

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 411 / 2006

Thursday this the 10th day of August, 2006

CORAM

HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER

P.Thankamany
Part-Time Sweeper
Urakam PO, Irinjalakuda Postal Division
Pin : 680 562
Residing at : Pozhath House
PO Urakam, Trichur District : Applicant

(By Advocate Mr. G.Sasidharan Chempazhanthiyil)

Versus

1. Sub Postmaster
Urakam Post Office
Irinjalakuda Postal Division
2. Superintendent of Post Offices
Irinjalakuda Postal Division
Irinjalakuda
3. Union of India represented by the
Postmaster General
Central Region, Kochi : Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 09.08.2006, the Tribunal on 10.08.2006 delivered the following :

ORDER

HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER

Termination of services of a part-time casual labourer without notice is the challenge in this case.

2. Briefly stated the applicant has been engaged as a part-time sweeper in the Office of the Sub Post Master Urakam Post Office for the past 28 years and she is 60. (respondents contend

that she is around 65 years of age). Vide Annexure A-2 order dated 20.05.2006. Sub Post Master has stated as under:-

"As it is noticed that the work performed by you is far from satisfactory, due to old age, it is hereby informed to you that your engagement as PTC sweeper at Urakam Post Office shall be dispensed with effect from 1.6.2006."

It is against the above order that the applicant has moved this Tribunal.

3. According to the applicant, age is not the criterion in respect of engagement of casual labourers. In this regard, the applicant relies upon the order dated 16.12.1993 which reads as under :-

" Sub: Proposal for prescribing superannuation age for casual labourers confirmed with temporary status

Sir,

I am directed to refer to your letter No.Rectt/27-2/93 dated 4.8.93 on the above subject and to state that in this office letter No.45-95/87-SPB-I dated 20.7.89 it has been clarified that as long as a casual labourer is physically fit and it capable of attending to the work assigned to him, there may be no objection to engaging him."

4. The applicant further submits that in regard to her physical fitness, a certificate from Civil Surgeon, Community Health Centre, Cherpu has been obtained vide Annexure A-3. According to the said certificate, the applicant is fit enough to perform the duties of a sweeper.

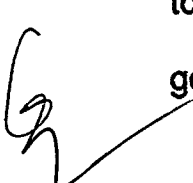


5. The applicant contends in her OA that as per Annexure A-4 order dated 26.12.1994, if it is proposed to dispense with the service of a casual labourer he/she may be issued a show cause notice and allow reasonable opportunity to defend before terminating the services.

6. Thus, on the aforesaid grounds the applicant has challenged the order of termination.

7. The respondents have contested the OA. According to them, the services of the applicant have been found far from satisfactory which is evident from an inspection report dated 10.01.2004 (Annexure R-1). It has also been stated (in the additional reply statement) that the applicant was given several chances to improve.

8. Arguments were heard and documents perused. The existence of Annexure A-1 order dated 16.12.1993 or its currency has not been disputed. In so far as the physical condition of the applicant is concerned, the respondents seem to have ignored the certificate issued by the Civil Surgeon as per whom the applicant is fit to do the work of a sweeper but the respondents themselves seem to have come to the conclusion that the applicant was unable to attend various items of work due to 'poor eye sight, old age and general weakness.'



9. As regard order dated 16.12.1995, which stipulates that reasonable notice should be given to the casual labourers before terminating their services, while existence of such order is not disputed the respondent's stand is that such an opportunity was given and chances were also given to the applicant to improve (this contention as contained in Para 7 of the reply statement is not supported by any documents).

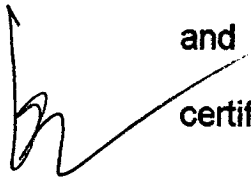
10. It has been stated by the counsel for the applicant that the basis of termination of the applicant's service is the inspection report of 2004 whereas no such adverse comments have been recorded in the subsequent reports which would go to show that the applicant's performance was not bad. In any event, argues the counsel for the applicant, provisions of order dated 16.12.1993 (Annexure A-1) and order dated 16.02.1995 (Annexure A-2) have not been followed in this case nor the certificate issued by the Civil Surgeon (Annexure A-3) taken into account.

11. Requirement of a sweeper (part-time or otherwise) which exists in the Office of the Respondent No.1 is not disputed and the applicant has been performing the duties of a part-time sweeper for almost three decades. Provision exists for engaging a casual labourer irrespective of age limit but subject to physical fitness and provision also exists, as a matter of rule, to put a casual labourer to notice before termination. The respondents have omitted to follow their own instructions. Considering the above position, order dated 20.05.2006 (Annexure A-2) cannot but be held as illegal. As the



impugned orders has not been issued by duly following the procedure prescribed, the applicant is entitled to a notice to defend her case for which a proper show cause notice is required. Such a show cause notice can be given only when the applicant is found physically unfit to continue in the part time job of a sweeper. Annexure A-3 fulfills the requirement of physical fitness. If, however, the authorities are not satisfied with Annexure A-3 medical certificate they can well approach any Government hospital at appropriate level to have the applicant medically examined to ascertain whether she is fit to work as part-time sweeper. Without following such a procedure and without giving any regard to the certificate of fitness produced by the applicant from a Civil Surgeon, the respondents have come to their own conclusion that the applicant is not in a position to do those jobs as of a sweeper due to poor eye sight, old age and general weakness. The respondents should first obtain the physical fitness certificate from a competent medical authority and it is only if the certification by the medical authorities goes against to the applicant that show cause notice can be given. Till then, the respondents cannot dis-engage the applicant.

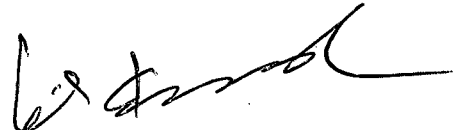
12. In view of the above, **the OA is allowed.** Respondents are directed to re-instate the applicant as a part-time sweeper. It is open to them to refer the applicant to a competent medical authority for the purpose of ascertaining the physical fitness of the applicant and if need be, about her age as well and on the basis of the certificate issued by the medical authorities further action either for



retention (in case of fitness) or for dis-engagement (in case medically found unfit) can be taken. And, in case of medical unfitness, a show cause notice should have to be issued before terminating the services of the applicant.

13. The respondents shall comply with this order by reinstatement of the applicant within a period of three weeks from the date of communication of this order. No costs.

Dated, the 10th August, 2006.



K.B.S.RAJAN
JUDICIAL MEMBER

vs