

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

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

230

1990

DATE OF DECISION 28.6.90

S. Raju Applicant (s)

Mr. G. Sasidharan Advocate for the Applicant (s)  
Chempazhanthiyil  
Versus

S.D.I. (Posts) TVM CSD, TVM Respondent (s)  
and others

Mr. TPM Ibrahim Khan Advocate for the Respondent (s) 1-5  
Mr. G. P. Mohanachandran for R-6

CORAM:

The Hon'ble Mr. N. V. Krishnan, Administrative Member

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

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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

JUDGEMENT

SHRI N. DHARMADAN, JUDICIAL MEMBER

The grievance of the applicant in this application, filed under section 19 of the Administrative Tribunals Act, 1985, is that the first respondent terminated his services as Extra Departmental Delivery Agent-II Mithurmala Sub Post Office under Rule 6 of the P & T E.D. Agents (Conduct & Service) Rules, 1964 and appointed the sixth respondent in his place without affording him sufficient opportunity of being heard.

2. The applicant was regularly selected and appointed as EDDA-II, Mithurmala Sub Post Office by Annexure-I order dated 9.12.1988. Accordingly he joined duty on the afternoon of 10.12.1988. While so the first respondent issued Annexure-III memo dated 1.9.1989 based on complaints submitted by the sixth

respondent who competed with the applicant in the regular selection. The following show cause notice was given to the applicant through the memo:

" enquiries were made which revealed that another candidate who fulfilled all the prescribed condition and who secured higher marks in SSLC than the marks you secured in SSLC was not selected and that your selection and appointment as EDDA II Mithirmala is thus not in order. The undersigned, therefore, proposes to cancel your appointment as EDDA-II Mithurmala S.O. You are therefore given an opportunity to show cause as to why your services as EDDA-II Mithurmala S.O. should not be terminated."

3. The applicant submitted Annexure-IV reply on 4.9.89 stating that the enquiry had been conducted by the Vigilance Wing without giving him any opportunity. There was no irregularity in the selection. The applicant was found to be fully qualified and eligible for appointment and therefore the first respondent selected and appointed him as regular EDDA. He has now put in nine months service and the termination of his service would be illegal. It deprives him of the only means of his livelihood and the income for himself and his aged parents. The impugned order at Annexure-V was passed by the first respondent on the very next day of submitting reply Annexure-IV without giving any further opportunity to substantiate his case. He filed Annexure-IX review before the PMG, Kerala Circle Trivandrum on 10.11.1989. This was also not considered. Hence he filed the present application.

4. The main contention of the applicant is that the termination of his service by the first respondent is illegal because it is based on a belated complaint of a defeated candidate, the sixth respondent, in the regular selection and there is no application of mind by the first respondent, who is related to the sixth respondent. He passed the order after his assumption of the office in November, 1988 only to implement his desire to bring in

5. Entertaining complaints from unsuccessful candidates who competed with the selected candidate in the regular selection and ousting the selected person without establishing grave irregularity in the selection proceedings invariably result in injustice. In the instant case the  
xxx  
xxx the memo Annexure-III was issued after a lapse of about nine months of the regular selection and appointment of the applicant. The only irregularity pointed out in the memo is the non selection of another candidate, the sixth respondent, who fulfilled all the prescribed conditions and secured more marks in the SSIC Examination than the marks secured by the applicant. This is stated to have been unearthed in the Vigilance enquiry conducted on the basis of the complaints of the sixth respondent and others. But no notice was given to the applicant intimating the details contained in the complaints so as to enable him to answer the same. The Vigilance enquiry based on the complaints was also conducted without giving an opportunity to the applicant. After the completion of the vigilance enquiry and the decision thereof to cancel the appointment of the applicant a memo SO/DA/1/11 dated 1.9.89 was issued to the applicant requesting to submit no objections within three days of the receipt of the same. Accordingly he submitted the reply on 4.9.89. The very next day Annexure-V order was passed terminating the service of the applicant.

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reason for the cancellation of the appointment of the applicant was the omission to note the residential qualification of the sixth respondent. The relevant portion in the reply reads as follows:

"The applicant happened to be appointed as the candidature of the sixth respondent was erroneously rejected as not residing within the delivery area of the Post Office. On an enquiry conducted by the Vigilance Wing of the department it was established that the sixth respondent was residing within the delivery area of Mithurmala PostOffice and his letters were delivered by that Post Office."

6. This is a new point and an additional reason set out in the reply. The respondents have no such case in the show cause memo Annexure-III. So the applicant did not get sufficient opportunity to meet this contention before cancellation of his appointment.

7. The learned counsel for the respondents produced for our perusal the files dealing with the selection of the applicant and enquiry conducted by the Vigilance on the complaints. On a perusal of the files it is clear that the applicant was not given any notice before the enquiry and he was denied further opportunity after the memo dated 1.9.89 and his reply to the same dated 4.9.89 even though he had requested opportunity to submit additional explanation and a personal hearing after serving the copies of some documents which were required by him.

8. The applicant also made a request by moving an application to direct the respondents to produce the files BIC/TV(C)/GLN of SSP North Division for proving the case of the applicant that the sixth respondent is residing outside the area of the Post Office and that the SSP North Division rejected the complaint and

gave a reply to the sixth respondent. Though the learned counsel undertook to produce all the files, the above referred files were not produced for our perusal.

9. The applicants also did not get any opportunity to meet the case of the respondents as indicated in the reply statements that the sixth respondent satisfied the residential qualification at the time of selection held on 15.11.88. He has valid ground to meet the same. But we are not examining the same at this stage. Under these circumstances, we are of the view that the impugned order of termination of the applicant is violative of the principles of natural justice.

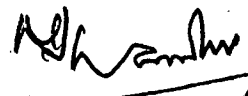
10. In the result, we hold that the impugned order at Annexure-V is unsustainable and it is liable to be quashed. We accordingly quash the order at Annexure-V.

If the respondents 1 to 5 decide to conduct any fresh enquiry into the complaints in accordance with law it shall be commenced within two weeks from the date of the receipt of the copy of this judgment and complete ~~in~~ <sup>by</sup> within two months thereof after giving opportunity of being heard to the applicant as well as the sixth respondent. During the continuance of the enquiry the sixth respondent shall be allowed to continue as a provisional hand subject to the outcome of the enquiry.

The respondents 1 to 5 are free to pass such orders <sup>as may be necessary</sup>

on the outcome of the enquiry depending on the result of the same. If the respondents do not take a decision to conduct a fresh enquiry within the time prescribed above they shall pass consequential orders appointing the applicant as EDDA, Mithurmala SPO as if Annexure-V is not in existence displacing the sixth respondent.

11. In the result the application is allowed to the extent indicated above. There will be no order as to costs.

  
(N. DHARMADAN)  
JUDICIAL MEMBER

28.6.91

  
(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

KMN