

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

DATE OF DECISION .. 16.2.90

PRESENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION No.464/89

K.V. George .. Applicant

Vs.

1. Director of Postal Services(HQ)
(now re-designated as Additional
Postmaster General)
Kerala Circle, Trivandrum.
2. Postmaster General,
Kerala Circle, Trivandrum.
3. Director General of Posts,
Department of Posts, New Delhi.
4. Union of India, represented
by Secretary, Ministry of
Communications, New Delhi. Respondents

Shri O.V.Radhakrishnan .. Counsel for the
Applicant

Shri P.Santhalingam, ACGSC .. Counsel for the
Respondents.

O R D E R

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 30th July, 1989
filed under section 19 of the Administrative Tribunals
Act, the applicant who has been working as Inspector
of Post Offices under the Director of Postal Services,

Kerala Circle, at Cochin, has prayed that the impugned order dated 9.8.88 (Exbt.A.9) rejecting his representation for promotion against the 1/3rd quota to the Lower Selection Grade of Postal Assistant with effect from 6.9.80, should be set aside. He has also requested that the respondents be directed to promote him to the LSG cadre with effect from 6.9.80 as was done in the case of his juniors through order dated 16.11.87 (Exbt. A.6). His further prayer is that the respondents be directed to fix his pay with effect from 6.9.80 with all consequential benefits of confirmation, arrears of pay and allowances. The brief facts of the case are as follows:

2. For promotion to Lower Selection Grade (LSG) of Postal Assistants 1/3rd of vacancies are reserved for promotion by selection through an examination and 2/3rd vacancies are filled up through promotion on the basis of seniority-cum-suitability. It is also provided that the panel prepared on the basis of the examination should be carried over from year to year till it is exhausted and those included in the panel of the previous year should be first absorbed in the vacancies of the following years before those included in the

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panel of the subsequent year are promoted. The applicant's contention is that he passed the examination on 10.12.78 for vacancies for the year 1977-78. His name was included in the panel prepared in 1979. His turn did not materialise for the vacancies for the year 1977 and 1978 but, contrary to Rule 272-A of P&T Manual, Volume IV, the vacancies for the years 1979 and 1980 in the 1/3rd quota were proposed to be filled up by a combined panel of officials remaining unabsorbed from the list of 1978 examination and those who qualified in the examination in 1980. In the combined panel the candidates in the earlier examination were reshuffled with the candidates of 1980 examination on the basis of seniority. Some officials in the former category moved the High Court of Kerala praying that they should be first accommodated in the LSG cadre for the vacancies of 1979 with all consequential benefits. The High Court in its judgement dated 15.2.1983 directed that those officials who qualified in the earlier examination of 1978 should have a priority for absorption over those who were successful in 1980 and later. Identical reliefs were also granted by it on other petitions by a common judgement dated 7.4.83. The applicant's case is that before he could be promoted

22

to the LSG cadre on the basis of his selection through the 1978 examination, he appeared in the examination for the still higher promotion to the post of Inspector of Post Offices in 1980 and was selected in 1981 and promoted as Inspector of Post Offices and joined the post on 11.5.81 after completing training. Later, the 2nd respondent passed an order dated 19.10.84 ordering that 26 officials including the applicant are deemed to have been promoted to the LSG cadre against 1/3rd quota with effect from 24.11.1981 indicating that the notional promotion with effect from that date will count for the purposes of fixation of pay under FR 27, without however arrears of pay. Subsequently on 8.5.85 the seniority of the promotees in the 2/3rd and 1/3rd quota who were promoted between 1979 and 1982 was revised but the applicant was not given any placement in the revised seniority list as he had, in the mean time, been promoted to the next higher grade of Inspector of Post Offices. His contention is that since 2/3rd quota of vacancies of 1980 were filled up on 6.9.80 his notional appointment against 1/3rd quota of 1980 vacancies should also have been filled up with effect from 6.9.80. Accordingly his pay as Inspector of Post Offices with effect from 11.5.81 would have been much higher based on his revised pay in the LSG cadre.

22

He has also referred to the judgement of this Tribunal in the transferred petition No.133/85 (original writ petition No.10046/84) dated 13.2.87 (Exbt. A5) in which the petitioners were allowed all the benefits resulting from their notional promotion to the LSG cadre including arrears of pay and increments from the dates of the notional promotion from 25.9.80/6.9.80. In compliance with this judgement, the respondents issued the order dated 16.11.87 (Exbt. A6) giving notional promotion to some of his juniors with effect from 6.9.80 with all consequential benefits of pay ~~and~~ arrears. The applicant claims that he is also entitled to retrospective promotion with effect from 6.9.80 with all consequential benefits. His representation was rejected by the impugned order at Exbt. A9 on the ground that since the applicant was not an applicant in the aforesaid transferred application No.133/85 he is not entitled to the benefits accruing therefrom.

3. In the counter affidavit the facts as indicated above have been ^{generally &} accepted by the respondents, but his claim has been disallowed on the ground that since he had already been promoted as Inspector of Post Offices on 11.5.81 he is not entitled to

12

retrospective promotion ~~to~~ the LSG cadre of Postal Assistants.

4. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. Those who were junior to the applicant were given retrospective promotion with effect from 6.9.80 with all consequential benefits as a result of the principle enunciated by the High Court of Kerala and the Tribunal. The principle is that against the 1/3rd quota ~~those~~ ^{those} who are included in the earlier panel should first be absorbed against subsequent vacancies before those who pass subsequent examinations are absorbed. A further principle that was enunciated was that the filling up of the 1/3rd quota vacancies of a particular year should go side by side with the 2/3rd quota of that year. Still a third principle enunciated was that those who are entitled to 1/3rd quota vacancies in a particular year by virtue of their inclusion in the panel of an earlier year should not only be given notional promotion with retrospective effect ^{from the date of} ~~of the~~ occurrence of the vacancy but should also be given all consequential benefits including arrears of pay and allowances. These principles are unexceptionable and the applicant should not be denied the benefit of these principles while his juniors enjoyed the same, merely on the ground that he was not a party in the cases in which


62

these [>]benefits were given. Such a technical point would be violative of Articles 14 and 16 of the Constitution because of the resultant hostile discrimination against the applicant. To that extent the impugned order is bad in law. In the counter affidavit however, the respondents have taken still another superficial plea that since the applicant had been promoted to the higher grade of Inspector of Post Offices with effect from 11.5.81 he would not be entitled to the benefits which his juniors got in the lower scale of LSG cadre. To our mind, this argument has to be summarily rejected. Promotion to a higher post through selection cannot be a ground for denying the applicant the benefits in the lower grade prior to his promotion which his juniors obtained. Such an argument would be placing a premium on mediocrity and inferiority and a discount on merit and excellence.

5. In the facts and circumstances, we have no hesitation in allowing the application. We do so and direct, in supersession of the impugned order (Annex A9) ₆ dated 9.8.88, that the applicant should be deemed to have been promoted to the LSG cadre with effect from 6.9.80 with all consequential benefits of seniority, fixation of pay and arrears in the LSG cadre until his promotion as Inspector of Post Offices on 11.5.81. We also direct that his pay as Inspector

of Post Offices with effect from 11.5.81 should also be re-determined on the basis of his revised pay in the LSG cadre with all consequential benefits including arrears.

6. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

16/2/90


(S.P. MUKERJI)
VICE CHAIRMAN

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