

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 245/91
T. A. No.

199

DATE OF DECISION 26.8.91

D.Sathyam _____ Applicant (s)

M/s. K.Karthikeya Panicker _____ Advocate for the Applicant (s)

Versus

Union of India represented by _____ Respondent (s)
the Secretary, Ministry of Communications,
New Delhi and 2 others

Mr.A.A.Abul Hassan,ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 18.2.91 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as Extra Departmental Delivery Agent(EDDA) at Muhamma under the Superintendent of Post Offices, Alappuzha Division has challenged the impugned order dated 14.2.91 at Annexure-A3 in so far as it transfers him as E.D. Messenger ,Pattanacaud against the newly created post on a provisional basis with the assurance that he will be considered for regular selection as EDDA, Varanam when vacancy arises there. He has also prayed that the respondents be directed to retain him as EDDA in Muhamma Post Office or to post him in any other Post Office near to his village as EDDA on a regular basis and to disburse to him monthly

allowance of an EDDA.

2. According to the applicant he was selected and appointed to the post of EDDA in the Muhamma Post Office through the Employment Exchange with effect from 7.8.87 vide the order dated 5.8.87 at Annexure-A2. His selection was on the basis of an interview/test. Since 1987 he has been working as EDDA without any interruption after executing a fidelity guarantee. He is aggrieved by the impugned order dated 14.2.91 at Annexure-A3 transferring him to a lower post of E.D.Messenger at another station called Pattanacaud and that also on a provisional basis. His reversion to a lower post with lower salary at a place 30 K.Ms away from his native place , according to him, is highly arbitrary and malafide. He has further argued that for the post of EDDA, the educational qualification is 8th Standard whereas for E.D.Messengers no educational qualification is prescribed. Since the Supreme Court has held that EDAs are holders of civil posts entitled to the protection of Article 311(2) of the Constitution of India , his sudden reversion to a lower post on a provisional basis is in violation of the constitutional protection available to him. The applicant is a permanent resident of Muhamma village where the Post Office is situated and even otherwise he cannot be posted to a far off place 30 K.Ms away from his residence as an E.D.Messenger. Whereas the allowance that he is drawing as EDDA is Rs.600/- per month, the monthly allowance of E.D.Messenger at Pattanacaud Post Office

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is only Rs.300/- Adverting to the impugned order at Annexure-A3 he has stated that of the four EDAs including him mentioned in the impugned order at Annexure-A3 the three other EDDAs have been posted either as EDDA or to the higher post of Extra Departmental Sub Post Master. The applicant has been singled out to be posted in the lower post of E.D.Messenger on a provisional basis.

3. The respondents in the counter affidavit have stated that Muhamma Sub Post Office where the applicant has been working had one post of Postman and two EDDAs. Due to abnormal increase in the delivery work, two posts of Postman were sanctioned in place of two posts of EDDAs. All the EDDAs who were thrown out as a result of departmentalisation of Post Offices, were directed to give their choice for being posted in the nearby expected vacancies and the applicant in his letter dated 10.1.1991 gave his willingness to be posted as Extra Departmental Packer, Mayithara Market PO. The substitute working as Extra Departmental Packer, Mayithara Market got an interim order of this Tribunal not to disturb her from her present post and therefore, the applicant could not be accommodated in the post of his first choice. When the EDDA at Varanam passed the Postman examination the applicant gave his willingness for posting as EDDA, Varanam but since the EDDA, Varanam could not be accommodated as a Postman, the applicant could not be transferred as EDDA, Varanam. The applicant's third choice

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of being posted as Extra Departmental Packer, Pallipuram could not be granted as the incumbent of that post who had been declared to have passed the Postman Examination could not be accommodated as a Postman because of cancellation of creation of the post. The only available vacancy was that of Extra Departmental Messenger at Pattanacaud where only the applicant could be accommodated provisionally with an assurance that he would be considered for regular selection as EDDA, Varanam whenever a vacancy arise there. Since the Postman took over charge at Muhamma on 18.2.1991 the post of EDDA, Muhamma held by the applicant stood abolished with effect from the forenoon of 18.2.91. The applicant , however, did not assume charge as E.D.Messenger at Pattanacaud and has been absenting himself from 15.2.1991. They have clarified that in accordance with D.G,P&T's letter of 23.2.1979, the surplus EDDAs are to be kept on a waiting list for a period of one year within which he can be accommodated in alternative post and the period of his absence from duty in such cases will be reckoned as service. The impugned order at Annexure A3 was passed to accommodate the applicant till he is considered for appointment as EDDA, Varanam when a vacancy occurs there. They have, however, conceded that EDDAs discharged on departmentalisation of the posts ^{are to} ~~will~~ be posted in the same rank as far as possible. They have also referred to the notice given to the applicant on 7.1.91 indicating that he was likely to be retrenched as EDDA, Muhamma by the end of February 1991 and that he was offered a post of

E.D Packer, Mayithara Market. He was also given the option for one more post out of the two of E.D Mail Carrier, Chethy or E.D Sub Post Master, Varanad. They have conceded that in his first representation the applicant gave his option as E.D Packer, Mayithara Market, but since that could not be ~~done~~ ^{granted} because of the Stay Order of the Tribunal, the applicant gave another representation dated 24.1.91 opting for the post of EDDA,Varanam. Since that also could not materialise, the applicant gave his third choice of ED Packer, Pallipuram on 11.2.91 but even that also could not materialise. As the last resort he had to be accommodated as E.D.Messenger, Pattanacaud . The respondents have argued that since the applicant had given his choice for the lower post of E.D Packer Mayithara and Pallipuram carrying lesser salary than that of EDDA, he cannot challenge his posting as E.D Messenger, Pattanacaud. Since the quantum of work of E.D.Messenger is not heavy the allowance attached to the post is not high. An assurance was also given that he will be accommodated as EDDA, Varanam later. He was appointed as E.D.Messenger,Pattanacaud provisionally so that he could be accommodated as EDDA,Varanam later. They have conceded that "it was also promised that he would be accommodated in the permanent vacancy as Extra Departmental Delivery Agent, Varanam which is expected to fall vacant shortly on promoting the present incumbent as Postman". They have also assured that his

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services will be counted from the date of his initial appointment as EDDA, Muhamma without any break. They have also stated that "the Appointing Authority offered the applicant the EDDA post of Varanam as and when the vacancy arises there. In order to avoid any break in service the applicant was ordered to work as Extra Departmental Messenger at Pattanacaud P.O." They have stated that Mayithara Market and Pallipuram for which the applicant exercised his choice are located at the same distance from Muhamma as is the case regarding Pattanacaud and that he would not have to travel any extra distance by his posting at Pattanacaud. They have also assured that he will not lose his seniority by his provisional appointment at Pattanacaud Post Office.

4. In the rejoinder the applicant has argued that in accordance with the order dated 27.9.90 at Annexure-R2(B) it has been laid down that the post of Postmen " may be created immediately after accommodating the retrenched EDDAs in available vacancies". In that communication, creation of two posts of Postman at Muhamma Post Office and replacement of the two EDDAs has been indicated. Accordingly the applicant is entitled to be accommodated in alternative appointments simultaneously with the creation of the post of Postman at Muhamma and his being accommodated ~~in~~ a pre-condition of creation of the posts. The respondents by posting him to a lower post and abolishing his post of EDDA on a provisional basis has violated that order. He has also mentioned the D.G,P&T's letter of 22.8.90 wherein it has been specifically prescribed that retrenched EDDAs on creation of

sanctioned posts are to be given alternative appointments. He has further argued that none of the posts opted for by him has been given to him. His willingness to be posted to a lower post in certain stations does not mean that his salary can be reduced by his posting to any other station.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is admitted that the applicant has been working on a regular basis as EDDA, Muhamma. It is also admitted that the post of E.D.Messenger at Pattanacaud carries lower emoluments than the post held by the applicant. Accordingly reverting him to a lower post and that also on a provisional capacity by the order at Annexure -A3 without giving him any opportunity to protect his interest is violative of Articles 311(2) of the Constitution. The assurance given in the impugned order regarding his appointment as EDDA, Varanam reads as follows:-

"2) Officials Sl.4 will be considered for regular selection as EDDA, Varanam when vacancy arises there."(emphasis added)

The above will show that even the assurance is not adequate for the protection of his rank and status as EDDA. It only says that the applicant will be considered for regular selection instead of saying that he will be appointed as EDDA, Varanam when the vacancy arises there. The contention of the respondents that the applicant had opted to go as E.D. Packer at Mayithara Market or Pallipuram will not entitle the respondents to post him to a lower post at Pattanacaud irrespective of whether Pattanacaud is at the same distance from his residential village at Muhamma as are the aforesaid two villages.

The applicant's claim of being kept as EDDA, Muhamma is further substantiated by the order dated 27.9.1990 at Annexure R2(B) issued in accordance with the order of the D.G,P&T's letter dated 22.8.90 .

The following extracts from Annexure R2B will be pertinent:-

" In accordance with the orders contained in DG Posts letter No.16-20/88-PE-1 dated 22.8.90, communicated in PMG Central Region, Kochi letter No.EST/6-1/86 Redistribution dated 20.9.90 , sanction for new posts of Postmen as detailed below has been received.

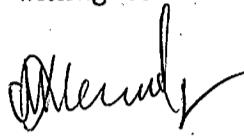
The posts may be created immediately after accommodating EDDAs in vacancies available. The creation of new posts should be made positively before 28.2.91 and date of creation should be intimated to this office.

Sl.No.	Name of Office	No.of Posts	Remarks
xx	xxx		
5.	Muhamma	2	(Replacing 2 EDDAs)
xx	xxx	"	
			(emphasis added)

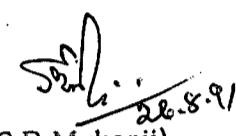
The aforesaid order clearly states that the posts of Postmen are to be created at Muhamma only after accommodating the retrenched EDDA like the applicant. We feel that accommodating the applicant in a lower post on a provisional capacity, is not proper accommodation and the applicant should not have been reverted to a lower post by the impugned order. ⁶ Prima facie the impugned order also seems to be discriminatory inasmuch as the applicant is the only person who has been singled out as E.D.Messenger at a station which he had not opted for, whereas the other three retrenched EDDAs have been accommodated either in similar posts or higher posts.

6. In the facts and circumstances we allow the application set

aside the impugned order dated 14.2.1991 at Annexure-A3 so far as the applicant is concerned and direct that he should be continued in his post even by creating supernumerary provision of EDDA II ,Muhamma till he is accommodated and posted as EDDA, Varanam on a regular basis or to any other posts for which he had given his willingness. There will be no order as to costs.



(A.V.Haridasan)
Judicial Member



26.8.91
(S.P.Mukerji)
Vice Chairman

n.j.j

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ERNAKULAM BENCH

CCP 20/91- in O.A. No. 245 of 1991
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DATE OF DECISION 26-3-91

D Sathyam _____ Applicant (s)

Mr K Karthikeya Panicker _____ Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
Secretary, Ministry of Communications,
New Delhi and others.

Mr TPM Ibrahim Khan, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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JUDGEMENT

Shri NV Krishnan, Administrative Member

The applicant has filed this CCP alleging that despite the interim directions given by this Tribunal in its order dated 22.2.91, the applicant has not been restituted to the post of EDDA Muhamma Post Office and the respondents have, ther efore, committed contempt of court.

- 2 The respondents have filed a reply denying the allegations. They have stated that even before the first interim order passed on 18.2.91 was brought to their notice, a regular Postman had been taken over charge at Muhamma Post Office on the fore-noon of 18.2.91 and that the interim order dated 22.2.91 was received much later.
- 3 We have heard the learned counsel of both the parties and perused the records.

4 The interim order dated 22.2.91, the non-compliance of which is alleged, is as follows:

"Mr Karthiyeya Panicker for applicant.
Mr PK Madhusoodhanan for respondents (Proxy).

Heard the learned counsel for the parties on the MP in which the applicant in OA 245/91 has sought restitution to the post of EDDA Muhamma P.O. on the strength of the interim order passed by us on 18.2.91. The learned counsel for the applicant states that no other person has taken over from him as EDDA or joined the post of EDDA.

Accordingly, we direct that if on 18.2.91 no other EDDA has taken over charge of Muhamma P.O. held by the applicant, the applicant should be restituted to the post of EDDA Muhamma P.O. provisionally until further orders".

The learned counsel for the applicant contended that though no other EDDA had taken over charge on 18.2.91, the applicant has not been restituted as EDDA by the respondents. The respondents are thus alleged to have committed Contempt of Court.

5 We notice from the original application itself *it is the present case* that the impugned order dated 14.2.91 (Annexure R3(E)) makes it clear that four EDDAs, including the applicant, were being thrown out of their posts on the creation of the post of Postman in place of the EDDAs. Therefore, only a postman was intended by the respondents to take the place of the applicant in Muhamma Post Office.

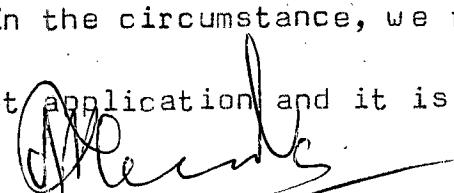
Indeed, the MP 227 of 1991 filed by the applicant, on the basis of which the interim order dated 22.2.91 was passed, itself alleges that the applicant was not allowed to resume duty as EDDA, because one Shri Nalinan who was appointed there as Postman by the respondents has come and joined there. In this light, we are of the view that

the interim direction dated 22.2.91 should really be construed to direct that, if on 18.2.91, no Postman had taken over charge at the Muhamma Post Office in place of the applicant, the applicant should be restituted to the post of EDDA, Muhamma.

6 It is stated in this application that a copy of the interim order dated 18.2.91 was served on the 2nd respondent on 19.2.91 morning. The respondents have produced Annexure R3(B) dated 14.2.91 posting CK Nalinan, temporary Postman to Muhamma P.O. replacing the EDDA-II there and Exbt.R3(C) showing that Shri Nalinan had taken over charge on the forenoon of 18.2.91. This received corroboration from MP 22/91 filed by the applicant as referred to above.

7 In the circumstance, we find that the status-quo before the interim order dated 18.2.91 was served on the respondents was that Shri Nalinan, Postman had already been taken over charge on the fore-noon 18.2.91 at Muhamma P.O. in place of the applicant. Hence, in terms of the interim order dated 22.2.91 the applicant is not entitled to restitution as EDDA.

8 In the circumstance, we find no substance in the contempt application and it is dismissed.


(AV Haridasan)
Judicial Member


(NV Krishnan)
Administrative Member