

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 528 of 1990
T. A. No.

DATE OF DECISION 19-7-1991

CK Joseph _____ Applicant (s)

M/s OV Radhakrishnan &
K Radhamani Amma _____ Advocate for the Applicant (s)

Versus

Chief PMG, Kerala Circle, Trivandrum & 2 others Respondent (s)

Mr KA Cherian, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

AV Haridasan, Judicial Member

The short question that arises for consideration in this application is whether a punishment of withholding of increment for 3 months without cumulative effect will disentitle an official to promotion to the next higher grade.

2. The factual matrix is thus: The applicant CK Joseph whose rank in the Circle Gradation list of Post Office Officials (Kerala Circle) as on 1.7.1982 in respect of Time Scale Postal Assistants was 1379 while that of Smt. TR Ambujakshi and Shri N Divakaran Pillai were 1380 and 1381 was considered by the Departmental Promotion Committee (D.P.C.) for promotion

to the next higher grade in the scale of Rs.425-640 and was promoted to that grade as per orders contained in the DPS(HQS) Trivandrum Memo No.ST/5/11/84 dated 28.2.1984 w.e.f. 30.11.1983 along with 59 others. This order was communicated by Senior Superintendent of Post Offices, Kottayam Division dated 30.3.1984. The applicant's name was included in the above order(Exbt.A1) at Sl.No.56. But in the Circle Gradation list of Post Office Officials(Kerala Circle) as on 1.7.1987 published under SD/PTG/9/89-90 dated 5.5.1989 PSD Tvm. and circulated under letter No.81/4/C0 dated Kottayam dated 11.1.1990 the applicant was placed at Sl.No.833 showing the date of promotion as 1.12.1983 while Smt.TR Ambujakshi was placed at Sl. No.633 and Shri N Divakaran Pillai at Sl.No.342. The date assigned for their promotion to the cadre was shown as 30.11.1983. As the date of the applicant's promotion to the L.S.G. was altered to 1.12.1983 from 30.11.1983 without any notice to him and as he was given seniority below Smt.TR Abujakshi and Shri Divakaram Pillai, on 22.3.1990 the applicant made a representation to the Chief Post Master General, Trivandrum inviting his attention to the Government Instructions contained in Ministry of Home Affairs Memo No.9/13/62-Estt(D) dated 10.10.1962 and No.9/30/63.Estt(D) dated 7.2.1964 and claiming that the currency of punishment of withholding of increment which was not considered by the D.P.C. as a disqualification for promotion should not have ^{been} a valid reason to postpone his promotion. In reply to this representation, the applicant was served with the impugned order at Exbt.A5 dated

14.5.1990 issued by the Senior Superintendent of Post Offices, Kottayam Division informing him that the Chief PMG, Trivandrum had clarified that as the applicant was promoted to L.S.G. only on 1.12.1983 as he was undergoing a penalty of withholding of increment as on 30.11.1983, the position assigned to him in the seniority list was correct. The applicant has challenged this impugned order on the ground ^{that} ~~the currency of~~ penalty of withholding of increment awarded to him by order dated 14.2.1983 at Exbt.A6 was over by 30.11.1983 and that even if it is admitted ^{to be not over in view of the clarification} ~~in~~ the Ministry of Home Affairs O.M. No.22011/2/68-Estt(A) dated 16.2.1979 which has been reiterated in the DG P&T's letter No.35/9/84-SPB.II dated 19.5.1984 which provides that punishment of censure, recovery of pecuniary loss and stopping of increments do not constitute a bar to promotion of the official, provided, on the basis of overall assessment of his record of service, the OPC recommends ^{that} promotion of the official to the next higher post, there is no justification for altering the date of his promotion and pushing him down below several of his juniors. The applicant prays that as this action without even giving him a notice ^{is} being arbitrary, violative of Articles 14 and 16 of the ~~of~~ Constitution and against principles of natural justice, the impugned order at Exbt.A5 may be quashed and the Circle Gradation list of Post Office Officials(Kerala Circle) relating cadre to the LSG ~~as on~~ ^{as on} 1.7.1987 at Exbt.A3 may be set aside to the extent it adversely affects the applicant and that the

respondents may be directed to fix the rank and seniority of the applicant in the cadre of LSG on the basis of his seniority position in the cadre of Time Scale Assistant in terms of Exbt.A2 seniority list reckoning the date of his promotion as 30.11.1983.

3. The respondents in the reply statement have sought to justify the alteration of the date of promotion of the applicant to the LSG from 30.11.1983 to 1.12.1983 and his placement in the Circle Gradation list below those who were promoted upto 1.12.1983 on the ground that at the time when the D.P.C. considered the case of the applicant for promotion, the fact that the punishment of withholding of increment was current was not brought to its notice, that in the order dated 28.2.1984 of the Director of Postal Services(HQ) promoting the applicant to LSG at Annexure-R-1(B) it was clearly mentioned that if a punishment was current, the official should not be given promotion and that their cases should be referred back to the DPS(HQ) and that the revised order dated 12.7.1984 promoting the applicant w.e.f. 1.12.1983 was issued under proper intimation to the applicant. According to the respondents, as period of the punishment of withholding of increment for 3 months ^{only on} expired 30.11.1983, the applicant was entitled to be promoted only after 30.11.1983.

4. In the rejoinder, the applicant has asserted that the revised order dated 12.7.1984 at Exbt.R1(C) was never communicated to him and that he came to know of the alteration

of the his
/date of/ promotion and lowering of his position in the seniority
list only when the Exbt.A3 gradation list was circulated.

5. We have heard the arguments of the learned counsel on either side and have also carefully perused the pleadings and documents produced. Exbt.A6 is a copy of the order dated 14.2.1983 of the Senior Superintendent of Post Offices, Kottayam imposing on the applicant a punishment of withholding of the next increment to the stage of Rs.405/- due on 1.9.1983.

A careful reading of this order would leave no doubt to the fact that the Senior Superintendent of Post Offices intended that the punishment should be only of withholding of increment and that there was no intention to postpone his promotion till the expiry of the period for which the increment was stopped. The respondents in the reply statement in paragraph 11 have admitted that the existence of a penalty of withholding of increment by itself is no bar for considering an official for promotion and have stated that the actual date of promotion could be only after the period of penalty ceased to operate. The applicant has produced Exbt.

A7. Relevant extract from the letter of DG P&T letter No.

35/9/84-SPB.II dated 19.5.1984 which reads as follows:

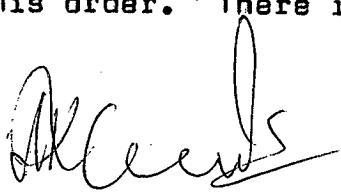
"Promotion of an official can be given effect to during the currency of the punishment of monetary recovery. In this connection a reference is invited to the instructions issued by the M.H.A. in O.M.No. 22011/1/68-Estt.(A) dated the 16th February, 1979, stating inter alia that the punishment of censure, recovery of pecuniary loss and stopping of increment do not constitute a bar to promotion of the official provided, on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post."

On the basis of this clarification given by the DG P&T, the learned counsel for the applicant argued that the stand taken by the respondents that even though the D.P.C. on the basis of the record of service of the applicant considered him to be fit for promotion, his promotion could be effective only after the period of penalty of stoppage of increments ceased is ^{to be operative} unreasonable. In the reply statement, the respondents have not even attempted to explain how in view of the clarification given by the DG P&T in his letter dated 19.5.1984 at Exbt.A7 the respondents could deny him the benefit of promotion w.e.f. 30.11.1983. What is stated about this point in the reply statement is "The statement that penalty of withholding of increment cannot stand in the way of promotion is devoid of any merit and has to be rejected." The existence of the instructions in the DG P&T's letter dated 19.5.1984 is completely ignored and is not attempted to be explained at all. The learned ACGSC appearing for the respondents did not bring to our notice any ~~other~~ rule or instruction which would warrant postponement of promotion of an official during a period while he is undergoing a penalty of withholding of increment for a period of 3 months without cumulative effect. In view of the clarification given by the DG P&T in his letter No.35/9/84-SPB.II dated 19.5.1984 at Exbt.A7, we find that the decision of the respondents to vary the date of promotion of the applicant from 30.11.1983 to 1.12.1983 is wholly unjustified. Further, when the applicant has categorically asserted in his rejoinder that he has not been ^h

given any notice regarding the revision of the date of his promotion from 30.11.1983 as shown in Exbt.A1, the respondents have not produced any evidence to show that such a notice was given to him or that he was at least informed of such a change in due time. There is nothing on record to show that the order of the PMG at Exbt.A3 altering the date of his promotion from 30.11.1983 to 1.12.1983 was ever communicated to the applicant. Further, even if it is presumed that actual promotion could be given only after the penalty of withholding of increment ceased to be operative, while promoting the official, the order should take effect from the date on which any person junior to him was promoted on the basis of the recommendation of the DPC. Therefore, we are of the view that the alteration of the date of promotion of the applicant from 30.11.1983 to 1.12.1983 is arbitrary and unjustified and that the impugned order at Exbt.A5 is also wholly unjustified and unsustainable.

6. In the conspectus of facts and circumstances, we allow this application, quash the impugned order at Exbt. A5 dated 14.5.1990; we set aside the impugned Circle Gradation list of Post Office Officials (Kerala Circle) as on 1.7.1982 pertaining to LSG (Rs.425-640) under TBOP scheme at Exbt.A3 to the extent that the applicant is given rank No.833 with the date of promotion to that cadre as 1.12.1983 and direct the respondents to fix the

seniority and rank of the applicant in the said gradation list, on the basis of his seniority position in the cadre of Time Scale Postal Assistants in terms of Exbt.A2 seniority list and to grant him all consequential benefits. Action on the above lines should be completed within a period of two months from the date of communication of this order. There is no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER


S.P.M.
19.7.91

(S.P.MUKERJI)
VICE CHAIRMAN

19.7.1991

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA-6/92 in
O. A. No. 528/90
T. A. No.

100

DATE OF DECISION 20-2-1992

(8)

Chief Post Master General Applicant (s)

Mr KA Cherian, ACGSC Advocate for the Applicant (s)

Versus

Mr CK Joseph Respondent (s)

Mr OV Radhakrishnan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The original respondents have filed this review application on the ground that the order is erroneous and happened to be passed as the Tribunal was mislead by the applicants by producing only a part of the letter which was marked as Annexure-A7 in the original application. But we notice that even along-with the review application, the review applicants have not cared to produce the full text, if any, of the letter concerned to satisfy us as to how we were mislead by the applicant. The

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Annexure-A7 was dated 19.5.1984. All the Annexures produced along with the review application are dated prior to 19.5.1984. So the latest instruction on the question decided by us was as contained in Annexure-A7. Therefore the review applicants have brought out any not entitled in the circumstances or reason to enter a finding that the order was erroneously passed. The RA therefore fails and the same is rejected.

Allesel
(AV HARIDASAN)
JUDICIAL MEMBER
20/2/92

Sarkar
20/2/92
(SP MUKERJI)
VICE CHAIRMAN

20-2-1992

trs

Pronounced in open court.

Allesel Sarkar
20/2/92