

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 226 of 2003

Tuesday, this the 26th day of September, 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

**M. Muraleedharan Nair,
S/o. V. Madhavan Pillai,
Accountant, Office of the
Senior Superintendent of Post Offices,
Kollam, Residing at Postal Staff Quarters,
Contonment Postal Complex, Kollam. ... Applicant.**

(By Advocate Mr. M.R. Harizaj)

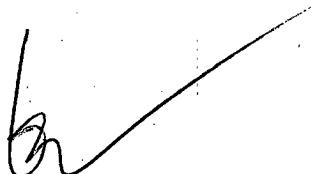
v e r s u s

- 1. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.**
- 2. The Director General of Posts,
Dak Bhavan, New Delhi.**
- 3. Union of India, represented by
The Secretary, Ministry of Communications,
Department of Posts, New Delhi. ... Respondents.**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

**ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

The applicant has prayed for the following relief(s) through this O.A.



(i) Quash Annexure A1 order dated 31.05.2002 ;

(ii) To declare that the applicant is entitled to be considered for promotion to the cadre of Assistant Postmaster (Accounts) with effect from the date on which his juniors were promoted;

(iii) To direct the respondents to promote the applicant to the cadre of the Assistant Postmaster (Accounts) with effect from the date on which his juniors were promoted to the cadre of Assistant Postmaster (Accounts), with all consequential benefits including fixation of pay, arrears of pay and seniority etc.;

(iv) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant and;

v) Grant the costs of this Original Application.

2. Briefly, the facts of the case as contained in the OA are as under:-

(a) Applicant commenced service as Postal Assistant from 30.10.1973. He passed the PO & RMS Accountant examinations on 22.7.1979. Subsequently he was posted as Accountant with effect from 12.3.1980. He is senior to the Accountants who passed PO and RMS Accountant tests after 4.1.1980. The cadre of PO and RMS Accountant is feeder cadre for promotion to Assistant Postmaster (Accounts) (LSG Accountant) under Rule 276-A of P&T Manual, Volume IV. The promotion is given on the basis of circle seniority of PO & RMS Accountants. The relevant provisions in Rule 276 of P&T Manual Volume IV read as follows:

"Rule 276.- Appointments to the posts of Accountants or Assistant Accountants in the ordinary time scale of pay carrying a special pay will be made from qualified officials who have passed

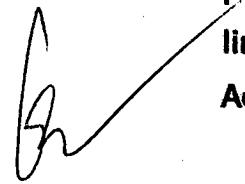


Accountant's examinations according to their seniority in their clerical cadre."

Rule 276-A.- (a) Officials on the ordinary Assistant's time scale of pay, who have passed the Accountant's examination, will be eligible for appointment to the post of Accountants or Assistant Accountants in the Lower Selection Grade on Rs. 425-15-560-EB-20-640, in preference to their seniors in the general gradation list who have not passed the Accountant's examinations even though such seniors may have passed the old lowest selection grade examination. Such appointment 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 promotion."

(b) Applicant while functioning as Accountant was proceeded against under Rule 14 on an allegation that he forged a signature of his co-worker to receive a payment of Rs. 516/- from GPF of that employee. Applicant was awarded with a punishment of reduction of pay by four stages for a period of three years with effect from 31.1.1987. The period of currency of punishment was over by 30.1.1990.

(c) After the introduction of Time Bound Promotion Scheme in 1983, PO & RMS (Accountants) in the time scale of pay plus special pay are also entitled to promotion in the scale of Rs. 425-640 on completion of their 16 years service in the clerical cadre including the period they worked as Accountant. Accordingly, the applicant was given Time Bound one promotion (TBOP) with effect from 7.12.1990 by an order dated 28.6.91. Even though he had completed 16 years of service as on 30.10.1989, he was considered and found fit for promotion only after the currency of punishment was over. Senior most officials in the LSG (Accounts) line is given posting as APM (Accounts). Applicant's juniors in the Accountant's cadre namely, P. Shilvsankaran, P.K. Mathew and N.D.



Vasanthakumari were promoted to the cadre of Assistant Postmaster (Accounts) (LSG Accountants) with effect from 7.12.1990, 18.2.1991 and 28.9.1991 respectively. Aggrieved by this, the applicant made a representation dated 24.9.1998. The Senior Superintendent of Post Offices, Kollam, by letter dated 21.4.1999 informed the applicant that the first respondent by letter dated 12.4.1999 informed that the official was not considered fit for promotion to Assistant Postmaster (Accounts) (LSG Accountants) by Departmental Promotion Committee which met on 31.10.1991 on account of his involvement in disciplinary case.

(d) The applicant challenged the said letter before this Tribunal in O.A. No. 1272/1999 and the same was disposed by order dated 23.1.2002 directing the first respondent to consider the representation to be submitted by the applicant in the light of the instructions contained in DG Post letter No. 137-18/2001 SPB-II dated 23.4.2001 and to give the applicant a detailed reply.

(e) The norm based promotions to LSG and HSG cadres were not granted since the implementation of TBOP in 1983 and BCR in 1991 on the plea that grade promotions are substitutes of norm based promotions. By Directorate's O.M. dated 23.4.2001, it was clarified that grade promotions are only upgradation of pay of employees who were otherwise facing problems of stagnation. It is further made clear that the upgradation under TBOP and BCR Schemes and promotion to LSG and HSG as per provisions of Recruitment Rules are two distinct matters. It was also reiterated that vacancies to the posts of LSG and HSG-II and HSG-I should be filled regularly.

[Signature]

(f) In pursuance to rejection order dated 21.4.1999 referred to above, the applicant submitted a representation on 5.2.2002 before the first respondent requesting him to consider applicant's promotion to the cadre of Assistant Postmaster (Accounts) (LSG Accountants) in the light of Tribunal's order dated 23.1.2002. The first respondent disposed of the said representation by Annexure A1 order dated 31.5.2002 denying the applicant's claim for promotion on the ground that there is no separate cadre of Accounts line officials, the applicant will only be considered for promotion to LSG (norm based) alongwith the general line officials in accordance with the Recruitment Rules in force, taking his seniority in the PA cadre and his performance over the years into accounts.

(g) Grounds for reliefs:

(i) Under Rules 276 and 276-A of P&T Manual Volume IV, promotion to the Assistant Postmaster (Accounts) (LSG Accountants) are made from the feeder category of PO & RMS Accountants based on the seniority in the Circle. As per the Circle seniority, applicant is senior to P. Shivasankaran, P.K. Mathew, N.D. Vasanthakumari, passed the PO & RMS Accountants test much after the applicant was passed and posted as Accountant. The promotion of juniors without considering the applicant is unjust, illegal and discriminatory.

(ii) Applicant was granted Time Bound One Promotion (TBOP) with effect from 7.12.1990. No adverse remark was made against the applicant after 30.1.1990. But the DPC held on

30.10.1991 to consider candidates for promotion to LSG APM (Accounts), applicant was found unfit on account of unsatisfactory record of service. The findings of the DPC is not based on any material facts on records and hence unsustainable. The findings of the first respondent that the promotion of the applicant to the cadre of LSG will be considered under the amended Recruitment Rules is applicable only in respect of the posts ^{that fell} vacant on or after 22.2.2002.

3. Respondents have contested the OA and their version is as under:-

(a) The promotion to Assistant Postmaster (Accounts) (Norm based LSG) is ordered in accordance with the instructions contained in Rule 276 of P&T Manual Volume IV. The applicant was considered for promotion to the cadre of Assistant Postmaster (Accounts) by the Departmental Promotion Committee held on 30.10.1991 but was not recommended due to unsatisfactory service records. The DPC findings are as under:

"Shri M. Muralidharan Nair having been awarded punishment of reduction of pay by 4 stages for 3 years from 31.01.1987 for fraudulently taking payment of GPF advance of another official, while working as Accountant, Karunagapally HO and the appellate authority having upheld the punishment, though the currency of punishment is over, the Committee found him unfit to hold the post of APM (A/Cs) for which unsuspected integrity is essential".

(b) Consequent on introduction of BCR Scheme with effect from 1.10.1991, no Departmental Promotion Committee was held for considering promotion to LSG norm based posts either in the general line or in the Accounts line. The posts of APM (A/Cs) are

filled by placement of senior BCR/TBOP officials with PO & RMS Accountant qualification.

4. Counsel for the applicant argued that promotion to the post of APM (Accounts) is as per seniority and seniority is based on the year of passing the Accountant's examination. And, the applicant on his part had qualified in the said examination as early as in 1979. Thus, in 1991, when the respondents considered the candidates for promotion as A.P.M. (Accountants), the name of the applicant was omitted even though by the time they had considered, the penalty imposed upon him had already been suffered and there is no reason as to why he could not be promoted by then. Assuming without accepting that by virtue of the opinion recorded by the DPC that the applicant was punished for certain fraudulent and the post of A.P.M. (Accounts) requires persons of 'unsuspected integrity', then again, within the next two years the applicant could have been promoted and in any event, since the applicant was functioning in that capacity w.e.f. 07-11-1994, his promotion should date back to that date and not 01-01-1998. For, once the responsibility of the functions as A.P.M. (Accounts) had been entrusted to the applicant w.e.f. November, 1994, whatever sting the earlier misconduct had, had completely been obliterated as otherwise the respondents would not have deployed as A.P.M. (Accounts). According to the learned counsel for the applicant, non grant of promotion from the date his juniors were granted promotion, on the ground of the misconduct for which the applicant had

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already suffered the penalty imposed, would amount to double jeopardy.

5. Learned Senior counsel for the respondents, on the other hand, contended that in so far as promotion to the post of A.P.M. (Accounts) is concerned, it is essential that the incumbent should be a person of unsuspected integrity and the decision taken by the DPC not to recommend the case of the applicant is a conscious decision as the applicant was involved in a fraudulent financial transaction. Again, in Rule 276A (a) clearly provides a discretion to the appointing authority to pass over any senior official whom he does not consider fit for such promotion. As such, non promotion of the applicant to the post of A.P.M. (Accounts) on account of the earlier misconduct does not amount to any double jeopardy. To a pointed question as to how long shall the sting of suspected integrity would continue to deprive him of the promotion, the counsel stated that there has been no such stipulation and in the instant case, the applicant was asked to officiate as A.P.M. (Accounts) from November, 1994 and his regular promotion was from 1998.

6. Arguments were heard and documents perused. The applicant was no doubt visited with a penalty of reduction of pay by four stages for three years from 31-01-1987 for fraudulently taking payment of GPF advance of another official while working as Accountant. This fact was within the full knowledge of the DPC and the DPC has recorded the same in their recommendation and



also added, "*though the currency of punishment is over, the committee found him unfit to hold the post of APM (A/Cs) for which unsuspected integrity is essential.*" This recommendation has been accepted by the appointing authority as he has the discretion to pass over any senior official whom he does not consider fit for such promotion. Admittedly, the penalty awarded to the applicant was minor penalty and the same had been suffered. It was later on that the DPC took a conscious decision not to recommend as the applicant's fraudulent withdrawal of GP Fund advance of some other person proved his suspected integrity and the post warranted man of unsuspected integrity. This has been accepted by the appointing authority.

7. The Apex Court has dealt with almost an identical case, wherein on account of imposition of minor penalty, promotion was not given and when the matter was taken up with the Tribunal, the Tribunal has held that promotion ought to have been given. However, the Apex Court has set aside the order of the Tribunal. In the case of ***Collector of Thanjavur Distt. v. S. Rajagopalan, (2000) 9 SCC 145***, the Apex Court has held as under:-

6. We are of the view that the Tribunal was in error in thinking that if the minor punishments inflicted on the respondents were taken into consideration at the time of considering their merit for the purpose of inclusion in the list of Deputy Tahsildars, that would amount to double jeopardy. In our opinion the said view expressed by the Tribunal is clearly contrary to the legal position in Union of India v.

K.V. Jankiraman. This Court held that: (SCC pp. 122-23, paras 28-29)

"28. The Tribunal has also struck down the following portion in the second sub-para after clause (iii) of para 3 which reads as follows: 'If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon' and has directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty, and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions. It may be pointed out that the said sub-paragraph directs that 'the officer's case for promotion may be considered in the usual manner by the next DPC which meets in the normal course after the conclusion of the disciplinary/court proceedings'. The Tribunal has given the direction in question on the ground that such deferment of the claim for promotion to the subsequent DPCs amounts to a double penalty. According to the Tribunal, 'it not only violates Articles 14 and 16 of the Constitution compared with other employees who are not at the verge of promotion when the disciplinary proceedings are initiated against them but also offends the rule against double jeopardy contained in Article 20(2) of the Constitution'. The Tribunal has, therefore, held that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a Review DPC as on the date when the sealed cover procedure was followed and the Review DPC should consider the findings in the sealed cover as also the penalty imposed. It is not clear to us as to why the Tribunal wants the Review DPC to consider the penalty imposed while considering the findings in the sealed cover if, according to the Tribunal, not giving effect to the findings in the sealed cover even when a penalty is imposed, amounts to double jeopardy. However, as we read the findings of the Tribunal, it appears that the Tribunal in no case wants the promotion of the officer to be deferred once the officer is visited with a penalty in the disciplinary proceedings and the Tribunal desires that the officer should be given promotion as per the findings in the sealed cover.



29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not

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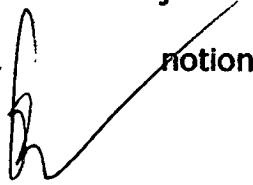
right in striking down the said portion of the second sub-para after clause (iii) of para 3 of the said memorandum. We, therefore, set aside the said findings of the Tribunal."

7. We respectfully follow the said decision. It has been clearly pointed out there that the denial of promotion would not amount to penalty and that it would be open to the authorities to take into account the fact that some punishments were imposed on them during the relevant period."

8. Thus, in the instant case, denial of promotion on the ground of suspected integrity cannot be faulted with. There is no question of double jeopardy and the case laws cited by the counsel for the applicant in the written submission, which all relate to double jeopardy do not apply to the facts of this case. But then, the question is, 'how long shall the sting of suspected integrity continue'. The respondents have themselves afforded the opportunity to the applicant to officiate as A.P.M. (Accounts) w.e.f. 07-11-1994. As such, the sting obliterated from that very date. Though feebly the learned senior counsel argued that it was only an officiating arrangement, the fact remains that the functional responsibility does not vary when it is on officiating basis. In any event, having found the applicant's efficiency and other attendant aspect as satisfactory, the respondents have promoted the applicant from 01-01-1998, in continuation of the officiating. This then leads to the question, whether the respondents who have regularized promotion of certain others from 1992 vide Annexure A-10 order dated 07-03-2005 are justified in not considering the case of the applicant for such regular promotion from 07-11-1994. In fact some of the officials so regularized from a date anterior to regularization of the applicant were juniors in the feeder

grade, as contended by the applicant in the pleadings. The applicant was, as stated earlier, asked to officiate in that post by the order of SSPO in accordance with the order of the DG Post vide their letter dated 15-09-1992 (referred to in Annexure A-1). Since the applicant had been holding that post from November, 1994 and without any break, the officiation was also regularized w.e.f. 01-01-1998, this shows that the applicant was eligible and fit for holding that post from 07-11-1994 itself. As such, regularization of promotion of the applicant from 01-01-1998 ought to have been advanced to 07-11-1994 with attendant seniority in the grade of A.P.M. (Accounts). Thus, the order dated 31-01-2002 at Annexure A-1 cannot be legally sustained.

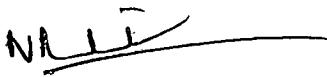
9. In view of the above the OA succeeds to the extent that the applicant is entitled to be considered for regularization w.e.f. 07-11-1994 in the post of A.P.M. (Accounts), which post he had been holding since then, though on officiating basis till 31-12-1997. Consequently, his seniority in the grade of A.P.M. (Accounts) shall be got re-fixed. While so refixing, respondents may follow the procedure if any, relating to issue of notice to the affected parties. If any of the present seniors who would become juniors to the applicant on recasting of the seniority happens to be holding a higher post by virtue of their promotion on the basis of their seniority, the applicant shall also be considered for promotion in the higher grade with effect from the date the junior had been promoted and if so promoted, pay shall be fixed only notionally, while actual pay would be admissible from the date the applicant

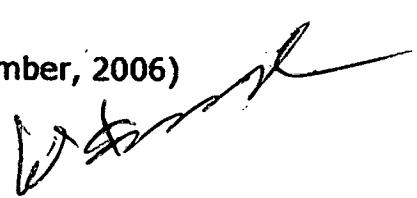


assumes higher responsibility. Passing of suitable orders in pursuance of this order and recasting of seniority shall take place within a period of four months, while, consideration for promotion if occasioned, shall be complete within a period of six months.

10. Costs easy.

(Dated, the 26th September, 2006)


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K B S RAJAN
JUDICIAL MEMBER

cvr.