

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

607

1992

DATE OF DECISION 11.1.93

K.R. Kesavan _____ Applicant (s)

Mr. O.V. Radhakrishnan

Advocate for the Applicant (s)

Versus

Sr. Supdt. of Post Offices, Respondent (s)
Aluva and others

Mr. George Joseph, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

The Hon'ble Mr. R. Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yc
2. To be referred to the Reporter or not? AO
3. Whether their Lordships wish to see the fair copy of the Judgement? AO
4. To be circulated to all Benches of the Tribunal? AO

JUDGEMENT

Mr. N. Dharmadan, JM

Applicant is aggrieved by Annexure A-2 order passed by Sr. Supdt. of Post Offices, Aluva which reads as follows:

"The name of Sri K.R. Kesavan, PA, Vazhakulam shown as Sl. No. 2 was inadvertently included in the list of officials promoted under TBOP Scheme vide Memo No. B1/TBOP/DLg dated 19.3.92. Since a punishment is current he cannot be promoted now. So his name is deleted from the said list. Necessary corrections may be made."

2. The applicant belongs to the S.C. community. He submitted that he is entitled to the Time Bound One Promotion introduced as per Department's letter No. 31/76/83-PE/1 dated 17.12.83. According to him even before completion of 16 years of service he becomes eligible for TBOP. However, his case was considered by the DPC on 25.7.91 for grant of higher grade in the pay scale of Rs. 1400-2300 w.e.f. 18.3.92. His name was cleared and included in the Annexure A-1 list along with two others for grant of higher

~~xxxxxxxxxxxxxxxxxxxxxx~~ grade. This decision was implemented by the respondents by allowing the applicant to draw higher grade salary on 31.3.92. Thereafter, the first respondent passed the impugned order Annexure A-2 dated 13.4.92.

3. The applicant was imposed with the Penalty of withholding of one increment for a period of two years from the date on which it falls due without cumulative effect as per Annexure A-3 proceedings dated 31.12.91. The operative portion of the ~~xxxxxx~~ order is extracted below:

"I, M. Sampath, Sr. Supdt. of Post Offices, Alwaye Division order that the next one increment of Sri K.R. Kesavan, Postal Assistant, Vazhakulam be withheld for a period of two years from the date of which it falls due, without cumulative effect."

4. Applicant filed Annexure A-4 appeal against the punishment and it is even now pending. Applicant has also produced Annexure A-5 letter of the DGP&T dated 19.5.84 to establish that the imposition of minor penalty is not a bar for grant of promotion. The said letter reads as follows:

"Promotion of an official can be given effect to during the currency of the punishment of monetary recovery. In this connection, a reference is invited to the instructions issued by the MHA in OM No.22011/1/68-Estt.(A) dated the 16th February, 1979 stating inter alia that the punishments of censure, recovery of pecuniary loss and stopping of increment do not constitute a bar to promotion of the official provided, on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post."

5. In the meantime, Annexure A-2 was passed stating that applicant's name was included in Annexure A-1 for grant of higher grade without advertizing to the fact that a punishment is current and he cannot be promoted on the basis of the recommendations of the DPC held on 25.7.91.

6. Learned counsel, Shri O.V. Radhakrishnan appearing on behalf of the applicant relied on Rule 102 of the P & T

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Manual submitted that the penalty proceedings as contained in Annexure A-3 is operative w.e.f. 1.10.92, only when the increment falls due. The said Rule reads as follows:

"The penalty of withholding of increment takes effect from the date of increment accruing to the officer after the issue of the punishment orders. It cannot affect the increment which was due prior to issue of the punishment orders even though it may not have actually been drawn due to the officer being on leave or other administrative reasons."

7. It is further submitted that applying Rule 102, Annexure A-2 letter of Sr. Supdt. of Post Offices cannot be sustained and it is to be quashed.

8. Learned counsel, Sri George Joseph, ACGSC appearing on behalf of the respondents, submitted that the penalty as contained in Annexure A-3 is to be treated as in force from the date of the order namely 31.12.91. He also brought to our notice Annexure R-1 produced along with the reply and submitted that since the penalty is current and in force, his case should have been considered by the DPC following the 'Sealed cover procedure' as contemplated in Annexure R-1.

9. The contentions of the learned counsel for respondents that the minor penalty imposed on the applicant as per Annexure A-3 is current is based on a misreading of the operative portion of the order. It is made clear in the order itself that the Penalty of withholding of the increment for two years will be operative from the date on which it falls due without cumulative effect. Even though the order is dated 31.12.91, admittedly, the increment fell due on 1.10.92. From the wording of Annexure A-3, it is clear that the penalty imposed on the applicant became operative only on 1.10.92. In fact, the DPC met on 25.7.91 and considered the case of the applicant for grant of higher grade and the DPC cleared him for getting the benefit. The penalty has nothing to do with the decision of the DPC which considered the case of the applicant on 25.7.91. Hence, we are of the view that Rule 102 of the P & T Manual Vol.III squarely

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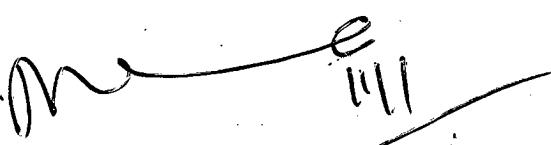
applies to the fact of the case and the applicant is entitled to the benefit of the decision of the DPC notwithstanding the penalty imposed on the applicant as per Annexure A-3.

10. The Penalty can be imposed subject to the decision of the appellate authority in accordance with law, by the respondents. Our decision in this case will not stand in the way of the respondents in implementing the penalty order in accordance with law, if it is approved by the appellate authority, even in regard to promotion and granting higher grade.

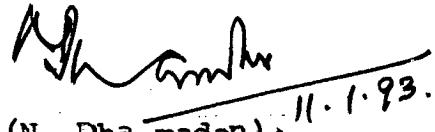
11. Having regard to the facts and circumstances of the case, ~~we are of the view that the~~ the reason mentioned by the respondents for deleting the name of the applicant from Annexure-I promotion list cannot be sustained. Hence, we quash Annexure A-2 and allow the application to the extent indicated above.

12. The application is disposed of on the above lines.

13. There will be no order as to costs.



(R. Rangarajan)
Administrative Member



(N. Dharmadan) 11.1.93
Judicial Member

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