

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 465 of 2011
And
Miscellaneous Application 482 of 2011 in
Original Application No. 465 of 2011

“ Tuesday, this the 30th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

L. Prabha, aged 42 years, W/o. V. Suresh,
Assistant Accounts Officer (Ad-hoc), Office of the
Accountant General (A&E) Kerala/Thiruvananthapuram,
Residing at : No. CGRA-21, Aasheervad,
Continental Gardens, Vattiyoorkavu Post,
Thiruvananthapuram-695 013.

.....

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Comptroller & Auditor General of India,
Government of India, No. 10, Bahadur Shah Safar
Marg, New Delhi – 110 012.
2. The Accountant General (A&E), Kerala,
Thiruvananthapuram – 695 001.
3. The Senior Accounts Officer (Admn.),
Office of the Accountant General (A&E), Kerala,
Thiruvananthapuram – 695 001.
4. The Senior Deputy Accountant General (Admn.),
Office of the Accountant General (A&E), Kerala,
Thiruvananthapuram – 695 001.
5. Manoj C.S., Assistant Accounts Officer,
Office of the Accountant General (A&E), Kerala,
Thiruvananthapuram-695 001.

.....

Respondents

(By Advocate – Mr. V.V. Asokan & M/s. Iyer & Iyer)

This application having been heard on 30.8.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant who is presently working as Assistant Accounts Officer (in short AAO) (Adhoc) in the office of Accountant General (A&E), Trivandrum is aggrieved by the inaction on the part of the respondents in not giving her promotion to the post of AAO with effect from the date her juniors have been promoted.

2. The facts in brief is as follows:-

a) In the office of the Accountant General agitations and demonstrations were held on various dates in protest against some common issues by the employees. Alleging that the applicant had participated in the agitational programme/rely fast on 19.11.2007 and 22.11.2007 after marking attendance or taking leave as the case may be, even though the applicant has applied for leave mentioning some other reason which was got sanctioned, she participated in the agitational programme. In the circumstances, she was asked to explain why the leave already sanctioned be not cancelled. Memorandum issued to that effect dated 26.3.2008 is produced as Annexure A-2.

b) The applicant submitted her reply on 28.3.2008 vide Annexure A-3 produced in the case denying the allegation that she participated in the agitational programme on the two days as alleged. It was her specific case that she did not participate in the second phase of the



agitational programme which started from 19.11.2007 onwards. Therefore, if any report is received contrary to facts, they are wrong since she did not participate in the agitational programme from November, 2007 onwards. She was on duty and remained in the section fully involved with her work on those days. She also requested the authorities to verify from the attendance register of her section which was also cross checked by her incharge. In the circumstances she pleaded not to treat the dates 19.11.2007 and 22.11.2007 as dies non as proposed in Annexure A-2.

c) By Annexure A-4 order dated 12.5.2008 which is a common order passed in the case of 44 employees, it is stated that the explanation submitted were found to be not satisfactory and the period during which the officials had participated in the agitation during 2007 is treated as dies non. The basis on which the finding is arrived at regarding the participation of the applicant is not stated in the said order. Applicant had a definite case that in November, 2007 onwards she did not participate in the agitation and the show cause notice specifically referred to the two dates only namely 19.11.2007 and 22.11.2007. According to her she was in the section and doing her work after marking attendance. Whether or not she was in the office and whether she participated in the agitation after marking the attendance, there is no specific finding with reference to any material placed on record. The authorities also do not refer to any such materials based on which they came to the conclusion that the



explanation offered by the applicant is in any way wrong and contrary to the facts.

d) As already submitted it is a common order passed in the case of 44 employees without individually considering the explanation of each such person. Be that it may the applicant submitted a detailed representation against Annexure A-5 before the Deputy Accountant General. Yet another representation was made by Annexure A-6 before the Accountant General. It is her case that she has not received any reply to Annexures A-5 and A-6. On the other hand she was considered for promotion by the subsequent DPC and vide order dated 7.7.2008 (Annexure A-8 produced in the case) she was promoted.

e) It is her case that by Annexure A-1 order dated 28.8.2009, 101 employees were given promotion. She has impleaded the employee shown as against serial No. 99 as a party to this application. However, there is no paper publication. According to the applicant the reason for not promoting her along with her junior by Annexure A-1 order is that she participated in the Dharna and dies non was imposed on her. This information she obtained by applying under the Right to Information Act. The information so furnished is produced at Annexure A-11.

f) In Annexure A-11 it is stated that the applicant at serial No. 19 of the list, the committee noted that she had consistently participated in agitations during the recent past even as late as in November, 2007 and administrative action had been initiated against her for the said



participations and dies non imposed. The committee took into account the fact of the official participating in agitation after agitation, without heeding to the administrative action initiated against her each time. The committee noted that the traits of non-amenability to discipline exhibited by the official time and again are not commensurate with the high responsibilities vested with the post and found her unfit to hold the gazetted post of AAO (Adhoc).

g) According to the applicant the only reason for imposing dies non as alleged in Annexure A-2 is for participation in the agitational programme on 19.11.2007 and 22.11.2007. In the aforementioned facts the non-promotion seems to be based on considerations of facts not proved by any legal means namely that she participated in agitation after agitation for which dies non is imposed. This observation said to be the basis for non-promoting the applicant as communicated to her by Annexure A-11 is perse wrong in so far as no action whatsoever was proposed against her alleging her participation in the agitational programme from time to time.

h) On the dates on which she has alleged to have participated in the Dharna is on 19.11.2007 and 22.11.2007 to which reply has been given to which no reference is made while passing the order at Annexure A-4. Thus the non-promotion is based on irrelevant considerations as well as based on extraneous matters not brought out by any record.



3. Subsequent to the filing of OA she has filed an application for condonation of delay since Annexure A-1 is dated 28.8.2009 and the challenge made to Annexure A-1 was made only in 2011. She has explained the circumstances under which this application was filed well in point of time after the expiry of the period so prescribed in the provisions contained in the Administrative Tribunals Act. According to the applicant as against Annexure A-1 order she had made representation before the higher authorities after knowing that the reason for her non-promotion is her participation in the dharna which information she got only by applying under RTI Act. Therefore, there is no laches on the part of the applicant in not approaching this Tribunal earlier especially since after considering her representation, she was actually promoted prospectively by Annexure A-8 order and what remains to be done is only to antedate the promotion from the date Annexure A-1 was passed in case of her juniors.

4. A reply is stated to have been filed and the copy is made available to us by the learned counsel Ms. Ramanya Gayathri for Mr. V.V. Asokan appearing on behalf of the respondents. Even though the record do not have the original we take it for granted as the reply is filed.

5. In the reply it is contended that the DPC consists of three Accountants General and it was after consideration of the applicant's service records and also the fact of the applicant's repeated participation in the illegal agitation which was detrimental for the office discipline, found the applicant not fit for promotion to the cadre of AAO (Adhoc). The reason for non-promotion is extracted as under:-



"18. In the case of Smt. Prabha L, Senior Accountant (SI No. 19 in the list), the Committee noted that she had consistently participated in agitations during the recent past even as late as in November, 2007. Administrative action had been initiated against her for the said participations and dies-non imposed. The Committee took into account the fact of the official participating in agitation after agitation, without heeding to the administrative action initiated against her each time. The Committee noted that the traits of non-amenability to discipline exhibited by the official time and again are not commensurate with the high responsibilities vested with the post and found her unfit to hold the Gazetted post of Assistant Accounts Officer (Ad-hoc)."

6. According to them inspite of specific instructions from the competent authority the applicant participated in the illegal agitation within the office premises and she had even admitted of her participation in the agitational programme in Annexure A-9 dated 30.7.2010 during 2006. Though she denied of having participated in any agitational programme during the year 2007 she did not file any appeal as against the order imposing the dies-non. It is also submitted that the departmental promotion committee having considered all the relevant aspects of the matter has made an assessment of the applicant's performance with due regard to the confidential records and other information available and has found that she is not fit for promotion. The said action is not liable to be interfered with. It is further contended that the DPC is not solely to be guided by the assessments made by the officers but they can make their own independent assessment as held by the Apex Court in 2009 SCC (L&S) 873 – Union of India Vs. S.K. Goyal. The subsequent DPC however, found her fit to be promoted. Therefore, in the aforesaid circumstances she is not entitled for promotion retrospectively as in the case of her juniors and the OA is devoid of merit and is liable to be dismissed.



7. We have heard the learned counsel for the applicant Mr. T.C. Govindaswamy and Mr. V.V. Asokan along with Ms. Ramanya Gayathri appearing for the respondents, perused the material placed on record, gone through the pleadings and cited decisions.

8. We have seen Annexure A-2 which is a show cause notice perhaps the only one which was issued to the applicant for participation in the dharna on 19.11.2007 and 22.11.2007 asking her why those days shall not be treated as dies non, which the applicant replied by Annexure A-3 within three days. Thus, the only order passed is Annexure A-4 i.e. the order passed in the case of 44 employees and therefore individual consideration of the explanation was not made. The applicant had specifically contended of not having participated in the dharna in the second phase i.e. with effect from 2007 onwards. The dies non imposed on the applicant is for participation only for two days i.e. 19.11.2007 and 22.11.2007 and not for participating in any other dates earlier to that. Therefore, we have to only consider as to whether the applicant has really participated in the dharna on 19.11.2007 and 22.11.2007 which is the reason for not promoting her earlier. To the extent Annexure A-4, it does not made any consideration to the specific reply made by the applicant of having denied the participation on the two dates. Further she did not avail any leave on those two dates. The show cause notice on the other hand speaks that the purpose mentioned in the leave application was otherwise than for participation in the dharna, whereas in Annexure A-4 there was no reference to these facts. Thus, Annexure A-4 is in clear violation of the principles of natural justice and non-consideration



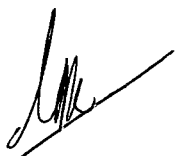
of materials facts as pleaded by the applicant in Annexure A-3 and is a non-speaking order with reference to the explanation. Therefore, for paucity of reasons Annexure A-4 order is liable to be quashed as against the applicant. Further, there is no consideration in Annexure A-4 to the explanation submitted by the applicant rather in one line the whole explanation is said to be not satisfactory not only in the case of applicant and also in the case of various other persons. It also reflects non-application of mind. We, therefore, has no hesitation to hold that the order Annexure A-4 in so far as the applicant is concerned is bad in law.

9. Going to the reasons given by the DPC it is their case that the applicant had participated in the dharna time after time which is not fallen out by any record. Even the authorities had only a case that the applicant participated in the dharna for which the action was proposed only by Annexure A-2 memo. If so, from what record in hand or material the DPC came to the conclusion that she has participated in the dharna and if at all she has participated in the dharna whether it amounts to misconduct and any penalty is imposed is also matters for which no consideration was made. Therefore, the DPC has also failed to consider the relevant facts into consideration. On the other hand they have taken into account irrelevant features which were not borne out of records. Even as a matter of fact if participation in dharna amounts to misconduct and subversive of discipline, the applicant ought to have been issued with a notice and after hearing her on the same, appropriate orders should have been passed, in which event the punishment imposed on the applicant would have found a place in the

ML

service record of the applicant. No body has a case that the applicant was inflicted with any punishment for participation in the dharna other than declaration of dies non for two days which have already been considered by us in the above paragraphs.

10. In the result non-consideration of the DPC for promoting the applicant along with her juniors is perse illegal, wrong and since irrelevant materials have been taken into consideration it is in violation of the principles of natural justice. Accordingly, the OA is allowed. Annexures A-4 and A-11 orders are set aside and we direct the DPC to review the promotion given to the applicant and consider her promotion from the same date on which her juniors are promoted. This exercise shall be done within a period of two months from the date of receipt of a copy of this order. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”