

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXX-106X

249 1990

DATE OF DECISION 10.6.1991

B.Jayakumar _____ Applicant (s)

Mr.M.R.Rajandran Nair _____ Advocate for the Applicant (s)

Versus

UOI rep. by its Secretary to Respondent (s)
Govt., Min. of Comms., New Delhi & 3 others

Mr.TPM Ibrahim Khan, ACGSC (R1-3) Advocate for the Respondent (s)
Mr.G.P.Mohanachandran (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? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

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

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant B.Jayakumar has prayed for declarations that the termination of his services as Extra Departmental Packer, Amaravila and the appointment of the 4th respondent as E.O. Packer in his place are illegal and null and void and for consequential relief.

2. The applicant who commenced his service in the Postal Department as a casual mazdoor with occasional engagement at Amaravila Post Office in the year 1983 was engaged as a substitute E.O. Packer and also as E.O.Packer

provisionally in that branch Post Office during various periods. While he was working as provisional E.O. Packer finding that steps were being taken by the department for selection of an E.O. Packer on regular basis, he submitted a representation that he should also be considered and accordingly he was also considered by the second respondent in the process of selection. But finding that the 4th respondent was selected the applicant made a representation on 3.3.1990 to the third respondent praying that the selection proceedings may be stayed and the 4th respondent may not be permitted to join duty.

The applicant belongs to Mannan community which is a Scheduled Caste. As according to the applicant the post of E.O. Packer, Amaravila is a post identified and reserved to be filled by ~~member of~~ the Scheduled Caste, the applicant claims that he has a superior right to be appointed in preference to the 4th respondent. He has also a case that as the knowledge of cycling is an essential qualification the selection of the 4th respondent without holding a cycling test is not in order. Since his representation to the third respondent dated 3.3.1990 was not responded and as the 4th respondent joined as E.O. Packer, Amaravila terminating the service of the applicant, the applicant has filed this application praying that the termination of his services and appointment of the 4th respondent may be declared illegal. It has been averred

in the application that as he had been in continuous service for more than one year the abrupt termination of his service without notice and payment of compensation amounts to illegal retrenchment in violation of the provisions of Industrial Disputes Act.

3. The respondents 1 to 3 have filed a reply statement and the 4th respondent has filed another reply statement. The respondents 1 to 3 in their statement have denied the averment in the application that the post of E.D. Packer, Amaravila is one reserved to be filled by a member of the Scheduled Caste. It has been contended by them that as the percentage representation of Scheduled Castes in the E.D. Post has exceeded the quota, no preference is to be given to the applicant. It has been further contended that selection and appointment of the 4th respondent are perfectly in order as he was the best among the candidates considered for selection and ^{as} ~~he also knew cycling.~~ Regarding the violation of the provisions of Industrial Disputes Act averred in the application, the respondents have contended that the applicant was engaged for short durations only with effect from 21.12.1988, that his provisional appointment was from 24.1.1989 with intervening breaks on 30.4.1989, 30.7.1989, 29.10.1989, ~~and~~ 31.12.1989 till his services were terminated on 7.3.1990. According to the respondents as the applicant did not have continuous

service as claimed by him, there is no violation of any provision of law in discharging him from service on 7.3.1990.

4. The 4th respondent also has filed a reply statement in which all the contentions raised in the reply statement of the respondents 1 to 3 have been reiterated. He has contended that as he has been selected and appointed strictly in accordance with the rules and instructions, the applicant is not entitled to have his selection declared null and void.

5. The applicant in the rejoinder has contended that, as the alleged interruption in the service of the applicant as provisional E.O. Packer on 30.4.1989, 30.7.1989, 29.10.1989 and 31.12.1989 were only because these days were Sundays and ^{so} ~~there~~ was no work, the contention of the respondents 1 to 3 that the services of the applicant was not continuous is unsustainable, that he had continuous service from 21.12.1988 till 7.3.1990 when his services were terminated, and that as no notice has been issued to him prior to termination, the termination of his services is illegal and opposed to the provisions contained in Chapter V of the Industrial Disputes Act.

6. We had directed the learned counsel for the respondents 1 to 3 by our order dated 8.4.1991 that he should file an affidavit indicating details of the 10% quota filled by SC/ST in the recruitment units. Pursuant

to this direction the Superintendent of Post Offices, Trivandrum has on 26.4.1991 filed an affidavit stating that there were 568 ED posts in the division out of which 104 were filled by Scheduled ~~Caste~~ candidates and 8 posts were filled by Scheduled Tribe candidates and that at the time of selection of the ED Packer, Amaravila Post Office, there were 560 posts out of which 98 was occupied by SC candidates and 11 were occupied by ST candidates. In this affidavit it was also contended that the termination of the services of the applicant on completion of the period of employment contracted for would amounts to retrenchment as defined in Section 2(oo)(bb) of the Industrial Disputes Act.

7. We have heard the arguments of the learned counsel for the parties and have also carefully perused the pleadings and documents produced. Though the applicant has claimed that the post of ED Packer, Amaravila is a post identified and reserved to be filled by the members of the Scheduled Castes which is denied by the respondents in their reply statement, the applicant was not able to substantiate his case by producing any authority. From the affidavit filed by the Superintendent of Post Offices, Trivandrum South Division on 26.4.1991, it is evident that on the date on which the selection to the post of ED Packer, Amaravila was held, more than 10% of the ED posts in the division were occupied by the members of the Scheduled Castes. Therefore, the claim of the applicant that the post of ED Packer, Amaravila should have been filled by appoint of a

member of the Scheduled Caste on the basis of the reservation or preference cannot be accepted. In the statement filed by the counsel for the respondents 1-3 on behalf of the respondents, it has been contended that since the 4th respondent ~~who~~ had obtained 246 marks while the applicant had obtained only 210 marks in the SSLC Examination, the selection of the 4th respondent was perfectly in order. According to the instruction of the Post Master General on this aspect, among persons who are matriculates, the person who has the highest marks in the SSLC Examination has a better chance to be selected. Since the 4th respondent has obtained highest marks in the SSLC Examination among the eligible candidates considered for selection, the selection of the 4th respondent cannot be faulted unless it is shown that the applicant or any other candidate is entitled to any preference. We have already stated in the foregoing paragraphs that as far as ~~when~~ the post of ED Packer, Amaravila for the time being was concerned, the applicant was not entitled to preference on the ground of being a member of the Scheduled Caste. The applicant has claimed that he is entitled to be preferred on the basis of his provisional service. According to the instructions on the aspect, what is provided for is that EDAAgent who have

service for 3 years and ~~discharged~~ for want of vacancies
should be kept in the waiting list and preference should
be given to such persons in filling ^{up} ~~vacancies~~ which
arise subsequently. In this case admittedly the applicant
has not completed 3 years of service continuously as an
ED Agent. Therefore the claim of the applicant that he
is entitled to preference as a working ED Agent is also
not sustainable. As a working ED Agent, ^{the} ~~only~~ considera-
tion that could be shown to the applicant was that he
should be considered for selection on a regular basis
along with other candidates though not sponsored by the
Employment Exchange while in the case of candidates
who are not working in the post unless their names are
sponsored by the Employment Exchange, they would not
be considered. Since the applicant has been considered
for regular selection, this ~~benefit~~ has been exten-
ded to him. The applicant has got a case that the 4th
respondent does not know cycling and that therefore his
selection and appointment is not proper. ~~The~~ ^{was} 4th respon-
dent in his reply affidavit has stated he ~~is~~ well versed in
cycling and the respondents 1 to 3 also have stated so.
We have no reason to disbelieve the statement of respon-
dents 1 to 3 on this aspect. Therefore, on a careful
consideration of the pleadings, documents and circumstances
available on record, we find that the selection of the
4th respondent as ED Packer, Amaravila is not vitiated
for any of the reasons canvassed in the application.

8. The applicant has claimed that, he has been in continuous service as ED Packer, Amaravila from 21.12.1988 to 7.3.1990, and that the termination of his services without complying the provisions of Chapter V of the Industrial Disputes Act is illegal and void, and that he is entitled to be declared to have continued in service. The respondents 1 to 3 contend that the applicant does not have continuous service as contended by him as there had been intervening breaks. In the affidavit filed by the Superintendent of Post Offices on 26.4.1991 it has been contended that as the applicant was discharged from service on completion of the period of employment contracted, the termination of his service does not amounts to retrenchment as defined in Sub-Section 2(oo) of the Industrial Disputes Act, and that therefore, the termination of the services of the applicant is perfectly justified. In the reply statement the respondents 1 to 3 have admitted that the applicant had been working as substitute ED Packer from 21.12.1988 to 31.12.1988 and 1.1.1989 to 23.1.1989 in the leave vacancy of Shri M. Kunjappi, and that from 24.1.1989 to 29.4.1989, from 1.5.1989 to 29.7.1989, from 31.7.1989 to 28.10.1989, from 30.10.1989 to 30.12.1989 and from 1.1.1990 to 6.3.1990 the applicant was engaged as provisional ED Packer, Amaravila with breaks on 30.4.1989, 30.7.1989, 29.10.1989, and 31.12.1989. In the rejoinder the applicant has stated that the breaks on 30.4.1989, 30.7.1989

29.10.1989 and 31.12.1989 were only for the reason that these days were Sundays and that it cannot be said on account of these breaks ^{that} the services of the applicant had been interrupted. To show that the services of the applicant were for definite terms, and that at the end of the terms contracted the services of the applicant were terminated, the respondents 1 to 3 have produced Annexure-R3(a), a memo by which the applicant was appointed as ED Packer, Amaravila for a period of 59 days from 1.1.1990 to 28.2.1990. But it is ~~an~~ admitted case that the applicant was not discharged on 28.2.1990 on the expiry of 59 days but was discharged from service only on 7.3.1990. Similarly even though fresh memos were issued of and on as the respondents had not made a regular selection to the post of ED Packer, Amaravila till the date of impugned selection in this case, the vacancy as ED Packer, Amaravila continued from the date on which the applicant was appointed provisionally in that post on 24.1.1989 and the breaks on 30.4.1989, 30.7.1989, 29.10.1989 and 31.12.1989 being only artificial breaks it could not affect the continuity of the service of the applicant. Therefore, the contentions based on Section 2(oo) of the Industrial Disputes Act that the services of the applicant was terminated on the expiry of the period contracted cannot stand. Therefore, there is clear and convincing evidence to show that the applicant had been in continuous service for more than 240 days when his services were terminated

on 7.3.1990 without issuing a notice and without paying him compensation as required under Section 25(F) of the Industrial Disputes Act. The retrenchment in his case is therefore null and void and the result is that the applicant is entitled for a declaration that he was in continuous service with full back wages as was held in Mohal Lal V. Bharat Electronics Ltd., 1981(3) SCC, 225.

9. In the result the application is allowed in part. The prayer of the applicant to declare the selection and appointment of the 4th respondent null and void is not granted. But the termination of the services of the applicant with effect from 7.3.1990 without complying with the provisions of Section 25(F) of the Industrial Disputes Act is declared as null and void and the respondents are directed to reinstate the applicant into service forthwith and to pay him full back wages for the period during which he was out of service, within a period of two months from the date of communication of this order. As the 4th respondent had been validly selected to the post of ED Packer, Amaravila in case it becomes necessary to retrench the applicant to accommodate the 4th respondent, the respondents 1 to 3 are at liberty to do so after complying with the requirement of Chapter V-A of the Industrial Disputes Act. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN