

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 357 1991

DATE OF DECISION 20.2.1992

Shri P.O. Antony _____ Applicant (S)

Shri M. Paul Varghese _____ Advocate for the Applicant (S)

Versus

Union of India & 3 others _____ Respondent (s)
(Secretary, Min. of Communications)

Shri P. Sankaran Kutty Nair, _____ Advocate for the Respondent (s)

CORAM: ACGSC

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

The Hon'ble Mr. A.V. 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 ? *✓*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓*
4. To be circulated to all Benches of the Tribunal ? *✓*

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The grievance of the applicant, a Postal Assistant, is that his promotion to the next higher grade under the time bound one promotion scheme, has been illegally withheld. He has, therefore, filed this application under Section 19 of the Administrative Tribunals Act praying that the respondents may be directed to consider his case for promotion to the next higher grade under the time bound one promotion scheme with effect from 30.4.1989 with retrospective effect with all consequential benefits. The facts can be briefly stated as follows.

The applicant who commenced his service in the Department of Posts as a Postman on 15.12.1967 was promoted to the cadre of Time Scale Postal Assistant on 30.4.73. Under the time bound one promotion scheme introduced in the Department with effect from 30.11.83, on completion of 16 years of service as Postal Assistant, he became eligible for promotion to the next higher grade with effect from 30.4.89. His position in the seniority list of Postal Assistants in Ernakulam Postal Division as on 1.7.87 was 176. While the applicant was expecting an order of promotion, to his dismay, he found that in the order of the 4th respondent dated 9th January, 1990 promoting 43 Time Scale Postal Assistants to the next higher grade under the time bound one time promotion scheme with effect from various dates, his name was not included while several of his juniors were promoted. Therefore, the applicant submitted a representation on 29.5.90 to the 4th respondent pointing out that he has been denied promotion while his juniors have been promoted. Even when the above representation was pending, by order dated 30th July, 1990, two more officials junior to him were promoted to the next higher grade. Again, the applicant submitted a representation on 7.8.90 to the third respondent. He had on enquiry come to know that the withholding of his promotion was for the reason that he had been awarded a punishment of withholding of increment on 20.12.89. He had mentioned in the representation at Annexure IV that

as the proceedings for the punishment imposed on him had not been initiated while he became eligible on 30.4.89, the denial of promotion to him was not justifiable. Though this representation was pending, by a subsequent order dated 14th January, 1991, three more officials junior to the applicant were promoted. It is in these circumstances that the applicant has filed this application. It has been averred in the application that the denial of promotion to the applicant with effect from 30.4.89 when persons junior to him had been promoted on the ground that a punishment of withholding of increment was awarded to him in a proceedings initiated after 30.4.89 is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution.

2. The respondents in their reply affidavit have conceded that the applicant would have been in the normal course promoted under the TBOP scheme with effect from 30.4.89 and sought to justify the denial of promotion to him in the order issued on 9.1.90 on the ground that when the DPC considered his case for promotion, he was undergoing a penalty of withholding of increment effective from 1.4.90 to 30.9.90 on the basis of a charge sheet issued on 17.10.89. They have further contended that as a further punishment of postponement of increment by 35 months was issued by the Senior Superintendent of Post Offices, Ernakulam, on 1.2.90 which would be in force from 1.10.90 to 31.8.93, the applicant

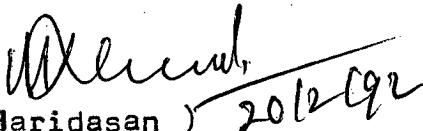
is not entitled to be promoted to the higher grade under rule 135 of the Postal Manual Volume III till 31.8.93.

3. We have heard the counsel for the parties and have also carefully gone through the documents produced. It is a common case that the applicant was entitled to be promoted to the next higher grade under the TBOP scheme with effect from 30.4.89. The respondents have denied promotion to the applicant with effect from 30.4.89 on the ground that when the order at Annexure II dated 9.1.90 was issued, the applicant was awarded a punishment of withholding of increment by six months by order dated 20.12.89 to be effective from 1.4.90 to 30.9.90 on the basis of a charge sheet issued on 17.10.89. While the DPC was considering the eligibility of the applicant for promotion under TBOP scheme as on 30.4.89, what had to be considered by the DPC was whether any disciplinary proceedings were pending against the applicant. If a disciplinary proceedings had been initiated and pending, the DPC could have adopted the sealed cover procedure and kept its recommendation in the sealed cover. But if no disciplinary proceedings were initiated or pending as on 30.4.89, the date on which the applicant became eligible for promotion, it was not necessary to adopt the sealed cover procedure either. The Hon'ble Supreme Court of India has in Union of India etc vs. K.B. Janki Ram etc reported in AIR 1991 SC 2010, held that

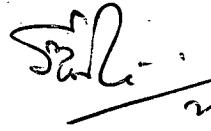
a disciplinary proceedings can be said to have been commenced only when a charge memo is issued to the employee. In this case the charge memo was issued to the applicant only on 17.10.89 while the DPC considered the question of eligibility of the applicant for promotion with effect from 30.4.89. Therefore, as on 30.4.89, there was no proceedings either initiated or pending against the applicant, the action of the respondents not to promote him to the next higher grade with effect from 30.4.89 while persons junior to the applicant were promoted with effect from that date, is illegal, arbitrary and discriminatory. The applicant, therefore, is entitled to succeed in this application.

4. In the result, the application is allowed and the respondents are directed to have the case of the applicant for promotion under the TBOP scheme considered by a review DPC as on 30.4.89 without reference to the disciplinary proceedings which has been initiated later and to promote him with effect from that date with all consequential benefits, if found he is not otherwise unsuitable for promotion. Action on the above lines should be completed and arrears of pay, if any on the basis of the retrospective promotion, should be paid to the applicant within a period of two months from the date of communication of this order.

5. There is no order as to costs.


(A.V. Haridasan)
Judicial Member

20.2.92


(S.P. Mukerji)
Vice Chairman

20/2/92