

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.119 OF 2006

Thursday this the 19th day of April, 2007

CORAM :

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

N. Kumaran Nair
Superintendent of Post Offices
Kasargode Division
Residing at : Sreevijayam,
Balla Post
Anandashram, Kasargode

Applicant

(By Advocate Mr. P.C. Sebastian)

Versus

1. The Chief Postmaster General
Kerala Circle
Thiruvananthapuram
 2. The Director General
Department of Posts
Dak Bhawan, New Delhi
 3. Union of India represented by Secretary
to Government of India
Ministry of Communications
Department of Posts
New Delhi
 4. Shri A.Ravindranath
SS POS Trichur Division
Trichur
- Respondents

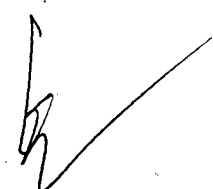
(By Advocate Mr. P.J.Philip, ACGSC (R1-3))

The application having been heard on 13.04.2007, the
Tribunal on 19-04-07 delivered the following :

ORDER


HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

"In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."



Apex Court in **Bal Kishan v. Delhi Admn., 1989**
Supp (2) SCC 351

The facts involved in this OA are as under:-

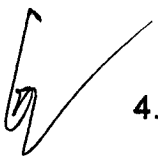
- (a) Applicant was a Postal Service Group B officer. He was promoted to P.S. Group B with effect from 28.07.1998. The fourth respondent is junior to the applicant both in the cadre of Inspector of Post Office as well as P.S.S. Group B. The 1st respondent is competent to make ad-hoc promotion to the cadre of Junior Time Scale Group A against short term vacancies due to regular incumbents being on leave for 45 days or more as per Government of India, Department of Personnel & Training O.M.No.28036/8/87-Estt (D) dated 30.03.1988 (Annexure A-2).
- (b) In deviation of the rules and practice the 1st respondent as per Annexure A-3 order dated 08.02.2006 promoted the 4th respondent who is junior to the applicant, on ad-hoc basis for the period from 13.02.2006 to 30.03.2006. As soon as the applicant came to know about the promotion of his junior as Senior Superintendent of Post Offices, Thrissur, he submitted Annexure A-4 representation dated 10.02.2006 to the 1st respondent requesting to examine the matter and to do justice to him considering the fact that he was due for superannuation on
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28.02.2006. Applicant's representation has been rejected by the 1st respondent as per Annexure A-5 dated 15.02.2006.

- (c) The impugned action in giving ad-hoc promotion to JTS Group 'A' as Senior Superintendent of Post Offices, Thrissur Division for 46 days from 13.02.2006 to 30.03.2006 overlooking applicant's seniority and eligibility is highly unjust, arbitrary and illegal and violative of applicant's fundamental rights under Articles 14, 16 & 21 of the Constitution of India.
- (d) Applicant is fully eligible and entitled to be considered for ad-hoc promotion in question in terms of clause 4 (iii) of Annexure A-2 Government orders.

2. Respondents have by and large admitted the factual position. Their contention is that since the total number of days of service prior to superannuation happens to be just 16 days, consciously, the applicant was omitted to be considered for promotion on ad hoc basis and his junior who has adequate service had been considered and promoted.

3. The question is whether any of the rights of the applicant stand hampered by the act of the respondents in not considering the applicant for promotion on ad hoc basis.



4. Counsel for the applicant submitted that respondents are to

strictly follow the procedure prescribed for ad hoc promotion. The

Rule position is as under:-

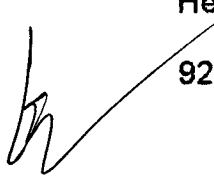
"2.....(v) Filling up of short term vacancies:- Whenever short term vacancies are caused by the regular incumbents proceeding on leave for 45 days or more, study leave, deputation etc. of less than one year duration, they may be filled up by officers available on an approved panel. Such a panel may be maintained taking into account not only the actual but also the vacancies anticipated over a period of 12 months in accordance with the existing instructions/holding DPCs. Wherever an officer is not available on an approved panel the post may be kept vacant, as far as possible.

4.....(iii) Where ad-hoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under :-

- (a) Ad-hoc promotions may be made only after proper screening by the appointing authority of the records of the officer.
- (b) Only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for ad-hoc appointments. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.
- (c) The claims of Scheduled Castes and Scheduled Tribes in ad-hoc promotions shall be considered in accordance with the guidelines contained in the Department of Personnel and A.R, Office Memorandum No.36011/14/93-Estt (S.C.T) date d30.4.1983 and 30.9.1983."

5. Counsel for the applicant submitted that there is absolutely no law which excludes persons retiring within 46 days for being considered for promotion on ad hoc basis against leave vacancies.

He has, in this regard, relied upon the decision of the Tribunal in OA 923/2003 wherein, the applicant was promoted on ad hoc basis



against a leave vacancy of 50 days duration, but as he was to superannuate within 25 days of his promotion, notwithstanding the fact that he was so promoted, his pay was not fixed in the higher post and consequently, pension was also not fixed accordingly. The Tribunal by its order dated 11-02-2004 held that once the applicant had performed the duties of the higher post, by being duly promoted by the competent authorities, there is no question of deprivation of pay and allowances attached to the higher post to the applicant. The OA was allowed. The counsel submitted that the fact that the applicant in the said OA was so promoted, despite the fact that he had only 25 days to superannuate goes to show that there is no embargo.

6. On the other hand, the counsel for the respondents submitted that the decision to overlook the applicant was conscious and for valid reasons as the applicant could not have served for more than 16 days and in case he was allowed to so function, it would mean that ad hoc promotion is permissible for a period of less than 46 days also, which is not so under the rules. Counsel for the respondents referred to reply at para 8 of the counter, which reads as under:-

"The contentions in Para 4 - E are not fully correct. The spirit behind A-2 orders is not to provide ad-hoc promotion to each and every official borne on the gradation list of the feeder cadre, and to give him/her higher pay and allowances, benefits of TA/DA and recurring enhancement in pensionary benefits. The administrative advantages that can be derived by making such an ad-hoc promotion is also of paramount importance. In the instant case giving an ad-hoc promotion for 16 days to the applicant would not have yielded any favourable results to the government but would only have resulted in unnecessary expenditure from the public exchequer."

7. Counsel also relied upon the audit observation at enclosure to Annexure R-2 which reads as under:-

" Sub:- Ad-hoc promotion - C/o Shri A.Achuthan Nair, as APMG (PLI)

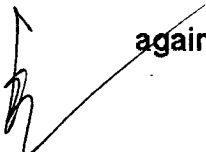
Please refer to your Memo No.ST/2/241/92 dated 08.10.2004 granting 45 days Commuted leave on MC to Shri K.Vasudevan Achary, Assistant Postmaster General (PLI) and ad-hoc promotion of Shri A.Achuthan Nair, SPO, OTP in the above said leave vacancy. Shri A.Achuthan Nair, joined in the post of Assistant Postmaster General (PLI), Circle Office on the forenoon of 11.10.2004 vide charge report No.ST/2/241/92 dated 08.10.2004 due to superannuation pension. The minimum required period of 45 days has not been fulfilled in this case.

Please refer to letter No. Audit 1-1460/4049-VI dated 11.02.1959 from AGP&T (copy enclosed) which specifies that the criterion for making officiating arrangements in short term vacancies should be the likelihood of the official to continue to officiate for the required period and subsequent events resulting in reversion etc. should not vitiate his claim. In this case, retirement on superannuation on 31.10.2004 is not at all a "subsequent event" and hence this office not in a position to authorise pay and allowances to Shri A.Achuthan Nair in the cadre of Assistant Postmaster General at higher rates."

8. Arguments were heard and documents perused.

Enclosure to Annexure R-2 is of 1959 vintage and there is no mention in the counter or during the course of arguments that the same is still in vogue. Minimum period as contained therein for officiating is not the same as of today. Hence, not much of weight could be given to the same.

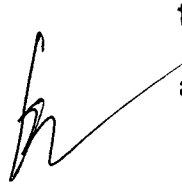
9. Annexure R-1 to the counter confirms that a person with less than 25 days to superannuate could well be granted promotion against leave vacancies. Rules on the subject prescribe only that



only those officers who fulfill the eligibility conditions prescribed in the Recruitment Rules should be considered for ad hoc appointment. If the authorities desired to insert the other condition as applied to the applicant, the same would have been incorporated in the rules. Thus the condition as imposed in the case of the applicant is one which has not been provided for in the Rules. The same cannot, therefore, stand judicial scrutiny.

10. The applicant has already superannuated. His ad hoc promotion shall only be notional and for a period of 16 days from 13-02-2006 to 28-02-2006. The applicant being senior to the one who had been given the promotion ought not have been ignored on the ground that he had to superannuate within 16 days. Applying the cardinal principle as spelt out at the very outset (Apex Court's decision in Bal Kishan's case), it is evident that one of the fundamental rights of the applicant has been hampered by the respondents in his not having been considered for promotion on ad hoc basis. If on the basis of the records, the applicant could have been promoted on ad hoc basis, respondents should consider the same and afford "notional promotion" to the applicant, fix his pay accordingly, and give the benefit of such fixation for the purposes of terminal benefits, irrespective of the extent of the benefit that the applicant might get.

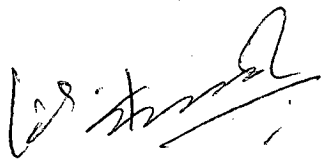
11. In view of the above, the OA is allowed. It is declared that Annexure A-5 order is illegal and hence quashed and set aside. In so far as Annexure A-4 is concerned, the same is not to be disturbed but a separate order giving notional promotion after due consideration as



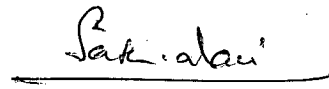
afore said, should be passed, notwithstanding the fact that by retaining the promotion of Respondent No. 4, there would be no vacancy to accommodate the applicant. Supernumerary post for the limited tenure of 16 days should be created for this purpose. Respondents are directed to pass suitable orders in this regard; fix the pay of the applicant accordingly and reschedule his pension/terminal benefits accordingly and afford the arrears of pension and other terminal benefits to the applicant within a period of three months from the date of communication of this order.

12. No cost.

Dated, 19th April, 2007.



K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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