

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 14 DEC 1994

APPLICATION NO: 300 of 1994.

APPLICANTS:- Sri.T.S.Anandan,
V/S.

RESPONDENTS:- Secretary,Dept of Posts, New Delhi
and others.,

To

1. Sri.V.V.Balan, Advocate, Sri. V.V.Balan, Advocate,
No.75, Muddappa Road Cross, Muddappa Road Cross,
Maruthi Sevanagar, Bangalore-33. Maruthi Sevanagar, Bangalore-33.
2. Sri.M.S.Padmarajaiah, Senior Central
Govt. Stng.Counsel, High Court Bldg,
Bangalore-1.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 06-12-1994.

Copied & issued
on 14-12-94
G.S.


for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 300/ 1994

TUESDAY, THE 6TH DAY OF DECEMBER, 1994

SHRI V. RAMAKRISHNAN ... MEMBER (A)
SHRI A.N. VUJJANARADHYA ... MEMBER (J)

Shri T.S. Anandan,
Aged 45 years,
S/o Late Shri T.M. Samy,
LSCPA, Bangalore GPO,
Bangalore - 560 001. ... Applicant

(By Advocate Shri V.V. Balan)

vs.

1. Union of India,
Secretary, Deptt. of Posts,
Dak Tar Bhavan,
New Delhi - 110 001.
2. The Chief Postmaster General,
Karnataka Circle,
Bangalore - 560 001.
3. The Chief Postmaster (Gaz),
Bangalore G.P.O.,
Bangalore - 560 001. ... Respondents

(By Advocate Shri M.S. Padmajaiah, Senior Standing
Counsel for Central Government).

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant herein is aggrieved by the fact that his date of promotion to time bound one promotion scheme has been fixed as on 1.8.91 instead of as on 30.7.91 on which date he claims that he completed 16 years of service as he was recruited as Postal Assistant on 30.7.75.



2. We have heard Shri V.V. Balan for the applicant and Shri M.S. Padmarajaiah, the learned Senior Standing Counsel.

3. The applicant participated in a pen down strike on 14.9.84 alongwith a number of others for which the department issued an order dated 1.10.84 intimating that he had been inflicted with break in service with all attendant consequences including loss of pay and allowances under FR 17 A. Subsequently, by a letter dated 7.6.85, the Post Master General, Bangalore had reconsidered the matter changing the punishment of break in service and treating the date of unauthorised absence as 'dies non'. On a subsequent occasion on 25.5.89, the applicant participated in an All India General Strike. On this occasion also the department treated this day as 'dies non'. The department has taken the view that as these two days were treated as 'dies non', the applicant had not completed 16 years of qualifying service as on 30.7.91 but completed the qualifying service only on 1.8.91. The applicant is aggrieved by the stand of the department. Shri Balan says that this has resulted in the date of increment getting postponed by one month as the increment would be available only from the 1st of August of the subsequent years instead of the 1st of July. In support of his argument that the department's stand was illegal, Shri Balan brings to our notice the decision of the Full Bench of this Tribunal in TA No. 1104/86 and 1089/86 in the case of Mallela Sreerama Murthy and Another versus Union of India & Others which was disposed of on 17.8.89 by the Hyderabad Bench. In this judgement it was held that executive instruction cannot be conflicting with the rules. Shri Balan submits that the action taken by the

department was under FR 17 A which inter alia, provides that a period of an unauthorised absence in the case of an employee as a result of going on strike, etc. shall be deemed to cause an interruption or break in service unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi permanency and eligibility for appearing in departmental examinations for which a minimum period of continuous service is required. Shri Balan submits that this rule does not provide for the minimum period of continuous service for the purpose of promotion, such as to TBOP. Any instruction to the contrary which goes against the statutory rules is illegal. Shri Balan also refers in this connection to the reply statement of respondents that 'dies non' is not a punishment. He also states that it is a well-established principle that every government servant has to be considered for promotion in accordance with the provisions of the recruitment rules. In the present case, according to recruitment rules, only 16 years of service is required for promotion and as the applicant joined service on 30.7.75, he completes 16 years of service on 30.7.91 and he should have been promoted to higher post under TBOP scheme on that date.

4. Shri Padmarajaiah opposes the application on the ground that the term 'dies non' means 'the day did not exist'. As such, for the completion of 16 years of qualifying service, the existence of two days, namely, 14.9.84 and 25.5.89 should be taken as if they did not exist. He refers to the Chambers' Dictionary which defines 'dies non' as 'a day on which judges do not sit, or one on which normal business is not transacted'. The learned counsel for the respondents argues that this means that the day did not exist at all. He also disputes the contention of Shri Balan that the action of the competent authority was in violation of the statutory rules. He avers that FR 17 A

provides that a period of unauthorised absence on account of strike shall be deemed to cause break in service of the employee. The competent authority can, however, decide otherwise for the purpose of leave travel concession, quasi permanency and eligibility in appearing for departmental examination. The learned counsel contends that Rule 17 A does not restrict the break in service only for these purposes of leave travel concession, quasi permanency and eligibility in appearing for the departmental examination. Shri Padmarajaiah, therefore, submits that the department's action was correct and that the general circular dated 25.3.89 issued by the Ministry of Communications to the Post Masters General which stipulates that the period declared as 'dies non' will not be taken into account towards qualifying service for the purpose of time-bound one promotion does not suffer from any infirmity.

5. We have carefully gone into the submissions. Shri Balan's main contention is that the instruction of the department that the period treated as 'dies non' should not be taken into account towards qualifying service for the purpose of promotion under the TBOP is in violation of the statutory rules, namely, FR 17 A. Shri M.S. Padmarajaiah argues that the scheme itself is executive in nature and the department issued executive instructions for implementing this scheme.

6. Rule 17 A as brought out earlier provides that a period of unauthorised absence on account of strike shall be deemed to be a break in service for certain purposes. In the present case, action has not been taken under FR 17 A as the department has not treated the period as an interruption or break in service but has chosen to treat the period as 'dies non'. The question of restricting

the interruption or break in service that the employee only for the purpose of leave travel concession, quasi permanency and eligibility for appearing in the departmental examinations does not arise in the present case as there is no interruption or break in service. On the other hand, the two days have been taken into as 'dies non' and the applicant will not get any pay and allowances for these days and this period will not qualify for pension. In view of this the contention of the applicant that the provisions of statutory rules under FR 17 A have been violated is without substance. As these two days were treated as 'dies non' they should be taken as non-existent and could not be ^{included} ~~extended~~ for computing 16 years of qualifying service and the completion of 16 years of eligible service gets postponed to 1st of August, 1991. It is unfortunate for the applicant that the difference in two days has resulted in postponement of increment by one month but the same cannot be helped. Shri Balan draws our attention to the fact that the department has stated that these two days treated as 'dies non' will not constitute any break in service. It however, does not automatically mean that these two days should be counted for eligible service. The consequence of break in service is that the past service gets forfeited ^{including for ~~past~~ leaving date} whereas the treatment of the period as 'dies non' results in past service being counted excluding the date treated as 'dies non'.

7. In the light of the foregoing, we find that the action of the department is in order. The application is, therefore, dismissed with no order as to costs.

TRUE COPY

May 16/94
Section Officer
Central Administrative Tribunal
Bangalore Bench

(A.N. VUJJANARADHYA)
Bangalore MEMBER (J)

Sd/-

(V. RAMAKRISHNAN)
MEMBER (A)