

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

DATED WEDNESDAY THE 28TH DAY OF FEBRUARY 1990

PRESENT

HON. SHRI S.P. MUKERJI, VICE CHAIRMAN

AND

HON. SHRI N. DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION : 265/89

S. Sanachandran

...the applicant

Versus

1. Director of Postal Service,
Central Region, Cochin
2. The Post Master General,
Kerala Circle, Trivandrum
3. The Departmental Promotion Committee
represented by its Chairman, Office of
the Postmaster General, Kerala Circle,
Trivandrum.
4. The Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.
5. P. Kunhammed Koya, Assistant Superintendent
of Post Offices, Badagara Division.
6. K. Rammohandas, Assistant Superintendent
of post Offices, (Vigilance) O/o of
D.P.S. Calicut.
7. P.T. Raju, Assistant Superintendent of Post
Offices, Changanacherry Sub Division.
8. K. Kuruvila Varghese, Assistant Superintendent
of Post Offices (OS) Idukki, Division,
Thodupuzha
9. N. Sadasi van, Assistant Superintendent of
Post Offices, Irinjalakuda Sub Division.

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10. M.C. Ayyappan, Assistant Superintendent of Post Offices, Trichur Division.
11. M. Balan, Assistant Superintendent of Post Offices, Calicut Division
12. K.T. Balakrishnan, Assistant Superintendent of Post Offices, Central Region, B/o DPS Cochin.
13. K.O.V. Narayanan Nair, Assistant Superintendent of Post Offices (OS), Trivandrum, South Division, Trivandrum-3.

M/s. O.V. Radhakrishnan, Radhamani Amma and Raju K Mathew, advocates appeared for the applicant

Mr. K. Karthikeya Panicker, ACGSC appeared for the respondents 1 to 4

JUDGMENT

Per Shri N. Dharmadan, Judicial Member

The short question to be considered in this case is whether the DPC had discharged duties in terms of the Recruitment Rules while recommending promotion of applicant from the cadre of Inspector of Post Offices to Assistant Superintendent of Post Offices in their meeting held on 13.12.1988.

2. The material facts are as follows: The applicant was appointed as Inspector of Post Offices on 20.2.1976 but later he was allowed to officiate in the post of Assistant Superintendent of Post Offices for various spells. According to the applicant the respondents 5 to 13 who are working in the cadre of

Assistant Superintendent of Post Offices are juniors to him because in Exhibit A-2 Circle Gradation list they were assigned Sl. Nos. 60,61, 66,72,73,76 and 78 respectively while the applicant is Sl.No.55. The applicant was superseded by respondents 5 to 13 illegally.

3. The Superintendent of Post Offices served Exhibit A-3 memo dated 29.7.1982 on the applicant for failure to submit the percentage verification report and Exhibit A-4 order, withholding increment for three months was also served on him on 19.11.1983. But the increment fell due on 1.2.1983 and the currency of penalty was over on 1.5.1983. The adverse entry based on Exhibit A-4 was not communicated to the applicant during the year 1982. Exhibit A-5 is the memo communicating the adverse remarks. Exhibit A-6 is copy of another memo dated 5.5.1986 intimating adverse remarks from the C.R. for the year 1985-86.

In the mean^time by Exhibit A-7 the applicant was promoted on ad hoc basis as Assistant Superintendent of Post Offices(Printing), Postal Stores, Trivandrum.

4. The respondents 5 to 7 who are juniors to the applicant/^{were} promoted to the cadre of Assistant Superintendent of Post Offices on regular basis as per Exhibit A-10 dated 26.10.1988. Exhibit A-11 appeal was filed by the applicant against this order. This was rejected and Exhibit A-12 is the

intimation. Exhibit A-13 is the order dated 27th February 1989 rejecting the appeal. The respondents 8 to 13 were also promoted as per Exhibit A-14 order dated 21.3.1989. The applicant is challenging Exhibit A-10 and 14. He also seeks for a direction to convene a review D.P.C. to consider the applicant for promotion to the cadre of Assistant Superintendent of Post Offices and promote him on regular basis over respondents 5 to 13 with all consequential benefits.

5. Against this background the contentions urged by the learned counsel for the applicant is that the promotion to the cadre of Assistant Superintendent of Post Offices is on the basis of seniority-cum-fitness and as such DPC need not make a comparative assessment of the records of the officers. They need only categorise the officers as 'fit' or 'not yet fit' for promotion on the basis of the assessment of service records. The officers categorised 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to be made. According to the learned counsel, adverse entries covered by Annexure A-6 and A-8 are not of serious nature. The minor penalty of withholding of increments for three months without cumulative effect is not a bar for promoting him nor does it render him unfit for promotion especially when the currency of penal action expired on 1.5.1983. Therefore, the DPC had gone wrong in not recommending

the applicant for promotion. It amounts to an abuse of power in assessing the suitability of an eligible person and is violative of Article 14 and 16 of the Constitution of India.

6. In the nature of the contentions, after perusing the records and hearing the arguments we directed the learned counsel for the respondent to produce the concerned D.P.C. proceedings and the confidential records of the applicant. Accordingly the Government counsel was good enough to produce them through ^h for our perusal. We have gone ~~over~~ them carefully.

7. The files containing ^h the confidential reports of the applicant disclose the following details. As per the proceedings dated 28.8.1982 the respondents had passed the order withholding the increments of the applicant for a period of three months from the date it falls due without cumulative effect. Again the respondent as per letter No. IR/TP/Diary/IPO dated T.V. 14. dated 25.11.82 had given a severe warning to the applicant for not replying to correspondence despite reminders. The further letter of the respondent dated 18.11.1983 discloses that copy of the adverse entries with punishment orders sent to him on 17.4.1983 have not been acknowledged and receipted by the applicant till then. In the letter the applicant had signed after noting that original communications

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dated 17.4.1983 have not been received so far.

8. For the period 1.4.1985 to 31.3.1986 also there were adverse remarks in the CR of the applicant ("Over all assessment: Satisfactory except that he tends to delay work") and they had been communicated as per letter dated 5.5.1986. He did not show any improvement. The adverse reports in his confidential records for ^{the} ~~next~~ year from 1.4.1986 to 31.3.1987 ("Over all assessment: The officer possesses the ability to put in better work. Some earnest effort is required"), were also communicated to the applicant as per RL No.2483 dated 26.8.1987. He has no case that these are unwaranted and against the actual facts. He had also not taken any steps for either objecting to the same or expunging them. Even if the adverse remarks are of minor nature they cannot be ignored as if not having absolutely any effect on his service.

9. We have also examined the minutes of the proceedings of the DPC held on 12.12.1988. The Committee considered the claims of eighteen officers including the applicant. The reasons recorded by the Committee in para(1) of the proceedings read as follows:

"...After examining the service records the committee came to the conclusion that all officials except S/Sh. S. Sarachandran and M.N. Subramanian Namboodiri at Serial (1) and (3) respectively are fit for promotion to the

cadre of ASPOs. In respect of S/Shri S. Sarachandran and M.N. Subramanian Namboodhiri as their records of service are not satisfactory they are found to be unfit for promotion to the cadre of ASPOs at present. In respect of Shri N. Narayanan Kutty APS candidate the CR sheet for 1987-88 is not available in his CR dossier. The committee decided that subject to the satisfactory confidential report of the official for 1987-88, he is found fit....."

10. The promotion to the cadre of Assistant Superintendent of Post Offices from among Inspectors of Post Offices is to be made in accordance with Rule 272-C of the P&T Manual Vol.IV. Mere seniority is not the criterion according to this rule. It is done on the basis of seniority-cum-fitness. The recommendation of the DPC is essential. The DPC need not make any comparative assessment of the records of the officers, but it is essential to categorise them as 'fit' and 'not fit' for promotion on the basis of thorough scrutiny and examination of all service records of the officers including CRs. We cannot assume that the DPC had not fairly and reasonably acted in accordance with rules after perusing the proceedings in this case.

11. Having examined the entire aspects of the matter we are satisfied that DPC had followed the procedure

contemplated in the relevant rules applicable to the selection. The D.P.C. came to a definite conclusion and categorised the applicant as 'unfit' after application of mind. The applicant was not eliminated merely on the basis of the penalty as contended by the applicant in this, case, in the year 1983. An assessment of the work of the applicant for the subsequent years was also made. The minutes bear out the fact that all the eighteen officers in the field of choice were considered and the list was drawn up after such consideration in the light of the available materials. The Court or Tribunal cannot sit in appeal over such matters when there are sufficient indications that the DPC had considered the over all circumstances and applied the mind before taking a final decision. The Kerala High Court in a similar matter considered the question and held as follows in V.E. Thomas v. State of Kerala, 1978(1)SLR 593.

".....It is further stated in the minutes that the petitioner was superseded on a general assessment of his confidential records including the punishment awarded to him withholding increment for a period of two years. From this is evident that DPC did not weed out the petitioner from consideration solely on the basis of the punishment imposed on him without reference to the confidential records. The minutes bear out the fact that all the 48mmembers including the petitioner who were in the field of choice were considered and the list was drawn up after such consideration strictly

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in conformity with the directions contained in Government orders referred above. Therefore, the petitioner's contention that he was discriminated against by virtue of punishment imposed on him without taking into consideration his merit and ability have to be repelled....."

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".....In the case on hand as well as in the Kerala case mentioned above we have sufficient materials to show that the DPC came to its decision after a clear application of mind in the task set out before it. This court cannot project into the rules relating to the promotion by the DPC requirement to record reasons for the supersession. From the materials in the file available I have/hesitation to hold that the DPC had complied with the legal requirements in coming to the conclusion in drawing up the list and was not influenced solely by the materials in the confidential records in exuding the petitioner on that sole ground....."

12. It is true that the applicant was given temporary and ad hoc promotions in the exigencies of service to officiate on leave vacancies and short term arrangements/without any recommendations of the D.P.C. But this would not confer any legal right on the applicant for getting permanent promotions.

xxx The D.P.C. may/taken into consideration this fact also while considering his case for regular promotion. The applicant has no case that the D.P.C failed to advert his temporary and ad hoc promotions. The files of all the eighteen officers including the applicant were placed for consideration by the D.P.C. On the facts and circumstances of the case it is not correct to say that the DPC categorised the applicant 'unfit' for promotion solely on the basis of the minor penalty imposed on him in 1983.

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13. In the result, we see no merit in this application and it is only to be dismissed. Accordingly we do so. There will be no order as to costs.

N. Dharmadan
(N. DHARMADAN)
Member (Judicial)

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S. P. Mukerji
(S. P. MUKERJI)
Vice Chairman

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