

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
T.A. No.

471/89

199

DATE OF DECISION 31.8.90

P.Bhargavan Nair _____ Applicant (s)

M/s O.V.Radhakrishnan,
K.Radhamani Amma &
Raju K.Mathew _____ Advocate for the Applicant (s)

Versus

Director of Postal Services(HQ),
Kerala Circle & 3 others. _____ Respondent (s)

Mr. T.P.M.Ibrahim Khan _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P. Mukerji, Vice Chairman**

The Hon'ble Mr. **A.V.Haridasan, Judicial Member**

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 7th August 1989, the applicant who has been working as an Accounts Officer in the Head Record Office under the Chief Postmaster General, Kerala Circle, has challenged the impugned order dated 9.8.88 at Exbt. A14 and the impugned order dated 1.2.89 at Exbt. A16 rejecting his representation and petition respectively for retrospective promotion as Lower Selection Grade (LSG) Supervisor with effect from 6.10.81. His further prayer is that the respondents be directed to regularise his promotion to the LSG with effect from 6.10.81 when he was promoted on an adhoc basis, with all consequential benefits. The brief facts of the case are as follows:

2. Having been appointed as a Sorter, the applicant appeared in the RMS Accounts Examination in April 1975 and came out successful

He was appointed as Assistant Accountant, Head Record Office on 23.12.77 and promoted to the LSG on purely temporary and adhoc capacity by the order dated 24.9.81. He joined the post at Calicut on 6.10.81. While holding the post he was allowed to cross the Efficiency Bar on 26.6.82. His grievance is that vide the order dated 9.12.85 (Exbt. A5), two persons senior to him who had been promoted to the LSG on adhoc basis in 1980 and 4 persons junior to him who had been promoted to the LSG on adhoc basis between 1982 and 1984 later than him, were regularised in the LSG from the date of their adhoc promotion while he was not so regularised. He represented against the same on 9.1.86 but his representation was rejected on 14.5.86. It appears that because of his participation in a 'Pen Down' strike on 15.5.82 he had been suspended on 18.5.82 and chargesheeted on 17.6.82. The Enquiry Officer found certain charges to be proved and some not proved. But the Disciplinary authority, disagreeing with the Enquiry Officer, found the charges to be proved and passed the punishment order on 4.4.84 withholding his next increment for three years. On filing a petition after his appeal had been rejected as time barred, the order of penalty was reduced to that of withholding of increment for a period of one year without cumulative effect. The penalty was effective from 1.7.84 and was over on 30.6.85. The applicant was chargesheeted again on 20.11.82 and the punishment order was passed wassed on 17.12.85 withholding his ^{next} increment for one year which was reduced in appeal to withholding of increment to six months on 15.4.86. This penalty was effective from 1.7.86 to 31.12.86. On 21.9.83 he was again chargesheeted for unauthorised entry in the office premises and on 6.8.86 the order of punishment withholding his ^{next} increment for six months was passed. This punishment was for the period from 1.7.87 to 31.12.87. On 26.4.88 the applicant was regularised [✓] from the date of his adhoc promotion, [✓] in the LSG but not with retrospective effect, like his juniors. His representation dated 28.5.88 seeking regularisation from 6.10.81, that is, the date of his original promotion to LSG on adhoc basis, was

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rejected by the impugned order dated 9.8.88 (Exbt. A14). The ground adduced in that order was that he had been promoted as LSG Accountant on an adhoc basis in September 1981 as the concerned DPC could not meet. As, however, his "record of service from May 1982 onwards was not satisfactory," his adhoc promotion could not be regularised till 1988. His request for regularisation of promotion from 6.10.81 cannot be acceded to as his record of service subsequent to the adhoc promotion was not satisfactory. The applicant represented on 31.10.88 urging that the developments and proceedings subsequent to the promotion on 6.10.81 on an adhoc basis should not be relevant for his regularisation. This representation was also rejected by the other impugned order at Exbt. A16. The applicant has urged that promotion to the LSG is a non-selection process, that he was promoted in September 1981 against a substantive vacancy and the disciplinary proceedings and currency of punishment which are related to events after 6.10.81 could not be taken into account by the DPC for not promoting him on a regular basis from the original date of his adhoc promotion.

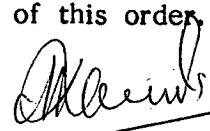
3. The respondents while accepting the factual position as indicated above, have clarified that the applicant was promoted on an adhocbasis in 1981 "due to sanctioning of the post of LSG Accountant in Head Record Office, Ernakulam and the posting could not be delayed till the selection by a regular Departmental Promotion Committee." The applicant was duly considered for regular promotion by the DPC in its meeting held on 18.11.85 but was not found fit for promotion "in view of adverse entries in his service record in May 1982 and 1984." The DPC which met on 25.4.88 considered his case again after the effects of all punishments were over and recommended that he could be regularised in the LSG and his appointment was regularised from 26.4.88 itself. His previous service in the LSG on an adhoc basis from 1981 counts for all purposes except for seniority.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The

respondents have conceded that a post in the LSG category had been created at Ernakulam and in the resultant vacancy at Calicut the applicant had to be promoted ^{on 6.10.81} ~~as~~ LSG Accountant on a purely adhoc basis as the posting could not be delayed for the holding of a meeting of the DPC. They have also conceded that the DPC which met on 19.11.85 could not recommend the applicant's regularisation in the LSG because of the adverse entries in his service record in May 1982 and 1984. It is also evident from the order dated 9.12.85 (Exbt.A15) that 4 persons who had been promoted on adhoc basis like the applicant during 1982 and 1984 (whereas the applicant had been so promoted on 6.10.81) were regularised in the LSG from the dates of their original appointment on adhoc basis. The impugned order at Exbt. A14 also clearly states that he was not promoted because his record of service subsequent to his adhoc promotion was not satisfactory. It is, thus, clear that the applicant was not regularised with effect from 6.10.81 because of the subsequent developments from May 1982 onwards. These developments comprised his participation in the 'Pen Down' strike on 15.5.82 and the 3 penalties that were imposed on him between 4.4.84 and 6.6.86. It is an established law that consideration for promotion from a particular date cannot be influenced or ~~governed~~ by the developments subsequent to that date. It is not the respondents' case that the applicant had been promoted to the LSG on an adhoc basis on 6.10.81 on trial or on probation. He was appointed on an adhoc basis not for being tried out in the LSG but because regular promotion could be made only if a meeting of the DPC could be convened and that meeting was convened only in November 1985. Had the meeting been convened during September/October 1981, the DPC could not have taken into account the developments which occurred in May 1982 and subsequently. The applicant's chances of promotion could not be allowed to suffer because of the administrative delay in convening the meeting of the DPC. A similar question came up for consideration by this Tribunal in OAK 218/87. In the judgement dated 12th April

1989 to which one of us was a party, reliance was placed on the Department of Personnel & Administrative Reforms' O.M. dated 20th May 1981 laying down that the record of service upto the end of the previous year or the period ending in March of the year in which the vacancy occurred only should be taken into account and not the subsequent ~~ones~~. The respondents in that case were directed "to get the suitability of the petitioners for promotion to Lower Selection Grade reviewed by the DPC as in 1982. The DPC while assessing their suitability should take into account the confidential reports only upto 31.3.82 and any entry factual or otherwise in respect of an event subsequent to that date should not be taken into account. The DPC also should not take into account any adverse entry relating to the period subsequent to 31.3.82 and any uncommunicated adverse entry relating to the period prior to 31.3.82 in making the assessment."

5. In the facts and circumstances, we allow this application, to the extent of setting aside the impugned orders dated 9.8.88 and 1.2.89 at Exbt. A14 and ^{respectively} A16 ~~and~~ ^{the} directing ~~the~~ respondents to get the applicant's case of promotion to LSG with effect from 6.10.81 reviewed by a DPC as in 1981. The DPC while assessing his suitability should take into account the confidential reports only upto 31.3.81 and any entry, factual or otherwsie, in respect of an event subsequent to ~~6.10.81~~ ¹⁹⁸¹ should not be taken into account. The DPC also should not take into account any adverse entry relating to the periods subsequent to ~~6.10.81~~ and also any uncommunicated adverse entry relating to the period prior to ~~6.10.81~~ in making the assessment. The respondents are directed to thereafter take a decision about regularising the applicant with effect from 6.10.81 on the basis of the recommendations made by the Review DPC. If the applicant is regularised with effect from 6.10.81 on these lines, he would be entitled to all consequential benefits including that of seniority. Action on the above lines should be completed within a perod of three months from the date of communication of this order. There will be no order as to costs.


31.8.90
(A.V.Haridasan)
Judicial Member


31.8.90
(S.P.Mukerji)
Vice Chairman