

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 63 of 1990  
T. A. No.

DATE OF DECISION 24-6-1991

PT Varghese Applicant (s)

M/s MR Rajendran Nair & PV Asha Advocate for the Applicant (s)

Versus

Union of India & 2 others Respondent (s)

Mr AA Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, 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? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

AV Haridasan, Judicial Member

The short question that arises for consideration in this application is ~~that~~ whether break in service under FR-17(A) should disentitle an official to promotion through the normal Departmental Promotion Committee(DPC).

2. The applicant while working as Lineman at Telephone Exchange, Kanjirappally, was placed under suspension w.e.f. 18.9.1980 pending disciplinary proceedings. On conclusion of the disciplinary proceedings, the applicant was exonerated of the charges. During the pendency of the suspension, the applicant filed OP-682/83 before the Hon'ble High Court of

...2...

Kerala challenging the order of suspension and directing reinstatement. This OP was transferred to this Tribunal after commencement of the Administrative Tribunals Act and it was renumbered as TAK-100/87. By the final order dated 18.12.1987, the application was allowed and it was directed that the period between 18.9.1980 and 1.6.1982 should be treated as duty with full pay and allowances. The applicant entered the Department as Lineman on 11.12.1964 and was confirmed in 1965. In the seniority list of Linemen of Kottayam Telecom District as on 1981, the applicant's rank was 17 while the rank of Shri PK Abdul Khader who commenced service on 11.12.1964 and confirmed on 1.3.1966 was 19. During 1980-81, several persons including Shri Abdul Khader were promoted as Sub Inspectors on receipt of copy of the order in TAK-100/87, the applicant submitted a representation on 11.1.1988 to the second respondent requesting that he should be promoted with effect from the due date in February, 1981 when his juniors were promoted. Referring to this representation, the applicant was informed by Annexure-III order dated 5.3.1988 that the scheme of one time bound promotion came into effect only from 30.11.1983, that he was found to be not eligible for promotion at that time and subsequent annual reviews and that his case for promotion to the cadre of Sub Inspector was considered during 1982 and was not found fit for promotion at that time. The applicant made a further representation on 21.11.1989 wherein he made specific reference to the promotion of his junior Shri PK Abdul Khader in February,

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1981 and mentioned that the pendency of disciplinary proceedings could not debar him from promotion. Thereafter, the second respondent by order dated 28.11.1989 at Annexure-V promoted the applicant in the next higher grade in the scale of pay of Rs.950-20-1150-E8-25-1400 w.e.f. 6.5.1989 along with 7 others. Since the grievance put forth by the applicant in his representation at Annexure-IV was not redressed, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, praying that the respondents ~~may~~<sup>be</sup> be directed to promote him with effect from the date on which his juniors were promoted with all consequential benefits, including arrears of salary with interest of 12% per annum.

3. In the reply statement filed on behalf of the respondents, it has been contended that the claim of the applicant for seniority and promotion to the cadre of S.I. was considered from 1979 onwards, that he was found not fit for promotion in 1979 and subsequent years upto 1989 and that as he was found fit in 1989, he has been promoted under one time bound promotion scheme on 6.5.1989.

4. In the rejoinder, the applicant has stated that the respondents have not stated the reason why the applicant was not found fit till 1989 for promotion. The respondents have filed an additional reply statement wherein they have stated that on 17.10.1979, the applicant was considered by the DPC and was found unfit on the scrutiny of his Confidential Report, that on 4.10.1980 when his claim was considered since there

were only 2 vacancies under the category and as the seniors were promoted, he could not be promoted, that on 23.1.1982 though his name was considered he was found not fit since there were a break in the service awarded for the period between 1.6.1979 to 12.6.1979 and that thereafter also, for various reasons mentioned in the additional reply statement, the DPC did not find him fit until the DPC on review on 26.9.1989 found him fit to be promoted. The learned Additional Central Government Standing Counsel produced for our perusal photo copies of the various DPC proceedings.

5. We have gone through the pleadings and have carefully heard the arguments of the learned counsel on either side. We have also perused the DPC proceedings dated 17.10.1979, 23.1.1982 and the subsequent DPC proceedings. On 17.10.1979 the applicant was found unfit for the promotion on scrutiny of his ACR. The applicant has not challenged this. His grievance is that his junior Shri PK Abdul Khader has been promoted in 1981 and that there is no justifiable reason to overlook him for promotion when Shri Abdul Khader was promoted. We have perused the proceedings dated 23.1.1982 pursuant to which Shri Abdul Khader, the person junior to the applicant was promoted. In this DPC proceedings it is seen recorded as follows:

"The committee found that Shri PT Varghese, L/M KPL is at present unfit for promotion since break in service awarded to him for the period from 1.6.79 to 12.6.79 has not been condoned."

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It is not disputed that Shri PK Abdul Khader<sup>is</sup> a person junior to the applicant in the seniority list of Linemen. The sole reason for the DPC to consider the applicant unfit for promotion was that there was a break in service for the period between 1.6.1979 to 12.6.1979 and that the same had not been condoned. The learned counsel for the applicant argued that a break in service under FR-17(A) cannot be held out<sup>as</sup> a reason for denying promotion by normal DPC. The Government instructions of Department of Posts LR No.137-17/85-SPB II, dated 19.8.1986 inter alia states as follows:

(3) No disability under F.R.17-A in regard to efficiency bar, promotion and special pay/allowance: It has been reported by the Service Unions that crossing of efficiency bar has been denied to officials, who have been issued orders under F.R. 17-A. According to these Unions, in many Circles promotions have been held up and special allowances and special pay have also been withdrawn.

2) The matter has been examined and it is clarified that as far as crossing of efficiency bar is concerned the disabilities under FR.17-A should not stand in the way of an official if he is otherwise found suitable to cross efficiency bar. Special pay and special allowances should not be withdrawn merely on the ground that FR.17-A has been invoked.

3) Interruption or break in service under FR.17-A has the following disabilities:-

Leave Travel Concession;

Quasi-permanency; and

Eligibility for appearing in Departmental examinations for which a minimum period of continuous service is required.

4) Promotion of employees can be by way of consideration by DPC and/or qualifying in Departmental examinations. If, in the case of an employee promotion is dependent on passing a qualifying examination for appearing in which a minimum period of continuous service has been prescribed and in his case FR.17-A has been invoked, it would have an indirect effect on his promotion. Though promotion by DPC and departmental examinations do have some similarities, it is not the intention that break-in-service under FR.17-A should affect promotion through normal DPC."

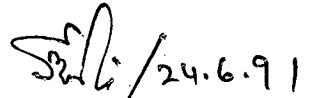
Here, the applicant and his junior Shri PK Abdul Khader were considered for promotion by a normal DPC without any departmental examination. So as per the Government Instructions referred to above, the break in service awarded under FR.17-A should not have been a reason to deny promotion to the applicant. It may be that this instruction clarifying the position being issued only in August 1986 the DPC which met in 1982 probably, was under an impression that as the break in service was not condoned, the applicant should not be considered eligible for promotion then. But after the above referred instruction was issued clarifying the position, the applicant had in his representation dated 11.1.1988 invited the attention of the Telecom District Engineer, Kottayam to this Government instruction and had prayed that he may be ordered to be promoted with effect from the date on which his junior was promoted. In spite of that, the respondents did not take care to consider this aspect. Since as per the latest instructions on the subject, a break in service under FR.17-A should not affect the promotion of an official through normal DPC, we are convinced that the respondents are bound to promote the applicant with effect from the date on which Shri PK Abdul Khader <sup>was</sup> promoted as Sub Inspector since the DPC considered him unfit for the solitary reason that there was a break in his service which was not condoned.

6. In view of what is stated in the foregoing paragraph, we declare that the applicant is entitled to be ~~xxxxxxxxxx~~

promoted with effect from the date of promotion of his junior Shri PK Abdul Khader as Sub Inspector with all ~~conse-~~  
*and that he should be so promoted*  
quential benefits, including arrears of salary. The action on the above lines should be completed and arrears disbursed to the applicant within a period of two months from the date of communication of this order. There is no order as to costs.



( AV HARIDASAN )  
JUDICIAL MEMBER

 24.6.91

( SP MUKERJI )  
VICE CHAIRMAN

24-6-1991

trs