

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 272 of 2003

Wednesday, this the 4th day of June, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Smt. Viji T. Thomas,
Thadathil House, Bandodka,
Changala (via) - 671 541Applicant

[By Advocate Mr. S. Sudhishkumar]

Versus

1. The Chief Post Master General,
Kerala Circle, Trivandrum - 695 033

2. The Superintendent of Post Offices,
Kasargod Sub Division,
Kasargod - 671 121

3. Assistant Superintendent of Post Offices,
Kasargod Sub Division,
Kasargod - 671 121Respondents

[By Advocate Mr. K. Kesavankutty, ACGSC]

The application having been heard on 4-6-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Since reply statement has been filed and pleadings are complete, we are hearing this Original Application for a final disposal as agreed to by the counsel on either side.

2. The applicant was provisionally appointed as Extra Departmental Branch Post Master (EDBPM for short), Ullody in the vacancy which arose on account of put off duty of Sri K. Sundara who was the original incumbent on the post, by Annexure A-1 order dated 20-8-1997 which, inter alia, contained a clause that the Superintendent of Post Offices, Kasargod Division reserved the right to terminate the provisional

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appointment any time before the period mentioned and that the appointment would be tenable till K.Sundara exhausted all departmental and judicial remedies. The applicant continued in service. While so, on 16-1-2003 the applicant was served with Annexure A-2 order by which the Assistant Superintendent of Post Offices, Kasargod Sub Division terminated the services of the applicant with effect from 16-1-2003 for reinstating K.Sundara in service and also purporting to act under Rule 8 of the Gramin Dak Sevaks (Conduct and Employment) Rules, 2001. On the same day, the applicant submitted a representation seeking alternate appointment pointing out the vacancy of GDSBPM, Iriyanni as also the post of GDSBPM, Bangara Manjeshwar. On 1-4-2003 the applicant filed this application seeking to set aside Annexure A-2 order of termination of service, for a direction to the 2nd respondent to reinstate her in service with immediate effect with all benefits from 16-1-2003 to the date of reinstatement and for any other order in the circumstances of the case.

3. It is alleged in the application that the Assistant Superintendent of Post Offices, who has issued Annexure A-2 order of termination of service, is incompetent to issue such an order as the Superintendent of Post Offices, who appointed the applicant, alone is competent to terminate her service and that since the applicant was appointed on a provisional basis and has completed a period of more than five years, her services cannot be terminated invoking the provisions of Rule 8.

4. Respondents seek to justify the impugned order on the ground that reinstatement of K.Sundara resulted in termination of the service of the applicant as a necessary consequence because the applicant was appointed only till the disciplinary

proceedings against K.Sundara would come to an end. It is further contended that since the Superintendent of Post Offices, who appointed the applicant, has issued Annexure R-2(a) letter dated 3-1-2003 to the Assistant Superintendent of Post Offices directing him to take action to reinstate K.Sundara, terminating the provisional appointment after observing all the formalities, the Assistant Superintendent of Post Offices is competent to terminate the services of the applicant as he has the delegated powers. Regarding the claim of the applicant for alternate appointment, the respondents contend that there is no post of GDSBPM in the division and the post of GDSBPM, Iriyanni would become vacant only from 30-4-2004 and therefore the applicant is not entitled to alternate appointment.

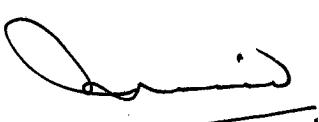
5. We have perused the materials placed on record and have heard the learned counsel on either side.

6. In Superintendent of Post Offices & Others vs. P.K.Rajamma [(1977) 3 SCC 94], it has been held by the Apex Court that the Extra Departmental Agent is holder of a civil post. From Annexure A1 it is seen that the applicant was appointed by the Superintendent of Post Offices, Kasargod Division. According to the provisions of Article 311(2) of the Constitution, no person shall be dismissed/removed/reduced in rank by an authority subordinate to the authority who appointed him. In this case, as the applicant was appointed by the Superintendent of Post Offices, the Assistant Superintendent of Post Offices, respondent No.3, had no competence to terminate his service. True the applicant's services had to be terminated for reinstatement of K.Sundara for his appointment was provisional and tenable till K.Sundara be reinstated in service. Even then the applicant's services can be terminated

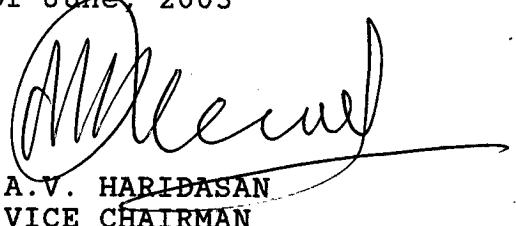
only by the authority competent to do so. In Annexure R-2(a) what is stated by the Superintendent of Post Offices is to take steps to reinstate K.Sundara terminating the provisional appointment after observing all formalities. The most important legal requirement is that the order has to be issued by the authority which appointed him. An inferior or subordinate authority is incompetent to issue the order of termination. Rule 8 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 cannot be invoked to terminate the service of an ED Agent who has rendered about five years of provisional service. Therefore, the impugned order Annexure A-2 cannot be sustained.

7. In the light of what is stated above, we allow the Original Application setting aside the impugned Annexure A-2 order. We direct the respondents to reinstate the applicant forthwith, at any rate within a period of two weeks from the date of receipt of a copy of this order, with full backwages. We make it clear that this order, however, would not stand in the way of terminating the provisional service of the applicant for reinstatement of K.Sundara by the competent authority in accordance with law. If the applicant is discharged again ^{for} ~~after~~ reinstatement of K.Sundara, efforts should be made to provide him alternate employment as he has rendered more than five years of service as a provisional ED Agent. There is no order as to costs.

Wednesday, this the 4th day of June, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

Ak.

Sub: Termination

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.

272 of 2003

Viji T.Thomas

Applicant

Vs.

The Chief Post Master General
Kerala Circle, Trivandrum and
others.

Respondents

I N D E X

Sl. No.	Particulars	Page Nos.
	<u>COMPILED NO.I</u>	
1.	Original Application	1 to 5
2.	Annexure-A2: True copy of Order dated 16-1-2003 of the 3rd respondent terminating the service of the applicant.	- 6 -

COMPILED NO.II

3.	Annexure-A1: True copy of the appointment Memo No.B3/319 dated 20-8-1997 showing the appointment of the applicant by the 2nd respondent.	- 7 -
4.	Annexure-A3: True copy of the representation dated 16-1-2003 submitted by the applicant to the 2nd respondent.	- 8 -

Dated this the 3rd day of March, 2003

G. Sudheer M
Counsel for the Applicant.

Date of filing:

Registration No.

N
Signature for Registrar.

