

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 25 JAN 1989

APPLICATION NO (S) 1564 / 88(F)

W.P. NO (S) \_\_\_\_\_

Applicant (s)

Respondent (s)

Shri A.V. Keni  
To

V/s

The Post Master General, Karnataka Circle, Bangalore  
& another

1. Shri A.V. Keni  
Assistant Director (Postal Life Insurance)  
Office of the Post Master General  
Karnataka Circle, II Floor, G.P.O. Building  
Bangalore - 560 001
2. The Post Master General  
Karnataka Circle  
Bangalore - 560 001
3. The Deputy Director of Accounts (Postal)  
Karnataka Circle  
II Floor, G.P.O. Building  
Bangalore - 560 001
4. Shri M.S. Padmarajaiah  
Central Govt. Sng Counsel  
High Court Building  
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY~~/~~INDEXED~~ ~~INDEXED~~  
passed by this Tribunal in the above said application(s) on 18-1-89.

*B.V. Venkatesh*  
DEPUTY REGISTRAR  
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

DATED THIS THE EIGHTEENTH DAY OF JANUARY, 1989

Present: Hon'ble Shri P. Srinivasan .. Member (A)

APPLICATION NO. 1564/88

Shri A.V. Keni  
S/o (late) Vithaldas Achut Keni  
Assistant Director (Postal Life Insurance)  
Office of the Postmaster General  
Karnataka Circle, II Floor, GPO Bldg.,  
Bangalore - 560 001. .. Applicant

Vs.

1. The Postmaster General  
Karnataka Circle  
Bangalore - 560 001
2. The Deputy Director of Accounts  
Karnataka Circle (Postal)  
Bangalore - 560 001. .. Respondents  
( Shri M.S. Padmarajaiah, Advocate)

This application having come up  
for hearing before the Tribunal today, Hon'ble  
Shri P. Srinivasan, Member (A), made the following:

ORDER

The applicant is currently working  
as an Assistant Director in the office of the  
Post Master General (PMG), Bangalore. He joined  
the erstwhile Post and Telegraphs Department in  
1952 as a Clerk. In 1961 he was promoted as  
Inspector of Post Offices. With effect from  
5.7.1979, he was further promoted as Assistant  
Superintendent of Post Offices (ASPO) in the grade

*P. Srinivasan*



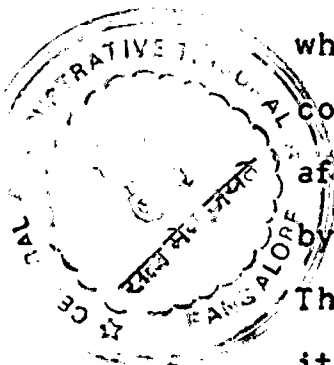
of Rs 550-900. However, in 1971 he was deputed to the Postal Training Centre (PTC), Mysore, as an Instructor. He was promoted as Senior Instructor in PTC from 5.7.1979. The Postal Training Centre is a separate unit not falling under the Karnataka Postal Circle of the Postal Department. The applicant was however borne on the establishment of the PMG, Karnataka Postal Circle.

2. The next promotion for an ASPO in the Postal Circle is to the Higher Selection Grade-I (HSG I) in the scale of Rs 700-900. For some reason or the other, no regular departmental promotion Committee (DPC) met for making promotions to HSG I between 1974 and 1983. However, during this period promotions to HSG I were being made on adhoc basis from among ASPOs in the order of their seniority. In this way, the applicant was promoted to HSG I on adhoc basis by order dated 29.12.1980 passed by the PMG, Bangalore and posted as Post Master, Chikmagalur.

3. The Principal, PTC where the applicant was working at the time declined to relieve the applicant to take up the post in HSG I in the parent department. There was no post in PTC in HSGI. But the applicant who held the post of Senior Instructor in the grade of Rs 550-900 (equivalent to the pay scale of ASPO) was promoted in PTC to the next higher post of Lecturer<sup>(a gazetted post)</sup> in the grade of Rs 650-1200 in a leave vacancy on 2.12.1980. He held that post till 31.12.1980 and then after a brief

reversion to the post of Senior Instructor, he was again appointed from 5.1.1981 as Lecturer, a post which he held till 9.12.1981 when he rejoined his parent department on further promotion as Superintendent of Post Offices (SPO) in the Postal Superintendents Service, Group B (PSS Group B for short). The applicant then applied to his parent department for a certificate that but for his appointment in PTC he would have worked as an Officer in HSG I from 29.12.1980 till he reported back as SPO on 9.12.1981, but for his officiating in the higher post of Lecturer in PTC. The matter was considered by the PMG in consultation with the Internal Financial Adviser and a certificate was issued on 5.8.1983 which reads as follows:

"Certified under FR 26 (C) (i) that Shri A.V. Keni, Lecturer, PTC, Mysore, would have officiated in HSG I cadre with effect from 29.12.1980 to the date of his regular promotion to PSS Group i.e., as SPO, Sirsi, from 9.12.1981 but for his officiating in gazetted cadre". It is common ground that certain advantages in the matter of fixation of pay accrued to the applicant by the issue of this certificate, into which it is not necessary to go for deciding the controversy between the parties here. Nearly 5 years after it was issued, the PMG cancelled the certificate by what ~~is termed as a~~ <sup>is an order</sup> "Corrigendum" dated 28.4.1988. The applicant is aggrieved with this cancellation as it was made without assigning any reason and since it resulted in a demand for recovery of excess amounts



*[Handwritten signature]*

alleged to have been made in the past on the basis of the earlier certificate. In due course on 27.5.1988 the Deputy Director Accounts, Karnataka Postal Circle called upon the applicant to repay the amounts to the tune of Rs 6,000/- and odd paid to him in excess in the past on the basis of the alleged wrong certificate. The applicant is aggrieved with this letter also.

4. The applicant who presented his case personally submitted that after having issued a certificate to him on 5.8.1983 taking into account all the relevant facts, the respondents were not justified in cancelling the same by the impugned order dated 10.6.1988 without assigning any reason whatsoever and without giving him an opportunity of being heard in the matter. The respondents have, in their reply cited as one of the reasons for cancelling the earlier certificate, the fact that the applicant had not actually worked as HSG I. The applicant pointed out that the need for a certificate arises only when a person does not actually work in the post in question, for otherwise no such certificate would be needed. The next reason stated in the reply of the respondents is that the promotion of the applicant to HSG I by order dated 29.12.1980 was only an adhoc promotion and so he was not entitled to a certificate under FR 26 (C) (i). The applicant submitted that during the period 1974 to 1983 all promotions to HSG I were

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made on adhoc basis and no DPC was held to make regular promotion. That being so, it was no fault of his that he was not promoted regularly. On the other hand, adhoc promotions were being made at the time for all intents and purposes like regular promotions following seniority and the vacancies thus filled up were not fortuitous vacancies. Therefore, merely because promotions were being made on adhoc basis as a matter of course, the applicant could not have been denied a certificate under FR 26(C)(i). A third reason given in the reply of the respondents was that if regular promotions had been made, the applicant's turn for promotion would have come only on 1.4.1983 by which time he had been promoted to PSS Group B. The applicant submitted that there was no basis for this statement. He further submitted that when promotions were being made on adhoc basis, the persons so promoted were given the benefit of fixation of pay in HSG I under FR 22C as if they had been regularly promoted and again on promotion to PSS Group B from HSG I their pay was fixed under FR 22 C. Thus adhoc promotion was no bar to fixation of pay under the normal rules. There was no need to speculate when an individual officer's turn for regular promotion would have come. The purpose of the certificate under FR 26 (c) (i) being fixation of pay, the applicant could not be denied the issue of the certificate. It was also seen from the reply of the respondents that because in the cases of 3 other persons who did not actually work in HSG-I who had sought for a certificate under FR 26(c)(i) relying on the applicant's case, <sup>they</sup> were found ineligible for the same, the certificate issued to the applicant had to be cancelled. The applicant submitted that the cases of those 3 persons



were different from his own. All these 3 persons were actually working in the Karnataka Postal Circle and were not on deputation. Nothing prevented them from taking over a post in HSG I in the Karnataka Circle, but for some reason or the other they did not. On the other hand the applicant was working in a different unit, ie., the PTC, Mysore, from where he was not relieved to join the post in HSG I in his parent department. The failure of the applicant to join in a post in HSG I in his parent department was not a matter of his own volition while the same could not be said of the 3 persons referred to in the reply of the respondents. If they could not be given a certificate because they did not work in HSG I as a matter of their own choice, the same criterion could not be applied to the applicant who was prevented from joining by reasons beyond his control.

5. Shri M.S. Padmarajaiah, learned counsel for the respondents strongly opposed the claim of the applicant. He reiterated the reasons stated in the reply, as to why the certificate should not have been issued in this case in the first instance, i.e., that the applicant had not actually worked in HSG I in his parent department, that his promotion on paper to HSG I was only an adhoc promotion and that his turn for regular promotion would have come in the normal course only on 1.4.1983, i.e., after he was appointed to PSS Group B. He, therefore, submitted that the cancellation of the certificate by the impugned order dated 28.4.1988 <sup>19</sup>10.6.1988 was perfectly legal.

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6. Before discussing the arguments on both sides, it is necessary to understand what FR26(c)(i) is all about. It reads as follows: "If a Government servant, while officiating in a post or holding a temporary post on a time-scale of pay, is appointed to officiate in a higher post or to hold a higher temporary post, his officiating or temporary service in the higher post shall, if he is reappointed to the lower post, or is appointed or re-appointed to a post on the same time-scale of pay, count for increments in the time-scale applicable to such lower post. The period of officiating service in the higher post which counts for increment in the lower post is, however, restricted to the period during which the Government servant would have officiated in the lower post but for his appointment to the higher post. This clause applies also to a Government servant who is not actually officiating in the lower post at the time of his appointment to the higher post, but who would have so officiated in such lower post or in a post on the same time-scale of pay had he not been appointed to the higher post". (emphasis supplied). Though the provision does not in terms speak of any certificate being issued there-under, I understand such a certificate is issued to specify the period during which the Government servant would have officiated in the lower post (portion underlined in above extract). The benefit of the provision - counting of the period for increment - has been extended even to cases where



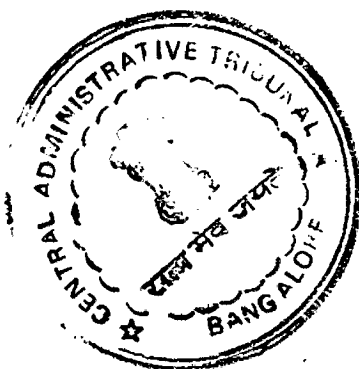
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11 the Government servant is not reappointed to the lower post (vide the earlier underlined <sup>portion</sup> ~~portion~~ in the extract above) by executive instructions (page 155, para 5(ii) of Swamy's F.R.S.R. Part -I General Rules, Ninth Edition) Nor is it necessary that the Government servant should be officiating in the lower post when he is appointed to the higher post. Therefore, but for the objections raised by the respondents to this application which I will deal with below, the applicant was eligible for such a certificate.

7. I may now turn to the rival contentions. It is not disputed that an order of promotion to HSG I was actually issued to the applicant on 29.12.1980 and he could not join a post in that grade in his parent cadre because he was holding a higher <sup>is gazetted</sup> post in a different unit i.e., PTC, Mysore, and the Principal of PTC would not release him. If the applicant had actually officiated in HSG I such a certificate would not have been necessary. The first objection of the respondents that the applicant had not actually worked in HSG I is therefore, meaningless. The objection that the applicant's promotion to HSG I was only adhoc does not also stand upto close scrutiny. I have perused the records relating to the issue of the certificate in the first instance and the cancellation made subsequently. When the certificate was originally issued an objection was indeed raised as to whether the applicant was entitled to it as his promotion was only on adhoc basis.

In a note recorded at the time, the Assistant Post Master General considered the question and observed that between 1974 and 1983 "for administrative reasons" no DPC meeting was held, and expressed the view that "for the omission on the part of this office, the official need not be deprived of the benefits, if any". He, therefore, recommended the issue of a certificate with which recommendation the Director, Postal Services, Head Quarters and the PMG, Karnataka Circle concurred. I do not see how the same reason could be unearthed again to cancel the certificate. As for the objection that if regular promotions had been made, the turn of the applicant would have come only on 1.4.1983, it is not known how this date has been arrived at. On the other hand, the practice at the time was to make all promotions only on adhoc basis and those promoted were given the benefit of fixation of pay under the normal rules, treating their promotion as normal promotion. That is why, the certificate was issued in the first instance treating the applicant's promotion to HSG I as a regular promotion for all practical purposes. Viewed in the light of the fact situation then prevailing it was a perfectly valid action. Its cancellation later therefore, was clearly unjustified. So far as the cases of the 3 other officials is concerned, they were at the material time working in the Karnataka Postal Circle unlike the applicant and were not prevented <sup>H</sup>~~them~~ from actually taking over a post in HSG I. It is not <sup>H</sup>~~avowed~~ <sup>avowed</sup> that they were "appointed



to officiate in a higher post or to hold a higher temporary post" as required in FR 26 (c) (i), a condition which the applicant fulfilled. Obviously, a certificate under FR 26(c)(i) is intended to protect persons who are prevented from working in a post in the parent cadre for reasons beyond their control, like being away elsewhere. The case of the applicant was different in that he was working in a different administrative unit and was not allowed to rejoin his parent cadre in HSG I. Thus, there was a material difference between the case of the applicant and those of the 3 other persons. The respondents were therefore, not justified in cancelling the certificate issued to the applicant merely because in the cases of the other 3 persons such a certificate could not be issued. Moreover, the cancellation of the certificate in the present case after 5 years resulting in monetary loss to the applicant without giving him an opportunity of being heard was bad in law on the score that it offended the audi alteram partem rule of natural justice and for that reason itself it deserves to be set aside. However, as already discussed, the cancellation was not justifiable even on the merits of the case.

8. In the view I have taken above, the impugned order of respondent no.1 dated 28.4.1988 and its Corrigendum dated 10.6.1988 (Annexure-A6 and A6a) cancelling the earlier certificate granted to the applicant is set aside. The letter of respondent no.2 dated 27.5.1988 (Annexure-A7) directing recovery of

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.....11/-

alleged excess payments made to the applicant  
in the past which admittedly is a direct  
consequence of the cancellation of the certificate  
is also set aside. The application is allowed.  
Parties will bear their own costs.



Sd/-  
MEMBER(A) 151

TRUE COPY

*P. V. Venkatesh*  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE