

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 583/89 199
~~XXX/XXX/XXX~~

DATE OF DECISION 18-06-1990

K. K. Sankaran Applicant (s)

M/s K. Raman & K.G. Pavithran Advocate for the Applicant (s)

Versus
Sr. Superintendent of Post Offices, Kottayam & 3 others Respondent (s)

T.P.M. Ibrahim Khan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, 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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri S.P. Mukerji, Vice Chairman)

In this application dated 4th October, 1989 filed under section 19 of the Administrative Tribunals Act, the applicant who has been working as Extra Departmental Agent under the Post Master General, Kerala Circle and later absorbed in a Group 'D' post with effect from 14.10.87, has prayed that the respondents be directed to appoint him to Class IV post with effect from 17.12.74 the date on which respondents 4 to 6 in TAK 56/87 were appointed and that he should be granted full service benefits including arrears of

pay with effect from 5.12.74. The brief facts of the case are as follows:

2. The applicant had been employed as an E.D. Mail Carrier at Thodanal Branch Post Office from January 1957. In May, 1974 there was a general strike of postal employees. At Kottayam Head Post Office all Group 'D' officials except one had struck work. For maintaining the services, the Post Master, Kottayam utilised the services of the applicant along with other EDAs by employing them as Group 'D' officials. The respondents have stated that the applicant worked in that capacity during the strike period from 11.5.84 to 17.5.84 and that it is a fact that he rendered valuable assistance to the Department disregarding the threat ~~of~~ ^{from} the striking workers. When the applicant ^{had} found that some EDAs who like ~~had~~ had rendered such assistance during the strike period as a reward were ^{later} absorbed as Class IV staff, he moved the departmental authorities for similar treatment and on their refusal to do so, he moved the High Court of Kerala in O.P.10016/83. This writ petition was transferred to this Tribunal as TAK 56/87 and disposed of by the order dated 4.6.87 (Exbt. A-2) with a direction to the Department "to give to the applicant the same treatment as has been given to the respondents 4 to 6 ~~under~~ ^{under} P-1 order by relaxing conditions regarding age, qualifications, etc in the Recruitment Rules. This will be done as expeditiously as possible, not later than within a period of three months from the date of receipt of a copy of this order."

Respondents 4 to 6 in that writ petition had been appointed as Class IV staff as a special case with effect from 17.12.74 and have been drawing annual increments in their pay scales since that date. The aforesaid order of this Tribunal was complied with by the respondents by issue of the order dated 13.10.87 appointing the applicant to a Group D post in relaxation of the normal Recruitment Rules. The applicant took over the Group D post on 14.10.87. He was given the minimum of the pay scale of the post. He represented on 20th February 1989 that he should be given the benefit of pay, allowance and seniority with effect from 5.12.74 when respondents 4 to 6 in the aforesaid writ petition were allowed to be appointed to Group D post, in compliance of the directions of the Tribunal by which he was entitled to be treated similarly as those respondents. This has not been granted by the respondents. While the applicant is relying upon the direction of the Tribunal for claiming arrears of pay and seniority about his appointment to Class IV post from 1974, the respondents have argued that the order of the Tribunal was merely to treat the applicant similarly as respondents 4 to 6 by relaxing the age and other qualifications and there was no direction about arrears of wages, etc.

3. We have heard the arguments of the learned counsel of both the parties and gone through the documents carefully. It is not denied by the respondents that the

applicant rendered valuable services during the strike period at the risk of his life like respondents 4 to 6 in TAK 56/87 who were absorbed as Group D staff with effect from 11.1.75. This Tribunal in its judgement dated 4.6.87 found that the applicant is entitled to the same treatment as has been given to the respondents 4 to 6 therein. The order of the Tribunal as quoted earlier however does not say that the applicant should be given the same treatment as given to respondents 4 to 6 ^{directs} ~~of~~ relaxation of conditions of age, etc. but that he should be given the same treatment as given to respondents 4 to 6 ^R by relaxing conditions of age, qualification, etc.. The Tribunal's emphasis was more on similarity of treatment ^{while} ~~of~~ relaxation of conditions of age and qualifications was ^{mentioned} ~~only as means~~ ^R by the Tribunal for giving the applicant the same treatment as respondents 4 to 6. The use of the word 'by' makes the position clear. It will also be unfair to the applicant in case he is given the benefits of appointment with prospective effect from the date of his appointment after the High Court and Tribunal's decision was available and the D.G. gave the relaxation order. He cannot be made to suffer in consequence of the time taken in processing his case. For instance, if the Tribunal had taken 5 years more to decide the transferred writ petition and the respondents had taken a few years more to get the order of the DG, it does not mean that the benefit of similarity of treatment

would be extended to him after 10 years.

4. In the facts and circumstances, we allow this application to the extent of directing that the applicant should be given the benefit of notional appointment with effect from 11.1.75 as Class IV official but without arrears of pay as he had not rendered any service in that capacity. This means that on the date of his appointment to Class IV post on 14.10.87 his initial pay should be fixed as if he was notionally appointed on 11.1.75. Consequently, he should also be given the of increments and benefits. ⁱⁿ seniority with effect from that notional date ⁱⁿ the Class IV cadre. We direct that action on the above lines should be completed by the respondents and orders issued within a period of three months from the date of communication of this order. There will be no order as to costs.

N. Dharmadan
18.6.90

(N. Dharmadan)
Judicial Member

S.P. Mukerji
18.6.90

(S.P. Mukerji)
Vice Chairman