

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 422 of 2011

Monday, this the 28th day of January, 2013

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. P. Ramachandran, S/o. (late) Govindan Nair,
Assistant Postmaster, Ottappalam,
Head Post Office, Palakkad.
Residing at Ramjyothi, Kanniampuram (P.O),
Ottappalam – 679 104.
2. M.V. Damodaran, S/o. (late) V. Krishnan Namboodiri,
Postmaster, Vadakanchery MDG,
Palakkad District, Residing at Mangalam Variam,
Anjumooorthy (P.O), Palakkad – 678 682.
3. M.C. Krishnankutty, S/o. (late) M.C. Appu,
Postmaster, Perintalmanna MDG,
Manjeri Postal Division, Malappuram,
Residing at 'Ambadi', Manjeri,
Malappuram – 679 322.
4. C. Balasubhramanian, S/o (late) C. Ayyappan,
Assistant Postmaster, Tirur, Residing at
Chemmanchery House, Neduva,
Parappanangadi – 676 101. - Applicants

(By Advocate Mr. M.R. Hariraj)

Versus

1. Union of India represented by
The Secretary, Ministry of Communication,
Department of Post, New Delhi – 110 001.
2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
3. Post Master General,
Northern Region, Calicut. - Respondents

(By Advocate Mr. Pradeep Krishna, ACGSC)



The application having been heard on 16.01.2013, the Tribunal on 28/01/2013, delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants are directly recruited Postal Assistants who are placed in the next higher scale of pay under the Biennial Cadre Review (BCR) Scheme with effect from 01.01.2001 and 01.01.2002, as the case may be, counting the periods of induction training undergone by them. But as per letter dated 30.04.2010, it was clarified that the induction training period before 01.01.1986 is not counted for increment and, therefore, should not be counted for BCR placement too. Accordingly, Annexure A-1 notices were issued to the applicants to rectify the placements by reckoning their eligibility with effect from 01.07.2001 and 01.07.2002, as the case may be. Aggrieved, the applicant have filed this O.A. for the following reliefs:

- (i) To quash Annexure A-1;
- (ii) To declare that the applicants are eligible and entitled to be granted BCR promotion reckoning their induction training as qualifying service and to direct the respondents not to change the date of promotion already granted to the applicants;
- (iii) To grant such other reliefs as may be prayed for an the Court may deem fit to grant; and
- (iv) Grant the costs of this Original Application.

2. The applicants contended that Annexure A-2 does not distinguish induction training reckoned for increment and the induction training which is not reckoned for promotion. A clarification cannot take away what is granted by the original order. The doubt regarding reckoning of

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period of induction training for BCR was settled only in 2004. Promotions to the applicants were granted much before that. The period of service was counted as qualifying by the respondents on their own. They are now estopped from taking a different stand. No recovery can be effected by such a changed stand. The condition that the induction training will count for promotions only if they are reckoned for increments is a new condition for the first time introduced by Annexure A-5. It has only prospective effect and does not call for review of the orders already issued. The Government of India orders under F.R. 31-A applies when there is an error of fact leading to a wrong order of promotion.

3. The respondents in their reply statement submitted that in view of the fact that there was no mention about the past cases in the Annexure A-5(2) memo, the 2nd respondent decided not to review the BCR placements already granted. But as per letter dated 30.04.2010 which clarified that the training periods completed prior to 01.01.1986 in respect of direct recruits would not be counted for BCR placements and that the induction training period completed prior to 01.01.1986 is not counted towards grant of increment, the BCR placements of the applicants had to be reviewed. As per Government of India instructions under F.R.31-A, the order of promotion of a Government servant should be cancelled immediately on finding that it was erroneous. As such there is no illegality or arbitrariness whatsoever as far as the notices are concerned. The respondents are acting only in accordance with statutory rules. The mere fact that the increment was granted from the 1st of the month does not make an official entitled to claim that the whole period should be treated as qualifying service. The BCR placement is not granted on the date

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on which an official completes 26 years. The official who completes 26 years by June of the year, the placement is granted with effect from the 1st of Junly. Likewise, for an official completing 26 years by December, the placement is granted from 1st January next. Annexure A-5 specifies in categorical terms that all cases had to be processed accordingly. Hence it is not correct to say that it has no retrospective operation. There are 62 officials including the applicants who are still in service and in whose cases induction training period prior to 01.01.1986 was counted for BCR placements. In the case of the applicants, BCR placements were found to be irregular and as such remedial actions are to be be taken.

4. We have heard Mr.M.R. Hariraj, learned counsel for the applicants and Mr. Pradeep Krishna, learned ACGSC, appearing for the respondents and perused the records.

5. The stand of the respondents is that as per letter dated 05.05.2004 at Annexure A-5(2), since the period of induction training completed befoe 01.01.1986 is not counted towards grant of increment, such training period would also not count for placement in higher scales under the BCR Scheme. Hence the erroneous placements in higher scale granted to the applicants are to be rectified in terms of the orders below F.R.31-A. In this context, Annexure A-2 dated 31.07.2000, which is relevant, is reproduced as under:-

"Period of Induction training shall also count for promotion under the TBOP/BCR Scheme

The issue regarding counting of the period of induction training spent by the employees of this Department for benefit of promotion under the TBOP/BCR Schemes has been under



consideration of this office for sometime. After consultation with the Department of Personnel and Training, it has now been decided that the period of induction training may also be counted for benefit of promotion under the above schemes. However, past cases decided otherwise would not be covered by the above orders. This issues with concurrence of Integrated Finance Advice *vide* their Diary No. 378/FA/2000, dated 25-7-2000." (emphasis supplied)

The applicants were granted BCR on 01.01.2001/01.01.2002 counting the period of induction training. Vide letter dated 05.05.2004 at Annexure A-5(2), it is clarified by the Ministry of Communications & IT, Department of Posts that as per DOP&T instructions, all the induction training completed before 01.01.1986 is not counted towards grant of increment and, therefore, such training period would also not count towards BCR. This is a new condition and there is no instruction to reopen the past cases. The 1st and 2nd applicants had joined as Postal Assistant on 14.01.1975. They were granted increments on 01.01.1976 and BCR on 01.01.2001. The 3rd applicant had joined as Postal Assistant on 24.01.1975. He was granted increment on 01.12.1976 and BCR on 01.01.2001. The 4th applicant had joined as Postal Assistant on 16.12.1975. He was granted increment on 01.12.1976 and BCR on 01.01.2002. The 4th applicant is eligible for BCR on 01.01.2002 strictly as per the say of the respondent that for an official completing 26 years by December, the placement under BCR would be granted from January next. On completion of 26 years of service, the first 3 applicants are eligible for grant of BCR. For the sake of administrative convenience, the official respondents granted the BCR to the applicants from January / July only, which is not legally tenable as we have held sometime ago that the employees are eligible for BCR on completion of 26 years of service. From this point of view, in the case of the applicants 1 to 3 the benefit of BCR which is in



excess of the BCR Scheme, if induction training period is excluded, is limited to a few days. Annexure A-2 dated 31.07.2000 allowing period induction training to be counted for promotion and BCR was made prospective only. The direction given in Annexure A-5(2) dated 05.05.2004 is "All cases may be strictly processed accordingly". In keeping with the style of original order of 31.07.2000, the clarification should be made effective prospectively only, in the absence of any direction to the contrary. In view of the fact that there was no mention about the past cases in Annexure A-5(2) of 05.05.2004, the 2nd respondent had rightly decided not to review the BCR placements already granted. In our considered opinion, the review subsequently was not called for.

6. The benefit of counting the induction training period for the purpose of granting BCR was granted in the year 2000. There was no condition attached to it except that past cases could not be reopened. 10 years later vide order dated 30.04.2010 a new condition is imposed that induction training period will not be counted in respect of direct recruits for grant of BCR placement because no induction training period completed prior to 01.01.1986 is counted towards grant of increment. This new condition for grant of BCR benefit is an amendment thought it is termed as clarification. A clarification clarifies what is not clear in the original order. A clarification cannot be issued which is in conflict with the original order. In the guise of clarification, an amendment is introduced by the respondents which takes away the benefit which was granted a decade ago. Annexure A-5(2) is in direct conflict with Annexure A-2. Therefore, it can have only prospective effect in the absence of specific direction otherwise. Therefore, we hold that

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Annexure A-5(2) can have only prospective application and the reopening of the past cases of placements under BCR is erroneous and illegal.

7. The respondents have submitted that as per Government of India instructions under F.R.31-A that order of promotion of a Government servant should be cancelled immediately on finding that it was erroneous. The relevant part of the Government order is extracted as under:

"GOVERNMENT OF INDIA'S ORDERS UNDER FR 31-A

" The orders of notification of promotion or appointment of a Government servant should be cancelled as soon as it is brought to the notice of the Appointing Authority that such a promotion or appointment has resulted from a factual error and the Government servant concerned should, immediately on such cancellation, be brought to the position which he would have held but for the incorrect order of promotion or appointment. (emphasis supplied)

[G.I., M.F., O.M. No. F. 1(2)-Estt. III/59, dated the 14th March, 1963]"

It applies, as rightly contended by the learned counsel for the applicants, when there is an error of fact leading to a wrong order of promotion. If there is a factual error in the instant case, the respondents have not stated the same. In fact, the respondent No. 2 did not commit any error in not reviewing the BCR already granted to the applicants.

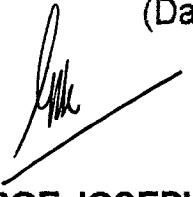
8. In the result, we hold that the grounds raised by the applicants are sustainable. Hence the O.A is allowed as under.

9. Annexure A-1 dated 30.03.2011 is quashed. It is declared that the applicants are eligible and entitled to be granted BCR promotion reckoning

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their induction training as qualifying service. The respondents are directed not to change the date of promotion already granted to the applicants. No costs.

(Dated, the 28th January, 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.