

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Original Application No. 499 of 2011

Friday, this the 29th day of July, 2011.

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Chitra Ninan,
W/o. Korason A. Kunnathu,
Inspector Posts,
Tripunithura Postal Sub Division,
Tripunithura - 682 301,
Residing at Kunnathu House, Kottayam. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Communications,
Department of Posts, New Delhi : 110 001
2. The Chief Postmaster General,
Department of Posts, Kerala Circle,
Thiruvananthapuram.
3. The Postmaster General,
Department of Posts, Central Region,
Ernakulam : 682 018. ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 29.07.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A, is aggrieved by the failure on the part of the 3rd respondent to issue her posting order as Assistant Superintendent of Post



Offices (ASPO) despite promotion orders having been issued by the 2nd respondent as early as 28.02.2011. She was initially appointed as Postal Assistant on 01.01.1999 and was promoted as Inspector of Post Offices (IPO) with effect from 29.09.2007. She is presently working as IPO in Tripunithura Sub Division under the respondents. Even though her juniors were promoted as ASPO on ad hoc basis, she was not promoted. Finally, she was promoted as ASPO by the 2nd respondent vide order dated 28.02.2011 (Annexure A-1). All, except the applicant, in the Annexure A-1 order have been given posting orders as ASPO on ad hoc basis. The applicant submitted a representation dated 04.03.2011 to the 3rd respondent requesting for a posting at Kottayam where there is a vacancy of ASPO, which has not yet been replied to. Hence the O.A.

2. The applicant submits that the inaction on the part of the 3rd respondent to issue posting order as ASPO as per order at Annexure A-1 against the existing vacancy at Kottayam, is arbitrary, discriminatory and violative Articles 14 and 16 of the Constitution. The applicant had been requesting for a posting at Kottayam on account of ill health of her daughter. The applicant apprehends that one of her juniors might be promoted and posted as ASPO at Kottayam. Once the orders of promotions are issued by the 2nd respondent, it is the duty of the 3rd respondent to order of transfer/posting. Failure to discharge his duties for no valid reason is arbitrary and discriminatory. Therefore, the applicant prayed for a direction to the 3rd respondent to issue posting orders as ASPO and to direct further to consider her posting at Kottayam in the existing vacancy with all consequential benefits including arrears of pay and allowances from the date of Annexure A-1.



3. In the reply statement filed by the respondents, it was submitted that the applicant does not have any right to insist on a choice posting. The vacancies in the cadre of ASPOs are to be filled up as per administrative exigencies and requirement. Long and frequent availment of leave by the applicant has been found to be adverse for a favourable consideration by the 3rd respondent to give her a posting on promotion as requested by her. The applicant has no right to prevail upon the administration for providing her ad hoc promotion at a choice station.

4. In the rejoinder statement filed by the applicant, it was submitted that once the promotions are ordered by the 2nd respondent, who is the superior authority, the 3rd respondent has no authority whatsoever to sit in appeal over the orders passed by the 2nd respondent in conformity with the rules and regulations. The applicant has more than 3 years of service to be considered for promotion on ad hoc basis. Even if she was on long leave frequently, it was duly sanctioned by the competent authority. It was mostly for child care. Taking into consideration the genuineness of her need to take leave, the leave availed by the applicant counts as service qualifying for promotion, pension, increment etc. This cannot be a ground for refusing posting order.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and perused the records.



6. As per Annexure A-1 order dated 28.02.2011, the applicant has been promoted on ad hoc basis as ASPO. Out of 5 IPOs who have been promoted as ASPOs, the applicant alone has not given posting order on the ground of her having been on long leave and frequently. Her leave has been duly sanctioned by the competent authority. The fact that the applicant's daughter is under prolong treatment is known to the respondents. As she fulfills all eligibility conditions for promotion as ASPO on ad hoc basis, she has been promoted by the competent authority. The mental reservations of the 3rd respondent with regard to applicant's performance as ASPO cannot be a valid ground to deny her a posting at his hand. Denying her a promotion posting order is discriminatory and illegal and is violative of Articles 14 and 16 of the Constitution.

7. As regards posting at Kottayam, the applicant does not have a right to be posted at a particular place of her convenience or choice. Transfers and postings are strictly within the domain of the executive. In the absence of malafide or illegality, the Courts/Tribunals do not interfere with the transfer/posting orders. The fact that one post of ASPO is vacant at Kottayam, is not disputed. However, it is the discretion of the respondents as to whom to post there. The applicant has represented for posting her as ASPO at Kottayam. It is expected that the respondents would consider her case for a posting at Kottayam.

8. The inaction on the part of the 3rd respondent in giving her a posting order for ad hoc promotion and in considering her request for a posting as ASPO at Kottayam cannot be justified. Therefore, in the interest of justice,



the O.A is liable to succeed. Accordingly, it is ordered as under.

9. The respondent No. 3 is directed to appoint the applicant as ASPO as per Annexure A-1 order forthwith and consider her posting at Kottayam in the light of her representation dated 04.03.2011 within a period of one month from the date of issue of this order.

10. The O.A is allowed as above with no order as to costs.

(Dated, the 27th July, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.