

BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL
BANGALORE BENCH , BANGALORE

DATED THIS THE 17TH DAY OF NOVEMBER 86

Present : Hon'ble Justice K.S. Puttaswamy, .. Vice-
Chairman

Hon'ble Shri.L.H.A. Rego .. Member

Transferred Application No.777/86.

D.G. Panchamukhi, Major,
Assistant Post Master,
General Post Office,
Bangalore-560 001. Applicant

Vs.

1. Post Master (Gazetted),
General Post Office,
Bangalore-560 001.
2. The Regional Director of
Postal Services,
Bangalore Region,
Office of the Post Master General,
Karnataka Circle,
Bangalore-560 001.
(Shri.M.S.Padmarajaiah)
Advocate for Respt.

.... Respondents.

The application has come up for hearing before
Court today. The Vice Chairman made the following :

O R D E R

This is a transferred application received from
the High Court of Karnataka under Section 29 of the
Administrative Tribunals Act of 1985(Act).

2. The applicant initially joined service in the postal department on 20-7-1945 as a Clerk in the then Bombay Circle, was confirmed in that post from 1-3-1948. Some time in 1950 he was transferred to Dharwad postal division which came under the new Karnataka Circle formed from 1-4-1960.

3. As on 22-9-1980 the applicant was working as an Assistant Post Master (APM) in the Bangalore General Post Office (GPO). On that day the Post Master (Gazetted) (PM) noticed certain dereliction of duty in the performance of duties of the applicant and initiated disciplinary proceedings under Rule 16 of the Central Civil Services (Classification Control and Appeal) Rules of 1965 (Rules) against him.

4. The gravamen of the charge against the applicant was that he had not attended to sorting of about 1500 postal articles which he denied. On an examination of the articles of charge and statement of imputations, the written statement filed by the applicant and the records, the PM by his order dated 11-12-1980 (Annexure-C) imposed the penalty of stoppage of promotion to the higher cadre for a period of one year. Aggrieved by the same the applicant filed an appeal before the Director of Postal Services, Bangalore Division (Director) who by his order dated 18-4-1981 (Annexure-B) dismissed the same. In Writ Petition No.11210/1981 filed before the High Court and transferred to this Tribunal the applicant had challenged the said orders made by the Director and the PM.

5. On 24-10-1986 the applicant made an application seeking for a direction to the respondents to consider his case for promotion from the date his immediate juniors was promoted to the cadre of Higher selection Grade-II (HSG-II) which has been allowed ^{on} the same day and therefore we are required to consider that aspect also.

6. Sri.D.G.Panchamukhi, the applicant in the case who argued his own case, contends that one Sri.K.S.Rao, as officiating PM was incompetent to initiate and inflict penalty under the Rules. In support of his contention Sri.Panchamukhi strongly relies on Government of India's instructions reproduced on page 59 of Swamy's Compilation of CCS Rules of 1985 Edition.

7. Sri.M.S.Padmarajaiah learned Central Government Standing Counsel appearing for the respondents contends that on the very submission made by the applicant Sri. K.S.Rao was in law competent to initiate and conclude the disciplinary proceedings against him.

8. According to the applicant, himself, Sri Rao was holding the post of PM on an officiating basis. Whatever be the differences between 'permanent' and 'officiating' tenures, those differences do not really make any difference to exercise the powers and functions that are attached to a post. An officer holding the post on an 'officiating' basis is not holding that post on an 'incharge basis' who can only attend to the current duties of the post. In this view there cannot be any doubt on the competence of Sri Rao to exercise the powers under the Rules.

9. The instructions of Government on which strong reliance is placed by Sri Panchamukhi read thus :

" (1) Officers performing current duties of a post cannot exercise statutory powers under the rules.-- An officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament(i.e. Income Tax Act)

or Rules, Regulations and By-Laws made under various Articles of the Constitution (e.g. Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules, etc.)."

He also relies on Rule 9(19) of the Fundamental Rules which reads thus :

(19):Officiate : A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. The Central Government may, if it thinks fit, appoint a Government Servant to officiate in a vacant post on which no other Government servant holds a lien"

We have carefully examined these provisions. We are of the view that these provisions do not militate against the view we have expressed earlier and do not provide for a contrary situation. We see no merit in this contention of the applicant and we reject the same.

10. Sri. Panchamukhi next contends that on 22-9-1980 there was a serious shortage of sorting postmen by reason of their absence or posting at some other places and, therefore, it was impossible for him to attend to sorting of all the articles well before the stipulated time, that too in the absence of proper lighting facilities and with due regard to all of them, he should have been exonerated of the charge.

11. Sri. Padmarajaiah contends that the authorities had considered the explanations offered by the applicant and their findings of fact do not justify interference by this Tribunal.

12. We notice that in his very first explanation, the applicant did refer to the story he developed in his written statement. Even otherwise, the PM on a detailed examination had found that there was full compliment of sorting postmen and there was dereliction of duty by the applicant. In appeal, the Director had independently considered the same and had concurred with the finding of the PM. We are of the view that the findings recorded by the authorities essentially on questions of fact based on evidence, do not suffer from any illegality which justifies our interference. We see no merit in this contention of the applicant and we reject the same.

12. Sri Panchamukhi lastly contends that Sri Rao was actuated by malice against him and his order is therefore illegal.

13. Sri. Padmarajaiah contends that the allegations of mala-fide made against Sri Rao are extremely vague and do not justify a detailed examination by this Tribunal.

14. We have carefully perused the allegations made by the applicant against Sri Rao. In appeal the Director had examined and rejected the same. We are of the view that the allegations of mala fide attributed by the applicant against Sri Rao are

vague and general and do not even justify us to call upon him to file his affidavit. We are constrained to observe that the allegations of malafides against Sri Rao have been made by the applicant in a very casual and light hearted manner. We see no merit in this contention of Sri Panchamukhi and we reject the same.

15. What now remains to be examined is the case of the applicant for promotion to HSG-II prior to the imposition of penalty and after the expiry of punishment imposed by the PM.

16. Sri Panchamukhi contends that his case for regular promotion as HSG-II from 1978 to 10-12-80 and from 11-12-1981 to 30-7-1982 on which day he retired from service had not been considered and given to him though his seniority, eligibility, suitability and vacancies in that cadre permitted the same.

17. Sri Padmarajaiah, contends that the claim of the applicant for promotion to HSG-II for the two periods is vague and does not justify this Tribunal to give any directions to the respondents.

18. Sri Padmarajaiah is right in his submission that the pleadings of the applicant on his claim for promotion for the two periods are vague. But we should not also ignore that the applicant is not assisted by a counsel. We therefore propose to examine the same on merit. We are of the view that this will be of the

19. We are of the view that this claim of the applicant has necessarily to be examined and decided by the appropriate promoting authority in the first instance, if not already done. We consider it proper to issue appropriate directions in that behalf.

20. In the light of our above discussion we make the following orders and directions:

1. We dismiss this application in so far as it challenges the orders of the Director and the PM imposing the penalty of withholding promotion for a period of one year.
2. We direct the respondents and the Post Master General, Karnataka Circle, Bangalore to consider the case of the applicant for regular promotions to HSG-II from 1978 to 10-12-80 and from 11-12-81 to 31-7-82 with due regard to his seniority, eligibility and vacancy position if not already done and pass such orders as the circumstances so justify extending all consequential benefits flowing from these orders.

21. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

M. R. Mehta
VICE CHAIRMAN 17/ii/88

Ch. S. S. S.
MEMBER (A) 17-2-88