

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED MONDAY THE TWENTY EIGHTH DAY OF AUGUST  
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 361/1986

K. S. Joseph

Applicant

Vs.

1. Union of India represented by  
the Secretary, Ministry of  
Communication & Broadcasting,  
New Delhi,
2. The Director of Postal Services,  
Cochin and
3. The Post Master,  
Head Post Office, Alleppey

Respondents

M/s. M. K. Damodaran, V. K. Mohanan &  
Johny Sebastian

Counsel for the  
applicant

Mr. P. A. Mohamed, ACGSC

Counsel for the  
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

This application is ~~XXXXXXXXXXXX~~ covered by the  
decision of this Tribunal in O.A.K-201/87 and hence, this  
can be disposed of without elaborately discussing the  
questions raised by the petitioner in this case.

2. The petitioner was temporarily working since 1976  
under the third respondent either as postman or class IV  
servant or Extra Departmental Packer for, he was working in

leave vacancy of one M. Koyamon. When Shri Koyamon resigned from service, the petitioner was appointed as E.D. Packer as per Annexure I order on 11.7.1985. This appointment was also extended from time to time. While he was working as EDLB peon test was conducted and the petitioner stood first in the examination and he was appointed after due notification. He has nine years experience in the field. He is eligible to be appointed in regular service in the light of the office memorandum at Annexure-V.

3. The service of the applicant was terminated as per order dated 3.4.86 at Annexure IV on the basis of an alleged complaint sent by one Madhusoodhanan, son of a retired Post Master K. K. Srinivasan. The petitioner seeks to quash Annexure-IV order and claims protection under Article 311(2) of the Constitution since he had been appointed after selection and due notification.

4. The respondents have filed a counter affidavit in which the facts are admitted. It is stated that the petitioner was appointed as temporary ED Packer with effect from 16.1.1986 after conducting test and other formalities. But, one of the applicants preferred a complaint to the Director of Postal Service, Cochin who ordered the cancellation of the selection. So, it is admitted that the impugned order was passed solely based on the complaint preferred by one of the unsuccessful

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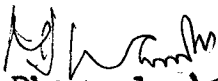
aspirants for the post, who happens to be the son of a retired Post Master.


5. In the O.A. 201/87, under identical circumstances, this Tribunal following the decision in O.A.K. 249/87, observed as follows:-

"We are at a loss to understand how such a complaint can in fact afford the foundation for an enquiry, in the absence of any specific assertion of illegality or irregularity pertaining to the selection. Whatever it be, the plea in the reply is only "that some irregularities were committed by the then Supdt. of Postoffices, Ottapalam, and he was instructed to review the selection and appointment." In the absence of a statement at least as to the nature of the irregularity, even assuming that an enquiry was conducted on the basis of the complaint, we cannot uphold the termination of the service of the applicant, the duly selected candidate who was appointed to the post and was holding the same. It has also to be pointed out that if as a matter of fact it emerged that there was some irregularity in the selection warranting the termination of the service of the selected candidate, the principles of natural justice dictate that before doing so, an opportunity should have been afforded to the applicant of being heard. In this context we would refer to the decision of a Bench of this Tribunal to which one of us was a party (Hon'ble Shri G. Sreedharan Nair in V. P. Tressia Vs. Sr. Supdt. of Postoffices (O.A.K.249/87) decided on 28.2.1989 where the proposal to terminate the services of a selected candidate as the applicant in the instant case, behind her back without affording her an opportunity of being heard, on receipt of complaint about the selection, was deprecated and it was held that in case action is to be taken to the prejudice of the applicant therein, due notice shall be given to her. We affirm the principle laid down therein."

6. In this case also, there was no enquiry before passing the impugned order nor was any notice issued to the petitioner prior to the order. The above decision applies to the facts of the case in all ~~forums~~<sup>aspects</sup>. In the result, we quash the impugned order passed by the third respondent dated 3.4.1986.

7. We also direct the respondents 1 to 3 to reinstate the petitioner in service. The applicant shall be deemed to have continued in service with effect from the date on which his services were terminated, but shall not be entitled to any back wages.
8. The petition is disposed of as above.
9. There is no order as to costs.

  
(N. Dharmadan)  
Judicial Member  
28.8.89

  
28-8-89  
(S. P. Mukerji)  
Vice Chairman  
28.8.89

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