

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 380 of 2012

Friday, this the 18th day of December, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

1. M.P. Ramesh, aged 45 years, S/o. Narayanan Kutty, Asst. Superintendent of Post Offices, Pattambi Sub Division, Ottapalam Division, residing at Parackal House, Kavuvattom, Cherpulasserry, Palakkad District.
2. V. Sarada, aged 36 years, W/o. C. Bhaskaran, Postmaster, Ottapalam Head Post Office, Ottapalam Division, residing at Nandanam, Civil Lines Ottapalam, Palakkad District 679 101. **Applicants**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by its Secretary to Government of India, Department of Posts, Ministry of Communications, New Delhi.
2. The Chief Postmaster General, Department of Posts, Kerala Circle, Thiruvananthapuram. **Respondents**

(By Advocate : Mr. Sinu G. Nath, ACGSC)

This application having been heard on 02.12.2015, the Tribunal on 18.12.2015 delivered the following:

ORDER

Hon'ble Ms. P. Gopinath, Administrative Member -

The applicants are aggrieved by the order No. B1/2/Test-PSS Gr. B dated 30.4.2012 issued by the Superintendent of Post Offices, Ottapalam Division intimating that their application for the Limited Departmental

Competitive examination (in short LDCE) for selection to PSS Group-B, 2012 has been rejected. The applicants who are originally posted against 2004 vacancies of Inspector of Post Offices were posted in January, 2006. When the respondents notified the examination for promotion to PSS Group-B, 2012, from among those IPO/ASP with 5 years of service, the applicants have also applied. However, their candidature is rejected as per Annexures A1 and A2 without stating any reasons.

2. The brief facts of the case are that the 2nd respondent has notified the LDCE for promotion to the cadre of Postal Services Group-B, 2012 vide letter dated 16.4.2012 which stipulates that for 19% meant for IP quota, the Inspectors and Assistant Superintendent of Post Offices with 5 years regular service as on 1.1.2011 are eligible. Applicants have more than 5 years of service reckoning their training period as on 1.1.2011. There was a rumour that their applications were being rejected and their junior one Mr. Permanand Kumar who is a direct recruitee who has joined the cadre much later and has commenced his training only on 30.1.2006 was allowed to compete. The candidature of the applicants is now seen rejected as Annexures A1 and A2 without showing any reasons. The issue involved in this case is no longer res integra since the same stands settled in favour of the applicants in view of the decision of this Tribunal in OA No. 801 of 2010 and connected cases. The applicants refer to Government of India, Department of Personnel & Administration Reforms OM No. 14034/5/81-Estt(D), dated 8.3.1983 which reads thus:



"Period of training before appointment to be treated as duty for eligibility to sit for departmental examinations:- The staff side of the National Council (JCM) has suggested inter alia that the service rendered by an employee during the training period before his regular appointment to the grade be treated as duty for eligibility to sit for the Departmental examinations.

2. The request made by the staff side of National Council (JCM) has been examined and it has been decided that in all cases where pre-service training is considered necessary before actual appointment to the post, the period spent by an officer on training immediately before such appointment would count as qualifying service for the purpose of eligibility for appearing in Departmental examinations, even if the officer is not given the scale of pay of the post but only a nominal allowance."

3. The relief sought by applicants is that they are entitled to be permitted to take part in the examination notified as per Annexure A7 reckoning their service in the training period as Inspector of Post Offices from 5.9.2005 to 14.1.2006 as regular service, to be reckoned with effect from the initial date on which the training commenced for the purpose of reckoning eligibility for competing in 2012 PSS Group-B examination or an other similar examination for promotion.

4. In reply respondent submits that the primary condition for appearing in the PS Group-B examination, as evidenced by Annexure A7 notification is 5 years of regular service in the cadre of Inspector Posts/Assistant Superintendent as on 1.1.2011. The dates of regular appointment of the applicants herein are 25.1.2006 and 9.10.2006 respectively, making them short of the mandatory requirement of 5 years regular service. As such, they raised a claim to include their induction training period prior to their regular appointment as Inspector Posts for reckoning eligibility service for appearing in the examination relying upon the provisions contained in clause (23) of FR-9 which lays down that in all cases where pre-service



training is considered necessary before actual appointment to the post, the period spent by an officer on training immediately before such appointment would count as qualifying service for the purpose of eligibility for appearing in Departmental Examinations, even if the officer is not given the scale of pay of the post, but only a nominal allowance. As the eligibility criterion for admission to the PS Group-B examination is 5 years of regular service and since the regular service in Inspector Posts cadre starts with the actual date of appointment in the said cadre, the representations were rejected and their candidature was also not processed. During the period of induction training, the Inspector Posts candidates are given only the pay scale applicable to the cadre of Postal Assistant/Sorting Assistant. It is only after completion of the said training and on actual appointment as Inspector Posts, that they are given the pay of Inspector. Thus, induction training cannot be considered as service in IP cadre and counted as qualifying service for the purpose of eligibility for appearing in the PS Group-B examination. Going by the provisions laid down in FR-9 also, it may be seen that the said provision would only be applicable to such cadres where pre-induction training is mandatory. However, for those promotee Inspectors like the applicants herein, such training is not mandatory and as such, the period spent for such training cannot be counted as qualifying service for the PS Group-B examination.

The applicants have built up the whole case creating an impression that one of their juniors, Shri Permanand Kumar has been admitted for the examination which is not true to facts. It is true that Shri Permanand Kumar a direct recruited IP candidate has been provisionally admitted for the PS



Group-B examination. Such a decision was taken by the respondents as two of his juniors were admitted by the Gujarat Circle and in obedience to the law laid down by the Hon'ble Apex Court that if any junior to a candidate has been admitted, the senior should also be given the same treatment, the said Permanand Kumar was also admitted for the examination. However, the same principle cannot be adopted in the instant case as the applicants are not senior to Shri Permanand Kumar but are ranked below him. Seniority between direct recruits and promotees in the cadre of Inspector of Posts is determined according to the rotation of vacancies between available direct recruits and promotees based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules (33.34% & 66.66% respectively). In the Inspector Posts cadre, after every two promotee candidates, one direct recruit candidate is interpolated in the gradation list according to their merit in the respective select list. As per seniority list of Inspector Posts as on 1.7.2008 even though DOCCS of Shri Permanand Kumar is 30.1.2006, he is positioned at serial No. 6 while both the applicants herein are placed below him at serial Nos. 8 & 15 respectively. Hence, the averment of the applicants that a junior has been admitted to the examination is not true to facts. Even if the claim for counting their period of induction training put forth by the applicants are accepted, they would not be eligible for appearing in the examination as what is required is 5 years of regular service. The period spent on induction training cannot be treated as regular service for counting the qualifying period for appearing in the examination. The applicants have not challenged the Recruitment Rules and without having done this, they cannot claim any



deviation from the provisions laid down in these Recruitment Rules.

5. Respondent avers that it is trite law that the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts as laid down by the Hon'ble Apex Court in *Nirmal Chandra Sinha v. Union of India & Ors. - (2009) 1 SCC 671*. This view has been upheld and reiterated by this Hon'ble Tribunal in its order dated 28.9.2011 in OA No. 145 of 2010. The Hon'ble Apex Court has also taken the same stand in *Union of India & Ors. v. V.K. Vadera & Ors. - 1989 Supp (2) SCC 625*, wherein the Hon'ble Court held that "we do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. Hence, the applicants are not entitled to get any relief as sought for in the OA and the OA is liable to be dismissed.

Applicant in rejoinder aver that in a promotion, the order of merit is the seniority and not the date of joining, which has no relevance.

6. Heard the counsel for applicants and respondents and the written submissions made.

The matter placed before the Tribunal is that the services of Inspector of Post Offices are to be reckoned with effect from the date on which



training commenced. Applicants refer to FR-9 cited in their OA at paragraph C of the grounds. The Government of India orders is reproduced below:

“(1) Training period before appointment on stipend or otherwise, counts for increment.- Under FR 26 only duty in a post on time-scale counts for increments in that time-scale. As per FR 9(6)(a)(i), the services as a probationer or apprentice is treated as duty provided that service as such is followed by confirmation. As such, the training period during which a Government servant is not remunerated in the scale of pay attached to the post cannot be treated as duty.

2. The Staff Side in the National Council (JCM) have raised a demand that the training period should be counted for the purpose of drawing increments as otherwise the concerned staff, particularly the non-Gazetted in the technical Departments, where the training period is a long one is put to perpetual disadvantage, vis-a-vis the staff in non-technical jobs who are recruited along with technical staff in the same scale of pay.

3. The matter has been considered in the National Council (JCM) and it has been decided that in case where a person has been selected for regular appointment and before formally taking over charge of the post for which selected person is required to undergo training, training period undergone by such a Government servant whether on remuneration of stipend or otherwise may be treated as duty for the purpose of drawing increments.

4. These orders take effect from 1st October, 1990. On the demand of the Staff Side in the National Council (JCM), the matter has further been examined and it has been decided that the benefit of treatment of such training period as duty for the purpose of increment may be allowed in the case of those Government servants also who had undergone such training on or after 1st January, 1986. However, in such cases the benefit of counting period for pay will be admissible on notional basis from 1st January, 1986 and actual basis from 1st October, 1990.

[G.I., Dept. Of Per. & Trg., O.M. No. 16/16/89-Estt.(Pay-I), dated 22nd October, 1990 and O.M. No. 16/16/92-Estt.(Pay-II), dated the 31st March, 1992.]

It is clarified, in consultation with Department of Personnel and Training, that the above orders are applicable only in cases of direct recruits, who are compulsorily required to undergo training before taking up Government employment.

[G.I., Dept. Of Telecom, Lr. No. 3-27/90-PAT, dated the 23rd August, 1991]

Clarification.- It is now clarified that the above order is applicable in all those cases where the employees were under training as on 1.1.1986 (even if training commenced before 1.1.1986, but completed after 1.1.1986) or deputed for training on or after 1.1.1986. The condition that benefit on this account will be on notional basis up to 30.9.1990 will continue to apply in cases relating to pre-1.10.1990 period.

[G.I., Dept. of Per. & Trg., O.M. No. 16/16/89-Estt. (Pay-I), dated the 30th August, 1994.]”



7. The applicants were Postal Assistants who competed in the LDCE for promotion as Inspector of Post Offices. Having qualified the exam they were deputed for training from 5.9.2005 to 14.1.2006. Hence they reckon that their service as IPO counts from 5.9.2005 onwards. Respondent contends that a Postal Assistant who qualifies in the Inspector's examination becomes an Inspector or is given posting as an Inspector only after completion of training, whereas the condition for appearing in PSS Group-B examination is five years of regular service as Inspector. When the applicants are undergoing training and till passing the exam they are drawing the pay of a Postal Assistant. They draw the pay of Inspector only on posting as Inspectors on completion of training. Hence, the five years service as Inspector for PSS Group-B examination will count from the date they are posted as Inspector and not from the date they are deputed for undergoing training preparatory to take over the job of an Inspector. During this period of training they were drawing Postal Assistants' scale of pay. Hence, it is the recruitment rule which specifies five years regular service which comes in the way of the 2nd applicant who has qualified in the exam. The 1st applicant has not qualified in the exam.

8. Respondent admits that clause 23(2) of FR-9 lays down that in all cases where pre-service training is considered necessary before actual appointment to the post, the period spent by an officer on training immediately before such appointment would count as qualifying service for the purpose of eligibility for appearing in departmental examinations even if

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the officer is not given the scale of pay of the post or is only given a nominal allowance. Hence, the respondent while drawing up the Recruitment Rules for PSS Group-B should have taken cognizance of this FR provision by adding the same. One of the apprehensions expressed by the counsel for respondent is that sometimes due to inconvenient posting the persons who under go training may not join the post after training as he is already drawing the higher pay. To cover such an inconvenience, the person who passes the exam and undergoes training would avail available and admissible leaves which is permissible under the rules and which is also treated as duty.

9. No Recruitment Rule can be drawn in a vaccum and the same has to take cognizance of the provisions already laid down and provided under other rules particularly the FR as quoted in this case. Respondent needs to amend their Inspector of Post Office Recruitment Rules to incorporate the provisions of FR-9. Applicant No. 2 who has qualified in the PSS examination was eligible for appearing in the examination and be given appointment as PSS Group-B with effect from the date of appointment of her immediate junior who was qualified and was appointed in the said examination. Ordered accordingly.



(P. GOPINATH)
ADMINISTRATIVE MEMBER



(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

“SA”