

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 88 of 2007

Tuesday, this the 31st day of July, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

P.C. Narayanan,
S/o. Chathunny P,
Inspector of Post Offices, (PG), (Officiating),
Manjeri, Manjeri Division,
Residing at 'Mampoyil House',
Amarambalam South PO,
Via. Vaniyambalam,
Malappuram District.

... Applicant

(By Advocate Mr. Shafik M.A.)

v e r s u s

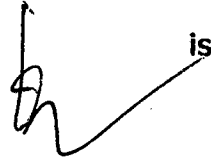
1. Union of India, represented by
The Postmaster General,
Northern Region, Calicut.
2. The Superintendent of Post Offices,
Manjeri Division, Manjeri.
3. P.J. James,
Postal Assistant (TBOP),
Perinthalmanna MDG,
Perinthalmanna.

... Respondents.

[By Advocates Mr. P.J. Philip, ACGSC (R1-2) & Mr. P.C. Sebastian (R3)]

**O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

When an individual has been promoted on ad hoc basis, whether he could be replaced by another one on ad hoc promotion is the question in this case. Within this issue is entangled another issue viz. whether the appointing authority could act at the dictate of the higher authority, albeit the direction is (allegedly) against the rule?



2. Facts as contained in the O.A. are as under:-

(a) Applicant joined the services as a Postal Assistant with effect from 28.1.1992. The 2nd respondent vide A/2 memo dated 3.2.2006 called for applications from eligible candidates satisfying the qualifications for appearing in the examination for recruitment as IPO, for filling up the vacant post of IPO (PG), Manjeri Division on local arrangement. The applicant has immediately expressed his willingness as per his letter dated 3.3.2006. The said notification was not acted upon. Thereafter, the 2nd respondent has again issued A/3 memo dated 7.12.2006 calling for willingness for being appointed as IPO (PG), Manjeri. The applicant has submitted his willingness vide Annexure A/4 dated 11.12.2006. No interview or any other mode of selection is prescribed. The applicant has joined the post with effect from 1.1.2007 and is continuing as such discharging his duties much to the satisfaction of his superiors.

(b) While so, Annexure A/1 order is issued terminating the appointment of the applicant and appointing the 3rd respondent, that too on the basis of a direction by the 1st respondent. The 1st respondent would appear to transgress into the jurisdiction of the 2nd respondent in making the selection. The action of the respondents in issuing A/1 order is highly illegal, arbitrary and violative of all canons of law. The authority competent to fill up the vacancy is the 2nd respondent and the 1st respondent is not having any role in the appointment. The impugned order makes it clear that the present termination of the applicant and the appointment of the 3rd respondent is as per the orders of the 1st respondent only. Hence the applicant has filed this OA for the following main reliefs:

- (i) To quash A/1 being illegal and arbitrary;

- (ii) To declare that the applicant is entitled to be continued as Inspector of Post Offices as per his appointment by A/5 till the vacancy is filled regularly;
- (iii) To direct the 2nd respondent to continue the applicant in the post of Inspector of Post Offices based on the selection he has conducted to issue A5 order of appointment.

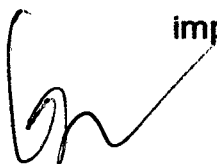
3. Respondents contested the OA. The contention as raised by the official respondents are as under:

(a) The Postmaster General vide letter No. STS/1-5/06/II dated 25.1.2007 directed that the senior most eligible official should be appointed. It was specifically made clear to the applicant that the arrangement to the vacant post of IPO (PG), Manjeri Division, was liable to be terminated at any time without notice. Annexure A/2 stipulated that willing official should submit their willingness so as to reach the office of the 2nd respondent on or before 13.2.2006. No one responded with this time frame and, therefore, Annexure R/2 letter was issued. It was only thereafter the applicant expressed his willingness by letter dated 3.2.2006.

(b) The initial selection was incorrect because the senior most eligible candidate was not posted. Although the second respondent is the authority vested with the power to fill up the vacancy, the 1st respondent as the superior authority has every right to intervene and issue appropriate directions in respect of the actions of the second respondent in his official capacity.

4. Private respondent has furnished his version and the same is as under:-

(a) The applicant has no valid cause of action as no legally protected right of the applicant has been violated by the impugned order. 3rd respondent as well as the applicant are



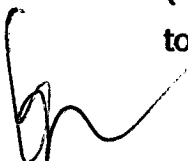
Postal Assistants of Manjeri Division eligible to appear for the departmental examination for the promotion to the cadre of Postal Inspectors. 3rd respondent is senior to the applicant. As per clause 4 (iii) of O.M. No. 28036/8/87 Estt. (D) dated 30.3.1988, ad hoc appointments are to be made from the eligible officials of the feeder cadre on the basis of seniority cum fitness even where promotion is by selection method.

(b) The 3rd respondent had also expressed his willingness in response to the 2nd respondent's memo dated 7.12.06 produced as Annexure A/3 to the OA. He having special qualification in computer operation, has been working as System Administrator of Manjeri Division. Applicant does not possess any better qualification than the 3rd respondent. However, the 2nd respondent selected the applicant to officiate as IPO (PG) as per Annexure A/5 totally overlooking the seniority of the 3rd respondent.

(c) The 3rd respondent made a petition dated 6.1.07 to the 1st respondent who is the next higher authority to the 2nd respondent highlighting his legitimate grievance against the unjust and arbitrary appointment of the applicant as IPO (PG). The 1st respondent after verifying the matter issued necessary orders to the 2nd respondent to set right the irregularity in the matter and accordingly the 3rd respondent has been appointed as IPO (PG), Manjeri Division on ad hoc basis terminating the irregular appointment of the applicant vide the order impugned in this OA. It has been done in accordance with the rules and in the interest and exigency of service and hence, the applicant has no valid reason for any grievance, much less any reason for complaint about the violation of any right.

5. In the rejoinder, the applicant has stated as under:

(a) The selection to the post of IPO even on ad hoc basis has to be done from among the willing candidates who fulfil all the




qualifications for regular appointment. As per the Recruitment Rules for the post of IPO dated 26.4.2001, seniority is not the criteria for selection. 2nd respondent cannot now take a stand that the willingness expressed by the applicant is belated. In fact, as explained earlier, it is only due to the persistent demands of the 2nd respondent to the sub divisional heads to encourage the officials to submit willingness of the officials, the applicant has submitted the willingness in pursuance to A-2. 1st respondent has already taken a decision on 5.1.2007 itself directing the 2nd respondent to appoint the 3rd respondent.

(b) As per Annexure R3(b) produced by the respondent himself, the Government of India directed that "ad hoc appointments may be made only after proper screening by the appointing authority of the records of the officer". The second respondent has correctly done the selection by assessing the records but it would appear that the first respondent has interfered in the same without following the rules on the subject for extraneous considerations.

6. The official respondents have filed additional reply to the rejoinder reiterating the stand taken by them.

7. Counsel for the applicant argued that when the applicant had been promoted on ad hoc basis there is no reason to revert him, and promote the private respondent allegedly on the ground that he happens to be senior to the applicant, as seniority is not the criteria for promotion to the selection post. Reason for reversion stating that the applicant did not apply on time is also untenable since the applicant had already been promoted on the basis of his willingness. In fact, the first respondent had already taken the decision as on 05-01-2007 to appoint the private respondent and it is that which had



forced the second respondent to to revert the applicant and the same is arbitrary and illegal.

8. Counsel for the official respondents submitted that there is no pressure from any corner and all that the first respondent directed was that the appointment should be on the basis of seniority and in fact as per the rules on ad hoc promotion, even for selection post, seniority-cum-fitness and not merit alone is the criteria.

9. Counsel for the private respondent struck a symphonic syndrome to the argument of the official respondents.

10. Arguments were heard and documents perused. Rule on ad hoc promotion is specific. It reads as extracted above. It is based on seniority-cum-fitness even where promotion is by selection.

11. The relevant files have been gone through. Though the initial promotion of the applicant amongst as many as 5 candidates had been through despite he being junior to private respondents, the same was on the basis of his merit. The question is whether for ad hoc promotions, merit is the lone criteria. In fact, in notice dated 12-12-2006, candidates at seniority No. 1 and 2 alone were considered and of them the applicant was selected on the basis of his 'better CR'. Others were not considered. First of all, the ad hoc promotion is on the criterion of "seniority cum fitness" and not on the basis of either merit simpliciter or merit-tempered with seniority. Seniority-cum-fitness is a method, whereby, the senior most amongst those who are



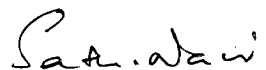
found fit should be through. The documents do not reflect that the non promotion of private respondent, who had been the senior most, was on the ground that he was found unfit. The next in seniority, i.e. the applicant was selected on the basis of higher qualification and better CR. It was when the private respondent made a representation that the PMG had directed selection on the basis of seniority, in all probability, keeping in view the rule position that in matters of ad hoc promotion the basis is seniority cum fitness. Of course, what PMG would have meant was not mere seniority, but seniority subject to fitness. The CRs of the private respondents reflect that nowhere his performance had been adversely criticized and for none of the years of the past (five years) has he be assessed less than good. Thus, the private respondent being not found unfit, he has now rightly been promoted and his promotion cannot take place save by reverting the applicant.

12. We find no illegality in the impugned order. The OA is therefore, dismissed. No costs.

(Dated, the 31st July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvr.