

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 240 of 1990
T. A. No.

DATE OF DECISION 14-8-1991

MV Somarajan Applicant (s)

M/s P Jacob Varghese &
VA Ganguja Advocate for the Applicant (s)

Versus

Union of India & 3 others Respondent (s)

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The prayer of the applicant, working as Higher Grade Telegraph Assistant, Trivandrum in this application filed under Section 19 of the Administrative Tribunals Act is that the corrigendum issued by the Senior Superintendent of Telegraphic Traffic, Ernakulam Division on 29.8.1986 at Annexure-A3 altering the date of promotion of the applicant to the higher grade under the One Time Bound Promotion Scheme (O.T.B.P.S.) from 25.6.1986 to 9.8.1986, the communications dated 28.11.1989 of the Divisional Officer, Telegraphs at Annexure-A5 rejecting his representation, the DG, P&T's letter dated 28.11.1984 stating that the non-qualifying service would be excluded in reckoning 16 years of service

under O.T.B.P.Scheme communicated in Annexure-A8 and the Annexure-A7 letter dated 1.2.1990 in which also the DG,P&T's letter on the subject is referred may be quashed and that the respondents may be directed to restore the applicant's promotion as ordered by Annexure-A2 dated 31.7.1986 to 25.6.1986.

2. The facts of the case can be briefly stated as follows; Having appointed as a Time Scale Clerk in the Central Telegraph Office, Bombay on 25.6.1970, the applicant completed 16 years of regular service on 25.6.1986. While he was working at Ernakulam, by order dated 31.7.1986 of the Senior Superintendent, Ernakulam Division(Annexure-A2), the applicant along with 3 other persons was promoted under the O.T.B.P.Scheme w.e.f. 25.6.1986. Thereafter on 29.8.1986 the Superintendent of Central Telegraph Office, Ernakulam, issued the impugned order at Annexure-A3 as a corrigendum to the Annexure-A2 order, altering the date of his promotion to 9.8.1986, instead of 25.6.1986. The applicant submitted a representation to the Superintendent, Central Telegraph Office, Trivandrum stating that the alteration of the date of his promotion was unjustified. He had in that representation copy of which is at Annexure-A4, pointed out that as per the O.T.B.P.Scheme, what is to be considered is whether an official has completed 16 years of regular service and not whether he has completed 16 years of qualifying service. He had also pointed out that he had availed of only 33 days of Extra Ordinary Leave and not 45 days as calculated by the

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Department. It was in reply to this representation that he received the Annexure-A5 order informing him that the non-qualifying service would not be counted for reckoning the period of 16 years. The applicant submitted an appeal to the third respondent. In reply to this representation, he received the Annexure-A7 order wherein also he was informed that Extra Ordinary Leave without medical certificate is excluded from qualifying service in reckoning 16 years of service for O.T.B.P. Scheme in compliance with the instructions contained in DG, P&T, New Delhi letter No.1-73/83-NCG dated 28.11.1984. Hence the applicant has filed this application praying that the impugned orders at Annexure-A3, A5, A7 and A8 may be set aside and the respondents may be directed to restore the date of his promotion to 25.6.1986. The applicant has averred that the period of Extra Ordinary Leave without medical certificate actually amounted to only 25 days and that in any event, as qualifying service for the purpose of pension not being the criterion for fixing the length of service under the O.T.B.P. Scheme and as what is relevant ^{is} only the regular service according to the scheme, the action of the respondents in postponing the date of his promotion from 25.6.1986 to 9.8.1986 is illegal and unjustified. It has also been averred that the respondents have gone wrong in altering the date of his promotion without giving him a notice and an opportunity to put forward his case.

3. The respondents in the reply statement have contended that the promotion of the applicant under the O.T.B.P. Scheme

w.s.f. 25.6.1986 was ordered by Annexure-A2 order because the fact that the applicant had availed of Extra Ordinary Leave without medical certificate for 45 days was not adverted to, that as per the instructions of the DG, P&T dated 28.11.1984, non-qualifying service is to be excluded in reckoning 16 years of service under the O.T.B.P. Scheme when the details of Extra Ordinary Leave availed of by the applicant came to notice, the corrigendum had to be issued and that therefore the impugned order at Annexure-A3 was perfectly in order.

4. We have heard the arguments of the learned counsel for the parties and have also carefully perused the records. That the applicant entered service on 25.6.1970 and therefore had completed 16 years of service on 25.6.1986 are not in dispute. It was on this basis that Annexure-A2 order was issued granting him promotion to the next higher grade under the O.T.B.P. Scheme w.e.f. 25.6.1986 later as it was discovered that the applicant had availed of Extra Ordinary Leave for a period of 45 days (this has now been stated to be only 33 days) basing on the Annexure- A8 instruction of the DG, P&T, the period of Extra Ordinary Leave was excluded from service and the date of promotion of the applicant was postponed to 9.8.1986 and that necessitated the issuance of the impugned order at Annexure-A3. The short question that falls for consideration is whether the period of Extra Ordinary Leave granted to an employee which cannot count as qualifying service for the purpose of pension

can be excluded from the period of regular service in reckoning the period of regular service for the purpose of giving promotion to an incumbent under the O.T.B.P. Scheme. Annexure-A1 is the circular issued by the DG, P&T regarding the grant of O.T.B.P. Scheme to employees in the Postal Department who had completed 16 years of service. This contains the full text of the scheme under which O.T.B.P. Scheme is to be granted. This scheme was introduced by an agreement between the Government and the employees after consideration by the Departmental Council(JCM). On a careful reading of Annexure-I, we find that an officer who has completed 16 years of regular service is entitled to be considered for promotion to the next higher grade. Nowhere in this document the term 'qualifying service' is mentioned. Qualifying service for the purpose of pension as per the CCS(Pension) Rules and "Regular" service are not one and the same. In the case of an employee who is in regular service of any Department of the Government, the period for which he has been granted leave of any kind cannot be excluded from regular service. During the period of leave whether Extra Ordinary Leave or any other leave, the employee continues to be in regular service, if the absence is regularised by grant of leave. If the absence is not so regularised, the period of his absence will be dies-non or unauthorised absence causing a break in service in which case the period will be excluded from service. In that view of the matter, the instruction given by the DG, P&T quoted at Annexure-A8 that the period of qualifying

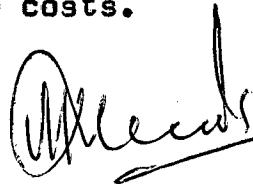
service alone has to be reckoned for computing the period of service for granting promotion under the O.T.B.P.Scheme does not appear to be correct and proper because, as per the scheme drafted on the basis of unilateral agreement at the JCM, an official is entitled for promotion to the next higher grade on completion of 16 years of "Regular Service". Though the applicant had been granted Extra Ordinary Leave for some period, we are of the view that, even during that period, the applicant being in regular service on completion of 16 years from the date of his initial entry into regular service, he was entitled to be considered for promotion under the O.T.B.P.Scheme. As a matter of fact, the Departmental Promotion Committee considered the case of the applicant and have rightly granted his promotion w.e.f. 25.6.1986 by Annexure-A2 order. The alteration of the date ~~to 9.8.1986~~ of promotion to 9.8.1986 basing on the Annexure-A8 instruction on the ground that the applicant had been under Extra Ordinary Leave for a few days, according to us, was by a mistaken interpretation of the term 'regular service' mentioned in the instructions regarding the grant of promotion under the O.T.B.P.Scheme. For the above said reason, we are of the view that the applicant should succeed.

5. In the result, the application is allowed, the impugned orders at Annexure-A3, A5 and A7 and the instructions of the DG, P&T contained in Annexure-A8 are set aside. The respondents are directed to restore the date of the applicant's

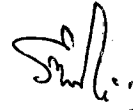
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promotion to 25.6.1986 as ordered in Annexure-A2 order.

Orders in this regard should be passed by the competent authority within a period of two months from the date of communication of this order. There is no order as to costs.

 14/8/91

(A.V. HARIDASAN)
JUDICIAL MEMBER

 14.8.91

(S.P. MUKERJI)
VICE CHAIRMAN

14.8.1991

trs