

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 393 of 2009

Monday, this the 5th day of April, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

K.K. Gopalakrishnan, S/o. the late A.P. Sankaran Vaidyar,
 aged 60 years, Group 'D' (Retired), Quilandi HPO,
 residing at Puthiyedath House, Panthalayam PO,
 Quilandi.

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Applicant

**(By Advocate – Mr. O.V. Radhakrishnan, Sr. along with
 Mr. O.F. Justin)**

V e r s u s

1. Superintendent of Post Offices, Vadakara Division,
 Vadakara 673 101.
2. Post Master General, Northern Region, Calicut.
3. Chief Post Master General, Kerala Circle,
 Thiruvananthapuram - 695 033.
4. Union of India, represented by its Secretary,
 Ministry of Communication, New Delhi.

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Respondents

(By Advocate – Mr. Rajesh for Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 5.4.2010, the Tribunal on the
 same day delivered the following:

ORDER

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

This applicant has a chequered history. An Extra Departmental
 Delivery Agent, he started his litigation from 2002 onwards and went up to
 the Apex Court and finally not satisfied with the verdict given by the



Department, the present Original Application has been filed with the following prayers:-

- "i. To issue appropriate direction or order directing the respondents 1 to 3 to hold DPC for appointment of the applicant to Group D against the vacancies of the year 1997 and 1998 and to promote him against the vacancy arose on 31.12.1997, if not on 14.6.1998 and to grant him appointment to Group D with effect from the date of his entitlement with all consequential benefits immediately, and at any rate, within a time-frame that may be fixed by this Hon'ble Tribunal;
- ii. to issue appropriate direction or order, directing respondents 1 to 3 to reckon the service from the date of his notional promotion to Group D in implementation of Annexure A-1 order towards qualifying service for pension and to grant him regular pension from the following month of his retirement on 30.06.2008 and to grant his all retiral benefits immediately, and at any rate, within a time-frame that may be fixed by this Hon'ble Tribunal;
- iii. to issue appropriate direction or order, directing the respondents to grant arrears of pension and retiral benefits with penal interest at the rate of 12% per annum till the date of payment;
- iv. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case;

And

- v. to award costs to the applicant."

2. The brief facts of the case are as follows:-


- a) While the applicant was working as Extra Departmental Delivery Agent in Vadakara Postal Division, he wanted to be appointed as Group-D employee and he filed OA No. 130 of 2002 before this Tribunal for a direction to appoint him as Group-D employee in any of the post arose during 1997 and 1998 on the basis of his seniority and also on the basis of his service as ED Agent. On hearing the Original Application on merit by the order dated 14th June, 2002, this Tribunal held as follows:-



"10. In the result, in the light of the above discussion, we declare Annexure A11 order dated 20.7.2000 illegal, incompetent and inoperative and the stipulation in Annexures A12 and A13 to observe the stipulation contained in Annexure A11 is also inoperative. These three impugned orders are therefore quashed to the said extent. The respondents are directed to consider the case of the applicant for appointment to Group-D vacancies which arose in the year 1998 and 1999 on the basis of his seniority, irrespective of the fact that he has crossed the age of 50 years and to give him appointment as Group-D if he is found suitable by the Departmental Promotion Committee. In that event, the applicant should be given notional seniority with effect from the date on which a person below him in the seniority list of ED Agents has been appointed against the vacancies of any of these years. The applicant shall not be entitled to arrears of pay and allowances on the basis of his notional appointment. The above directions shall be complied with within a period of two months from the date of receipt of a copy of this order. There is no order as to costs."

b) However, the order passed by this Tribunal has been taken before the Hon'ble High Court of Kerala in OP No. 23876 of 2002 by the Department. As per the judgment dated 24th May, 2007 the Hon'ble High Court held that "we make it clear that the principle laid down by the Tribunal will be confined to the parties to OA 130/2002". However, the judgment of the Hon'ble High Court has been taken in Special Leave Petition before the Apex Court which was numbered as Civil Appeal No. 3407 of 2009 and finally the Apex Court dismissed the Special Leave Petition.

c) After the verdict given by the Apex Court a Contempt Petition has been filed before this Tribunal by the applicant as CP(C) 50 of 2008 and as per the order dated 30th September, 2008 the said CP(C) has been closed on the reason that the respondent Department has



passed an order in favour of the applicant. However, during the pendency of the Special Leave Petition and also the pendency of the Contempt case, the Department has passed Annexure R-1 order by which the applicant was promoted as Group-D as per Office Memo No. B2 dated 20.9.2002 subject to the outcome of the SLP. However, that order has been passed by the Department promoting the applicant only with effect from 25.10.2000.

3. Aggrieved by the stand taken by the Department, the present Original Application has been filed by the applicant with the above prayers as stated in the earlier paragraphs.

4. The Original Application has been admitted by this Tribunal and ordered notices to the respondents. The respondents are resisting the Original Application by filing a reply statement and also relying on Annexure R-1 order dated 9.7.2008. The stand taken in the reply statement by the Department is that though this Tribunal has directed the Department to consider the case of the applicant for promotion to the post which arose in the years 1997, 1998 and 1999, the DPC for consideration of promotion to Group-D only met on 30.8.2000 and as the junior of the applicant one Saranan has been promoted with effect from 2000 only, the applicant was also promoted with effect from that date i.e. 25.10.2000. The further stand taken in the reply statement is that during the period 1997, 1998 and 1999 there was no appointment given or promotion given to Group-D as the Department officials have not reported the vacancies in Vadakara Division.



Further it is stated that as the Departmental Promotion Committee met on 30.8.2000 the applicant has been promoted. It is also stated in the written statement that the applicant has been given notional Group-D status with effect from the same date on which his next junior has been appointed i.e. on 25.10.2000 and hence the order dated 9.7.2008 (Annexure R-1) is in full compliance with the orders passed by this Tribunal.

5. On receipt of the reply statement the applicant filed a rejoinder in which further stand taken is that as the Writ Petition filed before the Hon'ble High Court as well as the SLP filed before the Apex Court have been dismissed, the Department is bound to consider the order passed by this Tribunal and the applicant is entitled to be promoted to the vacancy arose during 1998 and the justification now given by the Department that since his next junior was given promotion only with effect from 2000, he shall also be given promotion only with effect from 2000 is not justifiable.

6. We have considered the entire case of the applicant on hearing the counsel appearing for the parties. The learned senior counsel Mr. O.V. Radhakrishnan appearing for the applicant submits that since this Tribunal has accepted the case of the applicant in paragraphs 9 & 10 of the order dated 14th June, 2002 passed in OA 130 of 2002, the respondents are bound to follow the orders passed by this Tribunal and the applicant is entitled for promotion to the post arose during 1998 and the applicant is also entitled for counting his service for pensionary purpose with effect from 1998 and if the promotion is granted to the applicant for the post arose during 1997-1998



the applicant ought to have been covered the required period for service pension and the Department cannot justify that only because of the reason that the DPC met only on 30.8.2000 to consider the vacancy arose during 1997 to 1999 is not an excuse for giving effect to the orders passed by this Tribunal by appointing the applicant in Group-D in a post arose during 1998. The counsel further submits that as per Annexure A-12 answer which he received on application filed under the Rights to Information Act would show that there were vacancies during the period 1997, 1998 and 1999. Further it is also relied on by the learned counsel for the applicant that as per Annexure A-12 the information which he received from Superintendent of Post Offices, Vadakara Division would show that no appointments were given during the period 1997, 1998 and 1999 and appointments were only given for the years 1996 and 2000. If so as per the information which he received from the Postal Department it is clear that there were four vacancies existed in Vadakara Division during 1998 and as per the seniority list kept by the Department, the applicant ought to have been considered for the vacancy arose on 1.1.1998 i.e. to be considered for the vacancy which arose on 31.12.1997 as it could be treated as a vacancy arose during 1998. The learned counsel further submits that in paragraph 13 of the reply statement the respondents have stated that the SLP has been disposed of by the Apex Court upholding the orders passed by this Tribunal and the applicant has been appointed in the cadre of Group-D on the basis of his seniority against the vacancy for the year "1998". If so, the applicant is entitled to count his service with effect from 1998 as he ought to have been appointed for the vacancy arose on 31.12.1997 to be treated as arisen on



1.1.1998.

7. To the above arguments relying on the reply statement filed on behalf of the respondents the counsel appearing for the respondents submits that because of the pendency of the Writ Petition before Hon'ble High Court as well as the SLP before the Apex Court, the case of the applicant could not be considered. However, the department has passed Annexure R-1 order promoting the applicant with effect from 25.10.2000 as his junior has been appointed only during 2000. Hence the promotion now ordered for the applicant is in accordance with the orders passed by this Tribunal and the applicant is not entitled to count his service as Group-D employee with effect from 1998.

8. From the rival contentions now raised before this Tribunal the question to be considered is that whether the applicant is entitled for prayers which he had prayed in the Original Application or not. We have anxiously considered the entire arguments of the counsel appearing for the parties and also perused the documents produced before this Tribunal. It is admitted case before this Tribunal as well as the Hon'ble High Court of Kerala that the orders of this Tribunal can be given effect by giving promotion to the applicant to a post which arose during 1997 and 1998. However, documents now produced before this Tribunal by the applicant especially Annexures A-12 and A-13 would show that during the period 1997 to 1999 there occurred four vacancies in the Vadakara Division and nobody has been appointed during this period. If so as per the seniority list kept by the department it



was incumbent on the part of the department to give appointment to the applicant to any one of the vacancies occurred during the period from 1997 to 1999. For this question we have considered the fact that as per the information gathered from the Department it is shown that on 31.12.1997 a vacancy has arisen in Vadakara Division and that vacancy can be considered as a vacancy arose during 1.1.1998. If so, as per the seniority list kept by the Department, the applicant ought to have been appointed to that vacancy with effect from that date onwards. Therefore, the order passed by the respondents as Annexure R-1 is not in accordance with the true letter and spirit of the order passed by this Tribunal in OA 130 of 2002. Especially it could be seen from the finding rendered by this Tribunal in that Original Application that the case of the applicant should be considered for appointment to Group-D vacancy which arose in the years 1998 and 1999 on the basis of seniority, irrespective of the fact that he has crossed the age of 50 years and to give him appointment as Group-D if he is found suitable by Departmental Promotion Committee. This finding have been misinterpreted by the Department except saying that he has crossed the age of 50 years and therefore, he has not been considered and his junior has been considered only on 2000. This stand of the respondents is not justifiable and we are not accepting such a stand taken by the Department in giving appointment to the applicant with effect from 2000 and consider his case for notional promotion, though it was a notional promotion for counting the period with effect from 1.1.1998 for the purpose of pension.

9. Accordingly, we see that Annexure R-1 requires re-consideration by the




Department and the applicant should be assigned his seniority and appointment position with effect from 1.1.1998 and he is entitled for the entire period of his notional promotion for counting his pension and the department shall pass appropriate orders on that effect within a reasonable period at any rate within 45 days from the date of receipt of a copy of this order.

10. With the above direction the Original Application is allowed to the extent aforesaid. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

"SA"