

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.107/99

Thursday, this the 27th day of September, 2001.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. V.A.Kumaran,
Senior Superintendent of Post Offices,
Trivandrum North Division,
Thiruvananthapuram-695 001.
2. M.J.Chacko,
Assistant Director of Postal Services,
O/o the Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram-695 033. - Applicants

By Advocate Mr OV Radhakrishnan

Vs

1. Union of India represented by
its Secretary,
Ministry of Communications,
Department of Post,
Dak Bhavan,
Sansad Marg,
New Delhi-110 001.
2. Director General of Posts,
Dak Bhavan,
New Delhi-110 001.
3. Secretary,
Ministry of Personnel, Public Grievances &
Pensions, Department of Personnel & Training,
New Delhi.
4. Departmental Promotion Committee
represented by Chairman/Member,
Union Public Service Commission,
New Delhi. - Respondents

By Advocate Mr TC Krishna, ACGSC

The application having been heard on 18.6.2001, the Tribunal on 27.9.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants in this case, Shri V.A.Kumaran, Senior Superintendent of Post Offices, Trivandrum North Division, Trivandrum and Shri M.J.Chacko, Assistant Director of Postal Services, Office of Chief PMG, Kerala Circle, Trivandrum, are aggrieved against sub para (iv) of Paragraph-III of Office Memorandum No.22011/5/91-Estt(D) dated 27.3.1997 of the Department of Personnel & Training, {A-9(2)} and consequent promotion order dated 23.7.1998 (A-10) whereby the juniors of the applicants are stated to be promoted overlooking the applicants in the matter of promotion from Group'B' Postal Services to the Junior Time Scale (JTS for short) of Postal Services Group'A'. The applicants are further aggrieved by Office Memoranda rejecting their representations against nonpromotion to Group'A' JTS. A-17 is the O.M. dated 16.10.98 whereby the 2nd applicant's representation is rejected.

2. We have gone through the pleadings and the relevant material on record. We have also heard Shri O.V.Radhakrishnan, learned counsel for the applicants and Shri TC Krishna, learned counsel appearing on behalf of the respondents.

3. The applicants were holding substantive posts in the Postal Service Group'B' since 1989 on the basis of Competitive Examination held in 1988. Later, they were promoted on ad hoc basis to Indian Postal Service Group'A' (JTS) and were officiating in those posts with effect from 19.8.93 and 21.9.92 respectively vide A-1 and A-4 orders. When the Departmental

✓

Promotion Committee (DPC for short) for promotion from Postal Service Group 'B' to Indian Postal Service (Group 'A') (JTS) met in 1998, the applicants had already earned 4 to 5 years increment in their officiating posts. However, while several of their juniors were promoted, the applicants were overlooked in the matter of promotion to JTS Group 'A' when regular promotion to Postal Service Group 'A' (JTS) was made, as per the impugned A-10 order dated 23.7.98. According to the applicants, the appointment to Indian Postal Service (Group 'A') were governed by the Indian Postal Service (Group 'A') Rules, 1987, as amended from time to time. A-6, A7 and A-8 are extracts of the said rules as they stood in 1987, and as amended in 1995 and 1997 respectively. As per the rules relevant for the applicants, the qualifying service for promotion to Group 'A' was 3 years regular service in Group 'B'. For selection to Group 'A' from Group 'B', the zone of consideration was twice the number of vacancies plus 4 in respect of the promotions that took place in 1998 which is relevant for consideration in this application. Thus 244 persons ($140 \times 2 + 4$) came within the zone of consideration as the number of vacancies was 140. It is maintained by the applicants that upto 1997, the procedure for promotion for all Group 'C' and Group 'B' and Group 'A' posts upto and excluding the level of Rs.3700-5000 excepting the promotions for induction to Group 'A' posts or services from lower group, the bench mark was a rating of 'Good' in the relevant ACRs. All officers whose overall grading is equal to or better than the bench mark 'Good' should be included in the panel for promotion to the extent of number of vacancies. They would figure in the

Q.

promotion list in the order of their seniority in the lower category without reference to the overall grading obtained by each of them, once each of them fulfilled the precondition of the bench mark grading of 'Good'. The pay scale of Indian Postal Service Group 'A' (JTS) was Rs.2200-4000 and hence below the level of 3700-5000 at the relevant time. The above procedure was changed as per the impugned A-9 O.M. dated 27.3.97. The applicants submit that by the impugned A-9 O.M., the procedure to be observed by the DPCs as laid down in the earlier O.M.No.22011/5/86-Estt.(D) dated 10.3.89 has been amended. The provisions which are relevant in the applicants' case are contained in sub paragraph (i), (ii), (iii) & (iv) of paragraph 2.3.1 of O.M. dated 10.3.89 which have been substituted and incorporated under paragraph III of the impugned O.M. A-9. The contention of the applicants is that there is no scope for the DPC to categorise the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' in the case of promotion from Postal Service Group 'B' to Postal service Group 'A' (JTS) as the accepted bench mark is 'Good'. In other words, the applicants canvass for the proposition that the select list on the basis of selection-cum-seniority should contain names of officers who have got the bench mark grading of 'Good' and the DPC should stop at the point at which the required number of vacancies are covered by a matching number of officers with the bench mark grading of 'Good'. Any interpretation to the contrary would be prejudicial to the applicants and other similarly placed officers and therefore, to that extent, provisions of sub para(iv) of Para-III

2.

contained in the impugned O.M. A-9 dated 27.3.97 would be unjust and unsustainable. In this view of the matter, the applicants vehemently contend that the impugned promotion order A-10 in so far as it is based on A-9 was itself invalid.

4. By their reply statements, the respondents resist the application. According to the respondents, the promotion by way of induction to Group 'A' service was specifically dealt with in sub paragraph (iv) of para-III of the A-9 O.M. dated 27.3.97. The applicants were aspirants for promotion from postal Service Group 'B' to Postal Service Group 'A' and that being so, it was a case of promotion by induction and the specific procedure prescribed under sub paragraph (iv) was applicable in their case. It is maintained by the respondents that there is no contradiction in the instructions of the Department of Personnel and Training, as alleged by the applicants, since sub paragraph(iv) of A-9 provides for a special procedure and grading to be done by the DPC in the matter of promotion made for induction to Group 'A' post/services from lower groups. It is provided that in such a situation, while the bench mark continues to be 'Good' the DPC shall grade the officers as 'Outstanding' 'Very Good' 'Good' 'Average' and 'Unfit' as the case may be, and then proceed to arrange them according to the grading obtained by placing the outstanding officers, followed by those graded 'Very Good' and so on in the select panel upto the number of vacancies with the officers having the same grading maintaining their interse seniority in the feeder grade. It is stated that this procedure is intended to ensure induction of officers with

9.

higher potential and better calibre. The applicants did not make the grade and therefore, they could not be considered for the purpose of induction in Group 'A' (JTS) inspite of their occupying Group 'A' (JTS) post for quite some time on ad hoc basis. It is stated that that fact by itself would not confer an enforceable right to be promoted. With regard to the number of years in respect of which the ACRs were considered in the process of the promotion proceedings, it is pointed out by the respondents that a minimum of 5 years CRs had to be considered and if any officer did not make the bench mark grade in any one of the years under consideration, he would not find a place in the select list. It is specifically stated by the respondents that the first applicant had an adverse entry in his ACR for the year 1993-94 and as this was within the 5 year period for which the ACRs were to be considered, that applicant could not be considered.

5. In their rejoinder statement, the applicants have attempted to further support the claim by filing copy of O.M.No.22011/5/86-Estt.(D) dated 10.3.89, A-17(a) which is the earlier O.M. laying down elaborate procedure to be observed by the DPCs and a copy of the O.M.No.22011/8/98-Estt.(D) dated 6.11.98 (A-18) which refers to the UPSC's suggestion that there should be no need to scrutinise ACRs of all eligible candidates covered by the zone of consideration after the DPC has assessed as many employees as there are vacancies, as 'Good'.

6. The learned counsel on either side have explained the respective pleadings brought on record. Shri O.V.Radhakrishnan has putforward the contention that the bench mark for promotion

to Group 'A' from Group 'B' upto and excluding the level of Rs.3700-5000 having been fixed as 'Good', there was no justification for the DPC making classifications of 'Outstanding', 'Very Good', 'Good', 'Average' etc. by which process the right of the applicants has been unfairly denied. Learned counsel for the applicants emphatically states that the applicants have been holding the Group 'B' posts at the relevant point of time were covered by Sub paragraph(i) of A-9 and that accordingly, their promotion was to be regulated on the basis of selection-cum-seniority as indicated in Sub paragraph(iii) thereof. Sub paragraph(iii) of Paragraph-III of A-9 was the main provision concerning promotion from Group 'B' to Group 'A' and Sub paragraph(iv) is only a proviso for the purpose of determining inter se seniority of the officers in the select list. He would, therefore, vehemently contend that the DPC was not permitted to deviate from the procedure laid down in sub paragraph-(iii) thereby making it a dead letter in order to give effect to the proviso contained in Sub para(iv). In this connection, he invites our attention to the instructions contained in the office memorandum dated 6.11.98 (A-18) which defines the scope of A-9. According to the learned counsel, the position that emerges is that where the mode of selection is selection-cum-seniority and the prescribed bench mark is 'Good' the employees are to be graded by the DPC as 'Good', 'Average' and 'Unfit' only and in such case, no supersession can take place and the employees who possess the bench mark 'Good' are to be included in the panel in the order of their seniority in the lower grade. When A-9 and A-18 are read together, it would be clear that there is no scope for the

9.

exercise of categorising the candidates for promotion into 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' except for the limited purpose of determining the inter se seniority of the selected officers and in any case, selection of junior officers from the bottom of the consideration list on the basis of 'Outstanding', 'Very Good', 'Good' and 'Good' gradations is irrational and illegal, urges the counsel for the applicants. He also invites our attention to the fact that the applicants had unblemished record while they were holding the higher post of Group 'A' (JTS) on ad hoc basis. The commendations and the letters of appreciation they received while discharging the functions in their respective posts also have been brought to our notice. The learned counsel for the respondents has in his opposing submissions stated that the gradations on the basis of 'Outstanding', 'Very Good', 'Good' etc. were perfectly justified in view of the specific provisions regarding procedure to be observed by the DPC as contained in A-9 O.M. A-9 O.M., he would submit, was perfectly in order, as there was neither contradiction nor any unreasonable classification involved therein.

7. On going through the records and having regard to the contentions put forward before us, we do not find any substance in the argument that sub paragraph (i) and sub paragraph (iv) of paragraph III of the impugned A-9 O.M. are mutually contradictory. We do not consider that sub paragraph (iv) has the effect of causing any prejudice to the applicants, since the assumption that their case is governed by sub paragraph (iii) is unfounded. In this connection, we consider it

necessary to refer to the relevant paragraphs of the O.M. No.22011/5/86-Estt(D) dated 10.3.89 sought to be substituted by the impugned O.M. No.22011/5/91-Estt.(D) dated 27.3.97 in so far as they relate to the CRs to be considered and the grading to be made by the DPC in the matter of promotion. The relevant extracts are reproduced hereunder:

"2.2.1.....

(A) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (C) below.

(B) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year all the CRs for the relevant year shall be considered together as the CR for one year).

(C) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

(D) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade.

(E) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs, but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

(F) If the Reviewing Authority or the Accepting Authority as the case may be has overruled the Reporting Officer or the Reviewing authority as the case may be the remarks of the latter authority should

2.

be taken as the final remarks for the purpose of assessment provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing Authority and Accepting Authority are complementary to each other and one does not have the effect of overruling the other, then the remarks should be read together and the final assessment made by the DPC.

2.2.2 In the case of each officer, an overall grading should be given. The grading shall be one among (i) Outstanding (ii) Very Good (iii) Good (iv) Average (v) Unfit.

2.2.3 Before making the overall grading after considering the CRs for the relevant years, the DPC should take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him as reflected in the ACRs. The DPC should also have regard to the remarks against the column on integrity.

2.3.1 The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:

i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of posts for which promotions are to be made by Selection method. For all Group 'C' Group 'B' and Group 'A' posts upto (and excluding) the level of Rs.3700-5000 excepting promotions for induction to Group 'A' posts or services from lower groups, the bench mark would be 'Good'. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'Good'.

Wherever promotions are made for induction to Group 'A' posts or services from lower groups, the bench mark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank en bloc seniors to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel

2.

accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post.

ii) In respect of all posts which are in the level of Rs.3700-5000 and above, the benchmark grade should be 'Very Good'. However, officers who are graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter seniority in the feeder post.

iii) Appointments from the panel shall be made in the order of names appearing in the panel for promotion.

iv) Where sufficient number of officers with the required bench mark grade are not available within the zone of consideration officers with the required benchmark will be placed on the panel and for the unfilled vacancies, the appointing authority should hold a fresh DPC by considering the required number of officers beyond the original zone of consideration."

We may now proceed to extract the substituted paragraphs contained in the impugned A-9. Para III of the impugned O.M. dated 22.3.97 (A-9) as quoted hereunder is a reproduction from 1997 SLJ, Vol.3, 49, in order to avoid mistakes and omissions):

"Para-III (i),(ii), (iii) & (iv) of para 2.3.1 of O.M. dt.10.3.89 may be substituted as under:

Selection-cum-seniority and selection by merit

i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts, a bench-mark grade would be determined for each category of posts.

For all Group'C', Group'B' and Group'A' posts (up to and excluding the level of Rs.3,700-5,000) the bench-mark would be 'Good' and will be filled by the method of Selection-cum-seniority as indicated in sub-para.(iii).

(ii) In respect of posts which are in the level of Rs.3,700-5,000 and above, the bench-mark grade should be 'Very Good' and will be filled by the method of Selection by Merit as indicated in sub-para(iv).

(iii) Each Departmental Promotion Committee while considering the suitability of officers for promotion to posts for which the bench-mark has been determined as 'Good' would grade the officers as 'Good', 'Average' and 'Unfit' only. Only those officers who obtain the grading of 'Good' will be included in the panel in the order of their seniority in the lower grade subject to availability of vacancies.

(iv) Notwithstanding the provisions mentioned above, in the case of promotions made for induction to Group 'A' posts/services from lower groups, while the bench-mark would continue to be 'Good', the DPC shall grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be and the officers will be arranged according to the grading obtained, placing the 'Outstanding' officers on top followed by those graded as 'Very Good' and so on in the select panel up to the number of vacancies, with the officers having the same grading maintaining their inter se seniority in the feeder grade."

Procedure explained in Para-III of A-9 O.M. dated 27.3.1997 quoted above is the substituted version of the procedure contained in sub paragraphs (i) to (iv) of paragraph 2.3.1 of O.M. dated 10.3.89, A-17-(a)

8. In the case before us, admittedly, the zone of consideration for the promotion to Group 'A' (JTS) for 1998 the vacancies were 140 in number and hence the zone of consideration was twice the number of vacancies plus 4, i.e. $140 \times 2 + 4$. The correct procedure to be followed in the matter of promotion from Group 'B' to Group 'A' (JTS) in the case before us, as far as we can deduce from O.M. dated 10.3.89, O.M. dated 27.3.97 and O.M. dated 6.11.98 is as follows: As mentioned earlier, there is a well defined zone of consideration. The DPC should start grading the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' in the first place. This is in a way an exercise of sorting. This is warranted by the procedural provisions. It cannot be contended that the DPC can enter into an exercise categorising

2.

officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' once they make a list of only those who have obtained 'Good'. The purpose of a detailed categorisation from 'Outstanding' up to 'Unfit' is that officers of superior calibre and capability, falling within the zone of consideration should be available for induction from Group 'B' to Group 'A'. The separate procedural provision for the purpose of promotion by way of induction from Group 'B' to Group 'A' (JTS) cannot be faulted, as it is intended to serve the above purpose. It has also to be remembered that if the intention was to select the officers who passed the threshold grading of 'Good' in the first place and then the exercise of grading as 'Outstanding', 'Very Good', 'Good', etc. would follow in order to determine the seniority of the persons who found themselves in the select list, it would lead to state of absurdity. It makes no sense to make a further gradation of 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' after drawing a select list of officers to be promoted from Group 'B' to Group 'A' on the basis of the threshold grading of 'Good' because in such a case, there would not be any scope for sorting out 'Average' and 'Unfit'. The intention of the procedure is clear and unassailable. Promotion by induction has to be made by grading the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as indicated earlier. The DPC then excludes 'Average' and 'Unfit' since the prescribed bench mark grade is 'Good'. After this exercise the DPC proceeds to prepare the panel comprising persons equal to the number of vacancies in the order of 'Outstanding', 'Very Good' and 'Good' by retaining the inter se seniority in regard to the

persons in each grade. The select panel would thus contain the names of persons who achieved the grade of 'Outstanding' at the top of the list retaining their inter se seniority intact, followed by those obtaining 'Very Good' grade again in the order of their inter se seniority and finally those with 'Good' grade listed in the same manner, upto the number of vacancies. We find no inconsistency in the provisions of sub paragraph (iv) of paragraph-III of the O.M. dated 27.3.97 (A-9) in relation to sub paragraph (i) and/or sub para(iii) of paragraph III of the same O.M. It is noticed that substantially similar provisions were there in the O.M. dated 10.3.89 also. In sub paragraph(iv) of Para-III of the impugned A-9 O.M., the provision starts, however, with a non-obstante clause. This, as stated by us earlier, would signify the need to specifically provide for the procedure to be followed for promotion by way of induction of Group 'B' officers of superior calibre into Group 'A' (JTS). We are not inclined to accept the plea that sub Para(iv) cannot go beyond what is stated in sub paras(i) & (iii). Sub para(iv), as has been seen, starts with the non-obstante clause "notwithstanding the provisions above" thereby confirming that it is a self contained clause that serves a purpose. It cannot be rendered otiose or nugatory. O.M. dated 6.11.98 (A-18), relied on by the applicants, can have application in relation to promotion on the basis of selection-cum-seniority referred to in sub para(i) read with sub para(iii) of Para-III of O.M. dated 27.3.97 (A-9). The grounds and contentions in this regard therefore are liable to be rejected.

2

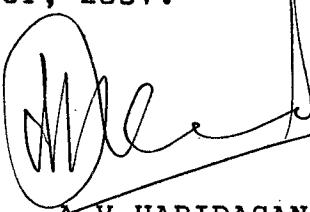
9. With regard to the alleged unfairness in considering 5 years ACRs thereby causing prejudice to the applicants inasmuch as the qualifying service is only 3 years, we are not impressed by this argument. The procedure laid down in O.M.No.22011/5/86-Estt(D) dated 10.3.89 is that the DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years (vide Clause-B of para 2.2.1 of O.M. dated 10.3.89 quoted at para 7 above). Where the qualifying service exceeds 5 years, a matching number of ACRs also would have to be seen. The qualifying service for promotion from Group 'B' to Group 'A' (JTS) may be 3 years. But ACRs of 5 preceding years should receive particular consideration. The contention on this score fails.

10. In view of the facts and circumstances discussed in the foregoing paragraphs, we are unable to grant any of the prayers in this O.A.

11. The O.A. is dismissed. There is no order as to costs.

Dated, the 27th September, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

trs

ANNEXURES

- 16 -

1. A-1: True copy of the Memo No.ST/1/1/4/93 dt.19.8.93 of the Chief PMG, Kerala Circle, Trivandrum.
2. A-4: True copy of the order No.ST/2/2/39/92 dt.21.9.92 of the Chief PMG, Kerala Circle, Trivandrum.
3. A-6: True extract copy of the Indian Postal Service (Group'A') Rules, 1987.
4. A-7: True copy of the Indian Postal Service (Group'A') Amendment Rules, 1995.
5. A-8: True copy of the Indian Postal Service (Group'A') Amendment Rules, 1997.
6. A-9: True copy of the Office letter No.137-29/97-SPG.II dt.16.7.97.
7. A-9(2): True copy of OM No.22011/5/91-Estt(D) dt.27.3.97.
8. A-10: True copy of the Order No.4-27/97-SPG dt.27.3.98 of the 2nd respondent.
9. A-17: True copy of the OM No.4-46/98-SPG dt.16.10.98 of the 2nd respondent.
10. A-17(a): True copy of the OM No.22011/5/86-Estt.D dt.10.3.89 of the DOPT.
11. A-18: True copy of the OM No.22011/8/98-Estt(D) dt.6.11.98 of the DOPT.