

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 224/90 199
~~KAXXX~~

DATE OF DECISION 31.7.1990

B Kasthuri Bai Amma Applicant (s)

M/s MR Rajendran Nair & Advocate for the Applicant (s)
Rajagopal TR

Versus

~~Union of India rep. by Secy.,~~ Respondent (s)
Min. of Comms., New Delhi & 3 others

Mr.TPM Ibrahim Khan (For R1-3) Advocate for the Respondent (s)
Mr.PK Ramakrishnan (For R.4)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

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


JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under section 19 of the Administrative Tribunals Act, the applicant who has been working as E.D.S.P.M on a provisional basis has prayed that the termination of her services w.e.f. 20.1.90 may be declared as null and void, that the selection of the 4th respondent to the post of EDSPPM, Kunthirickal may be declared as illegal, that the Rule 6 of the E.D.Agent (Conduct and Service) Rules is unconstitutional and that it may be declared that she is entitled to the preference under Section 25 H of the Industrial Disputes Act ^{for appointment in a post} ~~The facts~~ of the case as averred in the application can be briefly stated as follows:

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2. The applicant was provisionally appointed as Extra Departmental Sub Post Master (EDSPM), Kunthirickal u.s.p. 11.12.1987 for a period of 90 days by the order dated 18.1.1988. Thereafter by various orders the provisional appointment was extended of and on and the last order was dated 2.2.1989 appointing her as EDSPM from 3.9.1988 to 30.11.1988 and from 1.12.1988 to 27.2.1989. Thereafter without any further orders the applicant continued to work as EDSPM, Kunthirickal. While the applicant was continuously working as EDSPM, Kunthirickal the department took steps to fill up the vacancy regularly and an interview was held for that purpose on 14.3.1988. The applicant was not considered for regular appointment in that vacancy, though the 4th respondent who was not a resident within the delivery jurisdiction of the branch post office and was otherwise employed in Melaparambil Agencies, Kodyadi was selected for appointment. The selection was challenged by Smt.E.S.Rajalakshmi before this Tribunal in an application. Thereafter, the respondents 2 and 3 initiated fresh process for regular recruitment. The applicant also submitted an application for the post of EDSPM on 25.1.1990 mentioning her previous experience as EDSPM, Kunthirickal from 10.10.1987 to 20.1.1990. The applicant was not considered ^{after} giving ^{^h} weightage to her past experience as per rules and the 4th respondent stand selected, eventhough he is not a resident within the delivery area of the post Office. While the process of selection was in progress.....3/-



the services of the applicant were terminated without any order and she was made to hand over charge on 20.1.1990.

The services of the applicant who had been continuously working for more than 2 years, without giving her notice and compensation as required under Section 25 F of the Industrial Disputes Act is illegal and void. Aggrieved by the termination of her services and also by her non-selection, the applicant has filed this application.

3. The second respondent has filed a reply statement on behalf of the respondents 1 to 3 and the 4th respondent has filed separate reply statement. That the applicant has been provisionally working as EDSPM, Kunthirickal from 11.12.1987 till she was discharged on 20.1.1990 is admitted. It is contended that the department of Post is not an industry, that the ED Agents are covered by Rules specifically framed in that regard, that the Industrial Disputes Act is not applicable and that, therefore, the applicant is not entitled to seek protection under Chapter 5-A of the Industrial Disputes Act. It is thus contended that as the termination of her services which was only a provisional one was quite ^{in order} *La* the applicant is not entitled to any relief as claimed.

The selection of the 4th respondent has been sought to be justified on the ground that he was the best among the candidates interviewed on 9.3.1990 and that he had satisfied all the eligibility criteria including the residential qualification. The claim of the applicant for preference

on the ground of her provisional service has been disputed.

4. We have heard the arguments of the learned counsel on either side and have also perused the documents produced. The respondents have admitted that the applicant has been continuously working on a provisional basis as EDSPM from 11.2.1987 to 20.1.1990 on which date her services were terminated without notice ^{and without} ~~1~~ ² paying her any compensation. In a number of cases this Tribunal has been consistently holding that ED Agents of the Postal department are entitled to the benefit of Chapter 5-A of the Industrial Disputes Act. In the decision in OA 42/89 to which one of us (Hon'ble S.P. Mukerji, Vice Chairman) is a party and in OA 483 and 485/89 this Bench had already held that ED Agents are entitled to the benefit of Section 25-F ^{such other} ~~and~~ ² protection of Chapter 5-A of the Industrial Disputes Act, and that the termination of her services without complying with the requirement of Section 25-F is null and void. This principle was accepted by this Bench in OA 49/90 and we have held that the termination of the services of EDSPM who had been in service for more than 240 days without complying with the provisions of Section 25-F of the Industrial Disputes Act was illegal and unjustified and we had directed the department to reinstate the applicant in that case with full backwages. The facts of the case here are also similar. As pointed out earlier ^{that} ~~the~~ ⁴ the applicant has been in continuous service for more than 2 years i.e. from 11.2.1987 to 20.1.1990 is not in dispute. The averment that the applicant was not

given any notice of termination and that no compensation was given to her has also not disputed. Hence as the termination of the services of the applicant in this case on 20.1.1990 is violative of Section 25-F of the Industrial Disputes Act, it has to be held illegal and void.

5. The applicant has challenged the selection of the 4th respondent as EDSM, Kunthirickal. Though it is alleged that the applicant was not considered in the interview held on 9.3.1990 for the post in accordance with the rule, giving due weightage to her past service, it has not been alleged that the applicant was not interviewed. The respondents have in their reply statement contended that the applicant was not entitled to be given any such weightage for her provisional service and that the 4th respondent was selected. Since he was the most meritorious among the candidates interviewed and since he satisfied the eligibility criteria including the residential qualification. It is specifically admitted that the applicant was not interviewed on 14.3.1988 as she was not included in the list sent by the Employment Exchange. So it appears that the applicant was also interviewed on 9.3.1990 and that the 4th respondent was selected being the most meritorious candidate. The applicant has not alleged that she was not interviewed on 9.3.1990. Apart from stating that the 4th respondent did not satisfy the requisite residential qualification, it has not been stated in the application that the applicant is more qualified than the 4th respondent or that she has got more marks in the SSLC

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2

examination than the 4th respondent, which is the most important factor to be considered in making the selection. The respondents have declared in unequivocal terms that the 4th respondent satisfied the residential qualification also. Therefore, we are of the view that the applicant has not been successful in proving that the selection of the 4th respondent is irregular or illegal.


6. The question whether the Rule 6 of the ED Service Rules is legal or not does not really arise for consideration in this case as the service of the applicant was not terminated under this Rule. So we do not go into that question.

7. In the result, the application is allowed in part. The termination of the services of the applicant w.s.f. 20.1.1990 is declared to be illegal and void, and the respondents are directed to reinstate the applicant in service as EDSPM, Kunthirickal forthwith and to pay her the arrears of allowances and all the attendant benefits, from the date of illegal termination of her services. The prayer of the applicant to cancel the selection of the 4th respondent as EDSPM, Kunthirickal is not granted. The respondents will be free ~~xxx~~ to terminate the services of the applicant if such termination is deemed necessary to appoint the 4th respondent. But it should be done only in accordance with law in compliance with the legal requirements of Section 25-F

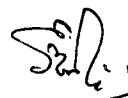
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of the Industrial Disputes Act and the applicant will be entitled to the protection of the various provisions of Chapter-V-A of the Industrial Disputes Act. There is no order as to costs.


31.7.90

(A.V. HARIDASAN)
JUDICIAL MEMBER


31.7.90

(S.P. MUKERJI)
VICE CHAIRMAN

31.7.1990