

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 47/2011

Wednesday, this the 8th day of August, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

N.M.Kavalan, S/o late Shri Marathan,
Retired Postman, Koratty.P.O.,
Irinjalakuda.

[Residing at: Nedumpilly House,
Koratty East P.O.
PIN: 680 308.]

- Applicant

(By Advocate Mr P.C.Sebastian)

v.

1. The Director General,
Department of Posts,
New Delhi.
2. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram-695 033.
3. The Postmaster General,
Central Region, Kochi-682 018.
4. The Superintendent of Post Offices,
Irinjalakuda Division, Irinjalakuda.
5. The Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts,
New Delhi.

- Respondents

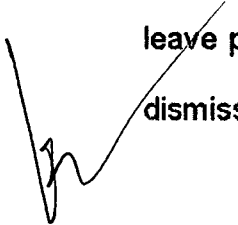
(By Advocate Mr Millu Dandapani, ACGSC)

This application having been finally heard on 08.08.2012, the Tribunal on the same day delivered the following:

ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The legal issue involved in this case being short, a short order would suffice. The applicants belongs to reserved community and was eligible and entitled to be promoted against an unfilled vacancy in the postman examination held on 13 – 11 – 1994. Vacancy meant for a reserved candidate had been wrongly filled up by a general candidate which resulted in the deprivation of the applicant being promoted to the post. The applicant challenged the action of the respondents by filing OA No. 140 of 1996, wherein he had claimed for a declaration that vacancy reserved for scheduled caste in the departmental quota is liable to be filled up by Extra Departmental Agent belonging to scheduled castes and for a direction to the respondents to consider the applicant for promotion as Postman against the vacancy reserved for scheduled castes in the quota for the Departmental candidate which was transferred to the merit quota for Extra Departmental candidates with consequential benefits.

2. The Above OA was allowed to the extent that it was declared that the vacancies reserved for scheduled castes in the departmental quota and for which there was no suitable candidate available, should be filled by a scheduled caste candidate belonging to the extra departmental agents' category to be filled on the basis of merit. The First respondent therein was, therefore, directed to reconsider the selection already done on 13 – 11 – 1994 and pass appropriate orders. When the respondents took up the matter before the High Court, the High Court disposed of the writ petition with the direction that the case of the applicant herein would be considered along with all eligible candidates. Special leave petition filed against the aforesaid judgment of the High Court came to be dismissed on 21st of February 2008. It is thereafter that by order dated 14th of



January 2010, the respondents had accorded appointment to the applicants on notional basis from 03 – 04 – 1995 (from the date the general candidate in the place of reserved vacancy was appointed), rendering the applicant entitled to superannuation pension only. The applicant has come up before the Tribunal claiming appointment on actual basis with pay and allowances for the period from 03-04-1995 onwards.

3. Respondents have contested the OA, stating that the case of the applicant would be hit by the principle of "no work no pay" which has been upheld by the Apex Court in a number of decisions including **Union of India versus B.M.Jha** (2007) 11 SCC 632.

4. Counsel for the applicant referred to the decision in the case of **K.V. Jankiraman** wherein, the Apex Court has stated that when retrospective promotion is granted, the same could be on actual basis. As such, the applicant is entitled to pay and allowances for the period of his retrospective promotion.

5. Per contra, counsel for the respondents relied upon the decision in the case of **B.M. Jha** (supra).

6. Arguments were heard and documents perused. In the case of **Union of India vs K.V. Jankiraman** (1991) 4 SCC 109, the Apex Court has held as under:-

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether


disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it."

In the case of **State of Haryana vs O.P. Gupta (1996) 7 SCC 544**, the Apex Court considered the above decision in the context of promotion following the normal rules and held as under:-

".... in Union of India v. K.V. Jankiraman this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

The case of O.P. Gupta has been cited in the case of B.M. Jha (supra) relied upon by the respondents, and the Apex Court in the said case of B.M. Jha has held as under:-

"5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom. However, this Court in State of Haryana v. O.P. Gupta and followed in A.K. Soumini v. State Bank of Travancore has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay". The learned Division Bench in the impugned judgment has placed reliance on State of A.P. v. K.V.L. Narasimha Rao. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion."



7. The case of the applicant has to be dealt with on the basis of the decision of the Apex Court in the case of B.M. Jha, relied upon by the Respondents. Since in that case, on the basis of No work No pay, the employee was not paid any pay and allowances on his retrospective promotion, the same holds good in the case of the applicant as well.

8. In addition, the applicant's claim before the Tribunal in his earlier OA was 'with consequential benefits' but the same had not been allowed. The direction given to the respondents to reconsider the matter meant implied declining of the prayer for 'consequential benefits.' Thus, principles of Res-judicata also would spring up to act against the claim of the applicant.

9. In view of the above, the O.A. is **dismissed**. No cost.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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