

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.299/10

Tuesday this the 22nd day of March 2011

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

Reginold C.C.,
S/o.C.K.Cheru,
Assistant Superintendent of Post Offices (Retd.),
Changanassery Sub Division, Changanassery.
Residing permanently at Forms Villa, No.12,
Shakthan Thampuran Nagar, Trichur – 680 001.Applicant

(By Advocate Mr.M.R.Hariraj)

V e r s u s

1. **Union of India represented by the Secretary
to the Government of India, Department of Posts,
New Delhi.**

2. **Director General of Posts,
Dak Bhavan, New Delhi.**

3. **Chief Post Master General,
Kerala Circle, Trivandrum.**

4. **Superintendent of Post Offices,
Trichur Division, Trichur.**

....Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 22nd March 2011 this Tribunal
on the same day delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

This Original Application has been filed under Section 19 of the
Administrative Tribunals Act, 1985. The applicant is seeking a direction to
grant him the benefit of the option he has made under proviso to FR 22 (I)

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(a) (1) after condoning the delay in exercising the same and to fix his pay accordingly with all consequential benefits including arrears of pay, refixation of pension and pensionary benefits, arrears of pension and pensionary benefits etc. with interest on monetary payments due at the rate of 12% per annum. He is also seeking a direction to the respondents to step up his pay at par with the pay of his junior, Shri.M.P.Nirmal Kumar, with all consequential benefits.

2. The brief facts of the case are that the applicant who was Inspector of Post Offices was promoted to the cadre of Assistant Superintendent of Post Offices (ASP for short) on ad hoc basis and he was allotted to the Central Region vide Annexure A-2 memo dated 26.6.2001 wherein it was stated that he will not have any claim for permanent absorption until and unless the service rendered on ad hoc basis has been regularised and it will not count for seniority in the grade or for promotion to higher grade. Subsequently, vide Annexure A-3 memo dated 16.10.2002, he along with 12 other persons, were promoted to the post of ASP on regular basis and allotted to the same region. According to the applicant, when he came to know that one of his junior Shri.M.P.Nirmal Kumar was drawing more pay than him, he has submitted the Annexure A-4 form of option on 18.3.2003 to have his pay fixed on the date of his next increment in the existing scale which falls due on 1.1.2002 as admissible under FR 22 (1) (a) (i). Thereafter, he has also made Annexure A-5 representation dated 24.2.2005 requesting the respondents to step up his pay at par with Shri.M.P.Nirmal Kumar. He has also made Annexure A-7 representation dated 28.11.2006 requesting the Director General Posts, Department of



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Posts, New Delhi, to condone the delay in exercising his option as aforesaid. In his said representation, he has submitted that though his ad hoc posting as ASP was regularised vide CO Memo No. ST/3-2/2002 dated 16.10.2002, a copy of the said memo was not given to him and hence he could not exercise the option for fixation of pay within the stipulated time limit. As a result, his junior who was promoted later as ASP was getting higher pay.

3. The respondents, vide Annexure A-1 order dated 17.6.2008, rejected the request of the applicant for condonation of delay in exercising the option as it was not found to be a fit case for consideration as the ad hoc period beyond one year was not regularised. Subsequently, he was informed vide Annexure A-11 order dated 15.7.2008 that his request for condonation of delay to allow him to exercise the option was taken up with the Directorate by the Circle Office but on consideration, it was not found as a fit case for consideration as the ad hoc period as ASP beyond one years was not regularised.

4. The applicant has challenged the aforesaid orders mainly on the ground that Annexure A-3 promotion order was never communicated to him and as such he did not have the opportunity to exercise his option within the stipulated period of one month from the date of issue of the same. His contention is that he came to know about the aforesaid fact only in March, 2003. Thereafter, he made Annexure A-4 option dated 18.3.2003. He has also brought to our attention the Annexure A-8 letter from the Assistant Director (Staff), his immediate senior, under the office



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of the Chief Post Master General, Kerala Circle, Thiruvananthpuram addressed to the Director General (PAP Sn), Department of Posts, Dak Bhavan, New Delhi, stating that on enquiry made, it was found that the aforesaid regular promotion order dated 16.10.2002 was not delivered to the applicant under acquittance. He has, therefore, recommended that the applicant may be given permission to exercise option as a special case.

5. Counsel for the respondents has refuted the contentions of the applicant. He has submitted that Annexure A-3 order could not have escaped the notice of the applicant as the same contains the names of the 12 other similarly placed persons. According to him, when all the other persons have no complaint about the non receipt of the order the applicant could not have raised such an objection. He has also submitted that the applicant being an office bearer of the All India Association of Inspector of Posts & Assistant Superintendent of Post Offices, such orders of promotion would always be brought to his notice by the members of the Association. He has also brought Annexure R-1 dated 16.10.2002 which is same as Annexure A-3 to our notice and in the said order there is an indication that copy of the order was sent to the applicant.

6. We have heard the rival contentions of the counsel for the parties. It is not the case of the respondents that the promotion order dated 16.10.2002 was sent to the applicant by any registered post or by any other means wherein his acquittance was obtained. On the other hand, it is on record that the Assistant Director (Staff) himself has written to the Director General (PAP Sn), New Delhi in clear terms that the aforesaid letter dated



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16.10.2002 was not found delivered to the applicant under acquittance after holding an enquiry in the matter. In our considered view, in the aforesaid circumstances, the applicant cannot be penalised for not exercising his option within the prescribed time limit. Moreover, we find that the period of exercising the option has expired only on 16.11.2002 and as soon as the applicant came to know about his order of promotion he preferred the option on 18.3.2003. The delay occurred was just four months which ought to have been condoned by the respondents themselves.

7. We, therefore, in the interest of justice, allow this OA and set aside the Annexure A-1 order dated 17.6.2008. Consequently, we declare that the applicant is entitled for condonation of delay in submitting his option and to get his pay fixed in terms of the Annexure A-4 option dated 18.3.2003 under FR 22 (1) (a) (i). As we have been informed that the applicant has taken voluntary retirement from service in 2009, he shall also be entitled for the consequential benefits on his pension and other terminal benefits. The respondents shall grant the monetary benefits arising out of the aforesaid directions within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 22nd day of March 2011)


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER