(Posts), and (2) that Shri. K.P. Sreedharan made a false statement of residence in the locality and has produced a false certificate of residence from the Tahsildar in this regard and that therefore, his appointment is illegal.

5. The respondents 1 & 2 in O.A. 1758/98 filed a reply statement raising the following contentions. As the final decision on the show cause notice is yet to be taken, there is no cause of action for the applicant to approach the Tribunal. As according to the instructions of the Director General of Posts in his letter dated 20.11.95 (Annexure R-4) 'An agent of Life Insurance Corporation is not eligible to be appointed as an ED Agent'. The applicant had suppressed the fact that he was an agent of LIC though he had submitted a letter to SDI that he had relinquished the LIC agency from 25.6.98 (Annexure R-1), he had sent the relinquishment letter (Annexure A-3) only on 26.6.98. The Branch Manager LIC had in his letter dated 31.8.98 informed the SDI that the applicant's agency was in force on that date and had later informed that the last policy registered on the proposal by the applicant was on 8.7.98. The applicant, therefore, having suppressed material facts and as he was irregularly selected and appointed at the behest of the second respondent, who being the authority higher than the first respondent, the first respondent has issued the show cause notice. The second ^{is in law} respondent is entitled to review the orders of appointment made irregularly. As this impugned show cause notice has been issued to set right an irregularity the same is perfectly justified and the application deserves to be dismissed.

6. The applicant in his rejoinder has stated that the LIC agency is not considered as an employment under the Corporation as the LIC has got its own separate rules regulating the services of its employees and the agents.

7. We have heard the learned counsel of the applicant in both the cases and also Ms. Sheljam on behalf of Additional Central Government Standing Counsel appearing in O.A. 1758/98 and also Mrs. Chitra, Additional Central Government Standing Counsel appearing for respondents in O.A. 214/99. The short question that calls for answer in both these cases is whether the appointment of the applicant, Shri R.P. Sreedharan in O.A. 1758/98 is vitiated or illegal for the reason that his LIC agency was current on the date of selection and whether he could be held guilty of suppression of material facts in his application submitted to the SDI thereby vitiating the process of selection. We will first consider whether Shri R.P. Sreedharan was guilty of suppression of any material facts. We have, before us, the proforma for the application to be submitted by the candidates for selection to the post of EDMC. Column 12 (R-6 A in O.A. 1758/98) of this proforma reads thus:

"Are you holding or have held (at any time) an appointment under the Central or State Government or Quasi-Government or Autonomous body or a private firm or institution. If so, give full particulars with date and reasons for termination of employment."

It is alleged by the respondents in the show cause notice and as admitted by the applicant that as against this column, he did not mention that he was working as LIC agent. Learned counsel of the applicant in O.A. 214/99 and ACGSC appearing for R. 1 & 2 in O.A. 1758/98 would strenuously contend that this would amount to suppression of material facts and therefore, the action of the respondents in issuing the show cause notice to the applicant is perfectly in order.



8. To say that the applicant was guilty of suppression of material facts it should first be held that the applicant was holding an appointment under the Central Government, State Government or autonomous body, or corporation or a private firm. Can the LIC agency be treated as an appointment? Referring to Regulation-17 of the L.I.C. of India (Agents) Regulations-1972 which reads as follows:

" 17.(1) The appointment of an agent may be terminated by the competent authority at any time by giving him 1 month's notice thereof in writing.

(2) An agent may, by giving one month's notice in writing to the competent authority, discontinue his agency and after the expiry of the period of one month his agency shall stand terminated."

The learned counsel of the respondents in O.A1758/98 argued that in the light of the word "appointment" made in the regulation it is idle to contend that the agency was not an appointment and that therefore, it is evident that omission to mention that the applicant was holding appointment as LIC agent amounted to suppression of material facts, we do not agree. The word "appointment" is used in Regulation 17 in the same sense as appointment of a representative or an authorised agent or of an advocate. By such appointment, a master and servant relation is not created. What is created is a relationship of Principal and Agent. An appointment, generally in service law is understood as an appointment to a post. An LIC agent not being a holder of a post, we are of the considered view that the applicant cannot be said to be guilty of suppression of material facts. If the applicant had understood by reading column 12 that he need mention only if he was holding or had held a post, he cannot be faulted for that.

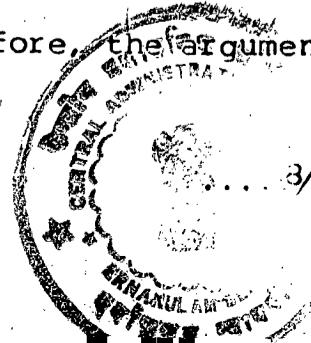
9. Now, the learned counsel of the respondents argued that Annexure R-4 instructions issued by the Director General of Posts

dated 20.11.95 stipulates that a person who has been working as



an LIC Agent would be eligible to be considered for selection as ED Agent only if he had relinquished the agency of LIC before the crucial date prescribed for the receipt of the application and therefore, so long as this instruction has not been challenged by the applicant, the same is in force and therefore the selection and appointment of the applicant being against the administrative instructions which has got the force of law, in the absence of statutory rules, the appointment has to be held as illegal and unsustainable. This argument at the first blush may appear to have considerable force but we are of the considered view that this would not stand ^{on} a closer scrutiny. This instruction issued by the Director General of Posts has not been made known to the intending candidates either by means of a notification or incorporating in the requisition made to the Employment Exchange ^{the} for the intending candidates to challenge/vires thereof. Further, it looks highly unreasonable to require a candidate to relinquish the LIC agency before he applies for appointment to the post because, in the event of his not being selected he would loose even the LIC agency.

10. If there would be any conflict of interest between the function of an ED Agent and that of an LIC Agent it may be probably justified to call upon the ED Agent to cease to function as an LIC Agent if he wishes to continue as ED Agent; but to stipulate that a person who has not relinquished the LIC Agency shall not be considered for selection for appointment to ED posts will not stand the test of reasonableness and would be opposed to articles 14 and 16 of the Constitution of India. While there is no embargo in a person holding a Civil Post to apply for selection and appointment as an ED Agent for it is evident from column 12 that holding a post is not a disqualification, it does not stand to reason that a person who is functioning as LIC Agent cannot even apply for selection and appointment to a post of ED Agent. Therefore, the argument



against the selection and appointment of the applicant on the ground that on a crucial date his agency was current has no force at all.

11. The applicant had stated in the O.A. that as the first respondent had advised that he might relinquish the LIC agency if he was to be appointed as ED Agent he had written to the Branch Manager that he was relinquishing the agency with effect from 25.6.98 with a copy to the first respondent.

12. That the applicant has relinquished the LIC agency is not in dispute and has been got verified by the first respondent also as is seen from Annexure R-1. It is contended that the agency of the applicant was current even on 8.7.98 but there is nothing on record to show that the applicant had after 25.6.98 functioned as LIC agent or canvassed any proposal after that date. In any case the applicant has been appointed only on 19.8.98, there is no case that after his appointment he functioned as LIC agent. Since the applicant has relinquished the LIC agency on the first respondent's advising him to do so, the action on the part of first respondent to take action to terminate his services for the reason that he was an LIC agent, is barred by the principles of promissory estoppel. The first respondent has issued the show cause notice at the "behest" of the second respondent (as claimed in the reply statement), the first respondent should have applied his mind to this aspect of the case.

13. The second ground canvassed by the applicant in O.A. 214/99 against the appointment of the applicant in O.A. 1758/98 is that he had produced a false certificate of residence from Tahsildar which was cancelled and that this fact is evident from A-5 in O.A. 214/99. We do not find any force at all in this argument for there is no requirement for EDMC to be a resident of the locality where the Post Office is situate. Secondly, even if the Tahsildar has stated in A-5 that the applicant was not a tenant of a particular premises it has been stated that he was a co-resident alongwith a resident on temporary basis.

14. Learned counsel of the respondents in O.A. 1758/98 argued that it has been held by the Hon'ble Supreme Court in State of Uttar Pradesh Vs. Shri Brahm Datt Sharma and another (AIR 1987 SC 943) that ordinarily a writ petition challenging a show cause notice would not be entertained as the person can challenge the order passed by the Government after considering the explanation and that therefore following the above dictum the application deserves to be dismissed. The facts of the case on hand and the case under citation have no comparison. In the case before the Apex Court the subject matter was withholding of pension. In this case the applicant approached this Tribunal to avert an impending termination from service. If the respondents as proposed would terminate the services of the applicant, the applicant would have to remain unemployed and fight the litigation, even his LIC agency having been terminated. Under these circumstances the application can be entertained even though it is against a show cause notice.

15. In the light of the above discussions we find that the action taken by the respondents in O.A. 1758/98 to terminate the services of the applicant by issuing show cause notice is unsustainable and unwarranted as the appointment of the applicant as EDMC, Nediyanga P.O. was perfectly legal and sustainable.

16. In the result, O.A. 1758/98 is allowed. The impugned order A-1 is set aside and O.A. 214/99/ dismissed. Parties are directed to bear their own respective costs.

Dated the 31st August, 1999.

Sd/-
G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Sd/-
A.V. HARIDASAN
VICE CHAIRMAN

rv



List of Annexures referred to in the order:

Annexure A-1 : True copy of the show cause notice dated 18.11.98 No. MC/BO - 64 dated 18.11.98 issued by the Ist respondent (O.A.1758/98)

Annexure A-2 : True copy of the letter of appointment dated 19.8.98 No. MC. BO.60/98 issued by the Ist respondent. (O.A.1758/98)

Annexure A-3 : True copy of the Relinquishment letter dated 26.6.98 submitted by the applicant to the Branch Manager, LIC of India, Payyannur Branch. (Alongwith its English translation) (O.A.1758/98)

Annexure R-4 : True copy of the letter dated 20.11.95 issued by the Director General department of Posts, New Delhi. (O.A.1758/98)

Annexure R-1 : True copy of the declaration dated 25.6.98 filed by the Petitioner to the respondent. (O.A.1758/98)

Annexure R-6(a): True copy of the Application format. O.A.1758/98

Annexure A5 : True copy of the proceedings Ref. No. A3-9634/98 dated 29.8.1998 of the Tahsildar, Thalipparamba. (O.A. 214/99)

CERTIFIED TRUE COPY

Date 14.9.99

Deputy Registrar

