

FINAL ORDER
27.4.1989

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED TWENTYSEVENTH DAY OF APRIL
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

&

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

O.A. 238/89

P. G. Vijayan

Applicant

Vs.

1. The Union of India
represented by the Secretary
Communications Department,
New Delhi
2. The Postmaster General of
Kerala, Kerala Circle
Trivandrum
3. Senior Supdt. of Postoffices,
Ernakulam, Cochin-11 and
4. The Sub Post Master (LSG)
Kalamasserry Post Office,
Ernakulam District

Respondents

Mr. Babu Cherukara

Counsel for
applicant

O R D E R

Hon'ble Shri G. Sreedharan Nair

Heard counsel for the applicant.

2. The applicant while working as Extra Departmental Packer at the Kalamasserry Postoffice, was removed from service by the order dated 31.5.1983 under Rule 6

of the P & T Extra Departmental Agents (Conduct & Service) Rules 1964. The very next day, he approached the High Court of Kerala with O.P. No. 4467 of 1983 assailing the said order of termination. On his motion, the High Court passed an order on 25.7.1983 that "he will be taken back in service provisionally, his continuance being subject to the final decision in the O.P." Though that order also directed that the petition be posted after three weeks, it is seen that the matter was pending before the High Court even on 1.11.1985 when this Tribunal was established, and thereafter, as the High Court had no jurisdiction to proceed further with the matter, the O.P. was transferred to this Tribunal. It was heard and finally disposed of by order dated 17.2.1989. The termination of service of the applicant was upheld as the appointment itself was not valid since the applicant was only a 17 year old boy at that time. A week after the passing of the aforesaid order, the fourth respondent has passed the order on 2.3.1989, again terminating the services of the applicant. It is this order that is assailed in the present application.

3. This is a case where the applicant, who was ousted from service, before a final decision was made on the validity of the order of termination, had the advantage of being restored to service, though provisionally by

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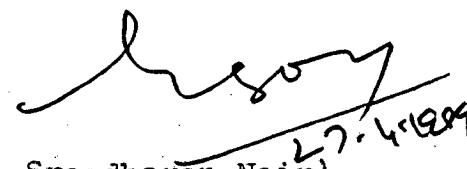
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virtue of the interim order passed by the Court. That order was passed "subject to the final decision in the O.P." As such, when the final decision was passed dismissing the O.P. without any reservation, and holding that the initial appointment of the applicant itself was not valid, certainly the respondents would have been faulted if they did not take prompt steps to terminate the services of the applicant as a result of the final decision in the O.P. Though in the impugned order, it is not stated that the termination is being effected by virtue of the final order on the O.P., it is quite implicit. We do not find any merit in the plea of the applicant that since the respondents did not take any prompt steps to have the O.P. disposed of expeditiously in view of the interim order, ~~the~~ benefit is derived by the applicant so as to enable him to continue in service despite the final disposal of the O.P. dismissing the same. The fact that the applicant chose to make a representation to the third respondent for permission to continue in the post, does not at all stand in the way of the fourth respondent, the appointing authority in terminating the service of the applicant in deference to the final order in the O.P.

4. The application is rejected.



(N. V. Krishnan)
Administrative Member
27.4.89



27.4.1989

(G. Sreedharan Nair)
Judicial Member
27.4.1989