

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 102 of 2013

wednesday, this the 28th day of August, 2013

CORAM :

HON'BLE MR.K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. K.Karunakaran, Aged 58,
Higher Grade Postman,
Payyanur Mukhya Dakh Ghar,
Residing at: Kaiprath House,
Kandankali.P.O., Payyanur-670 307
 2. M. Krishnan, Aged 59,
Higher Grade Departmental Stamp Vendor,
Payannur Mukhya Dak Ghar,
Residing at "Manjusha's", Karunkadava Road,
Kandankali.P.O., Payyanur-670 307
- ... Applicants.

(By Advocate Mrs. R Jagada Bai)

vs.

1. Union of India represented by the
Secretary to Department of Posts,
New Delhi - 110 001.
 2. Superintendent of Post Offices,
Kannur Division, Kannur -670 001.
 3. E.K.Bhaskaran, Mail Overseer,
Payyanur Sub Division,
Office of the Inspector of Post Offices,
Payyanur Sub Division, Payyanur - 670 307
 4. Post Master,
Payyanur Mukhya Dakh Ghar,
Payyanur-670 307.
- ... Respondents

(By Advocate Mr Millu Dandapani, ACGSC for R.1, 2 & 4)

This application having been heard on 22.08.2013, the Tribunal on 28-08-13
delivered the following :



ORDER**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The 1st applicant had earlier challenged the selection of the 3rd respondent as Mail Overseer in O.A. No. 622/2011. In compliance of the order of this Tribunal in the said O.A, an enquiry was conducted and the Post Master General had ordered to cancel the selection already made and to renotify the post of Mail Overseer, Payannur Sub Division. The applicants herein had applied for the renotified post, but the 3rd respondent was appointed again as Mail Overseer, Payannur Sub Division, vide transfer order dated 14.12.2012 at Annexure A-6. Aggrieved, the applicants have filed this O.A for the following reliefs:

- (i) Call for the records in connection with the posting of Mail Overseer, Payannur;
- (ii) Quash and set aside Annexure A-6;
- (iii) Post the applicant No.1 as Mail Overseer, Payannur, with all consequential benefits;
- (iv) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order;
- (v) Grant costs to the applicants for dragging them into unnecessary litigation.

2. The applicant contended that the post of the Mail Overseer is a supervisory cadre and is offered to the senior most willing official in the postman cadre. Promotion to the post of Mail Overseer is governed by Rule 281 of the Postal Manual Vol. IV. As per Annexure A-3 notification, selection is to be made only according to the seniority in the postman cadre. The applicants are seniors to the 3rd respondent. The appointment of the 3rd respondent as Mail Overseer, Payannur Sub Division, has resulted in



discrimination actuated by colourable exercise of power. The posting of the respondent No.3 was camouflaged in a transfer order as is evident from Annexure A-6.

3. The official respondents in their reply statement submitted that the officer who had finalised the selection process has since been promoted and transferred out of Kannur Division. With regard to selection, it was placed on record by the said officer that the CR dossiers and personal files of the applicants were verified by him and it was found that the 3rd respondent was more suitable to the post than the other applicants. The duties of Mail Overseer involve extensive travel. He has to visit different branch offices within the sub division. He has also to conduct petty enquiries and verifications as ordered by the Sub Divisional Officers. Seniority is not the sole criterion with regard to selection. It is imperative to take into account the job requirements pertaining to the post. In Annexure A-7, it is stated that the appointing authority in his discretion may pass over any senior official whom he does not consider fit for appointment. If the seniority only was adhered to strictly as the sole criterion in this case, Shri Vijayakumar, who is senior most would have been selected. Annexure A-6 order dated 14.12.2012 appointing the 3rd respondent was given wide publicity in the division duly endorsing the copies to all the offices concerned.


4. In the rejoinder statement, the applicants submitted that the applicant No. 1 was conferred with Best Postman award in the Division in 1998 by the Chief Postmaster General, Kerala Circle, for the excellent service rendered by him. Hence the averments put forward by the respondents regarding



suitability of the respondent No. 3 against the applicant No.1 fails to gain merit. The appointment of Mail Overseer is normally made in the order of seniority. But the appointing authority may, in his discretion, pass over any senior official whom he does not consider fit for such appointment. The power to act in discretion is not power to act arbitrarily. Shri Vijaya Kumar was charge sheeted under Rule 14 of the CCS (CCA) Rules, 1965 and punished in the past for assaulting a senior postman. His application for voluntary retirement has been approved by the competent authority.

5. In the additional reply statement filed by the official respondents, it was submitted that the appointment of Mail Overseer, Payannur Sub Division, was finalised by offering the appointment to the 3rd respondent who was found more suitable to the post. Shri Vijayakumar had not applied for voluntary retirement at the time of issuing Annexure A-6 appointment order dated 14.12.2012. The respondent No. 2 has correctly adjudged the suitability of the aspirants to the post of Mail Overseer taking into account all the aspects in the present set up, at the time of selection of the respondent No.3 to the post. This selection is in keeping with the instructions laid down in Annexure A-7 as regards overlooking the seniority of both the applicants as well as Shri Vijayakumar.

6. In the additional rejoinder, it was submitted that competent authority should exercise its discretion judiciously. The suitability for the post of Mail Overseer of Shri Vijayakumar, who had undergone a major penalty, cannot be equated with the credentials of applicant No.1 who was adjudged as Best Postman.



7. Party respondent No. 3 though served with notice failed to make appearance.

8. I have heard Ms. R. Jagada Bai, learned counsel for the applicants and Mr. Millu Dandapani, learned counsel appearing for the official respondents and perused the records.

10. The appointment to the post of Mail Overseer is to be done as per Rule 281 of the Postal Manual Volume IV, which is reproduced as under:

"281. Appointment to the post of Overseers, Overseer Postmen, Sorting or Reader Postmen and Head Postmen should be made by promotion of postmen and village postmen, Such appointments will normally be made in order of seniority but the appointing authority may, in his discretion, pass over any senior official whom he does not consider fit for such appointment. A single gradation list should be maintained for the holders of these posts which should be made interchangeable."

11. Condition No. 3 of the notification at Annexure A-3 dated 04.12.2012 reads as under:

"3. Selection will be made only according to their seniority in the Postmen cadre."

12. A reading of both together would show that normally the appointment of Mail Overseer is to be made by promotion based on seniority. The post of Mail overseer is partly supervisory. The Mail Overseer is to travel extensively and conduct petty enquiries and verifications as ordered by the Sub Divisional Officers. Taking into account these job requirements, how the respondent



No. 2 considered the 1st applicant, who has blemishless record of service as postman and was once adjudged as Best Postman of the Division and who is senior to the 3rd respondent, as unfit for the post of Mail Overseer is shrouded in obscurity. The appointing authority may, in his discretion, bypass a senior if he is not considered fit for appointment as Mail Overseer. This discretion to pass over the senior comes into play only after the senior is considered unfit for appointment as Mail Overseer. The discretion to pass over a senior is contingent upon the eventuality of considering a senior unfit for the post of Mail Overseer. Consideration involves application of mind to all relevant factors in the matter of appointment of Mail Overseer in the instant case. Application of mind on the part of the respondent No.2 in coming to the conclusion that the 1st applicant is unfit is conspicuous by its absence. An eligible senior officer cannot be bypassed at the whims and fancies of the officer who makes selection. As the respondents do not have a legally tenable ground to bypass the applicants, the act of bypassing them is arbitrary and illegal. The respondents have to exercise judiciously discretion, if any, bestowed upon them.

13. The discretion under Rule 281 is a discretion to bypass the senior official if he is found unfit for appointment as Mail Overseer. It is not a discretion to select the most suitable person. The method of appointment as Mail Overseer is promotion on the basis of seniority. It is not a selection on the basis of merit. If the senior is fit, he is to be appointed as Mail Overseer even his junior is more meritorious or more suitable than he is. In the instant case, the respondents have not understood and followed Rule 281. In fact they have violated it by making selection on the basis of perceived better



suitability. Hence the selection and appointment of the 3rd respondent is illegal and liable to be set aside. Further, on what counts the 3rd respondent was found to be more suitable for the post of Mail Overseer than the applicants, is not substantiated by the respondents other than vaguely stating that the 3rd respondent was more suitable for the post on verification of C.R. dossiers and personal files. Prejudice or bias cannot be a substitute for objectivity and rule of law in the matter of promotion.

14. The contention that if seniority only was adhered to strictly as the sole criterion in this case, Shri Vijaykumar, who is senior most, would have been selected is beside the point. If Shri Vijayakumar is fit for promotion, there is no question of bypassing him. If he is not aggrieved by the non-selection for promotion, it by no means abridges the right of the applicants for fair consideration for the post of Mail Overseer.

15. Discretion is not a power to act arbitrarily or capriciously. It is to be exercised judiciously and with responsibility. In the instant case, there is colourable exercise of the limited discretion provided under Rule 281 in as much as the fitness of the applicants for the post of Mail Overseer, is not properly considered. The respondent No.2 has exercised his discretion to make appointment of Mail Overseer on the basis of better suitability, which is not provided under Rule 281 of the Postal Manual Volume IV. Hence the O.A succeeds.

16. Annexure A-6 letter dated 14.12.2012 is set aside. The respondents are directed to consider the applicant No. 1 for the post of Mail Overseer,

Payannur Sub Division and issue appropriate orders within a period of one month from the date of receipt of a copy of this order.

17. The O.A. is allowed as above with no order as to costs.

(Dated, the 28th August, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.