

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 6 of 1990 1990  
~~XXXXXX~~

DATE OF DECISION 8-03-1991

K. Krishnan Applicant (s)

M/s. M.K. Damodaran & C.T. Ravikumar Advocate for the Applicant (s)

Versus

The Secretary, Ministry of Communications, New Delhi on behalf of Union of India and 2 others Respondent (s)

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

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? *Yes*
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

N. Dharmadan, JM

In this application filed under section 19 of the Administrative Tribunals Act 1985, the applicant, a Postman challenges the order of second respondent, the Superintendent of Post Offices, Tellicherry Division, denying him the very opportunity of being considered for promotion as Postal Assistant on the ground that a punishment of 'withholding of increment' is in operation against him. He further seeks to quash the Rule 157 of the Post and Telegraph Manual, Volume-III as unconstitutional, null and void as being violative of Article 14

*b*

....

and 16 of the Constitution of India.

2. Brief facts of the case are that the applicant was appointed as Postman in the year 1980 in the Tellicherry Division of Department of Posts. He is continuing in that post even now. He has passed the qualifying examination prescribed for promotion to the post of Postal Assistant on 18-12-88. Subsequently, he was deputed for training programme for Postal Assistant commencing from 17-7-1989 for two months and he has successfully completed the same. The applicant submits that vacancies of Postal Assistants arose on 18-12-88 and on 1-11-89, but the applicant was not promoted and appointed in any of these vacancies in spite of his requests. He submitted Annexure-II representation seeking appointment on the ground that he is the senior most qualified Postman to be promoted. But his representation was rejected by the respondents by Annexure-III order, which is under challenge in this application.

3. The applicant, in this application admits that he was imposed with a punishment of 'withholding of increment' for 18 months without cumulative effect and that a statutory appeal filed against the punishment is still pending for consideration before the second

...../

respondent and hence the punishment imposed against him is not final. The applicant further submits that since the post of Postal Assistant is not a selection post and he being the senior most incumbent, is entitled to be promoted in any of the vacancies of 1988 or 1989. There is also yet another permanent vacancy arose on 31-1-90 due to the retirement of Shri V.V. Velukutty.

4. The respondents filed a reply statement to the Original Application and also an additional reply statement to the amended Original Application. The respondents while admitting the fact that the applicant has passed the promotion test on 18-12-88, submit that the applicant is not entitled to be promoted in the vacancies as claimed by him in the vacancy arose in 1988 and thereafter. The respondents state that two vacancies were earmarked for SC and ST and were subsequently filled up by appointing Shri P.K. Ramachandran (SC) and Shri K. Balachandran (ST) and other two vacancies were filled by promoting Smt. Annakutty who stood first in the rank list and Shri K.S. Gopinathan a surplus Postal Assistant till 13-7-89. The respondents further submit that the vacancy which arose in 1-11-89 was filled by a direct recruit as four vacancies which arose prior to 1-11-89 were filled by Departmental candidates. The

respondents, however, admit that the next vacancy which arose on 1-12-89, should have been filled by the applicant but he could not be promoted due to the embargo created by the imposition of penalty viz.

'withholding of increment' for 18 months for the alleged misconduct committed by the applicant and the said penalty was imposed by Annexure-IV order dated 27-4-89. It is further submitted that <sup>the</sup> in effect ~~the~~ punishment is valid and in force upto 1-9-91. It was current when the promotion became due to the applicant viz. on 1-12-89.

The respondents rely on Rule 157 of the P and T Manual Volume-III in support of their above contention. The respondents, further submit that mere successful completion of the training programme does not assure any right for immediate promotion. However, it is admitted that the applicant successfully completed the training commenced on 17-7-1989 and is qualified for promotion to the cadre of Postal Assistants but for the punishment indicated above. The respondents also submit that the appeal filed by the applicant before the appellate authority against the punishment was rejected and hence, the punishment was current when the promotion became due

to the applicant. However, the respondents do not produce before us the order rejecting the appeal.

5. We have heard the learned counsel on both sides. It is an admitted fact that the applicant has passed the promotion test and completed the required training for getting promotion to the post of Postal Assistant. It is also admitted in the counteraffidavit that there existed one vacancy of Postal Assistant on 1-12-89 and the applicant was fully qualified and eligible to be promoted but for the currency of the minor penalty imposed upon him viz. 'withholding of increment' for 18 months without cumulative effect with effect from 27-4-89.

6. Regarding the question of currency of punishment, it is evident that the applicant filed an appeal and it was stated to have <sup>been ~~b~~</sup> rejected by the respondents. The assertion that the appeal was rejected, was not rebutted by the applicant in the rejoinder submitted by the applicant in reply to the counter affidavit. Hence, we accept the statement of the respondents and hold that the appeal filed by the applicant

against the penalty was rejected and the punishment imposed by the Disciplinary Authority on 24-7-89 was confirmed and the penalty is in operation against the applicant.

7. From the above facts the only question, which emerges for consideration in this case is whether the respondent is justified in denying promotion to the applicant on the plea, that during the currency of a minor penalty imposed by the competent authority, the delinquent, should not be promoted even when the competent authority found ~~xxxxxxx~~ that the officer is suitable for promotion inspite of the penalty. Withholding of increment is a minor penalty which was imposed upon the applicant for the alleged misconduct.

7. The learned counsel for the applicant submitted that the case is covered by the decision of the Chandigarh Bench of the Central Administrative Tribunal in PARVEEN KUMAR AGGARWAL V. I.C.A.R, KRISHI BHAVAN, NEW DELHI AND OTHERS, (1988) 8 ATC 496. This is not disputed by the learned counsel for the respondents. The Chandigarh Bench observed in the above judgment that

".....There is no provision in the Rules which would warrant imposition of two penalties at one and the same time. In other words, there cannot be two concurrent penalties.....When the promotion of a person is withheld on the ground that he is already undergoing another punishment of a minor nature, say "withholding of increment" as in the instant case, it will certainly amount to imposition of two penalties/ double jeopardy..." The Bench further clarified that "If in any case it is intended that promotion of a delinquent official be withheld, it is certainly open to the competent/disciplinary authority to impose such a penalty in a given case, but the competent authority cannot introduce the penalty of 'withholding of promotion' indirectly when the delinquent official is already undergoing punishment of 'withholding of increment'. Apart from any thing it will amount to colourable exercise of power too. Hence, this rider is struck down as being violative of Article 14 and 16 of the Constitution apart from being contrary to the letter and spirit of the provisions contained in the Rules which contemplate imposition of only one penalty at one time.." The Ernakulam Bench of the Tribunal,

following the dictum laid down in the above judgment  
observed in K.K. SASIDHARAN NAIR V. THE SECRETARY,  
MINISTRY OF COMMUNICATIONS, NEW DELHI AND ANOTHER,  
OA 501/89, as follows:

"....From the above, it is clear that the impugned order at Annexure-II that the applicant was ineligible for promotion during the currency of the punishment is prima facie against the very instructions of the Government of India dated 30th December 1976 as quoted above. The ruling of the Chandigarh Bench of the Tribunal has qualified those instructions by saying that the currency of the penalty by itself does not make the official ineligible for promotion and that itself does not make the official ineligible for promotion and that if he is found suitable for promotion the promotion cannot be postponed till the penalty period expires. Thus, the currency of the minor punishment of withholding of increment cannot debar the applicant before us from being considered on merit for suitability for promotion as on 30-11-83...."

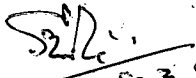
8. In the light of the above judgments, this application deserves to be allowed. Accordingly, we allow the application with the direction to the respondents to promote the applicant to the post of Postal Assistant which is kept vacant as per the directions of this Tribunal issued earlier. It is also made clear that the applicant is entitled to be promoted with effect from 1-12-89 with all consequential benefits. This should be done within a period of three months from the date of receipt of copy of the judgment.



9. In the result, the application is allowed.

We make no order as to costs.

  
(N. Dharmadan) 8.3.91  
Judicial Member

  
8.3.91  
(S.P. Mukerji)  
Vice Chairman

8-3-1991

ganga