

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 531 of 2009

Tuesday, this the 09th day of November, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

K.P. Valsan,
S/o. Kunhappa Nambiar,
Retired Senior Superintendent of Post Offices,
Calicut Division,
Residing at Valsalyam, Kottooli P.O.,
CALICUT : 673 016 ... Applicant.

(By Advocate Mr. M.R. Hariraj)

versus

1. Union of India represented by
The Secretary to Government of India,
Department of Posts, New Delhi.
2. Director General,
Department of Posts,
Dak Bhavan, New Delhi.
3. The Postmaster General,
Kerala Circle, Thiruvananthapuram. ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 25.10.2010, this Tribunal
on 09-11-2010 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member

Aggrieved by the refusal of the respondents to consider him for
promotion to the Senior Time Scale (STS) of Indian Postal Service (IPS)

Group-A, the applicant has filed this O.A. praying for the following main reliefs:

- (i) To call for the records leading to Annexures A6, A8 and A10 and quash the same;
- (ii) to declare that the applicant is entitled to be considered for promotion to STS of IPS Group-A with effect from the date of promotion of his juniors reckoning his seniority correctly and in accordance with the rotation rule between direct recruits and promotees as per Annexure A2 and to direct the respondents to consider the applicant for such promotion and to grant him the same with all consequential benefits, including arrears of pay, allowances, pension and other retiral benefits with interest @ 18% per annum from the dates on which the said amounts fell due till the date of actual payment;
- (iii) Alternatively to declare that the applicant is entitled to be considered for promotion to the Senior Time Scale of Indian Postal Service Group-A with effect from the date on which he completed four years of service in the Junior Time Scale and to direct the respondents to consider the applicant for such promotion and to grant him the same with all consequential benefits with interest @ 18% per annum from the dates on which the said amounts fell due till the date of actual payment;

2. The applicant while working in the Postal Service Group-B was considered and recommended for promotion to a vacancy in the Junior Time Scale (JTS) of the IPS Group-A in November, 2001 by the duly constituted Departmental Promotion Committee (DPC). He joined the JTS Group-A of the IPS on 18.02.2002. As per rules, 4 years regular service in the JTS is the qualification for consideration for promotion to the Senior Time Scale (STS) of the IPS Group-A. The applicant became qualified for consideration for promotion to the STS of the IPS Group-A on 18.02.2006. However, the DPC which met on 24.02.2006 did not consider the applicant for promotion to the STS of the IPS Group-A. The representations made



by the applicant in this regard were rejected by the competent authority. Hence the O.A.

3. The applicant submits that the prescription of 1st January as a crucial date for determining the qualification in regard to length of service by the applicant based on which he was not considered for promotion by the DPC, cannot be introduced without amendment of the Recruitment Rules. Amendment to Recruitment Rules is specifically indicated in O.M. dated 17.09.1998 at Annexure A-4. This O.M. is not an instruction which has to be applied de hors the rules, but only a guideline for amending the Recruitment Rules. The applicant was qualified to be considered for appointment to the STS of IPS Group-A on 18.02.2006. On that date the number of qualified officers for promotion to the STS was much less than the number vacancies available in the STS. The DPC which met on 24.02.2006 ought to have considered the applicant also for promotion. The prescription of crucial dates is necessary only in cases where the number of qualified officers are much more than the number of vacancies. The O.M. dated 17.09.1998 at Annexure A-4 was not communicated to all officers. The seniority of the applicants in the JTS cadre is not properly reckoned. The rotation of vacancies based on the ratio prescribed under the rules was not followed in the case of the applicant to determine his seniority in the JTS. The applicant was promoted to the JTS on 18.02.2002 against the vacancies of 2001 based on the recommendation of the DPC held in November, 2001. The delay in making the promotion based on the said recommendation has become the reason to deny further promotion to the applicant. As the posts in STS and JTS are inter

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changeable, the applicant is entitled to have the arrears of pay and allowances and interest thereon on being granted promotion based on rules. The appointment to the STS used to be given to the officers in JTS immediately on their completing 4 years of service upto the year 1999. Even after Annexure A-4, the crucial date was not taken into consideration by the respondents obviously because no amendment was carried out in the Recruitment Rules.

4. The respondents contested the O.A. It was submitted on their behalf that they had acted on extant instructions and rules. The applicant was not considered for the vacancy of 2006 as he had not completed 4 years regular service in JTS as on 1.1.2006. The process of issuing promotion order to the cadre of JTS all over the country is a time consuming one involving various administrative formalities. As such there was no undue delay in the case of the applicant. The respondents have no mandate to revise the instructions regarding fixing a date for determining the eligibility of promotion issued by the DoP&T. The unfilled vacancy in the year 2006 was due to administrative reason. The representations of the applicant have been duly considered by the respondents and the decisions were promptly conveyed to him. In the circumstances, the O.A. Is devoid of any merit and is liable to be dismissed.

5. In the rejoinder filed by the applicant, it was submitted that there is no statutory rule prescribing 1st January as a crucial date for determining eligibility. The respondents have failed to follow the model calendar for DPC prescribed by the DoP&T. In the absence of amendment in the

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Recruitment Rules as specifically provided in Annexure A-4, the prescription of 1st January as crucial date for determining eligibility cannot take effect.

6. In the additional reply statement, the respondents submitted that as per para 3 of the O.M. dated 17.09.1998 (Annexure A-4), the instructions contained therein came into force in respect of vacancy years commencing from 1st January / 1st April, 1999. On the crucial date of 01.01.1006, the applicant has not completed 4 years regular service in the grade of JTS, therefore, he could not be considered for promotion to STS for the vacancy year 2006. The respondents submitted that it is a matter of fact that DoP&T has issued the model calendar for holding DPC. However, it is also a matter of fact that DPC for promotion to JTC is a time consuming process. Further, the respondents submitted an affidavit reiterating their contentions made in the reply statement. It was also stated that the officers in the JTS were promoted on completion of their 4 years regular service upto 1999. But the case of the applicant was not considered for promotion in 2006 when the instructions in the Annexure A-4 came into force.

7. We have heard Mr. M.R. Hariraj, learned counsel for the applicant and Mr. Rajesh for Sunil Jacob Jose, SCGSC, learned counsel for the respondents, and have perused the documents.

8. The applicant has sought for a declaration that he is entitled to be considered for promotion to the STS of the IPS Group-A with effect from

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the date of promotion of his juniors reckoning his seniority correctly and in accordance with the rotation rule between direct recruits and promotees and to direct the respondents to consider the applicant for such promotion and grant him the same with all consequential benefits, with interest. This prayer is based on reckoning his seniority correctly as understood by the applicant. The applicant should have challenged the fixation of his seniority at the relevant point of time. As of now, it is too late to agitate this matter. Hit by the bar of limitation, this prayer merits no consideration.

9. Alternatively the applicant has sought a declaration that he is entitled to be considered for promotion to the STS of the IPS Group-A with effect from the date on which he completed 4 years of regular service in the JTS and to direct the respondents to consider him for such promotion and to grant him the same with all consequential benefits, with interest. This prayer is taken up for consideration. The rules governing promotion to the STS of IPS Group-A is reproduced as under :

"Rule: 20(2) Senior Time Scale: Appointment to the Senior Time Scale in the service shall be made by promotion of officers in the Junior Time Scale with four years regular service in that grade in the order of seniority subject to the rejection of the unfit on the recommendations of a duly constituted Departmental Promotion Committee."

A plain reading of the above rule would show that 4 years of regular service in the JTS would make an officer eligible for consideration for promotion to the STS. The respondents state that the applicant was not considered for promotion because he had not completed 4 years of regular service in the JTS as on 01.01.2006 which is the crucial date. There is no

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mention of crucial date in the Recruitment Rules. The respondents relied on Annexure A-4 dated 17.09.1998 issued by the DoP&T. For the sake of convenience, the same is extracted as under :

"No. 22011/3/98-Estt(D)
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel and Training)

North Block, New Delhi 110001
September 17, 1998

OFFICE MEMORANDUM

Subject:- Eligibility of officers to be considered for promotion by DPC – Fixing of Crucial Date of

The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. Vide the Department of Personnel and Training Office Memorandum No. 22011/7/86-Estt(D) dated July 19, 1989, the crucial date for determining the eligibility of officers for promotion has been prescribed as under:-

- (i) 1st July of the year in cases where ACRs are written calendar year-wise.
- (ii) 1st October of the year where ACRs are written financial year-wise.

2. The matter has been reconsidered by the Government and in supersession of the existing instructions it has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e. January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year



2000-2001 (financial year), which covers the period from April 1, 2000 to March 31, 2001, and the panel year 2000 (calendar year), which covers the period from January 1, 2000 to December 31, 2000, the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.

3. The crucial date indicated above is in keeping with para 9 of the Department of Personnel and Training Office Memorandum No. 22011/9/98-Estt(D) dated September 8, 1998 which prescribes a Model Calendar for DPCs. In accordance with paragraphs 10 and 11 of the said Office Memorandum, these instructions will come into force in respect of vacancy years commencing from January 1/April 1, 1999 and will, accordingly, be applicable to all such subsequent vacancy years.

4. These instructions shall be applicable to all services/posts. The Recruitment/Service Rules may, therefore, be amended accordingly. All Ministries/Departments are requested to bring these instructions to the notice of all concerned, including Attached/Subordinate Offices, for guidance and compliance.

(K.K. JHA)
Director (Establishment)

To

All Ministries/Departments of the Government of India

Copy to :- The Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi 110011 in continuation of the Department of Personnel and Training Office Memorandum quoted in para 3 above. "

10. In para 4 of the above O.M., it is clearly stated that the Recruitment Rule should be amended for making crucial dates effective. It is not the case of the respondents that the Recruitment Rules for promotion to STS are amended in accordance with the instructions contained in the said



O.M. at Annexure A-4. Annexure A-4 is a direction to all Ministries and Departments to fix a crucial date for determining the eligibility of officers as January 1st / April 1st. Annexure A-4 also states that in accordance with paragraphs 10 and 11, the model calendar for the DPC prescribed by O.M. dated 22011/9/98-Estt(D) dated September 8, 1998, will come into force in respect of vacancy years commencing from January 1/April 1, 1999. But in order to give effect to this instruction, the Recruitment Rules (RRs) have to be amended otherwise there would not have been a direction to amend the RRs. The instruction regarding crucial dates cannot be applied de hors the rules. The promotions have to be made in accordance with the Recruitment Rules. An administrative instruction cannot displace the existing Recruitment Rules. It is for the respondents to incorporate the administrative instructions in the Recruitment Rules. The first step to be taken to carry out the instructions of DoP&T in regard to A-4 direction is to amend Recruitment Rules suitably. Unless the Recruitment Rules are amended, the instructions cannot become effective. To the extent the applicant is denied consideration for promotion to the STS on the strength of the instructions contained in the O.M. dated 17.09.1998 at Annexure A-4 not being in accordance with the RRs concerned, the said denial of consideration is unsustainable in law. The applicant superannuated on 30.06.2006 without the benefit of promotion for which he was qualified in terms of length of service when the DPC met. The Recruitment Rules prescribe only 4 years of regular service in JTS. There is nothing in the rules concerning crucial date as 1st January, following which the respondents have unjustly and illegally denied consideration for promotion of the applicant in the last leg of his service.



11. As per the averment of the respondents, they have not been able to follow the model calendar for DPC in respect of holding DPC in time on account of administrative exigency. Had the model calendar for DPC been followed, the contention of the applicant is that he would have benefited by getting 4 years regular service for consideration for promotion to the STS as on 01.01.2006. We are in agreement with this contention. The selective application of the provisions of model calendar for DPC or O.M. dated 17.09.1998 at Annexure A-4 is not contemplated by the Government and is unsustainable in law, being discriminatory.

12. The respondents may not have the mandate to revise the instructions regarding the crucial dates but they had a duty to point out to the DoP&T the impracticability of revising the RRs before 1st January, 1999, if that was not possible and the need to follow the RRs till they are amended. In fact the respondents have violated the instructions regarding crucial dates by not amending the RRs in time and also violated the extant RRs by not following them when the DPC met on 24.02.2006, in not considering for promotion the applicant who was qualified for consideration in terms of the RRs. It is unacceptable that the respondents cannot implement instructions of the Government in regard to model calendar for DPC on account of administrative exigencies. It is still more unacceptable that they use the instructions regarding crucial dates to violate the RRs.

13. In view of the above, the O.A. is allowed. However, we do not consider that there was a deliberate attempt on the part of the respondents

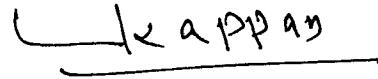
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to exclude the applicant from consideration for promotion. What happened was an error in good faith on their part . Therefore, we are not inclined to consider favourably the request for granting interest @ 18%, on the amount payable to the applicant. In the result, it is ordered as follows.

14. Annexures A6, A8 and A10 are quashed and set aside. We declare that the applicant is entitled to be considered for promotion to the Senior Time Scale of the Indian Postal Service Group-A with effect from the date on which he completed 4 years service in the Junior Time Scale. The respondents are directed to consider him for such promotion within a period of 60 (sixty) days from the date of receipt of a copy of this order and to grant him all consequential benefits if he is found fit for promotion within a further period of 30 (thirty) days from the date of meeting of the DPC.

15. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

cvr.