

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

Date of decision: 19.01.90.

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

GA 93/89

KK Kuttan : Applicant

Vs.

1 Postmaster General
Kerala Circle, Trivandrum.

2 Postal Services Board,
New Delhi.

3 Union of India rep. by its Secretary,
Ministry of Communications, New Delhi.

4 AS Venkitaraman
Superintendent of Post Officer,
Trichur.

: Respondents

M/s DV Radhakrishnan, K Radhamani
Ammu and Raju K Mathew.

: Counsel of Applicant.

Mr K Karthikeya Panicker, ACGSC

: Counsel of Respondents

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Shri NV Krishnan, Administrative Member.

The applicant is aggrieved by the order dated
17.6.88 (Ext.A2) of the Postmaster General, Kerala Circle,

(Respondent-1), by which, while officiating as Senior

Superintendent of Post Offices at Trichur, on an ad-hoc

basis in the junior time scale of the IPS Group A, he

was transferred and posted to Group B post of Assistant

~~Postmaster General,~~

~~Director~~, Savings Bank, in the Office of Respondent-1, on

~~Director~~

discriminatory
the ground that such a reversion was arbitrary and unfair and

that it has affected him adversely.

2. The facts giving rise to this grievance may be stated as follows:

2.1 The applicant was PSS Group B Officer working as Superintendent of Post Offices, Irinjalakuda Division, when, by the order dated 18.3.86 (Ext.A1) of Respondent-1, he was promoted, on an ad-hoc basis, to the junior time scale of IPS Group-A and transferred and posted as Senior Superintendent of Post Offices, Trichur, against a long term vacancy, namely, that of Shri Kesavankutty promoted and transferred by an earlier order. He continued on that post till the impugned order was passed.

2.2 By that order he was reverted to his basic grade of PSS Group B and transferred and posted as Assistant Director, Savings Bank in the office of Respondent-1.

2.3 The post held by him at Trichur was down-graded to PSS Group B and Shri AS Venkitaraman, Assistant Superintendent of Post Offices, Ottapalam Sub Division, was promoted on an ad-hoc basis and posted in his place. The applicant's grievance is that his reversion was not for accommodating a person more eligible than him to hold that post. On the contrary, the post was downgraded/ to accommodate an unqualified person.

2.4 It is also contended that while he was ~~not~~ thus reverted, one A Raghavan, admittedly junior to him, was allowed to continue as a Senior Superintendent of Post

Offices, Pathanamthitta in the higher grade. That apart, the applicant has referred to the following instances of promotion of his juniors to the junior ^{reversion} time scale of the IPS Group A on ad-hoc basis ^{was under suspension:-} while he ^{is} /

- (i) Order dated 19.6.88 (Ext.A4) promoting Shri EM Raghavakurup.
- (ii) Order dated 25.10.88 (Ext.A5) promoting Shri KR Goplakrishnan.
- (iii) Order dated 7.2.89 (Ext.A6) promoting S/Shri S Rangarajan Potty, V Sethumadhavan, NK Sreedharan Nair and P Ramankutty Nair.

2.5 When a representation was made by him in this regard on 21.6.88 (Ext.A7), he was informed by the order dated 4.7.88 (Ext.A8) that it was not possible to agree to his request to modify his reversion, transfer and posting ^{as} contained in the impugned order.

2.6 The applicant has, therefore, prayed to set aside the impugned order dated 17.6.88 (Annexure A2) and issue a direction to Respondents to allow him to continue in the IPS Group A service with consequential benefits.

2.7 In a rejoinder filed by him subsequently, the applicant states that on the basis of ^a selection made by the Departmental Promotion Committee, which met in 1989, the applicant was promoted ^{regularly} to the junior time scale of the IPS Group A from 11.5.89. His grievance is that as he was reverted earlier by the Annexure A2 order, he had suffered in the matter of fixation of his pay on his regular promotion on 11.5.89, for, but for such

reversion he would have drawn Rs 3,500/-, while his actual pay was fixed at Rs 3200/-.

3 The Respondents have filed a reply/denying and an additional affidavit all these allegations. Their main contention is that the applicant was initially promoted only on an ad-hoc basis and he had no right to continue on the post of junior time scale IPS Group A post. Until he was regularly selected for that post, the authority who granted such ad-hoc promotion could also revert him to his substantive post and such reversion in his case was other-wise than by way of punishment. The reversion was necessiated due to administrative exigencies, because Shri K Padmanabhan Nair, Assistant Director Savings Bank in the Respondent-1's office was proceeding on 60 days' earned leave and it was necessary to fill that post on a regular basis. It is for that reason that the applicant was transferred from Trichur to Trivandrum. Further, the post to which he was appointed at Trivandrum also carried a special pay. Therefore, it cannot be contended that there was any malafide or punishment involved in this reversion. It is admitted that Shri Raghavan, an Officer junior to the applicant, was, nevertheless, allowed to continue on the higher post of Senior Superintendent of Post Offices, Pathanamthitta, but this was due to the fact that this officer was due to retire shortly i.e. from 31.1.89. and Hence, it was not considered proper to shift him from Pathanamthitta and post him to Trivandrum in Respondent 1's

Office

on the post to which the applicant was transferred.

It is also admitted that other persons junior to the applicant as mentioned in para 2.4 above were promoted on an ad-hoc basis. This, however, does not mean that the applicant's claims were over looked. In fact, it is alleged that his name was also considered, but no decision could be taken in his case without scrutinising his confidential service records which were kept in the Directorate and not available.

4 The Respondents have also rebutted the innuendo that Respondent-1 has shown special consideration to Venkitaraman, Assistant Superintendent of Post Offices, Ottapalam for whose benefit the applicant was transferred from Trichur and the post held by him was down graded as Group 'B' Post. It is contended that though Shri Venkitaraman was not an approved Group B Officer, when the Annexure A2 order was passed, he was subsequently approved for promotion from August, 1988. It is also contended that when ~~an~~ approved Group B Officers are not available for posting, the Head of the Circle could down grade a post of Group A to Group B.

5 The Respondents also deny that the applicant has any ground to complain that his pay has been affected on his final promotion from 11.5.89 due to this earlier reversion. It is contended that this is merely an incident of service and the applicant cannot claim any protection in this regard.

6. We have perused the records and heard the learned counsel.

7. There are two aspects of this matter. The first is that even if, for arguments sake, the Ext.A-2 order was genuinely required in administrative interest, an explanation is needed why the applicant was not considered again for promotion to the junior time scale of the IPS Group 'A', when his junior Shri EM Raghavakurup was promoted on 19.8.88 (Ext.A-4). The contention of the respondents that this could not be done because confidential records were not available sounds hollow because ~~all~~ ^{the} promotions are made on an ad hoc basis which is ^{not} necessarily dependent upon an appraisal of the character rolls. That apart, it was unnecessary to peruse the character roll of the applicant because ^{he} till two months back, he was holding such a post at Trichur. Therefore, the applicant has a case that he ought to ^{be} have ~~be~~ promoted in the place of EM Raghavakurup on 19.8.88. Shri Raghavakurup who was then the Assistant Director (PLI) in the Office of Respondent-1 was already available at Trivandrum itself and could have been posted in place of the applicant as Assistant Director, Savings

Bank.

8. The Respondents cannot satisfactorily explain away their failure to promote the applicant when the Ext.A-4 order was passed ~~by~~ promoting ER Raghavakurup, merely by stating that this was only an ad hoc promotion. No doubt, as stated above, ad hoc promotions can be made without taking into account the considerations normally taken into account when making a regular promotion. But that does not mean that in making an ad hoc promotion, a senior person readily available on the spot should not be considered for ad hoc promotion. If such a decision is taken, the senior official will have a legitimate cause ^{for grievance} ~~of action~~ as in the present case.

9. The second aspect can now be considered. The applicant contends that his reversion was ~~not~~ not only not necessary but was made to accommodate a junior official at Trichur. The reason given by the Respondents is that the post of Assistant Director, Savings Bank, had to be filled up at Trivandrum. The respondents are right not to have shifted Shri E. Raghavan, the officer junior to the applicant, who was working as Senior Superintendent of Post Offices, Pathanamthitta, as he was due to superannuate shortly. They ^{also} are correct that the reversion of the applicant was certainly

not by way of punishment. Even so, the question is whether, the transfer of the applicant was a simple administrative decision or there are circumstances to ~~to~~ suggest that either this was done to accommodate some other person or that the situation ought to have been handled in a different way or that powers have been exercised improperly.

10. While considering this matter, we have to bear in mind that an important reason to justify ad hoc promotions is that these involve the least changes in the administration. Thus, if there is vacancy at a place, an ad hoc promotion is made of a person available at the very place itself. Judged by that standard, the transfer of the applicant from Trichur to Trivandrum, against a short term leave vacancy of a duration of 60 days, was entirely unnecessary, for, ad hoc arrangements could very well have been made at Trivandrum itself. If the post of Assistant Director, Savings Bank, was so important that it could not be left vacant, it could have been filled up either by EM Raghavakurup or by V. Sethu-madhavan, both of whom were readily available in the office of Respondent-1 and both of whom were fully qualified to hold that post carrying a special pay, because, in a few months thereafter, they were given promotions on ad hoc basis to Group 'A' posts. It is absolutely surprising that to arrange

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for a substitute for a period of 60 ~~days~~^{days}, for which period Shri K Padmanabhan Nair, Assistant Director, Savings Bank, was going on leave, Respondent-1 felt it necessary to transfer the applicant all the way from Trichur to Trivandrum. We are of the view that this transfer has been made obviously with a view to promote Shri Venkitaraman, who was only an Assistant Superintendent of Post Offices at Ottapalam, to a Group 'B' post, for which propose the post had to be down graded too.

11. The facile and easy manner by which respondent-1 seems to have upgraded and downgraded the posts indicates that these were necessitated on personal grounds, eg, the post of Senior Supdt. of Post Offices at Trichur had to be downgraded to a Group 'B' post because an unqualified person like Venkitaraman, Assistant Supdt. of Post Offices, Ottapalam, could not, even on an ad hoc basis, be promoted to a Group 'A' post. If that be so, we are inclined to presume that Respondent-1 could as well have upgraded the post of Assistant Director (Savings Bank) in his office to a Group 'A' post, so long as it was held by the applicant on his transfer from Trichur,

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as this upgrading would have been offset by the downgrading of the post of Senior Superintendent of Post Offices at Trichur.

12. As mentioned by us earlier, merely because an official has been granted a promotion on an ad hoc basis, it does not mean that he can be reverted at will, even if it be otherwise than by way of punishment. Prima facie, his reversion would be justified if someone who has a better claim has appeared on the scene to occupy the post held by him. That is not the case here nor was there any compelling necessity to revert and transfer him to Trivandrum, because, as shown above, others were readily available to fill up the short term vacancy at Trivandrum. We are satisfied that there were no administrative exigencies to necessitate this reversion.


13. We have only to add that a reply dated 8.12.89 by the Respondents 1 to 3 to the rejoinder, was filed in the Registry on 11.12.89, ie, the date on which the matter was finally heard. This fact was, however, not even mentioned at the time of arguments. That apart, the rejoinder was filed as early as on 25.9.89. Hence, we

are not advert^{at}ing to this belated reply ~~and~~ it is not fair to consider the same without giving opportunity to the other side. We cannot but disapprove of the filing of a part of the pleadings on the date fixed for arguments or worse still, after the conclusion of the arguments, without getting prior permission from the Bench. If the learned counsel for the Respondents was so keen that this reply should also have been taken into consideration, he ought to have filed a Miscellaneous Petition with such a prayer or sought prior permission in this behalf.


14. In the circumstances, we allow this application with the direction that on his regular promotion to the junior time scale of IPS Group 'A' by the order dated 11.5.89 (Ext.A-17), the pay of the applicant shall be fixed by deeming that he was not reverted from the post of Senior Superintendent of Post Offices by the order dated 17.6.88 (Ext.A-2). However, he will not be entitled to claim any arrears of backwages in pursuance of this order for any period prior to the date on which he assumed charge in prus^uance of Ext.A-17 order.

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15. The application is allowed as above and there will be no order as to costs.


(N. Dharmadan)
Judicial Member

19.1.90


(N.V. Krishnan)
Administrative Member

19th day of January, 1990.