

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.534/2002

Wednesday, this the 27th day of October, 2004.

CORAM:

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

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

K.J.Joseph,
Senior Superintendent of Post Offices,
Kottayam Division,
Kottayam-686 001.

- Applicant

By Advocate O.V.Radhakrishnan

Vs

1. Union of India
represented by its Secretary,
Ministry of Communication,
New Delhi.
2. Director General of Posts,
Department of Posts,
Dak Bhavan, New Delhi.
3. Chief Postmaster General,
Kerala Circle,
Trivandrum-695 033. - Respondents

By Advocate Mr C.B.Sreekumar, ACGSC

The application having been heard on 29.9.2004, the Tribunal on 27.10.2004 delivered the following:

O R D E R

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

The applicant, K.J.Joseph was promoted to the Junior Time Scale of the Group A purely on temporary and adhoc basis and was posted to officiate as Senior Superintendent of Post Offices, Kozhikode, by memo dated 30.6.1992 of the Chief Post Master General. The applicant assumed charge on 8.7.1992. By notification dated 22.12.1993, the applicant was formally

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appointed to the Junior Time Scale of the Indian Postal Service Group A on purely temporary and adhoc basis from 8.7.1992 to 31.12.1993. On 23.7.1998, by order dated 23.7.1998, the applicant was regularly appointed to the Junior Time Scale of the Indian Postal Service Group A. On 31.5.1999 the applicant represented to the Director General, Department of Posts (A-7) requesting that since he has been officiating in the Junior Time Scale without any break since 8.7.1992, and he could not be regularly promoted until 23.7.1998 despite availability of vacancy, only due to non-convening of DPCs regularly, his continuous adhoc service in JTS of Group A be regularised so as to enable him to be considered for officiating promotion to Senior Time Scale of Group A by counting the required four years of regular service for the purpose. The Chief PMG by A-8 communication dated 17.9.1999 rejected the representation on the ground that adhoc service was not to be counted as qualifying service as the adhoc promotion was ordered on circle seniority purely on temporary and adhoc basis. By A-10 (6.2.2002) issued by the Chief PMG to the PMG, this view was reiterated. The applicant is challenging A-8 and A-10 while seeking a declaration that officiating service rendered in JTS of Group A be reckoned as qualifying service for appointment to STS of the IPS Group A and that he should be appointed to STS of IPS Group A with effect from 23.7.1998.

2. The learned counsel for the applicant invited our attention to the case of L.Chandra Kishore Singh Vs. State of Manipur [(1999) 8 SCC 287] in which the Apex Court has held

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that when first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority and shall relate back to the date on which the appointment was made and the entire service will have to be computed in reckoning seniority according to length of continuous officiation. Further, he argued that delay in convening the DPC for making regular promotion to JTS of IPS was not attributable to him, but was solely due to administrative delay in convening the DPC at the right time. The learned counsel for the respondents, in response, invited our attention to Direct Recruit Class II Engineering Officers' Association Vs State of Maharashtra [(1990) 2 SCC, 715] and M.D. Israels and others Vs State of West Bengal and others in Civil Appeal No.879/1998 in which the Apex Court had held that where initial appointment is only adhoc and not according to the Rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for seniority and promotion. The learned counsel for the respondents also argued that the applicant's adhoc promotion was against circle seniority, while any regular promotion will have to be made only against All India seniority. Thus an officer of Postal Service Group B may be the seniormost in the circle who could be appointed to officiate on adhoc basis in a JTS post in the circle, but he may not be senior enough to be considered for regular promotion to IPS Group A on the basis of All India seniority.

3. Heard. A-2 order was issued by the Chief PMG under delegated powers and the applicant assumed charge on 8.7.1992.

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A-4 order was issued by the Government of India, Department of Posts by invoking Presidential powers, on 22.12.1993, covering the period 8.7.1992 to 31.12.1993, clearly specifying that the appointment was temporary and adhoc. Further continuation beyond 31.12.1993 is evidenced by records, but since the respondents have accepted the fact that the applicant continued to officiate on adhoc basis in the JTS of IPS until regular appointment, we have no problem with that. The issue however, is whether A-4 and A-5 orders can be materially differentiated. The ratio in L.Chandrakishore Singh, despite differences in details from the present case, allows a lingering doubt to persist in the mind of the applicant as to why A-5 should not be read as a continuation of A-4, which in time-frame it is, so as to take it as an order of regularisation. The doubt is not genuine as the A-5 order does not seek to regularise any appointment, it is a fresh order of appointment that would be applicable to the applicant irrespective of his continuance in JTS on adhoc basis. By contrast A-4 order is a regularisation order as it formalises the adhoc appointment by issue of the fresh adhoc appointment by the competent authority covering the period from the date of joining of the applicant in pursuance of the Chief PMG's A-2 orders, upto a prospective date. As the respondents have explained, A-4 order had to be issued as A-2 order could not remain operative beyond four months. The issue is clinched by the fact that adhoc appointment is based on circle seniority, while regular appointment to IPS Group A is based on All India seniority. There is substance in the argument of the respondents that no one can claim entry into the regular cadre

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of an All India service on the basis of circle seniority. In this light, we see no force in the argument of the learned counsel for the applicant that the applicant was senior enough and fit enough to make it to the STS of IPS. The plain fact is that the applicant fell short of the parameters of the Recruitment Rules for promotion to the STS as he did not have four years of regular service in the JTS of Group A. As R-6 would show there were at least eight seniors waiting for regular promotion to the JTS of IPS until the issue of the R-6 order. The applicant's argument as to why these promotions could not be ordered earlier, in which case, he would have acquired the qualification for promotion to STS earlier, is hypothetical, at best.

4. In the conspectus, we find no infirmity in A-8 and A-10 communications. We are also not persuaded to declare that the applicant's adhoc service should be treated as regular without reference to the rights of others. In the result, we find no scope or basis for directing the respondents to appoint the applicant to the STS of IPS from 23.7.1998.

5. In the result, we dismiss the application leaving the parties to bear their own costs.

Dated, the 27th October, 2004.

H. P. Das

H. P. DAS
ADMINISTRATIVE MEMBER

A. V. HARIDASAN
VICE CHAIRMAN

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