

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. Nos. 282/07

MONDAY THIS THE 3rd DAY OF *MARCH*, 2008.

C O R A M

**HON'BLE DR K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

K. Arya Devi W/o N. Natarajan
Assistant Post Master Accounts,
Malappuram, Malappuram,
residing at Jyothis, Thrikalmkode
Manjeri, Malappuram,

..Applicant

By Advocate Shafik M.A.

Vs.

1 Union of India
represented by the Postmaster General
Northern region, Calicut.

2 The Superintendent of Post Offices
Manjeri Division, Manjeri.

3 K.K. Aravindakshan
Accountant (BCR), Malappuram HO
Malappuram.

.. Respondents

By Advocate Mr. P.J. Philip, ACGSC.

ORDER

HON'BLE DR. K. S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant in this O.A. is presently working as Assistant Postmaster, Accounts at Malappuram HO. She is aggrieved by the order dated 25.4.2007 posting respondent No. 3 to officiate as Assistant Postmaster Accounts (HSG-II) at the Manjeri HO for a period of not exceeding 180 days on purely ad hoc basis (Annexure A-1).

2 She has prayed for the following reliefs:

(i) To call for the records relating to Annexure A-1 to A-8 and to quash A-1 being illegal and arbitrary

(ii) To declare that the applicant is entitled to be posted as Assistant Postmaster Accounts (HSG-II), Manjeri HO on the basis of her seniority in the PA/SA cadre as is being followed till now and to direct the respondents to appoint the applicant as Asst. Postmaster Accounts, Manjeri HO immediately in preference to the 11rd respondent.


(iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit just and proper in the circumstances of the case

and

(iv) To grant the costs of this Original Application.

3 When the matter came up for hearing on 27.4.2007, the Tribunal had issued an interim order staying the operation of the impugned order (Annexure A-1).

4 In support of the reliefs claimed, the applicant has contended that the post of Assistant Postmaster Accounts (HSG-II) at Manjeri HO has to be filled up on the basis of seniority cum fitness. As per the seniority list, the applicant is senior to the 3rd respondent. The applicant has been requesting for posting in the vacant post of APM Accounts at Manjeri, however, it was denied to her and the 3rd respondent, who is junior to the her has been given ad hoc posting. The 3rd respondent is not entitled to get posting to a higher post on the basis of "immunity" for his trade union work. The impugned order is not a transfer order, it amounts to promotion. Office bearers of union may be entitled for transfer in preference to others. Such a transfer can be given only to an identical post and not to a post involving ad hoc promotion and overlooking the seniority of others.



5 The respondents have contested the O.A. and have filed two reply statements. In the first reply statement filed on 21.6.2007, it was contended that the post of Assistant Postmaster Accounts is a Higher Selection Grade-II post, it has to be filled by promotion from Lower Selection Grade officials with three years regular service. The promotion has to be done at the Circle level. The 3rd respondent was elected as a Treasurer of one of the recognised service unions. There are orders of the Director General (Posts) that office bearers of service unions may be brought to their headquarters if appropriate post is available. Accordingly the 3rd respondent was transferred as Accountant at Manjeri HO through Annexure A-5 and A-6 orders. Annexure A-1 order was issued in accordance with the directions of respondent No.1. As the applicant is not promoted to the Lower Selection Grade cadre at the Circle level, she cannot claim the post of Assistant Postmaster Accounts at Manjeri.

6 In the additional reply statement filed by the respondents on 25.10.2007 it is stated that ad hoc arrangement in the post will not result in any financial benefit. The 3rd respondent was not given any out of turn promotion as is alleged by the applicant. Already an employee who is junior to the applicant is working as Assistant Postmaster Accounts at Manjeri and it was not challenged by the applicant. Subsequently, on the directions of this Tribunal it was clarified in a statement filed by the respondents that the employee referred to in the additional reply who is junior to the applicant had only been asked to manage the work of Assistant Postmaster Accounts at Manjeri and no order has been issued appointing him as Assistant Postmaster Accounts, Manjeri.




7 We have heard the learned counsel for the applicant Shri Shafik M.A. and learned counsel for the respondents 1 & 2 Shri P.J. Philip, ACGSC and have also perused the documents carefully.

8 The issue for consideration in this O.A. is whether the posting of the 3rd respondent to officiate as the Asst. Postmaster Accounts (HSG-II) Manjeri on ad hoc basis for a period not exceeding 180 days is in accordance with rules. It is not in dispute that the 3rd respondent is junior to the applicant. It is also admitted that the post of Assistant Postmaster Accounts (HSG-II) at Manjeri HO is a higher post compared to the post held by the 3rd respondent. The respondents have tried to justify the posting order on the ground that the 3rd respondent is a trade union office bearer and therefore has to be given preference in accordance with the orders issued by the Director General of Posts. The relevant extract of the orders of the Director General of Posts have been produced by the respondents. These extracts read as follows:


"(i) the orders regarding grant of immunity from transfer to Union office bearers should be followed strictly except on administrative grounds. Bringing the Chief Executive of the unions to their Headquarters should also be followed if an appropriate post in which the Chief Executive could be posted is available.

(j) Where it is not possible to observe the general principles laid down in the instructions on the concession of immunity from transfer a report should be sent to the department indicating the circumstances under which it is not possible to extend the facility even in the first year of term of office with the Unions."



9 It is very clear from the above extract that what is envisaged in the instructions of Director General of Posts is that union office bearers should not be transferred from the Headquarters, and the Chief Executive of the union should be brought to an appropriate post in the

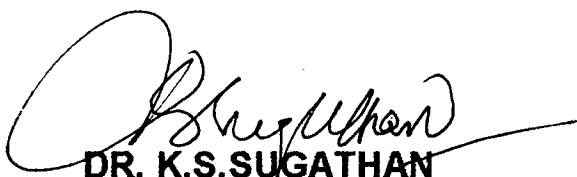
Headquarters. These instructions are relevant only if the union office bearers is to be transferred away from the Headquarters or to be brought to the Headquarters or for the purpose of bringing the chief executive of the union to the headquarters. It does not envisage that trade union office bearers should be given out of turn promotion for the purpose of bringing them to the Headquarters. What is attempted to be done by Annexure A1 order is to give an out of turn promotion to the 3rd respondent even though it is an ad hoc promotion. It is not possible to accept the argument advanced on behalf of the respondents in their additional reply that the 3rd respondent is not entitled to any higher financial benefits on account of his posting as Assistant Postmaster Accounts at Manjeri. It is nowhere stated in the order at A-1 that the 3rd respondent shall not be entitled to the pay scale attached to the post of Assistant Postmaster Accounts (HSG-II). What is mentioned in the order dated 25.4.2007 is that "the pay of the official appointed on ad hoc basis will be initially fixed under FR 22(I)(a)(1) but restricted under FR-35." Fixation of pay under FR 22(I)(a)(1) can arise if a person is appointed to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him and his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which each pay has accrued..." Such a fixation can be done only when there is promotion to a higher post. Further, as per OM dated 22.10.1990 issued by the Department of Personnel and Training when promotion is not on regular basis, if there is substantial increase in the pay fixed, the pay may be restricted under



FR-35. The reference to fixation of pay under FR 22(1)(a)(1) along with restriction under FR -35 in the impugned order implies that it is an ad hoc promotion and therefore they should not have ignored the applicant's seniority. The respondents have not been able to show any rule that provides for ad hoc or out of turn promotion to union office bearers for the purpose of bringing them to the Headquarter. In the absence of any such rule the action of the respondents is clearly illegal. The respondents are expected to be well conversant with rules and procedures regarding promotion including ad hoc promotion. They are also expected to follow the rules scrupulously. Therefore, violation of the principle of seniority for accommodating a trade union office bearer and giving him an ad hoc promotion is illegal and arbitrary. The contention of the respondents that A-1 was issued only due to the non-availability of a suitable post to accommodate the third respondent at Manjeri cannot stand the test of legal scrutiny. We have therefore no hesitation in concluding that the order issued by the respondents at Annexure A-1 is illegal and unsustainable.

10 For the reasons stated above, the O.A. is allowed to the extent the impugned order dated 25.4.2007 is quashed and set aside. The interim order issued on 27.4.2007 is made absolute. The respondents are directed to fill up the vacancy of Asst. Postmaster Accounts, Manjeri in accordance with the relevant recruitment Rules. No costs.

Dated 3.3.2008.


DR. K.S. SUGATHAN
ADMINISTRATIVE MEMBER


DR. K.B.S. RAJAN
JUDICIAL MEMBER