

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.195/04

Wednesday this the 16th day of June 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

K.Raghavan,
S/o.late R.Kunjukunju,
Sub Postmaster,
Chavara.

Applicant

(By Advocate Mr.O.V.Radhakrishnan)

Versus

1. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram - 33.
2. Director of Postal Services (HQ),
O/o. the Chief Postmaster General,
Thiruvananthapuram - 33.
3. Postmaster General,
Northern Region, Calicut.
4. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam.
5. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.

Respondents

(By Advocate Mrs.Mariam Mathai,ACGSC)

This application having been heard on 16th June 2004 the
Tribunal on the same day delivered the following :

O R D E R

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

The applicant while working as Sub Postmaster, Chavara was along with others promoted to HSG I on adhoc basis by Annexure A-5 order and by Annexure A-6 order he was allotted to Northern Region. Before the orders Annexure A-5 and Annexure A-6 were issued the applicant was served with Annexure A-2 Memorandum under Rule 16 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 on 19.5.2003. Although he had submitted

✓

his explanation a final order is yet to be issued. However the applicant was served with Annexure A-7 order dated 6.2.2004 imposing on him a minor penalty of withholding of one increment for a period of six months without cumulative effect. Since there was no proceedings pending and alleging that the penalty had not become operative as increment had not yet accrued and that the applicant had already submitted an appeal, the applicant has filed this application for a declaration that he is entitled to the benefits of promotion to HSG I on adhoc basis ordered as per Annexure A-5 and that the deprivation of the benefits of such promotion by refusing to relieve him from the post held by him is illegal, arbitrary and unauthorised and for an appropriate direction to the respondents 1 to 4 to give effect to the Annexure A-5 order.

2. The respondents resist the claim of the applicant. They contend that in Annexure A-5 and Annexure A-6 promotion it had been stipulated that before giving effect to the order of promotion it should be seen that the incumbents are not facing departmental or vigilance proceedings or that penalties are not current in their case and that since departmental proceedings was pending against the applicant which ended in imposing a minor penalty the applicant is not entitled to seek the reliefs. The respondents have also stated that the contention of the applicant that the currency of penalty had not begun as the increment would accrue only in August 2004 is not correct because the penalty is current the moment it is imposed although it takes effect only in August. They rely on the P & T Manual Vol.III.

3. The applicant filed a rejoinder in which it is contended that in terms of the DP & AR OM No.21011/1/77-Estt. "A" dated 30.1.1978 a copy of which is Annexure A-10 "once an appeal is filed the penalty is not operative" and therefore the penalties should not have been used as a bar for giving effect to his promotion.

4. We have with great care scrutinised the pleadings as also all the material papers brought on record and have heard the arguments of Shri.O.V.Radhakrishnan learned counsel for the applicant as also of Smt.Mariam Mathai,ACGSC for the respondents. Shri.O.V.Radhakrishnan with considerable tenacity took us through the provisions of Paragraph 102 of the P & T Manual Vol.III as also the stipulation incorporated in Annexures A-5 and A-6 and argued that since the two contingencies, namely, pendency of disciplinary proceedings and currency of penalty did not exist after Annexure A-7, for, by issuance of Annexure A-7 the proceedings have come to an end and the penalty would become current only in August 2004 when the increment would accrue, there was nothing which prevented implementation of the promotion order Annexure A-5 after issue of Annexure A-7. Smt.Mariam Mathai learned counsel for the respondents, on the other hand, with equal vehemence argued that the penalty becomes current the moment the order is issued although withholding of increment would be made only with effect from the date from which the increment would fall due and this position has been well set out in Paragraph 157 of the P & T Manual Vol.III. Shri.O.V.Radhakrishnan appears to be apparently right in contending that the disciplinary proceedings came to an end the moment the order of penalty is issued but it should be noted that

an appeal having been filed which is to be treated as continuation of the proceedings. Further since the penalty imposed on the applicant as HSG II was withholding of the next increment in that grade if the applicant is promoted before the penalty is given effect to the penalty would become inoperative and infructuous. Such an action will be against the provisions contained in Rule 157 of P&T Manual Vol.III which reads as follows:

"157. An officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot, on that account, be considered to be ineligible for promotion to a higher grade, as the specific penalty of withholding of promotion has not been imposed on him. The suitability of such an officer for promotion should, therefore be assessed by the competent authority as and when occasions arise for such assessment. On assessing his suitability, the competent authority will take into account the circumstances leading to the imposition of the penalty and decide whether, in the light of the general service record of the officer and the fact of imposition of the penalty, he should be considered as suitable for promotion. Even where the competent authority may consider, that, inspite of the penalty, the officer is suitable for promotion, effect should not be given to such a finding and the officer should not be promoted during the currency of the penalty.

A person who has been punished with stoppage of increment should not be considered for local promotion during the currency of the punishment which will include the period from the date of passing the order to the date on which his next increment which is to be postponed falls due.

A person whose pay has been reduced to a lower stage should not be considered for promotion till the expiry of the period of punishment."

5. In the light of what is stated above we find that the arguments of the learned counsel for the respondents has considerable force and therefore the applicant is not entitled to seek the reliefs as sought in the application in the present circumstances. In the result, the application is dismissed



leaving the parties to bear the costs. However, we expect that the appeal submitted by the applicant against Annexure A-7 would be disposed of without undue delay.

(Dated the 16th day of June 2004)

H.P.DAS
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

asp