

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.NOS.365/93 & 366/93.

Thursday, this the 2nd day of December, 1993.

C O R A M

HON'BLE MR A.V. HARIDASAN, JUDICIAL MEMBER
HON'BLE MR S KASIPANDIAN, ADMINISTRATIVE MEMBER

O.A. 365/93

1. MN Babu,
Maliyamveedu,
Vaduthala, Ernakulam District.
2. PK Mukundan,
Puthenpurayil,
Perumbalam, Alleppey Dist.
3. A Mohammed,
Veliyilparambu,
Kadamangalam, North Parur.
4. KM Ayyappan,
Koolimattathu Veedu, Muttom,
Thaikkattukara P.O., Alwaye.Applicants.

By Advocate Shri MR Rajendran Nair.

Vs.

1. Union of India represented by
Secretary, Ministry of Communications,
Department of Posts, New Delhi.
2. The Senior Superintendent of Post Offices,
Ernakulam.
3. The Post Master General, Central Region,
Kochi—16.
4. The Asst. Supdt of Post Offices,
Ernakulam Sub-division,
Edapally, Kochi—24.
5. The Senior Post Master, Ernakulam.
6. KV Purushothaman,
ED Packer, Udayamperoor,
Ernakulam District.
7. P Suguna, ED Packer,
Udyogamandal, Ernakulam Dist.
8. P Pushpakumari,
Branch Postmaster,
Edappally North, Ernakulam Dist.
9. MN Omana, EDDA,
Ambalamugal, Ernakulam Dist.Respondents.

By Advocate Shri Mohamed Navaz, Addl Central Govt Standing Counsel

By Advocate Shri MC Nambiar for Respondents 6 to 9.

contd.

O.A. 366/93

KN Ramakrishnan,
Mangalayil House, Vennala,
Cochin-25 (Group D of Cochin-1, Post Office)

....Applicant

By Advocate Shri MR Rajendran Nair.

Vs.

1. The Post Master General, Cochin-16.
2. The Post Master, Cochin-1.
3. Union of India represented by
Secretary, Ministry of Communications,
New Delhi.

By Advocate Shri K Karthikeya Panicker, Addl Central Govt Standing Counsel.

O R D E R

AV HARIDASAN, JUDICIAL MEMBER

Since common facts and question of law are involved in both these applications, they are being considered and disposed of by this common order.

2. The applicants in both these cases are aggrieved by the order of the Post Master General, Kochi, the third respondent in OA 365/93 and the first respondent in OA 366/93, dated 11th January, 1993 directing the cancellation of the appointment of the applicants in Group D posts after observing the procedure prescribed under Rule 5 of the Temporary Service Rules (Annexure I in both the cases) and the consequential orders issued by the Assistant Superintendent of Post Offices, Ernakulam (Annexure II, II(A), II(B) and II(C) in OA 365/93 and Annexure II in OA 366/93) giving the applicants in these cases notice of termination under Rule 5 of the CCS (Temporary Service) Rules, 1965.

3. The historical background which lead to the issue of the impugned orders and to the filing of these applications can be briefly stated as follows:

4. Applicants 1 to 4 in OA 365/93 commenced their service as casual mazdoors under the respondents on various dates. The first

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applicant was first engaged on 10.8.81, the second applicant on 12.11.83, the third applicant on 8.8.83 and the fourth on 6.8.84. While they were continuously working as casual mazdoor, they filed OA 469/89 praying for a direction to the respondents to regularise them in service, to give them work and wages and not to terminate their services except in accordance with the provisions of Industrial Disputes Act. The Department in the reply statement filed in that case stated that regularisation of casual mazdoors in Group D posts is made on the basis of their seniority and merit towards available vacancies, ^{that} in view of the directions contained in the Supreme Court judgement, the Government of India had issued instructions regarding regularisation of casual mazdoors and that the case of the applicants for regularisation was under active consideration of the Department. On the basis of the above statement, OA 469/89 was disposed of with the following directions:-

"In the conspectus of facts and circumstances we close this application with the direction to the respondents that the question of regularisation of the services of the applicants and payment of wages for the weekly off and national holidays should be considered and decided within a period of six months from the date of communication of this order. We make it clear that if any scheme of regularising the casual workers is finalised in accordance with the directions of the Supreme Court or under any policy decision, the applicants also should be considered under that scheme for regularisation."

As the Department found it not feasible to implement the directions contained in the judgement within the time stipulated, they filed MP 1016/90 for extension of time to implement the directions by three months. In that MP, the Department stated:

"As per directions contained in the above order, the respondents/petitioners herein took up the proposal of creation for regularising the services of the applicant. Final administrative clearance for creation of the post from the Directorate is yet to be received. Due to administrative exigencies, the respondents are not in a position to implement the order within a stipulated time."

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This MP was disposed of with the following directions:-

".....Accordingly we allow the MP and grant a further extension of time by three months from today with the direction that the date of regularisation of the original applicants should take effect from the date of the pronouncement of judgement."

Thereafter, the Senior Superintendent of Post Offices, Ernakulam Division, issued memo dated 15.3.1991 (Annexure VI) stating that as per orders contained in the Post Master General's memo No. EST/39-1/88 dated 13.3.1991, **all** the four applicants selected for appointment as Departmental Group D in Ernakulam Division, were allotted to the units noted against each. Following the above order, the Assistant Superintendent of Post Offices, Ernakulam Sub Division, Edappally, issued an order dated 15.3.1991 (Annexure VII) appointing applicants 1 to 3 in Group D posts in Cochin Foreign Post Office against newly created posts. The Senior Post Master, Ernakulam issued order dated 16.3.1991 (Annexure VIII) appointing the 4th applicant as Group D at Ernakulam HPO with immediate effect against an existing vacancy. So, the applicants in OA 365/93 started performing their duties as Group D employees from the dates they were appointed.

5. Applicant in OA 366/93, Shri KN Ramakrishnan commenced his casual service under the respondents in the year 1980. He had also approached this Tribunal by filing OA 342/90 against denial of employment and praying for regularisation. That application was disposed of with a direction to the respondents to consider his case for regularisation and absorption in service as part of the implementation of the scheme that the Department had evolved in that behalf. Finding that the applicants in OA 365/93 had been regularly appointed in Group D posts while Shri Ramakrishnan was not so appointed, he filed OA 993/91 for a declaration that the termination of his services with effect from September, 1990 was null and void and for a direction to the respondents to give him work and wages and to regularise him in service in preference to his juniors. OA 993/91

contd.

was finally disposed of by order dated 26.2.1992 directing the respondents to regularise the service of Shri Ramakrishnan, the applicant therein with effect from the date of regularisation of Shri KM Ayyappan, applicant No.4 in OA 365/93 within a period of ten days from that date with all consequential benefits including fixation of pay and seniority. Thereafter, by order dated 27.4.1992, the Senior Superintendent of Post Offices conferred on Shri Ramakrishnan temporary status with effect from 16.3.91. Respondents filed a review application for review of the judgement in OA 993/91 on the ground that implementation of the order would create administrative problems inasmuch as Extra Departmental Agents have to be given preference for appointment in Group D posts over the casual labourers according to recruitment rules. However, this review application was dismissed. In a contempt petition CCP 34/92, the Tribunal directed respondents to implement the directions in the judgement in OA 993/91 within a period of six weeks from the date of that order. In this background, the Senior Superintendent of Post Offices, Ernakulam, issued an order dated 20.6.92 appointing the applicant in OA 366/93, Shri Ramakrishnan as a Group D employee in Cochin HPO. Consequential benefits including fixation of pay and seniority were also conferred on the applicant with effect from 16.3.1991. However, it was also stated in the order dated 20.8.1992 (Annexure VII) that the appointment of Shri Ramakrishnan would be subject to review of regularisation orders of Shri KN Ayyappan done in obedience of the judgement in OA 469/89.

6. While the applicants in both these cases were thus working in Group D posts, the Post Master General, Kochi, in his proceedings dated 11.1.1993 (Annexure I in both these cases) held that the appointment of the applicant in OA 365/93 in Group D post on a regular basis was not in order since by doing so, the provisions of the statutory recruitment rules which provide for preference to be given to ED Agents in the matter of appointment to Group D posts have been over looked. He held that as the Tribunal had in OA 469/89

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directed the respondents to consider the question of regularisation of the applicants in that case and payment of wages for weekly off and national holidays within a time frame in accordance with the scheme evolved in that regard, the Department had erroneously appointed the applicants in that case in Group D posts overlooking the provisions of the statutory recruitment rules. The applicant in OA 366/93 had also to be appointed in Group D post with reference to the date on which the 4th applicant in OA 365/93 was regularly appointed in obedience to the directions contained in the judgement in OA 993/91. As applications filed by persons similarly situated as the applicant in OA 366/93 for similar reliefs are pending, the Post Master General felt that if all these persons are to be regularly appointed, that would cause an anomalous situation for appointments made to Group D posts against the provisions of the statutory recruitment rules will be highly detrimental to the interest of ED Agents awaiting their chances for appointment to Group D posts. Therefore, the Post Master General held that it was necessary to retrieve the steps and to cancel the irregular appointments of the applicants in these two cases in Group D posts and directed the concerned appointing authorities to take immediate action for cancelling the appointments of the applicants by observing the procedure prescribed under Rule 5 of the CCS (Temporary Service) Rules. It was pursuant to this direction that the impugned orders at Annexure II, II(A), II(B) and II(C) in OA 365/93 and Annexure II in OA 366/93 were issued informing the applicants that their services would be terminated with effect from the date of expiry of a period of one month from the date of service of the notices issued under Sub Rule (1) of Rule 5 of the CCS(Temporary Service) Rules, 1965. It is challenging these ~~impugned~~ orders that the applicants have filed these applications.

7. Applicants in OA 365/93 have prayed not only for quashing the impugned orders, but also to ante-dating their service in Group D to 4.6.92, the date of judgement in OA 469/89 with all consequential benefits and also for a direction to consider disbursement of wages

for weekly off and national holidays during the period they worked prior to September, 1988. The applicant in OA 366/93 has also prayed for a declaration that he is entitled to be regularised with effect from the date of regularisation of his junior, i.e. 4.6.90 with all consequential benefits apart from quashing Annexure I & II. In both these applications, applicants have alleged that the Post Master General does not have the statutory authority to review appointments and that the case of the respondents reflected in Annexure I in both these cases, that the appointments of the applicants were made by a mistake, is baseless. They have alleged that as the appointments of the applicants in OA 365/93 were made strictly in compliance with the undertaking by the respondents in MP 1016/90 and in terms of the order passed by the Tribunal in that MP, it is not open for the respondents now to retrieve that step which according to the applicants would amount to contempt of Court. The applicant in OA 366/93 has alleged that since the appointment of the applicant was made in terms of the directions contained in the judgement in OA 993/91, respondents have no right either to cancel that appointment or to terminate his services.

8. The respondents in OA 365/93 have filed a reply statement. The material contentions raised are as follows:

9. While this Tribunal had in its judgement in OA 469/89 directed the respondents to consider the question of regularisation of the services of the applicants and payment of wages for weekly off and national holidays and decide within a period of six months and that if any scheme for regularisation of the casual mazdoors be finalised in accordance with the directions of the Supreme Court or under any policy decision, the applicants should also be considered under that scheme for regularisation. While implementing the above directions, respondents committed a serious mistake of overlooking the provisions in the statutory recruitment rules which provide for preference to ED Agents over casual mazdoors in the matter of appointment to Group

contd.

D posts. According to the scheme for grant of temporary status and regularisation of casual mazdoors (Annexure R2-A) grant of temporary status does not automatically confer a right of regular absorption. It has also been specifically stated in the scheme that regular appointment to Group D posts would be made in accordance with the recruitment rules according to which ED Agents are a preferential category for appointment. Since an error was committed in appointing the applicant in OA 366/93 overlooking the provisions of the recruitment rules and as the respondents had no other alternative but to appoint the applicant in OA 366/93 in obedience to the directions in the judgement in OA 469/89, the Post Master General has no other alternative but to set right the mistake committed by directing cancellation of the irregular appointment observing the formalities prescribed under Rule 5 of the CCS (Temporary Service) Rules. Since the impugned orders in these cases have been issued bonafide for rectification of a mistake committed in the interest of service and administration, the applicants do not have a genuine grievance. It is settled in law that administration has got the right to rectify its mistake and for doing so, it is not necessary to give notice to the affected persons since nobody ^{would} acquire any right on the basis of an order passed by a mistake. The respondents-Department pray that the application which is devoid of merits may be dismissed.

10. The respondents have in a M.P. in OA 366/93 sought permission to adopt the contentions raised in OA 365/93 in this case and to treat the reply statement therein as reply statement in this case also.

11. Respondents 6 to 9 in OA 365/93, who are ED Agents, have filed a reply statement contending that the applicants are not entitled to the reliefs prayed for in the application and that if the reliefs are granted to them, they would be adversely affected.

12. We have carefully gone through the pleadings and documents and have also heard the arguments of the counsel for the parties in these cases. The main thrust of the argument of the learned

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counsel for the respondents-Department justifying the impugned orders in these cases is that the orders appointing the applicants in Group D post on regular basis having been issued by a mistake overlooking the statutory recruitment rules, the administration is justified in rectifying that mistake by issuing the impugned orders. Learned counsel for the applicants on the other hand argued that it cannot be said that the appointment of the applicants in either of these two cases as regular Group D employees was erroneous in any way because according to various instructions issued by the Government of India, casual labourers having put in a number of years of service are entitled to regularisation. The counsel further argued that in OA 365/93, the respondents are estopped from contending that the appointment of the applicants was made by a mistake because it was on the basis of their specific undertaking in the MP 1016/90 that administrative clearance for creation of posts for regularising the applicants was pending, that the Tribunal was pleased to grant them extension of time by three months with a specific direction that the date of regularisation of the applicants should take effect from the date of pronouncement of the judgement. It is further argued that if this undertaking and the directions contained in the order in MP 1016/90 were not complied with, it would have been open for the applicants to move the Tribunal for taking action against the respondents under Contempt of Court Act. Now that the undertaking has been honoured by the respondents by appointing the applicants in regular Group D posts, the counsel argued that to retrieve that step would amount to review of the directions of the Tribunal by the respondents. The counsel further argued that as far as appointment of the applicant in OA 366/93 is concerned, a specific direction in the judgement in OA 993/91 was given to regularise the services of the applicant therein with effect from the date of appointment of Shri Ayyappan, the 4th applicant in OA 365/93 in Group D post and, therefore, cancellation of that appointment would amount to a review and cancellation of the directions contained in the judgement by a party to the judgement. In such a situation, the learned counsel for the applicant argued that without taking leave of Court

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or at least without giving an opportunity to the applicant to show cause against such action, the / cannot justifiably cancel the appointment of the applicant.

13. Regarding the contention raised by the applicants that the Post Master General has no authority to review the appointment and direct cancellation of the appointment, no definite plea is taken by the respondents. Learned counsel for the respondents did not also touch this point at all. The appointment of the applicants in OA 365/93 in Group D posts was made on the basis of the order of the Post Master General. Whether it is open for the successor in office of Post Master General to review that order and direct cancellation of the appointment is a debatable point. Further, in the light of the definite direction contained in the order of the Tribunal in MP 1016/90 that the regularisation of the applicants in OA 469/89 should take effect from the date of pronouncement of the judgement in that case, having appointed the applicants in Group D posts, whether it is open for the successor in office to direct cancellation thereof for any reason is also another question which requires to be debated. Similarly, since the direction contained in judgement in OA 469/89 is to appoint the applicant in that case, who is the applicant in OA 366/93 with effect from the date on which Shri Ayyappan, the 4th applicant in OA 365/93 was appointed, having made such an appointment pursuant to the above direction, whether it is open for a successor in office of the Post Master General to unilaterally decide that the appointments were erroneous and to give a direction to cancel the appointment is in order, is also another question. Though the administrative authority should have the liberty to rectify its own mistakes and while doing so, the principles of natural justice do not come into operation, when the question whether an earlier act suffers from a mistake or not is not free from doubt, we are of the view that it is necessary in the interest of justice to give the affected parties an opportunity to show cause. Admittedly, in these two cases before issuing the impugned orders of termination of services of the

applicants, no such opportunities have been given to the affected persons, i.e. the applicants. Further, in Annexure I order in both these cases, the direction given to the appointing authorities is to cancel the appointment of the applicants by observing the formalities prescribed in Sub Rule (1) of Rule 5 of CCS (Temporary Service) Rules. This Rule enables the appointing authority to terminate the services of a temporary employee. But this provision is not intended for the purpose of enabling the appointing authority to cancel the appointment. Therefore, we are of the definite opinion that the orders impugned in this case suffer from violation of principles of natural justice.

14. The respondents 6 to 9 who are ED Agents who claim to be adversely affected by the appointment of the applicants in Group D posts have no role to play in this case. In these two cases, the applicants are challenging the orders by which their services were threatened to be terminated. The sole question for consideration in these cases are whether the termination of the services of the applicants is justified. Respondents 6 to 9 in OA 365/93 cannot have any say in the matter. Apart from seeking cancellation of impugned orders, applicants in these cases have also prayed for ante-dating their appointment in Group D posts. The applicants in OA 365/93 have also prayed for a direction to the respondents to give them some monetary benefits. Regarding the monetary benefits such as paid holidays, respondents have in their reply statement stated that the matter is under consideration. As far as ante-dating of the appointment in Group D post is concerned, we are of the view that this is an entirely different relief which cannot be clubbed with the main relief claimed by the applicants.

15. In the result, in view of what is stated in the foregoing paragraphs, we allow these two applications in part, quash the impugned orders Annexure I, II, II(A), II(B) and II (C) in OA 365/93 and Annexure I & II in OA 366/93. Regarding payment of paid weekly off and national holidays claimed by the applicants in OA 365/93,

as the respondents have stated that the matter is under consideration, the respondents are directed to take a decision and to communicate the same to the applicants therein within a period of three months from the date of receipt of this order. If for any reason, the respondents consider it necessary either to cancel the appointment of the applicants in Group D posts or to terminate their services, they can take action in that behalf only after giving the applicants an opportunity to show cause against such action.

16. There is no order as to costs.

(S KASIPANDIAN)
ADMINISTRATIVE MEMBER

(AV HARIDASAN)
JUDICIAL MEMBER

CERTIFIED TRUE COPY

Date 10.12.93



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