

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.178/07

Friday this the 18<sup>th</sup> day of January 2008

**C O R A M :**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN  
HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

K.P.Varghese,  
S/o.K.V.Poulose,  
Retired Postmaster, Kochi Foreign Post.  
Residing at Kottaram House, Chembumukku,  
Thrikkakara P.O.

...Applicant

(By Advocate Mr.P.C.Sebastian)

**Versus**

1. The Director of Postal Services (HQ),  
O/o.the Chief Postmaster General,  
Kerala Circle, Thiruvananthapuram – 695 033.
2. The Chairman,  
Departmental Promotion Committee  
(For promotion to HSG I),  
O/o.the Chief Postmaster General,  
Kerala Circle, Thiruvananthapuram – 695 033.
3. Union of India represented  
by Secretary to Govt. of India,  
Ministry of Communications,  
Department of Posts, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 18<sup>th</sup> January 2008 the Tribunal on the same day delivered the following :-

**ORDER**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN**

The applicant herein is aggrieved by the denial of his promotion to HSG-I cadre when his juniors in HSG-II feeder cadre were promoted to HSG-I as per Annexure A-4 order dated 13.12.2004. The applicant entered service as a Time Scale Postal Clerk on 20.7.1967 and was

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promoted to the cadre of LSG Accountant with effect from 1.7.1986 on a regular basis. In the Postal Department both TBOP and BCR schemes were in operation. The applicant though was eligible, was superseded without any ostensible reasons for promotion to HSG-II when his juniors were promoted with effect from 1.10.1991. Therefore the applicant had approached this Tribunal by filing O.A.670/99 which was disposed of by this Tribunal directing the respondents to consider his representation. However his representation was rejected since some of the penalties awarded to him were not given effect to or recorded in his service record. Aggrieved the applicant approached this Tribunal in O.A.1068/00. The Tribunal ordered the matter to be placed before the Review DPC. Review DPC was held on 5.12.2002 which did not recommend his case. The applicant again challenged this decision in O.A.212/03. The applicant had also challenged the order in the disciplinary proceedings initiated against him in O.A.433/91 which was allowed by this Tribunal setting aside the punishment order but leaving it open to the competent authority to initiate denovo proceedings against the applicant. Finally after series of challenges in various orders before this Tribunal the respondents have admitted in O.A.212/03 that the Review DPC had committed an error in not recommending his claim for placement under BCR with effect from 1.1.1996 and as per order dated 27.3.2006 issued by the 1<sup>st</sup> respondent the applicant was placed in the next higher grade (HSG-II) in the scale of Rs.5000-150-8000 with effect from 1.1.1996 by Annexure A-2. Another 17 officials in the cadre of LSG Assistant Postmasters (A/c) were also promoted to the cadre of HSG-II on notional basis with effect from 15.12.2001 by Annexure A-3 dated 8.12.2004. Now by the impugned order dated 13.12.2004, 9 officials including 3 persons who are juniors to him in

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Annexure A-3 have been promoted to the higher cadre of HSG-I and superseding the applicant for no ostensible reason. When the applicant sought information under the Right to Information Act, he has been informed that his case was not recommended due to unsatisfactory record of service. According to the applicant no disciplinary proceedings was pending against him as on 23.11.2004 when the DPC met nor any punishment is current and hence the reasons given by the 1<sup>st</sup> respondent in Annexure A-5 for denying promotion to the applicant and promoting his juniors is arbitrary and illegal. The only punishment of withholding one increment for three years which was awarded to the applicant was modified by the Appellate Authority to six months which was over by the month of June, 2001. There are no adverse remarks in his ACR for the last five years of his service prior to the date of DPC.

2. A reply statement has been filed by the respondents. Respondents have confirmed the history of disciplinary proceedings as narrated by the applicant and the series of O.As filed by the applicant starting from O.A.57/90, O.A.433/91, O.A.899/99, O.A.670/99, O.A.1068/00, O.A.212/03 and finally O.A.253/05. After all the punishments were implemented and their currency was over, he was placed under BCR with effect from 1.7.2001 and then promoted notionally to HSG-II with effect from 15.12.2001 as per order dated 8.12.2004. Again by virtue of an order in O.A.212/03, a review DPC was held and the applicant was placed under BCR with effect from 1.1.1996. As regards his promotion to HSG-I cadre, respondents have submitted that the method of promotion to HSG-I is by selection and mere seniority in feeder cadre does not automatically entitle the applicant for promotion. The DPC which met on 23.11.2004 has in fact

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considered his case for promotion to HSG-I cadre, but has not recommended his promotion in view of his unsatisfactory service records and the same was communicated to him vide Annexure A-5. Therefore, the prayers of the applicant according to them are devoid of any merit.

3. We have heard Shri.P.C.Sebastian, learned counsel for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC for the respondents. The DPC proceedings relating to the applicant were also called for and perused. No doubt pleadings in the O.A do point to the facts that the applicant has a chequered service career but in this O.A we are concerned only with his entitlement for consideration for promotion to HSG-I cadre and the legality of the promotion of his juniors in supersession of his claim. The history of long legal battles from 1990 onwards for BCR placement and promotion to HSG-II cadre are exactly not relevant to the prayer in this O.A. The applicant had to fight a sustained battle against the authorities for the various disciplinary proceedings initiated against him and his supersession by the DPC at various stages and finally by Annexure A-2 order dated 27.3.2006 he got a placement under BCR scheme as HSG-II with effect from 1.1.1996. The applicant would, therefore, become senior to all the 17 persons shown as promoted to HSG-II by Annexure A-3 order dated 8.12.2004. Now by impugned order dated 13.12.2004 (Annexure A-4) 9 persons from the list of 17 persons mentioned in Annexure A-3 have been further promoted to the cadre of HSG-I on ad hoc basis. The reason given for non promotion of the applicant in this order and which was communicated to the applicant by Annexure A-5 is that he had unsatisfactory record of service and that a penalty of withholding of increment for 6 months was awarded to him on the basis of which the DPC

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has not recommended him for promotion. We have called for the DPC proceedings and gone through the same. The DPC which met on 23.11.2004 for considering the fitness of HSG-II officials for ad hoc promotion has considered 11 officials including the applicant at Serial No.7 and recommended 9 officials for promotion and the applicant and another person had not been recommended in view of their unsatisfactory service record. The service record perused by the DPC has been verified. They have considered the CR gradings of the officials for the last five preceding years and also the details of punishment ordered during the past five years. The applicant's gradings are 'Good', 'Very Good', 'Good', 'Very Good', 'Good'. There are no adverse remarks. In the details of punishments awarded during the past 5 years in Column 7 of the statement placed before the DPC it has been noted as follows :-

"Next increment withheld for a period of 3 years without cumulative effect in Memo No.B-675 dated 29.12.2000 of SSP, Emakulam. On petition, modified as withholding of increment for a period of six months. (punishment over by 30.6.2001)"

4. A similar entry is there for the official at Serial No.10 whereas in all other cases the entries are 'Nil' as far as this column is concerned. In the case of Serial No.3, one L.Santhamma, who had one 'Average' grading out of five years, the DPC has recommended her as fit for promotion. Thus going by the analysis of the record in this statement enclosed in the DPC proceedings, it is clear that Serial No.7, the applicant and Serial No.10 were considered unfit only on the ground of the punishments indicated in Column 7 of the statement. But it has been clearly indicated in the entry that the punishment which was operative only for a period of six months was already over by 30.6.2001 and the DPC met on 23.11.2004.

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According to the instructions of Department of Personnel in matters of promotion and consideration by DPCs, punishment is not necessarily a bar for promotion. But during the currency of penalty the actual promotion of the officer could not be effected. In the case of the applicant the penalty period was already over by June, 2001. Hence there was absolutely no justification in denying promotion only on the ground that a penalty had been awarded during one of the five years which was under consideration. It is also well laid down position that the CR grading for the preceding five years only are to be considered. Hence the respondents reference to the unsatisfactory service record if it is in terms of the disciplinary proceedings etc. having been initiated against the applicant during the past period from 1991 onwards has no relevance. Such consideration would not be in accordance with the rules and in fact as seen from the proceedings of the DPC itself, the Committee had only considered the record immediately preceding five years in which the applicant has 2 'Very Good' and 3 'Good' gradings. Besides it is also noticed that the promotions considered by the DPC were only on ad hoc basis and they were not regular promotion where strict norms have to be observed by the DPC for assessment. According to the instructions of the Department of Personnel dated 14.9.1992 employee against whom disciplinary proceedings are pending for more than two years and DPC finding in respect of whom are kept in sealed covers can also be given ad hoc promotion and later if the employee is exonerated the ad hoc promotion will be treated as regular promotion. Therefore denial of ad hoc promotion only on the ground that the employee had suffered a penalty of six months postponement of increment which was also for a period preceding three years of the date of DPC and the gradings in the ACRs are Good is not found legally justifiable. We also note that earlier

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disciplinary proceedings initiated against the applicant on several grounds had to be set aside by this Tribunal at various stages and finally concluded in the penalty of six months stoppage of increments had been awarded. In these circumstances, we are of the view that the DPCs' assessment of the fitness of the applicant mainly on the ground that there was a punishment was faulty and not in accordance with the rules. Hence we declare that the applicant is entitled to be considered for promotion and direct that a review DPC may be held for considering his promotion to HSG-I cadre in the light of extant rules and if he is found otherwise eligible shall be promoted from the date of promotion of his immediate juniors as per Annexure A-4 with all consequential benefits. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. As the applicant has already retired from service any such promotion granted will be only on notional basis. Consequential benefits would be restricted to refixation of last pay drawn for pensionary purposes only. O.A is accordingly allowed.

(Dated this the 18<sup>th</sup> day of January 2008)

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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