

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 268
~~T.A. No.~~

1991

DATE OF DECISION 9.4.91

V. K. Chackappan _____ Applicant (s)

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

Versus

The Sub Divisional Inspector
(Postal), Perumbavoor and others Respondent (s)

Mr. TPM Ibrahim Khan for R 1 & 2
Mr. N. Nandakumara Menon for R-3 Advocate for the Respondent (s)

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?
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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by his removal from service without issuing any notice or hearing and appointment of the third respondent in his place.

2. The applicant was working as Extra Departmental Mail Carrier, Choondakuzhy Post Office as a substitute of a regular incumbent Mr. V. K. Johny during various spells from 1.1.1985. He worked for short periods during 1987, 88 and 89 when Mr. Johny took leave. On 28.1.1991 he was engaged as substitute by Shri Johny who resigned the post on 8.2.1991 for taking employment in a group 'D' post on

b2

..

regular basis. Thereafter the Branch Post Master allowed the applicant to continue on a provisional basis, and it was reported to the SDI, the first respondent. While the applicant was thus continuing as provisional EDMC, the impugned order, Annexure-I dated 18.2.91, was passed by the SDI (Postal), Perumpavoor by which the applicant was removed from the post of EDMC, Choondakuzhy Post Office for appointing the third respondent in his place on a temporary basis. The order reads as follows:

"The person who is performing duties in the post of EDMC, Choondakuzhy Post Office is removed and his place Sivaraman, S/o Kunjitty, Panickaru House, Choondakuzhy is appointed in the said post from 19.2.91 till 18.5.91 temporarily.

Choondakuzhy Post Master shall implement the order forthwith and report."

2. The respondents 1 & 2 and the third respondent have filed separate reply statements. The contention of the respondents is that Shri Johny nominated his brother, the applicant, when he has gone on leave till the post fell vacant on his promotion. This arrangement was terminated on the appointment of Shri Johny in a Group 'D' post. The applicant was removed for making a provisional appointment with a Scheduled Caste candidate for the post of EDMC, Choondakuzhy is earmarked for Scheduled Caste candidate. Therefore, the third respondent, who is a SC candidate, was appointed on a provisional basis. But steps for regular selection are in progress and the appointment of the third respondent will be subject to the regular selection and appointment of a candidate in that post. The present appointment of the third respondent is only for a limited period of 89 days.

3. Having heard the matter and after perusing the documents, we are satisfied that the order Annexure-I is unsustainable and it is liable to be quashed. It is an admitted fact that the applicant was working as a substitute EDMC in the post office during the period when Shri Johny was on leave. Even after his resignation on 8.2.91, the Department accepted the continued appointment of the applicant and reported the matter to the first respondent. This indicates that the respondents 1 & 2 have no manner of objection in allowing the applicant to continue as a or deemed provisional ^b provisional/hand till a regular selection and appointment to the post. In these circumstances, there is no justification on the part of the respondents 1 & 2 to remove him from service w.e.f. 18.2.91 without any notice or prior intimation for posting an outsider whose previous experience in the post office as EDMC has been disputed by the applicant. It is contended by the third respondent that he worked in the same post Office for 195 days as EDBPM. However, as a provisional/hand is allowed to work in the vacant post pending regular selection, it may not be fair and proper on the part of the Postal authorities to oust him for engaging another provisional hand pending such regular selection without assigning any valid and acceptable reason for such a change. In the instant case admittedly the ~~selection~~ ^b process for selection and appointment of regular EDMC in the Post Office is in progress. and no valid reason is

stated for the removal of the applicant except stating that on the resignation of the regular incumbent the applicant has no right to continue as a substitute. This reason is unsupportable because after 8.2.91 the Department allowed the applicant to continue as EDMC making it a deemed provisional appointment. Under these circumstances, the respondents 1 & 2 ought to have endeavoured to complete the process of selection as expeditiously as possible and filled up the post with regular candidate rather than ousting the applicant in an illegal manner for posting a fresh hand in the vacant post. But because of the peculiar circumstances of the case we do not want to disturb the present posting of the third respondent till the expiry of the present term of his appointment.

4. Having considered the matter in detail, we are of the view that justice in the case will be met if we direct the respondent-1 to complete the selection process initiated for making regular selection and make appointment to the post of EDMC, Choondakuzhy Post Office within a period of two months from the date of receipt of a copy of the judgment. In the regular selection, the first respondent shall consider the claims of the applicant and the third respondent even though their names are not sponsored by the Employment Exchange.

5. We make it clear that we are allowing the third respondent to continue in the present post till the expiry of 89 days from 19.2.91 i.e. till 18.5.91. If ~~on that date~~ ^{by}

In present appointment of the third respondent as EDMC,
Choondakuzhy Post Office the selection proceedings are not completed, the applicant shall be appointed provisionally as EDMC, Choondakuzhi replacing the third respondent till the selection is completed. In this view of the matter, we are not setting aside the order Annexure-1. It goes without saying that when a regularly selected candidate becomes available such person can be appointed as EDMC, Choondakuzhy Post Office after displacing the provisional candidate who is in occupation of the post as per the directions indicated above.

6. The application is disposed of as above. There will be no order as to costs.

N. Dharmada N.
(N. DHARMADA N) 9-4-91
JUDICIAL MEMBER

N. V. Krishnan
(N. V. KRISHNAN) 3/4/91
ADMINISTRATIVE MEMBER

KMN