

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO. 317 OF 2008

Friday, this the 6th day of March, 2009.

**CORAM:**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**  
**HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

E.Vijayan  
Retired Deputy Postmaster  
Ernakulam Head Post Office  
Residing at Priya Nivas  
Kuzhoor P.O. Pin 680 734

... **Applicant**

(By Advocate Mr. P.C.Sebastian )

versus

1. The Chief Postmaster General  
Kerala Circle  
Thiruvananthapuram
2. The Director of Postal Services (HQ)  
Office of the Chief Postmaster General  
Kerala Circle  
Thiruvananthapuram
3. Union of India represented by Secretary  
to Government of India  
Ministry of Communications  
Department of Posts  
New Delhi

... **Respondents**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC )

The application having been heard on 06.03.2009, the Tribunal  
on the same day delivered the following:

ORDER

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

The applicant entered his service in the Postal Department as  
a Time Scale Clerk (Postal Assistant) in October, 1961 and later on was  
promoted to Lower Selection Grade in August, 1979. His further  
avenues of promotion are Higher Selection Grade-II and Higher

Selection Grade I for which the basis is seniority-cum-fitness. According to the gradation list of LSG Officials of Kerala Circle as on 01.07.1987, the applicant was ranked at Sl.No.123 while one Shri A.N.Gopinathan whose initial date of entry into the service was January, 1966 and who was promoted to LSG in November, 1981 was at Sl.No. 318 vide Annexure A-1.

2. The applicant was promoted as Higher Selection Grade II and later as Higher Selection Grade I respectively in December, 1991 and November, 1997. Annexure A-2 in respect of HSG I refers.

3. One Shri P.V.Sreedharan Nambisan promoted as LSG in December, 1981 was promoted as Higher Selection Grade II in May, 1988 and on observing the same his senior one Shri Goudiam Adiyodi filed OA 1092/92 before the Tribunal for promotion at par with his junior Mr.Nambisan with consequential benefits including promotion to HSG. The said OA was disposed of by order dated 09.07.1993 directing the respondents to review the promotion of the applicant to HSG II. In pursuance of the said order Shri Goudiam Adiyodi got his promotion as HSG II from June, 1985, the day his junior Nambisan was promoted, vide order dated 11.07.1994 (Annexure A-3). The date of promotion was however, later on rescheduled as 03.06.1988 vide Annexure A-4.

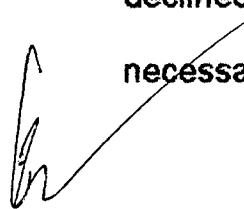
4. On observing that Goudiam Adiyodi got his promotion, two similarly situated individuals M/s K.Sreenivasan Nair and A.J.Chandi filed OA 1292/96 which was allowed by order dated 22.06.1998 with a direction to the respondents to consider the claim of the applicants



therein at par with their junior, with all consequential benefits. Annexure A-5 refers. This order was challenged by the respondents in OP 25315/98. As the Hon'ble High Court vacated the stay initially granted in respect of the above order, respondents had by order dated 16.09.2002 implemented the order dated 22.06.1998 in OA 1292/9, vide Annexure A-6.

5. Whereas it was expected by all similarly situated persons that like treatment would be given to all, whereas, the benefits were given only to those who approached the Tribunal, a batch of 25 OAs was filed which was disposed of by a common order dated 28.07.2005 whereby all these OAs were allowed. Shri A.N.Gopinathan Nair, who was junior to the applicant as referred to in Para 1 above, filed OA 564/03 claiming advancement of date of promotion to HSG II and HSG I with all consequential benefits at par with his junior A.J.Chandi and this OA alongwith OA 563/03 was allowed vide Annexure A-7 order dated 04.01.2006. This order refers to the earlier batch matter (OA 809/02 and others) and it was on the basis of the said decision that the above OA 564/03 was also allowed.

6. Writ Petitions filed by the respondents against OA 1292/96 and other OAs had all been dismissed. Writ Petition against order dated 29.07.2005 and 04.01.2006 filed against the orders of this Tribunal in the batch matter (OA 809/02 and OA 563/03 and 564/03) are at present pending before the Hon'ble High Court but the Hon'ble High Court declined to grant any stay of the order of this Tribunal. Consequently necessary orders have been passed for implementation of the order of



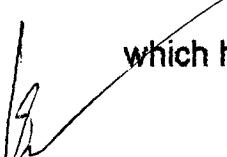
this Tribunal; which were however made subject to the out come of the Writ Petition.

7. The applicant in the instant case is one such person who also is equally placed as the applicant in other OAs and he claims parity with others. However, by Annexure A-9 respondents have rejected his claim and stated that promotion order to Shri A.N.Gopinathan Nair, referred to in his representation is subject to the out come of Writ petition and as such the case of the applicant shall be considered only after the decision in the Writ Petition is pronounced. It is against the above order that the applicant has come up in this OA seeking the following relief :-

- "(i) *To call for the files leading to the issue of Annexure A-9 and quash the same.*
- (ii) *To declare that applicant is entitled to be considered for promotion to HSG II and HSG I cadres with all consequential benefits, with effect from the date on which applicant's juniors such as A.J.Chandy, A.N.Gopinathan Nair etc. were promoted.*
- (iii) *To issue appropriate directions/orders to the respondents to extend the benefit of Annexure A-7 judgment of this Hon'ble Tribunal by promoting him to SHG II with effect from 03.06.1988 and to HSG I with effect from 26.10.1995 with all consequential benefit and to effect payment of the arrears of pay and allowances due to the applicant in this regard, within a period of time limit as deemed proper to this Hon'ble Tribunal."*

8. Respondents have contested the OA. According to them the representations of the applicant was not considered as the matter is still pending before the High Court. Sri Govindan Adiyodi was promoted to the cadre of HSG-I vide memo dated 09.10.1995 and some other juniors were also promoted vide memo dated 18.09.2006. The cause of action has arisen in 1994-1995 and applicant was well aware of the same. If the applicant had any genuine grievance, he should have filed the OA

within one year at least. This OA therefore, is hopelessly barred by limitation and is only to be rejected under section 19 (3) of the Tribunals Act 1985 as was done by this Hon'ble Tribunal in OA No.1113/2000 filed by Shri B.M.Eshwara who was also senior to Sri Govindan Adiyodui. The question of delay and laches was considered by the Apex Court in Union of India vs. Virpal Singh Chauhan ( 1995 (6) SCC 684 ) and the Hon'ble Court held that delay disentitles the party to discretionary reliefs under Article 226 or 32 of the Constitution. In B.S.Bajwa v. State of Punjab (AIR 1999 SC 1510 ) the Supreme Court held that " it is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justified." In Rabindra Nath Bose vs. Union of India (AIR 1970 SC 470) the apex Court held that " each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after a lapse of number of years ". It may also be submitted that orders in OAs 563/2003 and 564/2003 and other similar OAs have been implemented by the respondents to tide over the situation which existed in the wake of the contempt petitions filed by the applicants therein. It was clearly mentioned in the orders that the promotions ordered therein would be subject to the outcome of the WP(C)s pending before the High Court. This does not entitle the applicant to seek similar reliefs. The judgments cited by the applicant only speak of giving equal treatment to similarly situated persons when a judgment has become final. It does not say anything about extending the benefit of an order which has been challenged before a higher court.



9. Counsel for applicant submitted that in all earlier cases the orders have been complied with and even if they have not been complied with, that cannot be the reason for postponing the case of the applicant. Counsel for respondents submitted that as stated in the impugned order the request of the applicant for promotion to the cadre of HSG II / I can be considered only after knowing the decision of the Writ Petition pending before the Hon'ble High Court of Kerala.

10. Arguments were heard and documents perused. As regards limitation the claim of the applicant is based on promotion of Gopinathan Nair, his junior and his promotion in one of the recent past. Again the order impugned is of 2008. Hence limitation does not affect the case of the applicant. Now on merits. Admittedly similar matters have already been decided and as per impugned order promotion ordered to Shri A.N.Gopinathan Nair is subject to the out come of the Writ Petition (C) No.13376/06 filed by the respondents against the judgment in OA 564/03. All that the applicant claims is that the applicant should also be promoted accordingly. In the case of Shri A.N.Gopinathan Nair also there has been no stay by the Hon'ble High Court. Even if there be a stay, the stay order means only that the order which has been stayed would not be operative from the date of passing of the order but it does not mean that the stay order has been wiped out from existence ( **Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association, CSI Cinod Secretariat, Madras, 1992 3 SCC (1)** ) In the instant case, junior Shri A.N.Gopinathan Nair has been promoted with <sup>Subject to</sup> the rider that the promotion is/out come of the Writ Petition. Logically the same order should have been passed by the respondents

themselves without dragging the applicant to the Court.

11. *In Inder Pal Yadav v. Union of India, (1985) 2 SCC 648*, the Apex Court has held as under:-

*"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.*

12. The Apex Court as early as in 1975 in the case of *Amrit Lal Berry v. CCE, (1975) 4 SCC 714*, held as under:-

*We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.*

13. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under:-

**"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. -** We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Ellas Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters

relating to a specific grievance or anomaly of an individual employee."

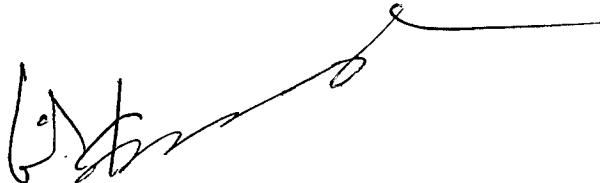
14.. In view of the above decision of the Hon'ble supreme Court and Pay Commission Recommendations, this Tribunal is of the considered view that pending the decision in W.P.(C) No. 13376/06 in the case of Shri A.N.Gopinathan Nair, the applicant's case should be considered for promotion to HSG II & I from the date on which the applicant's junior Shri A.N.Gopinathan Nair has been promoted and consequential benefits should also be given to the applicant. According to the applicant, his promotion to HSG II should be from 03.06.1988 and HSG I with effect from 26.10.1995.

15. Accordingly this OA is allowed with a direction to the respondents to consider promotion of the applicant to HSG II with effect from 03.06.1988 (subject to verification from records) and HSG I with effect from 26.10.1995 (subject to verification from records) and whatever benefits were made available to Shri Chandy and Gopinathan Nair be extended to the applicant also subject to his having been found fit for promotion. Of course, respondents may clamp the very same condition / rider as in the case of Gopinathan Nair that promotion is subject to the out come of the Writ Petition pending before the Hon'ble High Court of Kerala.

16. The above order shall be complied with, within a period of four months from the date of receipt of a copy of this order. No costs.

Dated, the 6th March, 2009.

  
K.NOORJEHAN  
ADMINISTRATIVE MEMBER

  
Dr.K.B.S.RAJAN  
JUDICIAL MEMBER