

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 318
T.A. No.

1989

DATE OF DECISION 29.10.90

Anil Kumar P.A. Applicant (s)

M/s. M. Ramachandran & P. Ramakrishnan Advocate for the Applicant (s)

The Supdt. of Post Office, Respondent (s)
Trichur Division, Trichur & others

Mr. V. V. Sidharthan, ACGSC Advocate for the Respondent (s) 1 & 2
Mr. K. Ramakumar for R-3

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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

Hon'ble Shri N. Dharmadan, Judicial Member

Many a time, manifest mistakes are being committed by administrative authorities. But they will be at a loss to decide whether they are bound to follow a specific procedural norm or not for rectification of the mistakes. One such question arises in this case for consideration.

2. The applicant is challenging Annexure-II/Order dated 22.5.89 by which his selection as Extra Departmental Branch Post Master, Maruthayur was cancelled on the ground of mistake and the third respondent was appointed in that place.

3. According to the applicant he is fully qualified for the post and he was interviewed on 19.4.1989 along with four others including the third respondent and he was selected for the post. Accordingly the first respondent issued Annexure-1 order dated 8.5.89 intimating him that he was provisionally selected as EDBPM, Maruthayur.

Consequently the Sub Divisional Inspector issued Annexure-II, as per direction of the first respondent, requesting the applicant to assume charge on 22.5.89 relieving the officiating BPM. He was also requested to undergo training. Since the applicant was not given training he filed this O.A. on 24.5.89 for a declaration that he is entitled to be appointed as BPM in the light of Annexures-1 and 2.

4. The learned counsel appearing on behalf of the respondents filed a statement dated 31.5.89 stating that the selection of the applicant was made by a mistake. The income certificate furnished by Smt. A. Soudamini, the third respondent was not noticed by the first respondent at the time of selection and hence the applicant happened to be selected. He secured only lesser marks in the SSIC and not eligible for selection. The respondents also have filed a reply statement dated 1st September, 1989 producing the order cancelling the appointment of the applicant and appointing the third respondent in his place.

5. The applicant amended the original application challenging the order which is produced as Annexure-~~III~~. Smt. Soudamini was also allowed to be impleaded as the third respondent.

6. The third respondent appeared through Advocate Mr. K. Ramakumar and we have heard the arguments of the learned counsel appearing on both sides.

7. Having heard the matter the only question that emerges for consideration is whether the cancellation of the selection and appointment which appears to have been made by the first respondent by mistake can be corrected without notice to the applicant.

8. The selection to the post of EDBPM was made by conducting an interview on 19.4.89 after considering the claims and qualification of competing candidates on a regular basis. According to the applicant selection was made in accordance with law. But the respondents deny the averments and submit that the applicant would not have been selected had the first respondent noticed the income certificate obtained from the Tahsildar and produced by the third respondent before interview. According to the first respondent since the third respondent has secured higher marks in the SSLC and she has also produced the necessary certificates for proving

12

her eligibility, she is better qualified and hence she is selected and appointed. The appointment order Annexure-1 and the consequent order of SDI Annexure-2 were the result of a patent mistake which can be rectified even without any notice to the applicant. A mistaken selection and appointment would not confer any right on the appointee so as to necessitate a notice or hearing.

9. An administrative authority has an inherent power of correcting its own mistake unless there is some restrictions imposed by law. If due to bonafide omission or mistake the authority has taken a decision it can certainly be revised at a later stage when the mistake comes to its notice. Otherwise the authority is committing the mistake of perpetuating such mistake even after it was discovered by the authority. See *Sunder Lal Vs. State of Punjab and others*, 1970 SLR 59, *Ranjit Singh Vs. President of India and others*, 1971 SLR 561, *Mathew and another Vs. State of Kerala and others*, 1974 KLT 9 (SN) and *Varma Vs. Union of India and others*, AIR 1980 SC 1461.

10. The invocation of the inherent power depends upon the facts of each case and the law applicable thereto. In *Markandey Singh Vs. Union of India*, 1976(1) SLR 327, the High Court held as follows:

"I have grave doubts if inherent powers can be invoked for allowing time-barred claims. Normally, such powers are exercised in the interest of justice in cases where the prescribed procedure provides no remedy to an aggrieved person. In the case in hand, Shri Singh having failed to submit a memorial to the President, even after the lapse of three years

of the fixation of his year of allotment, could not possibly invoke the inherent powers. Another aspect of the matter is that if belated claims are allowed arbitrarily, an atmosphere of perpetual uncertainty in the Service concerned would prevail. Their Lordships of the Supreme Court in *Halloom Lawrence Cicil D' Souza v. Union of India and others*, 1975 U.J.(S.C.) 471 at page 474 laid down that satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of state claims and it is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with diligence and promptitude and not sleep over the matter."

11. If an order passed by the administrative authority is vitiated by a mistake it will not correctly reflect the actual order or the decision taken by such authority; it must be open to correction and it will not have any sanctity to prevail over or override the correct one. Say for example a case where the actual decision taken by the authority is that a person should be appointed only on a provisional basis subject to verification of details, but by mistake, the appointment order has been issued describing it as substantive appointment. Can it be suggested that the authority cannot rectify the mistake by issuing a further order so as to bring it in accord with the real decision of the authority even without any further notice? A mistaken order invariably would not confer any legal right on the party to whom it is issued because such order will not correctly reflect the actual decision. *Mukerji. J. of Calcutta High Court* held in *Smt. Anima Pal vs. State of West Bengal and others* 1980 (1) SLJ 392 held that in such a situation principles of natural justice would not apply. Same view was taken

2


by Punjab and Haryana High Court in Mrs. S. Bhan Vs. Director of Public Instruction, 1980(1) SLR 120. The Central Administrative Tribunal, Bangalore Bench in C. Pallappa Vs. Divisional Officer Southern Railway, 1989 (1)CAT 391 considering a similar situation held as follows after following a catena of decisions:

"What in effect, the respondent has done in this case, is that by his impugned order dated 24.9.87 (Annexure-C), he has merely corrected a patent administrative error, though belatedly but within the period of limitation, but in that process, has not offended either the provisions of Article 311 of the Constitution, particularly the principles of natural justice or transgressed the bar of limitation for the reasons aforementioned."

The Chandigarh Bench of the Tribunal discussed the case law on the subject and came to the following conclusion: in Shri D. R. Sharma Vs. Union of India and others, 1990(1) CAT 55:

"Now the question crops up as to whether a bonafide mistake can be rectified without observing the cannot of natural justice and without following the procedure laid down under Article 311 of the Constitution of India. In the preceding paragraphs, we have examined the various decisions of the High Courts on which the learned counsel for both the parties have relied upon. After due examination of catena of judgments adverted to above, we are of the view that no benefit can be allowed on a mistake. If owing to some bonafide mistake, the department has taken a decision to delete the name of the applicant from the select list of those persons who opted to go outside Chandigarh in other Ministries/ Departments to officiate as Assistant on long term basis, as against the applicant who did not opt as such, the department's action in correcting the mistake at some subsequent stage when mistake come to notice is decidedly justified. It cannot be inferred that a bonafide mistake should be allowed to perpetuate when it is discovered."

The observation of the Supreme Court in District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another Vs. M. Tripura

Sundari Devi, 1990(3)SCC 655, in connection with the refusal of permission  to join a candidate on the basis of a mistaken order

may be used with advantage in support of the proposition advanced in this case by the respondents. The following passage is relevant in this connection:


"The Selection Committee presumed that all those who had applied in response to the advertisement must have had the requisite qualifications needed for the posts. However, the order appointing the respondent had made it clear that the respondent should come along with the original certificates. When the respondent approached the appellants with the originals of ~~the~~ certificates which were scrutinised, it was found that in fact that she was short of the qualifications. It is in these circumstances, that she was not allowed to join the service. It cannot, therefore, be said that the appellants had selected the respondent with the knowledge that she was underqualified. According to us, there is a good deal of force in this contention. It is common knowledge that sometimes the Selection Committee proceeds on the basis that all those who appear before it, are otherwise qualified. However, the second stage at which the documents are scrutinised is when the higher authorities go through them at the time the candidate concerned approaches them for resuming (sic assuming) duties along with the original certificates. It is at that stage that the mistake was discovered in the present case and the respondent was not permitted to resume her duties. We see nothing wrong in this action."

12. Coming to the facts of this case the applicant was informed by means of Annexure-I that he has been provisionally selected after the interview held on 19.4.89. The consequential order Annexure-II was also issued by the SDI. Since these orders were issued on a mistake, which was found out when the complaint filed by the third respondent was enquired into, and/satisfied that the income certificate produced by the third respondent was not noticed ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ while preparing the tabular statement, he issued the impugned order by way of correcting a bonafide mistake. In this

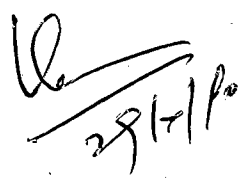
case, originally the candidates produced income certificates from the Village Officer but a subsequent decision was taken to inform the candidates to produce income certificate from the concerned Tahsildars/and accordingly before the interview intimation was given to the candidates to produce certificate of income from the concerned Tahsildars. Having obtained the certificate from the candidates as per the subsequent intimation the first respondent inadvertently omitted to rely on such certificate which was produced by the third respondent from the Tahsildar. Thus it can be seen that it is a bonafide omission and a mistake liable to be rectified: but on the facts of this case the relevant question is whether the applicant is entitled to a notice before cancellation of the appointment order and the appointment of the third respondent in his place. As indicated above the omission of the first respondent to note the relevant certificate produced by the third respondent being only a bonafide omission and that the applicant has no case to satisfy us that he has a better claim and eligibility to get a preferential appointment to the post so that the appointment of the third respondent can be successfully attacked to deprive her of the posting/in pursuance of Annexure A-III order, we are of the view that no right has been ~~acquired~~ in his favour by the ~~xxx~~ a mistaken appointment order issued inadvertently by the first respondent. It can be corrected even without any notice to the applicant.

5

13. In the light of the above decisions, we are of the view that the Annexure-III order is not liable to be set aside and accordingly we uphold the same and dismiss this application. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

29.4.90.


(N. V. Krishnan)
Administrative Member

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