

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 17-6-87

APPLICATION NO 2046 /86(F)

W.P. NO

Applicant

Shri Nazarath

v/s

The Supdt of Post Offices,
Belgaum Division & another

To

1. Shri Nazarath
Sub-Divisional Inspector
Hukkeri Sub-Division
Post & Telegraph Dept.
Hukkeri
Belgaum Dist.

2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050

3. The Superintendent of Post Offices
Belgaum Division, Belgaum

4. The Post Master General
in Karnataka
Karnataka Circle
Bangalore - 560 001

5. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/XXXXX

XXXXXX ORDER passed by this Tribunal in the above said
application on 5-8-87.

R.V. Deo
DEPUTY REGISTRAR
XXXXXX (JUDICIAL)

Encl : as above

RECEIVED 18/8/87
J. M. S.
28/8/87

Diary No. 1003/c.R/87
Date: 21-8-87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH, BANGALORE

DATED THIS THE 5TH AUGUST, 1987

Present: Hon'ble Sri P. Srinivasan

Member (A)

APPLICATION NO. 2046/86(F)

NAZARATH
C/o M.Raghavendra Achar,
Advocate,
No. 1074 and 1075,
Banashankari Ist Stage,
Sreenivasa Nagar II Phase,
BANGALORE

Applicant

(Sri M.R. Achar... Advocate)
Vs.

1. Superintendent of Post
Offices, Belgaum Division,
Belgaum.

2. Pest Master General in
Karnataka, Karnataka Circle,
Bangalore-1.

Respondents

(Sri M.S. Padmarajaiah,... Advocate)

This application has come up for hearing
before this Tribunal to-day, Hon'ble Member (A)
made the following :

O R D E R

The applicant entered service in the Postal
Department as Postal Assistant on 17.9.1963. The
next promotion for a Postal Assistant is to the
Lower Selection Grade (LSG). Promotion was to
be made through two channels. One of them was
through a qualifying examination to the extent
of 1/3rd of the posts. Among those who qualified
in this examination, promotions were to be made
on the basis of seniority. The applicant qualified
in this examination and his turn for promotion
on the basis of seniority became due in November
1981. By order dated 28.11.1981 he was promoted



to the LSG. However, meanwhile the applicant took a competitive examination for a still higher post of Inspector of Post Offices (Inspector) held in July and August 1981. He passed this examination also and became eligible for appointment as Inspector. He was sent for four weeks practical training from 23.11.1981 for the post of Inspector. It was while he was still under training that the aforesaid order dated 28.11.1981 prometing him to LSG was issued: M This was ~~not~~ national because he did not actually work in the LSG. A complication introduced at this stage was that the applicant was directed to exercise an option either to be appointed to LSG or as Inspector. It is not clear under what provision this option was asked for. It was, however, explained at the hearing that since persons selected for appointment as Inspector often reject such appointment the and that was why the applicant was asked whether he would accept the post of Inspector, if offered. On 2.1.1982 the applicant indicated that he would accept appointment as Inspector. In pursuance of this option, the applicant was appointed as Inspector with effect from 23.1.1982. It is clarified that after completion of training (and till his appointment as Inspector), M the applicant was appointed as Wireless Inspector, a post which carried the same pay scale as Postal Assistant with a special pay of Rs. 40. Since there was an audit objection the applicant's appointment to the LSG by order dated 28.11.1981 referred to above was cancelled by order dated 20.1.1982. In other words, the applicant was treated as having continued to work in the pay scale of Postal Assistant and M



his pay on appointment as Inspector was fixed with reference to the pay drawn by him as Postal Assistant. The contention of the applicant is that while he was undergoing training he was eligible for promotion to the post of LSG, on preferma basis in terms of Government of India, Ministry of Finance, OM dated 14.3.1978 printed at page 127 of Swamy's compilation of Fundamental Rules and Supplementary Rules Volume I 7th edition. Therefore, the order dated 28.11.1981 promoting him to LSG while he was undergoing practical training to the post of Inspector was a perfectly valid order and he was entitled to the pay of that post according to the "next below" rule. Therefore cancellation of this promotion was not in order.

As a consequence, when he was promoted as Inspector, the pay that he would have drawn in LSG should have been taken into account and his initial pay as Inspector should have been fixed applying FR 22-C. In this application the applicant seeks an order from this Tribunal setting aside order dated 16.12.1985 (Annexure C) by which the applicant's representation against the cancellation of his appointment to LSG was rejected.

2. Shri M.R. Achar, and Shri M.S. Padmarajaiah, have been heard.

3. I have considered the rival contentions, by Shri M.R. Achar that the applicant was entitled to the promotion as LSG even though he was also selected for appointment as Inspector and that of Shri M.S. Padmarajaiah that he was not entitled to both the promotions and having opted to be appointed as



P. S. K

Inspector he could not be given promotion as LSG. Government of India, Ministry of Finance, letter dated 14.3.1978 clearly states that when a Government servant is undergoing training or instruction in India and is treated as on duty under FR 9 there should be no objection to his promotion to the next higher grade with effect from the date he would have been so promoted had he not proceeded on training provided he had been approved for such promotion and all his seniors except those considered unfit had been promoted to that post. No doubt this letter does not deal with practical training for a higher post but I see no reason why the terms of that letter should not apply to the facts of the present case. As long as the applicant was under practical training for the post of Inspector he was still a Postal Assistant and would be entitled to all promotions to which a Postal Assistant was eligible, if any vacancy arose during that period. It is clear that a vacancy in LSG occurred during that period and the applicant was duly promoted to LSG obviously under the "next below" Rule. If he had also qualified for appointment as Inspector that does not mean that till he was appointed as Inspector he should be denied his normal promotion to LSG. The option given to him was only to ensure that he would accept the post of Inspector if and when he was appointed to that post: it cannot operate to deny him promotion to LSG since it was his right provided he fulfilled the requirements which ^{he} did ~~and~~ the



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authority did in fact give him that promotion in the first instance. I have, therefore, no hesitation in striking down the action of the respondents cancelling the promotion of the applicant to LSG by order dated 28.11.1981. The applicant's pay in the LSG should be regulated under the next below rule set out in Ministry of Finance OM dated 14.3.1978 to which reference has been made earlier and the initial pay of the applicant in the post of Inspector will thereafter be regulated with reference to the pay he would have drawn in LSG by applying FR 22-C.

5. In the result the application is allowed. Parties to bear their own costs.



SJ -
MEMBER (A) 5/81

True Copy

R. V. Venkateshwar
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
17/8