

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 450 of 2002

Monday, this the 4th day of October, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. R. Ravindran Pillai,
S/o late S.Raghavan Pillai,
Postmaster, HSG-I, Kollam HO
Residing at 'Chirayil Puthenveedu',
Kovoor, Arinallur PO,
Kollam - 690 538Applicant

[By Advocate Shri O.V. Radhakrishnan]

Versus

1. Chief Postmaster General,
Kerala Circle, Trivandrum - 695 033
2. Director of Postal Services (SR),
Office of the Chief Postmaster General,
Kerala Circle, Trivandrum.
3. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.Respondents

[By Advocate Shri C. Rajendran, SCGSC]

The application having been heard on 4-10-2004, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who was Postmaster (HSG-I) Kollam HO at the time when he filed this application is aggrieved that although he was promoted by the competent authority by order dated 23-5-2002 (Annexure A1) on a regular post to officiate in Postal Services Group 'B' in the scale of pay of Rs.7500-250-12000 with effect from the date of assumption of charge on condition that the promotion would be given effect to

only in case where no vigilance/disciplinary case was pending and as no disciplinary proceedings was pending against the applicant and despite the order dated 11-6-2002 (Annexure A2) of posting the applicant as Sr.Postmaster, Ahmednagar HO, Maharashtra Circle, the respondents have not relieved him and thereby disabled him to avail the benefit of promotional posting. Finding that a memorandum of charges was issued on 10-6-2002, which was served on the applicant only on 12-6-2002, for action under Rule 16 of the CCS (CCA) Rules, 1965 and apprehending that the applicant would not be relieved on account of this memorandum of charges, the applicant has filed this application seeking the following reliefs:-

- "i. To call for the records leading to Annexure A-5 and to set aside the same;
- ii. To declare that the 1st respondent cannot delay or deny appointment to the applicant to Postal Services Group 'B' ordered as per Annexure A-1 by not giving effect to the same on the basis of the Rule 16 proceedings under CCS (CC&A) Rules commenced after the date of appointment and after the date of issuance of posting order as per Annexure A-2 memo dated 11-06-2002;
- iii. To declare that the delay in assuming charge of the post of Senior Postmaster, Ahmednagar HO by reason of not relieving the applicant immediately on receipt of Annexure A-2 posting order by the 1st respondent shall not operate to his prejudice or cause any injury to him;
- iv. to issue appropriate direction or Order to the 1st respondent to give effect to the appointment of the applicant to PS Gr.'B' ordered as per Annexure A-1 by relieving him immediately to enable him to take charge of the post of Senior Postmaster, Ahmednagar HO on the basis of Annexure A-2;
- v. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case such other; and
- vi. to award costs to the applicant."

2. Respondents in their reply statement contend that a disciplinary proceedings against the applicant was under contemplation and a charge sheet was prepared on 10-6-2002, and therefore the applicant could not be allowed to take the benefit of promotion. In terms of Annexure R1 instructions, the action taken by the respondents in not relieving the applicant cannot be faulted, contend the respondents.

3. We have perused the pleadings and have heard Shri O.V.Radhakrishnan, learned counsel of the applicant as also Shri C.Rajendran, learned SCGSC appeared on behalf of the respondents.

4. We are informed by the learned counsel on either side that, aggrieved by the interim order dated 4-7-2002 passed by this Bench of the Tribunal directing the 1st respondent to relieve the applicant to enable him to join at Ahmednagar pursuant to Annexure A2, the respondents had filed OP.No.20034/02-S before the Hon'ble High Court of Kerala, that the Hon'ble High Court of Kerala had dismissed the OP, that pursuant to the interim order the applicant had been relieved and he had joined at Ahmednagar in Postal Services Group 'B' and that the applicant on transfer back to Kerala has joined the Kerala Circle.

5. Learned counsel of the applicant inviting our attention to the decision of the Apex Court in Union of India vs. K.V.Janakiraman [(1991) 4 SCC 109] argued that since no vigilance/disciplinary case was pending on the date of issuance of applicant's promotion and posting orders by Annexure A1 and A2 orders, in the sense that no memorandum of charges was

served on the applicant on the date of Annexure A1, the action on the part of the respondents in not relieving the applicant was wholly unjustified.

6. Learned counsel of the respondents, on the other hand, argued that as a departmental case against the applicant was contemplated for imposition of a major penalty the applicant was not relieved, that the memorandum of charges was issued only for a minor penalty on 10-6-2002 taking into account the fact that the applicant stood promoted and that the non-relief of the applicant cannot be faulted as the applicant was facing a departmental proceedings.

7. Since it is evident from the pleadings and materials placed on record that as on the date of issuance of Annexure A1 no disciplinary proceedings against the applicant was pending and no charge sheet had been served on the applicant, there was no need for the respondents to keep the relief of the applicant pending. It is also seen from the averments in the reply statement as also from the memorandum of charges that only a minor penalty proceedings under Rule 16 of the CCS (CCA) Rules has been issued by the respondents. It is also a fact not disputed that Annexure A5 memorandum was served on the applicant only on 12-6-2002. Under these circumstances, we find that the action on the part of the respondents in not relieving the applicant to enable him to join at the promoted place was wholly unjustified.

8. Now that the applicant has already been relieved by Annexure A7 order dated 19-7-2002 and that he has joined the promoted post, we dispose of the Original Application directing



the respondents to treat the relief of the applicant and his joining on the post is perfectly regular and in order. No order as to costs.

Monday, this the 4th day of October, 2004

H. P. DAS

ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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