

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

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

361/92 199

DATE OF DECISION 30-3-1993

M. Unnikrishnan

Applicant (s)

Mr. Abraham Kurian

Advocate for the Applicant (s)

Versus

Sub Divisional Inspector, Chalakudi Postal Sub Division & 2 others. Respondent (s)

Mr. P. Sankarankutty Nair

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.V. Haridasan, Judicial Member

The Hon'ble Mr. R. Rangarajan, Administrative Member

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

JUDGEMENT

R. Rangarajan, AM

The applicant, Shri M. Unnikrishnan, presently working as EDDA, Kallur Post Office, Trichur, was appointed in the above said post with effect from 19.10.85. After working so for more than 3 years, the applicant was relieved from the post on the forenoon of 28.10.88 under orders of the 1st respondent, provisionally appointing another person without issuing any notice to the applicant and without following any provisions of law in the matter. Aggrieved by the relief from the post on 28.10.88 he has approached this Tribunal by filing OAK 459/88 and obtained judgement from the Tribunal for his reinstatement as EDDA till a regular appointment is made. The operative portion of the judgement in the above said OAK is reproduced below:

"8. In the facts and circumstances we allow the application, set aside the impugned order dated 4.8.88 (Annexure-II) and direct the respondents

that the applicant should be reinstated in the post as Extra Departmental Delivery Agent till a regular appointment is made. While making the regular appointment the qualifications prescribed for the post when the vacancy arose should only be considered and the applicant also should be considered for regular appointment along with others and given due weightage for his past service on the analogy of Section 25H of the Industrial Disputes Act. In case he is retrenched in accordance with law, the benefit of Chapter V-A of the Industrial Disputes Act also should be made available to him. There will be no order as to costs."

However, as the respondents did not obey the order of this Tribunal, he filed a CCP No.19/90 in OAK 459/88, whereupon the respondents reinstated him, expressing regret for the wrongful action in not permitting the applicant to rejoin duty. The applicant was reinstated with effect from 8.2.90. Thus he was out of job from 28.10.88 to 8.2.90 and he continues to work in the same capacity thereafter till now.

2. The applicant after rejoining his duty on 8.2.90 submitted a representation to the second respondent requesting for treating the period from 28.10.88 to 7.2.90 as duty and to pay his salary for the period as his retrenchment was set aside by this Tribunal vide Annexure-II judgement. The representation is at Annexure-V. He also submitted a representation to the Postmaster General, Kerala Circle in this connection vide Annexure-VI. However, the postal authorities had turned down his request vide the impugned order at Annexure-I, which is extracted below:-

"With reference to your representation cited above I am to inform you the following.

The regular EDDA, Kallur is Sri.P.K.Divakaran who was removed from service in connection with some irregularities. A case in this connection is pending at CAT Cochin. In the circumstance your request for regular appointment in the said post cannot be considered. As regards the pay and allowances, the CAT has not ordered payment of backwages."

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Aggrieved by this, he has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

- "(i) The period from the date of termination (28.10.88) to the date of reinstatement (8.2.90) be treated as duty for all purposes with full pay and allowances for the period. This follows from Annexure-II judgement of the Hon'ble Tribunal in OAK 459/88.
- (ii) Declare that there is no break in service by reason of the termination, or due to delay on the part of the respondents to reinstate the applicant inspite of the Hon'ble Tribunal's orders in OAK 459/88.
- (iii) Grant such other relief as may be prayed for and the Hon'ble Tribunal may deem fit to grant, and;
- (iv) Grant the cost of this Original Application."

3. In the reply statement the respondents have stated that as per the directions contained in the judgement in OAK 459/88 delivered on 22.12.89 the applicant was reinstated with effect from 7.2.90 (AN). They further submitted that the judgement of the Hon'ble Tribunal had not directed the respondents to regularise the services of the applicant from 28.10.88 to 7.2.90 and also not directed to pay his allowances for the above period. The applicant is not entitled for the pay and allowances as he is not a regularly selected candidate. Moreover, temporary appointees are entitled for the allowances for the days they worked in the post.

4. The respondents further submit that the applicant is not entitled for wages from 28.10.88 to 7.2.90 as he had not worked in the post and his claim is not acceptable. They further add that the applicant in OA No. 459/88 has specifically prayed to treat him as having continued in the post but the prayer was not granted as per their interpretation of the judgement.



They submit that as this prayer was specifically raised and negatived by the Hon'ble Tribunal, he is not entitled to raise it again before the Tribunal and the prayer must be deemed to have been negatived for all legal purposes.

5. The applicant filed a rejoinder wherein he has repeated the facts as stated in the O.A. He emphatically states that the Annexure-II judgement of this Tribunal has set aside the impugned order dated 4.8.88 terminating the applicant's service and ordered his reinstatement. The main ground for setting aside the termination order was illegality caused due to non-compliance with the provisions of Chapter-V-A of the I.D.Act. In the rejoinder he has quoted the judgement of 1989 Lab.I.C.12 CAT (Ahd.) and the Supreme Court judgement, AIR 1988 SC 344 to bring home the fact that once the order is held illegal and set aside, he is entitled for backwages and also the continuity of service treating the interim period as duty.

6. We have heard the learned counsel of both the parties and perused the records carefully. The judgement in OAK 459/88 clearly states that the impugned order dated 4.8.88 terminating the services of the applicant as having set aside. This would mean that the termination order is null and void. ~~XXXXXXXXXXXXXXXXXXXX~~  
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7. The Supreme Court in AIR 1988 SC 344 clearly directed that termination of service if held to be a nullity, it entails the person who has been terminated

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from service to be paid salary on the footing that he had always continued in service and the void order was never in existence in the eye of law. The relevant portion is extracted below:

"We agree wholly with the reasoning and conclusion of the High Court. Since the order of termination of service of the respondent was rightly held to be a nullity he was entitled to be paid salary on the footing that he had always continued in service and the void order was never in existence in the eye of law. The appeal, therefore, fails and is dismissed with no order as to costs."

8. In 1989 Lab.I.C. NOC 12 CAT (Ahd) it has been held that retrenchment action if not sustainable because of non-compliance of the provisions contained in section 25-F of the I.D.Act, the petitioner was entitled for reinstatement and backwages.

9. In the present case, as stated earlier, this Tribunal has set aside the termination order treating it as illegal. If so, it is in the same footing as the judgements of the Supreme Court and the CAT as quoted above. Hence we are of the view that the applicant is entitled for backwages for the period from 28.10.88 to 8.2.90 treating this period as duty for all purposes. We are also of the view that this period will not be construed as a break in service because of the termination.

10. Accordingly, we direct the respondents to pay to the applicant the backwages in accordance with law, within a period of 3 months from the date of receipt of a copy of this judgement, treating the period from 28.10.88 to 8.2.90 as duty.

11. The application is thus allowed and there will be no order as to costs.

  
(R. Rangarajan)  
Administrative Member

  
(A.V. Haridasan)  
Judicial Member  
30/3/93