

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.48/2000

Wednesday, this the 21st day of November, 2001.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

R.Joseph Rahul,
Junior Accounts Officer,
O/o the Deputy Director of Accounts(P),
Thiruvananthapuram. - Applicant

By Advocate M/s G Sasidharan Chempazhanthiyil, Pearly Mathew &
Vishnu S

vs

1. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.

2. Director General,
Postal Department,
New Delhi.

3. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi. - Respondents

By Advocate Mr P Vijayakumar, ACGSC

The application having been heard on 7.9.2001, the Tribunal on
21.11.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant who started his career as Postal
Assistant in May 1982 became a Sub Divisional Inspector (SDI
for short) of Post Offices (earlier designation being
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Inspector of Post Offices) with effect from 19.9.88. In 1989, he passed the Junior Accounts Officers (JAO for short) Examination hoping to be promoted to that grade which carried a higher scale of pay. With effect from 1.1.96, however, the scales of SDI of Post Offices and JAO were unified. The applicant was posted as JAO on regular basis on 24.9.96 and later on confirmed with effect from the same date. By A-1 notification dated 9.8.99, the first respondent invited application for Postal Service Group 'B' Examination for filling up the vacancies pertaining to the year 1997. The applicant who claimed to be eligible to apply against 19% IPO line quota in view of his officiating status as JAO and assuming that his lien was still in the IPO line applied with a representation regarding his eligibility for the examination. Apparently, the authorities disputed this. However, the applicant was provisionally admitted to the examination. The examination was taken on 20.12.99 and 21.12.99, but A-5 communication dated 20.12.99 rejecting the applicant's claim regarding his eligibility for being considered under the 19% IPO line quota was served on him through A-6 letter dated 4.1.2000. The applicant is aggrieved by this. His claim is that since his name was in the gradation list of IPO published in 1998 and since he was only officiating as JAO at the relevant time, his lien was still with IPO line and hence his eligibility to be considered as a candidate against 19% quota earmarked for IPO line officials was undeniable. The legal

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tenability of A-5 is, therefore, under challenge in this O.A. The applicant prays for the following main reliefs:

- i) To call for the records and quash Annexure-A5.
- ii) Declare that the applicant is entitled to be considered for promotion in Postal Service Group 'B' and direct the respondents to extent such a consideration.
- iii) Direct the respondents to consider the applicant in the process of selection to Postal Service Group 'B' for the vacancies of 1997 pursuant to Annexure-A1 notification.

2. The applicant contends that the rejection of the applicant's candidature for Postal Service Group 'B' as per A-5 order is not maintainable in law. The applicant became a JAO. The JAO post carried a higher pay scale than IPO (SDI), but it was on the recommendations of the Vth Central Pay Commission that the IPO (SDI) and JAO scales were unified. The applicant did not opt for JAO cadre as is clear from A-3. His name thus figured in the gradation list as on 1.7.93 published on 16.11.98 as revealed by A-2. This list was relevant for the purpose of promotion to Postal Service Group 'B'. The impugned order A-5 also specifically highlights the necessity to obtain

an option from officers placed on a similar footing with the applicant. That being the position, denial of option to him and treating him as JAO were not legally acceptable. Citing his own reversion to SDI in 1994 after the initial promotion as JAO in 1992, the applicant maintains that regular promotion by itself would not mean that his lien is in the promoted post. His name having been included in the gradation list of SDIs and his probation having been declared only on 7.10.99, the applicant had a right to be considered for promotion to Postal service Group 'B' post of 1997 and 1998 vacancies against the quota earmarked for IPO line. The delay in holding the examination was not attributable to the applicant and that therefore, would not wipe out the applicant's right in that regard. It is also pointed out by the applicant that when A-1 notification dated 9.8.99 regarding Postal Services Group 'B' Examination was issued, the applicant's name was very much present on the gradation list of IPO. This is borne out by A-2(2). Had the applicant's name been struck off, the remarks column would have contained an entry to that effect. A-3 was only a proposal to strike his name off the gradation list and an opportunity was given to him to state his comments which meant that if the applicant had any objection to the proposed act, he had the freedom to communicate it. But A-4 letter which the applicant had sent by post was not considered and a decision to strike off his name was taken in the meanwhile.

3. By the M.A.798/2001 filed while the case was in progress, the applicant has brought to our notice A-7

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communication dated 29.12.99 with regard to option to be obtained from the officials who qualified in both IPO/IRM and JAO cadres before such officials were promoted to either of the cadres. A-7 was apparently issued since there was a genuine doubt as to substantive cadre to which the officials placed like the applicant belonged. Accordingly, instructions were issued to place the optees in the cadre opted and to delete their names on the basis of such option from the cadre from which they have opted out. A-8 dated 30.1.2001 filed by the applicant would show that he was specifically directed to submit his option to continue in JAO cadre or otherwise. By A-9, the applicant replied to A-8 by stating that since the matter regarding deletion of his name from the gradation list of IPOs was subjudice inasmuch as the applicant had filed an O.A. (i.e. the present O.A.48/2000), the applicant was unable to say anything on the matter till a final decision was taken by the Tribunal.

4. In the reply statement and additional reply statement filed by the respondents, it has been emphatically stated that the applicant having entered regular service as JAO with effect from 24.9.96 and continued voluntarily and unconditionally in the said cadre, his lien in the post of IPO got automatically terminated and he acquired a lien against the post of JAO on his confirmation as JAO with effect from 24.9.96. According to the respondents, the settled position of law is that as the applicant never made any request for reverting to or reposting him to the cadre of IPO, he was not

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under

entitled to be considered for promotion ~~to~~ the quota reserved for IPO cadre after the termination of his lien in that cadre. Further, A-2 gradation list of the IPO cadre represented the position as on 1.7.93 when the applicant was on deputation to Telecom Department as officiating JAO. That being so, the applicant's lien as per rules would remain in IPO cadre at the relevant time. The next gradation list of IPOs as on 1.7.99 which was yet to be published would not include the applicant's name in view of the forfeiture of his lien in that cadre with effect from 24.9.96. The respondents also would state that A-4 reply allegedly sent was never received in the first respondent's office and that therefore the authenticity thereof remained unproved. The declaration of probation as JAO on a subsequent date would not mean that between the date of promotion and the date of issue of the confirmation order, the applicant would remain in the IPO cadre. Confirmation was with retrospective effect. Further, since the promotion itself was against a regular post, the applicant had no right to be considered as a member of the IPO cadre. With the specific reference to A-7 letter dated 29.12.99 from the Additional D.G. (SGP) with regard to the procedure of option on qualifying IPO/IRM and JAO examination and A-8 memo dated 30.1.2001 addressed to the applicant directing him to submit his option to continue in the JAO cadre or otherwise, the respondents have stated that A-8 does not mean that applicant can once again opt for IPO cadre. On the other hand, it was intended to serve the purpose of completing the administrative formalities to get a formal written option from the applicant

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to JAO cadre which had already been opted by him by his voluntary conduct pursuant to R-2 promotion order dated 24.9.96. It is also submitted by the respondents that the applicant had consistently expressed his wish to be promoted to and posted in JAO cadre as is corroborated by R-3 dated 24.6.94.

5. We have heard Shri Vishnu S Chempazhanthiyil, learned counsel for the applicant and Shri P Vijayakumar, learned ACGSC representing the respondents.

6. Shri Vishnu, learned counsel for the applicant, would contend that with reference to the date of occurrence of vacancies in P.S. Group 'B' cadre sought to be filled, the applicant was on probation in JAO cadre in 1997 and that therefore, he had a right to be considered for promotion to the post against 1997 vacancy. It has also been submitted by the counsel that the applicant would have continued right to be considered against IPO quota with regard to 1998 vacancies as well. Placing reliance on the Supreme Court's decision in Ramlal Khurana Vs State of Punjab and others, [(1989) 4 SCC, 99] the learned counsel would canvass for the proposition that as long as the applicant had a legal right or option to revert to the IPO/SDI cadre, he could exercise his lien against IPO/SDI post and that therefore, could claim for promotion against the IPO line quota of 19% for P.S. Group 'B' promotion. It is strongly contended by the learned counsel for applicant that by A-7 and A-8 communications, the

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applicant's right to opt is recognised. He did not, however, exercise the option owing to the fact that the whole issue including his right to be treated as a candidate belonging to the IPO line of officials was subjudice in view of the pendency of this O.A. before the Tribunal. Counsel would therefore state that the applicant has a right to be treated as a candidate belonging to the IPO line of officials for the purpose of promotion examination for P.S. Group 'B', 1997 held in December 1999.

7. Shri P Vijayakumar, learned ACGSC representing the respondents would state that the applicant had accepted his regular promotion as JAO from IPO, and as such, his lien would be in the promoted post. By A-3 communication dated 20.8.98, the applicant was informed of the proposal to remove his name from the roll of IPOs. At that stage, the applicant was free to exercise his option and report that he would revert to the IPO line, if that was advantageous to him. A-4 communication is not an authentic one as alleged by the applicant. The respondents' office did not receive such a communication. Even in the light of A-4 communication, it would be said that the applicant was thinking of all possible advantage of ACP, if it came through in which case, he felt like staying in the IPO cadre. In other words, he wanted to keep his option open even going by A-4 communication allegedly sent to the respondents. Learned counsel maintains that on his regular promotion to JAO, as per rule his lien would be shifted to JAO cadre post. Learned counsel for the respondents would rely on

the Hon'ble Supreme Court's decision in Ram Saran and another vs State of Punjab, [(1991) 2 SCC, 253]. The applicant had an opportunity to exercise an option which might have enabled him to qualify himself for further promotion as a member of the cadre so opted. Since he did not do so, he would get his chance as a member of the cadre to which he was regularly promoted i.e. JAO, counsel would contend. He would therefore, urge that the application, being misconceived, is liable to be dismissed.

8. We have examined the pleadings and the other relevant material on record. We have also carefully considered the contentions put forward by the learned counsel for the applicant and the respondents. The basic facts are not in dispute. The applicant was promoted to the IPO cadre (re-designated as SDI) on regular basis after qualifying in the examination held in 1987. Until then, he was a Postal Assistant. Later he passed the JAO's test held in the year 1989. He was promoted to the cadre of JAO on regular basis with effect from 24.9.96. R-2 makes it clear that he was promoted as JAO with effect from 24.9.96 in a vacancy arising from that date on regular basis. Until then, he was officiating as JAO in a temporary vacancy. F.R. 12-A lays down that unless otherwise provided a Government servant on acquiring a lien on a post will cease to hold the lien previously acquired on any other post. F.R.13 states that a Government servant who has acquired a lien on a post retains a lien on that post while performing the duties of that post.

The question here is: Where did the applicant's lien remain at the relevant time? It cannot be disputed that the applicant had a lien on the post of SDI earlier known as IPO when he was promoted to that post on a regular basis. Later, he was promoted to the cadre of JAO on regular basis against a clear vacancy with effect from 24.9.96. At that point of time he should be considered to have acquired a lien on the new post, viz, JAO. The mere fact that his name still appeared in the gradation list of IPOs dated 16.11.98 would not mean that the applicant retained his lien as IPO (SDI). In the first place, JTO gradation list reveals the position as on 1.7.93. This cannot be disputed. Secondly, the applicant was promoted on regular basis to the post of JAO and eventually, he got his confirmation also from the date of promotion to that post. In the alleged reply (A-4) to A-3 proposal dated 20.8.98 to remove the applicant's name from the roll of IPO consequent to his promotion as JAO on regular basis, the applicant, at best, indicated his desire to be borne on IPOs roll anticipating the benefit of the ACP scheme as he was an IPO as on 1.1.96. This, in our considered opinion, would not entitle him to be borne on IPO line for purposes of P.S. 'Group'B' promotion. The fact that he continued to hold the regular post as JAO on promotion to that post with effect from 24.9.96 and was confirmed subsequently with effect from that date would show that the applicant's lien got shifted from IPO cadre to JAO cadre with effect from 24.9.96. There was no reversion to IPO cadre. The case relied on by the applicant's counsel is not only of any help

to him, but if properly appreciated, would militate against the applicant's claim. What was considered by the Apex Court in Ramlal Khurana Vs State of Punjab and others, [(1989) 4 SCC 99], was Rule 3.14 of the Punjab Civil Services Rules which provided that a competent authority shall suspend the lien of a Government servant when he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. The court recognised the purpose and principle behind Rule 3.14 of the Punjab Civil Service Rules to be that the suspension of the lien in the parent department would enure to the benefit of the Government servant as and when he wanted to return back to his parent department. The Supreme Court in that case was considering the case of a deputationist, but ultimately the Court went on to observe as under:

"Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that no government servant can have simultaneously two liens against two posts in two different cadres. It is a well accepted principle of service jurisprudence."

(Emphasis added)

F.Rs 12-A and 13 are in consonance with the principle of service jurisprudence taken note of by the Hon'ble Supreme Court in the passage cited above. Thus, if the applicant did not revert to his parent cadre but continued to enjoy the benefits of the regular post he was holding, he could not

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claim the advantage of any lien against the previous cadre, namely, IPO cadre. As already mentioned, the applicant was promoted from SDI cadre on regular basis as JAO against a substantive vacancy. He did not revert to the cadre of SDI inspite of expressing his intention of retaining his name in the SDI gradation list for the specific purpose of ACP benefit. That, in effect, means, the applicant wanted to have the twin advantage of being in the regular cadre of JAO and continuing in the gradation list of SDI for possible ACP benefit. It is this situation that is precisely rendered unworkable in the light of a number of decisions of the Apex Court including the case law cited supra. The case law cited by the respondents' counsel has great relevance in the context of this case. The Apex Court in the case of Ram Saran and another Vs State of Punjab and others, [(1991) 2 SCC 253] has considered the lien-related claim of an employee for promotion against the quota earmarked for ministerial cadre while continuing in the next higher cadre. Although the contentions in the said case revolved round a different issue viz. inclusion of ex-cadre experience for the purpose of determining the Government servant's claim for promotion from the ministerial quota along with those who had remained in the ministerial cadre, the principle enunciated by the Apex Court is applicable to the facts of the case. The following observations of the Court are significant:

"The petitioners without being on the ministerial cadre even by reversion could not claim promotion as a member of the ministerial cadre without revival of the lien. Such revival could be effected only on

reversion and not while the lien remained suspended. When the rule requires members of the ministerial staff to have experience as such for five years to satisfy the eligibility requirement, the Inspectors cannot claim that service in the different cadre with their lien suspended should be equated to service in the ministerial cadre and treated as experience in the ministerial cadre even if the functions and duties of the Inspectors may be of identical nature. The purpose of the rule is to provide promotional avenues to different categories within specified limits. The benefit intended for one category cannot be extended to another category by stretching the rules, particularly when no injustice would result. The argument that the petitioners if found ineligible would remain in the lower cadre while their juniors are being promoted to the higher cadre cannot be countenanced. Even when the juniors continued in the lower ministerial cadre for long years, the petitioners were in a different cadre which had a larger promotional avenue and they are satisfied in the post. If the petitioners did not exercise their option to revert back to the ministerial cadre at the right time to qualify themselves for further promotion, the appellants cannot be deprived of the benefit they derived by continuing in the lower cadre on account of that situation."

The underlying principle is that, to be considered as a member of the preferred category (in this case IPO line), there ought to have been a revival of the applicant's lien. The applicant's lien in this case remained with his regular post viz, JAO. Again in Jagdish Lal and others Vs State of Haryana and others [AIR 1997 SC, 2366], the Apex Court, after holding that seniority should be counted from the date of initial appointment and not from the date of confirmation which is an "inglorious uncertainty", has re-confirmed the articulated major premise that "...an employee cannot simultaneously be a member of two posts/service/grade/cadre nor is he eligible to hold lien on two posts."

(Emphasis supplied)

9. We observe that the applicant has relied heavily on the suggestion in the impugned order with regard to the option

to be obtained from officials like the applicant henceforth before they are allowed to be borne on either of the cadres for which they have qualified on the basis of the performance in the respective examinations. We are not impressed by the argument that A-5 recognises any need to give the applicant a further option and that therefore, the applicant was entitled to opt for reversion. That observation regarding option to be given in future appears to us to have been made with the intention of warding off ambiguity in interpreting the service rules at a later stage. However, unfortunately, there appeared to have been some confusion in the minds of at least some functionaries in the respondents' office in this regard which probably might have led to the issue of A-8 memo dated 30.1.2001. It is important to note that A-7 does not specify that past cases should be reopened for the purpose of option. It only mentions that option should be obtained without fail from the officials who qualify in both IPO/IRM - JAO cadre examinations before they are promoted to either of the cadres. It does not speak about the right of option to be given to the applicant. In other words, the whole exercise is intended to be prospective. But A-8 gives the impression that the applicant is given a specific chance to submit his option to continue in the JAO cadre or otherwise. We fail to understand why and how such an option could be insisted. Be that as it may, the applicant's reply in A-9 is again quite unsatisfactory in the sense that the applicant has prevaricated by stating that the issue is subjudice. The issue is not subjudice and the applicant's right, if any,

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remained unaffected. We, therefore, are inclined not to attach any importance to A-8 and A-9 communications and we go by what is provided under the F.Rs with regard to lien and by the principles enunciated in the decisions cited above. In other words, the applicant having voluntarily accepted the promotion on regular basis to JAO and having continued in that post against a substantive vacancy throughout inspite of an earlier chance to exercise his option in favour of IPO line, undoubtedly, had his lien in the JAO cadre only at the relevant point of time. Therefore, when the promotion examination for P.S. Group 'B' took place, the applicant could not have been considered against 19% quota earmarked for IPO. In this view of the matter, the application is liable to be dismissed.

10. On the facts and in the circumstances of the case, the application is dismissed, leaving the parties to bear their respective costs.

Dated, the 21st day of November, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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ANNEXURES

Applicant's Annexures

1. A-1: True copy of letter No. Rectt/10-6/2/97 dt.9.8.99 issued by the first respondent.
2. A-2: True copy of the Gradation list of IPOs as on 1.7.93 published by Asstt. Director(Staff), O/o the CPMG, Trivandrum vide letter No.ST/101/GNL/93/II dt.16.11.98.
3. A-3: True copy of lettr. No.ST/SAJ-63 dt.20.8.98 of the Asstt. Director(Staff), O/o the CPMG, Kerala Circle, Trivandrum.
4. A-4: True copy of the representation dt.31.8.98 submitted by the applicant before Asstt. Director(Staff), O/o CPMG, Trivandrum.
5. A-5: True copy of letter No.9-25/99-SPG dt.20.12.99 issued by ADG(SGP), D/o Communications, New Delhi.
6. A-6: True copy of Memo No.1074/Admn.I/E.I/C-10 B dt.4.1.2000 issued by Sr. Accounts Officer, Admn., O/o the Dy. Director of Accounts(Postal), Trivandrum.
7. A-7: True copy of order No.9-25/99-SPG dt.29.12.99 of the 2nd respondent.
8. A-8: True copy of memo No.1153/Admn.I/EI/C42I dt.30.1.2001 of the Dy. Director of Accounts(Postal), Kerala Circle, Thiruvananthapuram.
9. A-9: True copy of the reply dt.13.3.2001 to the Dy. Director of Accounts (Postal), Kerala Circle, Thiruvananthapuram.

Respondents' Annexure

10. R-1: True copy of the OO No.60/Admn.1/E.I/IOB dt.12.11.92 issued by Dy. Director or Accounts(Postal).
11. R-2: True copy of OO No.51/Admn.I/EI/ 10/ dt.24.9.96 issued by Dy. Director Accounts(Postal).
12. R-3: True copy of the letter dated 24.6.94 of applicant to CPMG, Trivandrum.