

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.561/92

Tuesday, this the 23rd day of November, 1993.

SHRI AV HARIDASAN, JUDICIAL MEMBER
AND
SHRI S KASIPANDIAN, ADMINISTRATIVE MEMBER

N Madhavan Kutty,
S/o late K Thayyunni Nair,
Aged 60 years, residing at
1/347, Kizhakkumpattukara,
Trichur-5. - Applicant

By Advocate Shri MR Rajendran Nair

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Communications,
New Delhi.
2. The Chief General Manager,
Telecom, Kerala Circle,
Trivandrum. - Respondents

By Advocate Shri George Joseph, ACGSC

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AV HARIDASAN, J.M.

The grievance of the applicant, who is a retired employee of the Telecom Department is that the respondents have unjustifiably denied him the benefit of retrospective promotion basing on the revision of his seniority on the basis of the judgement of the Principal Bench in TA-783/85 (Dev Dutt Sharma V. Union of India and others) while such benefit had been given to many others similarly situated like him, The facts in a nutshell can be stated thus.

2. The applicant entered the Telecom department on 2.8.1955 as a Time Scale Clerk. He was confirmed on

1.3.1957. Since the seniority was reckoned on the basis of the date of confirmation then; on that basis the applicant was promoted to Lower Selection Grade on 26.12.1970. His juniors Smt PK Thankam and VJ Paulose were promoted to LSG w.e.f. 8.7.1972 and 15.2.1971 respectively. While so, the applicant retired from service on superannuation on 30.11.1989. Subsequent to the retirement of the applicant, by order dated 23.11.1990 at Annexure-I in implementation of the judgement of the Principal Bench of the Central Administrative Tribunal in TA-783/85, the respondents revised the dates of promotion of the Time Scale Clerks to the LSG Cadre on the basis of their date of entry into service. The date of promotion of the applicant was changed from 26.12.1970 to 25.7.1970. The date of promotion of VJ Paulose was changed from 15.2.1971 to 25.7.1970. On the basis of this revision of date of promotion to LSG, the Department issued a seniority list of LSG Cadre. In this seniority list at Annexure-II, the applicant was placed at Sl.No.74 while VJ Paulose was at Sl.No.80. As a consequence of the seniority position, the department issued another order on 18.3.1991 promoting LSG Postal Assistants to the Senior Section Supervisor with retrospective effect from the date of their eligibility in accordance with the change in their seniority. Shri VJ Paulose was retrospectively promoted with effect from 8.9.1986. Applicant was not given the benefit of retrospective promotion as Senior Section Supervisor. Finding that he has been denied the benefit,

the applicant made a representation on 24.6.1991 to the Chief General Manager, Telecommunication, the second respondent claiming that the same benefit may be extended to him. It is finding no response to this representation that the applicant has filed with this application praying that it may be declared that the applicant is entitled to be promoted to the Higher Selection Grade with effect from 26.12.1978 or at least with effect from 8.9.1986 the date of promotion of his junior and for a direction to the respondents to grant him all consequential benefits including arrears of pay and allowances. It has been alleged in the application that one Shri Ayyappan who was at Sl.No.6 in Annexure-I and Sl.No.9 in Annexure-III a person similarly situated like him was granted the benefit of retrospective promotion to HSG with all consequential benefits and that denial of the same benefit to him amounts to violation of the guaranty of equality enshrined in Article 14 and 16 of the Constitution.

3. The respondents have contended that the applicant having refused to accept promotion to HSG offered to him in the year 1985 and 1989 had no right to be considered for promotion again or for retrospective promotion. They have sought ^{to justify} ~~the~~ benefit given to Shri Ayyappan on the ground that it was specifically on the basis of judgement in OA-204/89.

4. In a rejoinder the applicant has alleged that the promotions of the applicant which he declined were only adhoc promotions and that the refusal to accept the adhoc promotion cannot debar an employee from claiming his right to be considered for regular promotion in his turn. He has also alleged that shri VJ Paulose who is junior to the applicant also had refused adhoc promotion in 1989 and that inspite of that, the respondents have given him the benefit of retrospective promotion.

5. Shri MR Rajendran Nair, the learned counsel for applicant inviting our attention to the pleadings that Shri Ayyappan who was similarly circumstanced as the applicant has been given the benefit of retrospective promotion on the basis of the revised seniority which is not disputed by the respondents, argued that the negation to that benefit to the applicant is clearly violative of the provisions of Articles 14 and 16 of the Constitution.

Shri George Joseph, the learned counsel for respondents on the other hand argued that the benefit was granted to shri Ayyappan because the department had to abide by the directions contained in that judgement and that the judgement. in Ayyappan's case does not confer on the applicant any right as he is not a party to that judgement. But the fact remains that the Tribunal granted the claim of the applicant, Shri Ayyappan in that case not because of any circumstances pecualiar to him, but As considering the legal rights put forward by him./ the

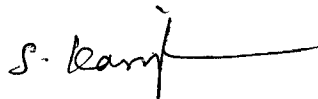
applicant herein also is claiming exactly the similar right there is no reason why a different standard should be adopted by the same Tribunal in the case of the applicant. If the cause of action for the applicant had arisen long back and if, after it had become barred by limitation, if the applicant had filed this application claiming the benefit on the basis of the judgement in Ayyappan's case it could be said that the decision in Ayyappan's case did not revive the cause of action which had been time barred. But here, there is no such plea on limitation because such a plea cannot be raised as the revision of seniority, impugned orders etc. are within the period of limitation prescribed in the Administrative Tribunals Act. The refusal on the part of the applicant to accept adhoc promotion cannot be put up against him as a bar for being considered for promotion. There is no convincing answer to the question posed by the applicant that while Shri VJ Paulose who refused adhoc promotion has been given the benefit of retrospective promotion, why the same is denied to the applicant.

6. In the conspectus of facts and circumstances, we are convinced that there is absolutely no justification for not granting the applicant the benefit of retrospective promotion with effect from the date of promotion of his junior Shri VJ Paulose.

7. Shri George Joseph further argued that even if the applicant is presumed to be entitled to the retrospective promotion, since he has not officiated in the higher post,

the applicant is not entitled to claim the arrears of pay and allowances. Exactly identical question was considered by this Bench of the Tribunal recently in OA-760/92. In that judgement, after considering the grievance of the applicant on this question, the Bench held that the denial of the arrears of pay and allowances to persons similarly situated like the applicant on belated promotion for no fault of them was unjust and had directed the respondents to give the applicants in that case the arrears of pay and allowances.

8. In the result, in the light of the foregoing discussion, the application is allowed. The respondents are directed to consider the case of the applicant for retrospective ^{notional} promotion with effect from 8.9.1986 the date on which Shri VJ Paulose was promoted in accordance with law and to promote him with retrospective effect if he is found otherwise ~~not~~ ineligible and to give him all the consequential monetary benefits flowing out ^{of} ~~his~~ retrospective promotion both from HSG and LSG cadre, within a period of three months from the date of receipt of a copy of this order. No costs.



(S KASIPANDIAN)
ADMINISTRATIVE MEMBER



(AV HARIDASAN)
JUDICIAL MEMBER

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