

(26)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 704/89

~~TxNo.~~

Date of Decision : 10 - 4 - 1992

Mr. Y. Veera Swamy

Petitioner.

Mr. KSR Anjeneyulu

Advocate for the
petitioner (s)

Versus

Union of India and others

Respondent.

Mr. NV Ramana, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. P. S. Habeeb Mohamed, Member (Admn.) (Bangalore Bench)

THE HON'BLE MR. T. Chandrasekhara Reddy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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M(A)

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M(J)

(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.704 of 1989

DATE OF JUDGMENT: 10th April, 1992

BETWEEN:

Mr. Y.Veera Swamy .. Applicant

AND

The Union of India represented by:

1. The Secretary to Government,
Department of Posts,
New Delhi.
2. The Director of Postal Services,
Vijayawada.
3. The Senior Superintendent of
Post Offices,
Prakasam Division,
Ongole.
4. The Sub Divisional Inspector (Postal),
Chirala Sub Division,
Chirala.
5. Sri Potu Raju, EDDA, Papayapalem,
Chirala. ..

Respondents

(Respondent No.5 given up as per the
order of Registrar dated 18.12.1989
on a letter filed by the Advocate for
the applicant)

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COUNSEL FOR THE APPLICANT: Mr. KSR Anjneyulu

COUNSEL FOR THE RESPONDENTS: Mr. NV Ramana, Addl.CGSC

CORAM:

Hon'ble Shri P.S.Habeeb Mohamed, Member (Admn.)

Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI P.S.HABEEB MOHAMED, MEMBER (ADMN.)

In this Original Application No.704 of 1989 filed by Mr. Y.Veera Swamy who was the EDDA/MC under Section 19 of the Administrative Tribunals Act, 1985, the impugned order contained in letter No.PF/EDMC DA Papayapalem, dated 1.9.1989 issued under the signature of the 4th respondent, Sub Divisional Inspector (Postal), Chirala Sub Division, Chirala, terminating his services with effect from 1.9.1989 under Rule 6 of P&T E.D.Aagents (Conduct & Service) Rules, 1964, is being challenged and the prayer is made for issue of ~~as~~ directions by the Tribunal declaring the order of the Sub Divisional Inspector (Postal), 4th respondent, as aforesaid, as arbitrary and illegal and setting aside the same and for reinstating the applicant as EDMC/DA, Papayapalem with all consequential benefits.

2. The case of the applicant as brought out in the application is that after issue of the notification of the

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Sub Divisional Inspector (Postal), Chirala for filling up the post of EDDA/MC of Papayapalem on regular basis, the applicant who fulfilled the prescribed conditions applied for the post along with others and was duly selected and vide orders dated 20.7.1988 (Annexure-2) he was appointed to the said post. He was working in the post continuously on regular basis from 21.7.1988 till his services were terminated in accordance with the impugned order. The charge of the post was forcibly taken over from him and he has ceased to perform the duties of EDDA/MC. Being aggrieved, he has filed ~~lubdt~~ before the Tribunal for obtaining the relief as aforesaid. Though he had submitted a representation to the Senior Superintendent of Post Offices, 3rd respondent, dated 1.9.1989, there was no reply by the respondents.

3. The application was admitted vide orders of the Tribunal dated 18.9.1989 and by way of interim directions it was ordered that appointment to the post made if any would be subject to the result of the application.

4. The stand of the respondents is that, ~~RE~~ the post of EDMC/DA had fallen vacant from 25.3.1988 because of the retirement of the regular incumbent. The vacancy was notified to the Employment Exchange and since none was sponsored by the Employment

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Exchange, a public notification was given in the Newspaper by the 4th respondent. Five applications were received including that of a provisional appointee, Mr. M. Venkata Rao and the 4th respondent selected the applicant and he was appointed. He ~~had~~ taken charge on 21.7.1988 but on receipt of certain complaints by the 3rd respondent, the 3rd respondent reviewed the entire selection and ~~the~~ he ~~3rd respondent~~ cancelled the selection by the 4th respondent appointing the applicant as EDMC/DA and appointed another person viz., Mr. Potu Raju as EDMC/DA with effect from 1.9.1989. The services of the applicant were terminated because the 3rd respondent found certain irregularities committed in the selection made by the 4th respondent. The applicant has put in only one year of service and his services could be terminated under Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964. The counter reads as follows:-

"Rule-6 prescribes that the services of an employee who has not rendered more than 3 years of continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time. The said rule does not provide for any notice before termination. The applicant has rendered only one year service before termination. As such, the contention of the applicant that his termination from service is illegal is not correct."

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According to the counter, there is no irregularity in the action of the 4th respondent in terminating the services of the applicant in accordance with Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964.

5. During the arguments of the case, the learned counsel for the applicant relied in support of his arguments that, recourse to Rule 6 of the Extra Departmental Agents Conduct and Service Rules, 1964 ~~was~~ were not in accordance with the law, ^{by} ~~either~~ ^{or} a Judgment of the Madras Bench of the Central Administrative Tribunal in, "C. Siyamala Vs. Union of India and others (AISLJ 1986(3) (CAT) p.385)". He particularly relied ~~on~~ ^{at para 6 of} the Judgment in support of his contention which reads as follows:-

"The learned counsel for the respondent stated that even if the third respondent has given opportunity to the applicant, the third respondent would have taken the same decision to cancel the appointment of the applicant and to appoint the fourth respondent instead. We do not know what would have been the representation that would have been made by the applicant if notice has been given before taking the decision to revise the selection made by the selection authorities. We are, therefore,

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of the view that there has been a clear violation of principles of natural justice, when the third respondent has set-aside the original selection made by the selecting authority, without notice to the affected party at the instance of an unsuccessful candidate. In this case the respondents 1 to 3 are not justified in replying, in support of their action in setting aside the appointment of the applicant on the basis of the representation made by the fourth respondent on Rule 6. Rule 6 will not apply to the facts of this case and that will apply only in different set of circumstances where the work or conduct of a person who is already holding the post is not quite satisfactory and as such the termination is necessary for administrative reasons. Here the appointment of the applicant has been set-aside at the instance of an unsuccessful candidate and not on administrative grounds or for the unsuitability of the applicant to the post. Therefore, Rule 6 cannot come into play in this case where the third respondent setting aside the selection made by the selecting authorities, to accommodate the fourth respondent, an unsuccessful candidate, by exercising the power under Rule 6. We clearly are of the view that Rule 6 cannot come into play when the department wants to ~~xxx~~ bring in a third party in place of the applicant. As already stated, Rule 6 could be applied only when the person is found unsuitable to the post and so his services can be terminated within three years."

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The learned counsel for the respondents on the other hand argued that the termination was in accordance with Rule 6 of the Extra Departmental Agents Conduct and Service Rules, 1964 which reads as follows:-

"6. Termination of Services:

The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice."

6. After perusal of the documents filed and relied on by the parties and after hearing the rival arguments, we do not have any hesitation in holding that the impugned order is not in accordance with the law. The passage from the Judgment in Siyamala's case referred to (supra) shows clearly that Rule 6 cannot be resorted to cure the alleged irregularity in the appointment of the Extra Departmental Mail Carrier/Agent and it can only be resorted to where work and conduct of the person who is already holding the post is not satisfactory and as such termination is necessary for administrative reasons.

7. We are fortified in this view by a decision of the Division Bench of the Kerala High Court in, "P.V.Madhavan Nambiar and another Vs. D.V.Radha Krishnan (SLR 1990(1) p.757)". It was the case of an Extra Departmental Stamp

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Vendor whose services were terminated in accordance with Rule 6 of the Extra Departmental Agents Conduct and Service Rules, 1964. The learned Judge ~~of the High~~ Court of Kerala held as follows in the above case:-

"Termination on any administrative ground or reason which has come into existence or which has arisen after appointment, it does not contemplate irregularities if any conducted in the process of selection itself or in the matter of appointment. Rule 6 contemplates termination of service of an employee who has not already rendered more than three years' continuous service which pre-supposes that the appointment has been made properly appointed. Hence we have no hesitation in taking the view that the termination of service on ~~any~~ any administrative ground contemplated by rule 6 is a ground that have arisen before or in regard to the appointment, termination cannot be done under rule 6. As it is not the case of the appellant that ~~there~~ was any administrative ground of reason which has arisen after the appointment of the respondent, we have no hesitation in taking the view that rule 6 could not have been pressed into service by the appellants. Hence, on this short ground the termination of the respondent is liable to be vacated

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as the same has been brought about in violation of rule 6. We therefore see no good grounds to interfere with the judgment of the learned single Judge."

8. This Judgment of the Kerala High Court has been closely followed in the Judgment of the Central Administrative Tribunal, Patna Bench (to which one of us, Mr. P.S. Habeeb Mohamed, Administrative Member, was a party), in "Vikram Kumar Vs. Union of India and others and Ashok Kumar Yadav Vs. Union of India and others (1990), 14 Administrative Tribunals Cases p.367)", which was the case of the applicant who was appointed as Extra Departmental Branch Post Master in the jurisdiction of the Superintendent of Post Offices, Muzaffarpur Division in Bihar, wherein the Tribunal at para-8 held as follows:-

"It has also been argued that the Director has got power to review and cancel the appointment. The learned counsel on behalf of the respondents has not been able to refer to any provision of law but he has only submitted that by virtue of his being head and by virtue of the fact that he enjoins the power of review, he has also got a right to cancel the appointment order. There is, however, no such case before us that the Director held the departmental review and in pursuance of that review he found certain

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irregularity which was bad in law and, therefore, the appointment order was ordered to be cancelled. There is also nothing to show that the Director found the appointment order illegal and, therefore, the appointment order being ab initio illegal was ordered to be cancelled. In this connection, it is stated that the appointment of an EDBPM if not illegal, cannot be cancelled without showing any reason and affording opportunity to the appointee. A reference may be made to P.V. Madhavan Nambiar v. D.V. Radha Krishnan decided by the Hon'ble High Court of Kerala. The facts of that case were quite similar to the instant case. In that case the respondent - D.V. Radha Krishnan was appointed as Extra Departmental Stamp Vendor. Subsequently, on the instruction of the second appellant, the first appellant cancelled the appointment of the respondent. In the original petition filed by the respondent, a Single Judge quashed the cancellation order and directed the appellants to re-employ the respondent. It was against that order of the Single Judge that appeal was preferred. The case was heard and decided by the Division Bench. It was observed that the termination was not on the ground of unsatisfactory work of the respondent. It was urged that the termination was on account of administrative grounds unconnected with the conduct of the respondent. The administrative ground pointed out was that the first appellant failed to follow the procedure prescribed.

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in the matter of making the selection and in the matter of issuing the order of appointment in the prescribed form. Their Lordships of the Hon'ble High Court held that the termination order in such facts and circumstances was illegal and, therefore, the appeal was dismissed. While dismissing the appeal, their Lordships observed as under:

"Termination on any administrative ground or reason which has come into existence or which has arisen after appointment, it does not contemplate irregularities if any conducted in the process of selection itself or in the matter of appointment."

9. Even though there is a slight difference in the facts of the case between Vikram Kumar Vs. Union of India supra, wherein a superior officer, the Director had not either found some irregularities in the appointment, nor found the appointment to be illegal, whereas in the present application before us, there is an indication in the counter that there was some irregularity in the appointment, this will not alter the fact, that the ratio has been clearly laid down in the Judgment of the Kerala High Court in P.V. Madhavan Nambiar's case supra as also in Siyamala's ~~xxxxxx~~ case supra that, resort to Rule 6 of the Extra Departmental Agents Conduct and Service Rules cannot be had in the case of curing alleged irregularity in the

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Copy to:-

1. The Secretary to Government, Department of Posts, New Delhi.
2. The Director of Postal Services, Vijayawada.
3. The Senior Superintendent of Post Offices, Prakasam Division, Ongole.
4. The Sub Divisional Inspector (Postal), Chirala Sub Division, Chirala.
5. One copy to Sri. K.S.R.Anjaneyulu, advocate, CAT, Hyd.
6. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd-bad.
7. One spare copy.

Rsm/-

13/11/2011

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appointment of the Extra Departmental Mail Carrier/Agent and on this ground we quash the impugned order and direct that the applicant be reinstated in duty within a month from the date of receipt of a copy of this order.

This is also a fit case where the applicant should be paid back wages on account of his being out of duty on account of the illegal termination of his services.

It is for the Department to make any administrative arrangement that it may like, if any provisional appointment has been made in the meanwhile.

10. The application is disposed of accordingly and the respondents are directed on the above lines. There will be no order as to costs.

PSH
10.4.92
(P.S.HABEEB MOHAMED)

Member(Admn.)

T.C.R.
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 10th April, 1992.

4/5/92
Deputy Registrar (Judl.)

vsn

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cc: 2

O.A. 704/89

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

THE HON'BLE MR. *P.S. Habib Mohamed A.P.*

AND

THE HON'BLE MR. *R. BALASUBRAMANIAN: M(A)*

AND

THE HON'BLE MR. *T. CHANDRASEKHAR REDDY:*
MEMBER (JUDL)

AND

THE HON'BLE MR. *C.J. ROY : MEMBER (JUDL)*

Dated: *10/11/1992.*

ORDER / JUDGMENT

R.A./C.A./M.A. No.

O.A. No.

in
704/89

T.A. No.

(W.P. No. *_____*)

Admitted and interim directions
issued

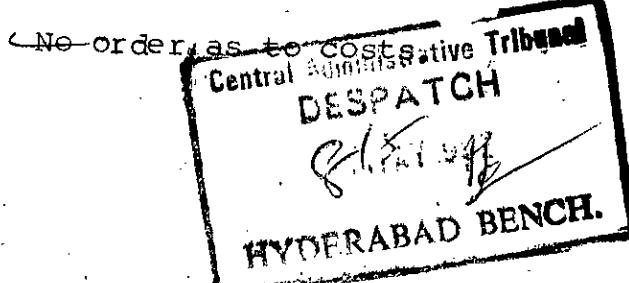
Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.



pvm.