

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
TxXX No.

4/ 1990

DATE OF DECISION 18.6.1990

Lalithambika T. Applicant (s)

Mr. S. Krishnamurthy Advocate for the Applicant (s)

Versus

Union of India, represented by the Secretary, Ministry of Communication, New Delhi. Respondent (s)
and 5 others

Mr. T. P. M. Ibrahim Khan, ACGSC Advocate for the Respondent (s)

Mr. M. R. Rajendran Nair

Mr. P. V. Mohanan

CORAM:

The Hon'ble Mr. S.P. MUKERJI, VICE CHAIRMAN

&

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? *No*

4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The grievance of the applicant is against termination of her services as EDSPM, Thottappally w.e.f 29.9.89 and the proposal of appointment of the 6th respondent in her place contrary to the legally recognised procedural formalities applicable to the same.

2. According to the applicant she has worked as the Sub Post Master of Thottappally Post office under the Alleppey Sub Division from 1982 onwards on various leave arrangements on a provisional basis. The applicant had worked for 528 days, of which more than 240 days in the year 1989 itself. When the post of EDSPM, Thottappally fell vacant due to resignation of Smt. B. Radhamony on 31.7.1989, the applicant was appointed provisionally to that post as per Annexure-A.

which contained a condition that her provisional appointment will be terminated when regular appointment is made to the post.

3. The second respondent, who is the appointing authority, has issued a notification for filling up of the vacancy after selecting a candidate by inviting applications from the 4th respondent, the District Employment Officer, Alleppey. According to the applicant though she had registered her name before the 4th respondent in the year 1975 and renewed it from time to time, her name was not sponsored by the 4th respondent. However, the second respondent without completing the selection process, proposed to appoint the 6th respondent who was working as EDMC, Purakadu by transfer to Thottappally, the place where the applicant was provisionally working on leave arrangements. This, according to her, is illegal. Hence she filed this Original Application before this Tribunal.

4. She has also moved an M.P 118/90. We have heard the same and passed the following order on 15.2.90 as an interim measure:

" The applicant has filed MP 118/90 to give a direction to the Respondents that the Respondents may not appoint Respondent-6 to the post of EDSPM, Thottappally provisionally pending disposal of this application.

Having heard the counsel, we are of the view that the interest of justice would be served if a direction is given to the effect that notwithstanding the posting of Respondent-6 on a provisional basis by transfer, he will not acquire any right prejudice to the applicant and their rights will be subject to the final order in this case. Accordingly it is directed."

5. The applicant's challenge against the termination is that it is violative of provisions of Section 25-F of the I.D Act. She has also a case that she is entitled to preferential right under Section 25-H of the I.D Act in the matter of selection to the post and reemployment thereon. According to the applicant she is fully qualified for the post. She further submitted that since the 6th respondent was working at Purakad his appointment by transfer is illegal and he cannot claim any experience so far as the selection and appointment to the post of EDSPM, Thottappally is concerned.

6. The second and third respondents have filed separate counter affidavits. In the counter affidavit filed by the second respondent the period of past service of the applicant as Extra Departmental Sub Post Master, Thottappally on various leave arrangements on a provisional basis from 1982 onwards has been admitted. They have stated that though the applicant worked for more than 471 days in various spells of leave arrangements, she has ~~for~~ worked only 60 days as a permanent incumbent to the post on a provisional basis. They have further stated that since the appointment of the applicant was provisional from 1.8.89 to 29.9.89 on condition that the provisional appointment will be terminated when regular appointment to the post is made without assigning any reason, the applicant's services were terminated on 29.9.89. Regarding the appointment of the 6th respondent by transfer, the second respondent submitted that he applied for the post

at Thottappally on transfer basis while he was working at Purakad as Extra Departmental Mail Carrier and since he satisfied all the eligibility conditions, a proposal to make provisional appointment of the 6th respondent at Thottappally was made as per Annexure B. But his appointment was made after the interim order of this Tribunal. Hence it is subject to the final outcome in this case. They have also submitted that the applicant's case cannot be considered for regular appointment because of the fact that her name was not sponsored by the 4th respondent.

7. The sixth respondent also filed a counter affidavit. His case is that he was appointed as ED Packer at Avalukunnu Sub Office with effect from 5.6.1975 and he continued in that post till 21.10.1981. Later on due to upgradation of the post of ED Packer , Avalukunnu to that of Group D post, he was offered another post of EDMC,Purakad from 2.2.1982. While so he requested for a transfer to the post of EDSPM, Thottappally pointing out that he was a retrenched ED Agent as disclosed in Annexure R6A. According to him under Annexure R6B D.G's order dated 12.9.88 his case can also be considered for regular selection even if his name has not been sponsored by the Employment Exchange. He has also placed reliance on a decision of this Tribunal in OA 7/89.

8. The 4th respondent against whom the applicant made the allegation that he did not send the name of the applicant in spite of her registration as early as in 1975, has not filed any counter affidavit in this case.

9. The main question to be considered in this case is whether the termination of the applicant and appointment of the 6th respondent by transfer are legal or valid on the facts and circumstances of this case.

10. The answer to that question is vitally connected with the appointment order of the applicant. It is pertinent to read Annexure-A, the last appointment order given to the applicant in this connection. Paragraphs 1 and 2 of the same are as follows:-

"Whereas the post of EDSPM, Thottappally has become vacant and it is not possible to make regular appointment to the said post immediately, the undersigned has decided to make provisional appointment to the said post for a period of 31 days from 1.8.89 to 31.8.89 or till regular appointment is made, whichever period is shorter.

"2. Smt. Lalithambika T. Ambanattumadam, Thottappally is offered the provisional appointment. She should clearly understand that the provisional appointment will be terminated when regular appointment is made and that she shall have no claim for appointment to any post."

11. Even though this order is for a period of 31 days it was issued in continuation from the earlier appointments. Hence the statements in para 1 and 2 are to be read together and understood on the facts of this case.

The concluding portion of the second paragraph is crucial. It retains the power of termination of services of the applicant by the second respondent. But he can do it only when makes a regular appointment to the post after a legal

and valid selection. The process of such regular selection had not been completed by the second respondent so far. So the termination of the applicant appears to be bad and against the terms in para 2 of Annexure-A.

12. When it is an admitted fact that the applicant was working as EDSPM, Thottappally from 1982 onwards on leave arrangements and she has been appointed by means of the last appointment order Annexure A in continuation of the earlier appointments with a specific understanding that her provisional appointment will be terminable when regular appointment is made, there is no legal justification to terminate the services of the applicant of regular selection on 29.9.89 before the completion of the formalities by the second respondent, who is the appointing authority, as admitted in the counter affidavit of the second respondent. He should have proceeded with the regular selection and found out a suitable person for filling up the regular vacancy and made the appointment with such if she is not selected, a person in place of the applicant as indicated in Annexure-A. Instead of taking such regular steps and completing the formality of a regular selection, the 6th respondent has been appointed to the post at Thottappally by means of a transfer which appears to be not in order in the light of Annexure R2(A). The relevant clause in Annexure R2(A) reads as follows:-

"Transfer of ED Agents from one post to another.

Transfer of ED Agents from one post to another is not permissible under rules. There is no preference for working ED Agents for selection to another ED post. The orders regarding preference for working ED Agents

issued under this office letter No. STA/102/6-VI/78 dt. 7.11.78 are cancelled. However, if they apply for a post in response to local notification (Where employment exchange has not furnished nominations) or are nominated by the Employment Exchange, such applications will be considered on merits along with other applications. But if such EDAs are selected, they will have to resign from the old post and forgo past services."

13. We have held in R. Padmanabhan Nair vs.

Superintendent of Post Offices and another, ATR 1990(1)

CAT 215, that termination of a substitute employee of

Postal Department is violative of the provisions of

Chapter V-A of the Industrial Disputes Act, 1947.

According to us, the principles laid down in that

decision squarely apply to this case also and hence

we are of the view that the termination of the services

of the applicant is illegal and he is also liable to

be reinstated in the post, but without any back wages

because of the fact that the 6th respondent was working

in her place while she was out of service.

14. The impugned order by which the 6th respondent

was proposed to be appointed as EDSPM, Thottappally,

cannot be sustained in the light of paragraph 7 of

Annexure R2(A) produced along with the counter affidavit

of the second respondent. But his claim can be considered

in the light of Annexure R6B produced along with the

counter affidavit of 6th respondent. According to the

6th respondent, he is a regular employee and his services

cannot be terminated. However, we have made clear in our

interim order passed on 15.2.90 that the 6th respondent

would not get any better claim on account of his posting at Thottappally pursuant to the impugned order. He can seek a transfer to the original place or any other place where there is a vacancy when he is displaced due to the reinstatement of the applicant consequent on the implementation of the order in this case. The claim of the 6th respondent will be considered by the second respondent sympathetically.

15. Admittedly the second respondent, who is the appointing authority, has taken a decision to make regular selection to the post of EDSPM, Thottappally and initiated proceedings on 24.8.89 and there is no reason why this has been dropped by the second respondent without completing the same and the 6th respondent was appointed to the post by transfer. Since the second respondent decided to make a regular appointment, it was incumbent upon him to complete the same and fill up the post with a regular appointee as indicated by him in Annexure-A appointment order of the applicant. He can be replaced only by making regular selection and making such an appointment to the post. Under these circumstances the second respondent is bound to make a fresh selection in accordance with law in which he should consider the case of both the applicant and the 6th respondent notwithstanding the fact that they were not sponsored by the 4th respondent. Till such a regular

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and completed [✓]
appointment is conducted, the applicant shall be
allowed to work as EDSPM, Thottappally. Accordingly
we allow this application and dispose of the same with
the aforesaid directions. There will be no order as to
costs.

N. Dharmadan
(N.DHARMADAN)
JUDICIAL MEMBER

18.6.90

S.P. Mukerji
(S.P. MUKERJI)
VICE CHAIRMAN

18.6.90

n.j.j