

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00514/2016

Tuesday, this the 3rd day of April, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

V.V. Raman,
S/o. V.C. Velayudhan, aged 56 years,
Superintendent of Post Offices (PS Group B),
Lakshadweep Division, (on Ad-hoc promotion),
Head Post Office Complex, Kochi – 682 011,
permanent resident of Valiyaveettil House,
1.Cheroor P.O., Thrissur – 680 008.

Applicant

(By Advocate: Mr. Shafik M.A.)

Versus

1. Union of India,
represented by its Secretary to Government ,
Ministry of Communications & I.T,
Department of Posts, Dak Bhavan,
Sansad Marg, Govt. of India, New Delhi – 110 001.
2. The Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi – 110 001.
3. Member (Personnel),
Postal Services Board and Chairman of
Departmental Promotion Committee,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
4. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram – 695 033.
5. Post Master General,
Central Region, Kochi – 682 020.

Respondents

(By Advocate: Mr. P.R. Sreejith, ACGSC)

This Original Application having been heard on 21.03.2018, the Tribunal delivered the following order on 3.4.2018:

ORDER

By E.K.Bharat Bhushan, Administrative Member

In this OA, the applicant is challenging the Minutes of the Departmental Promotion Committee (DPC) held on 13.10.2015 to consider the selection of officials of Inspector Line for promotion to Postal Service Group-B Cadre for the year 2015-16 (under DPC quota 75%) [Annexure A3] and Annexure A4 Notification dated 10.11.2015 effecting promotion and postings in Postal Services Group-B Cadre. The reliefs sought in the OA are as follows:

(i) Set aside Annexure A3 to the extent it did not recommend the applicant for promotion to the cadre of Postal Service Group-B for the year 2015-16 under DPC quota of 75 percent.

(ii) Set aside Annexure A4 to the extent it did not promote the applicant to the cadre of Postal Service Group-B for the year 2015-16.

(iii) Issue an order or direction to the 2nd and 3rd respondents to convene Review DPC Meeting of the proceedings held on 13.10.2015 for promotion to the cadre of Postal Service Group-B for the year 2015-16 under DPC quota of 75 per cent and consider the applicant's case based on the eligibility without considering the adverse reports in Annexure A8 and A10.

(iv) Issue an order or direction to the 2nd respondent to issue orders promoting the applicant to the cadre of Postal Service Group-B with retrospective effect with all consequential benefits including seniority and pay.

2. The facts of the case are as below:

The applicant joined the Department of Post as a Sorting Assistant on 28.5.1979. After passing the departmental examination, he was promoted to the cadre of Inspector in 1992. Subsequently he was promoted as Assistant Superintendent of Post Offices w.e.f. 25.1.2004. Being eligible for promotion under 75% quota for Postal Services Group-B, his name came up for consideration before the DPC held on 13.10.2015. The relevant pages of the draft All India Seniority

List of the Cadre of Inspectors (IPO/IRM) which formed the feeder line for the promotion post are at Annexure A1.

3. The DPC considered the cases of 183 officers including the applicant from the normal zone of consideration as well as 85 officials from the extended zone of consideration for SC/ST officials. The Committee cleared the cases of 120 officials from the above two Zones. It also approved a list of 23 officials who were considered and whose cases were kept in 'sealed cover'. True copy of the DPC Minutes held on 13.10.2015 for promotion to 75% quota of the posts in Postal Services Group-B is at Annexure A3. As is seen, the applicant's name was included in Annexure: V of Ann: A3. Against his name, the notation "Rule-14 case pending" is indicated. The applicant states that no disciplinary or prosecution or departmental action of any kind was pending against him and he is aggrieved by the fact that his promotion was withheld on false reasons. Excluding him, the second respondent issued orders promoting 120 officials to the cadre of Postal Services Group-B vide notification dated 10.11.2015 Annexure A4.

4. At this point in the OA, the applicant goes on to mention certain events which took place when he was posted as Superintendent of Post Offices, Changanassery Division on ad-hoc basis from 5.6.2014 to 8.5.2015. He submits that a concocted story was made that he had misbehaved with one Smt.K.V.Vidya, Assistant Superintendent (HQs) in his office. Smt.Vidya whom the applicant had pulled up for lack of care in her duties, made up a story of sexual harassment and the 4th respondent, for his own reasons, forwarded the same to the Committee for Prevention of Sexual Harassment of Women at Work Place, Kerala Circle, Trivandrum (Internal Committee). The inquiry report which is at Annexure A7 concluded as follows:

*“However, neither the complainant nor any of the witnesses alleged any sexual advancement or any sexually coloured remark has been made by Sri. V. V. Raman against them. To substantiate the version of Sri. V V. Raman that it was due to personal vengeance, Smt. Vidya made a complaint against him, he submitted one representation and copies of some official communication issued by him to the complainant and one printed notice issued on behalf of the employees of Changanassery Division against Sri. V.V. Raman. These were also scrutinized by the committee and found that some of the allegations mentioned in the letter of complaint are reflected in the notice also. Regarding the allegations in the notice, one report by Sri. V.V. Raman appeared to have been sent to the higher authorities. In the said report, there is a mention about the incident of calling the ASP(HQ) as “**Chantha Pennu**”.*

In Para 3. Hence the argument raised by Sri V.V.Raman deserves some consideration.

The committee observed that the period of limitation of complaint to the complaint committee i.e., one month was not satisfied in the case. The incident stated in the letter of complainant dated 08.12.14 was allegedly occurred in August 2014, and no complaint was made by the complainant in August 2014 or subsequently prior to 08.12 14. Nor has the unreasonable delay been explained by the complainant. It is also observed that an official communication was issued by Sri. V.V.Raman to Smt. S.V. Vidya about her laxity in some official matters on 28.11.2014. Further the letter of complainant is dated 08.12.14 and a report of Sri. V.V.Raman regarding the allegations mentioned in the printed notice to PMG, Central region is also dated 08.12.14. Hence, the committee is of the opinion that the complainant was not in good terms with Sri V.V.Raman for official issues and also the complaint might have been made by the external instigation/advice.

However, it is established that Sri. V.V.Raman used to indulge in unnecessary loose talks with the complainant, Smt. V.H.Sherma, OA, Divisional Office and with other staff at work place which is unbecoming of a Govt. Servant and Sri V.V.Raman may be admonished to avoid such conduct in future.

As the official has already been transferred from Changanassery Division, the committee recommends the disciplinary authority to issue severe warning to the official with special mention that any case of recurrence will be viewed very seriously.”

5. Further to this report sent to the 2nd respondent, a communication showing the present vigilance status of the applicant was forwarded by the 4th respondent's office to the 2nd respondent through communication dated 28.9.2015 (Annexure A10). In this communication, it is stated that the vigilance status of the applicant is

not clear and under remarks column the following entry is seen:

“There was a complaint against the officer alleging sexual harassment. The Committee for Prevention of Sexual Harassment of Women at Work Places made enquiries into the allegation and has given report directing the Disciplinary Authority (DPS Central Region) to issue severe warning to the officer. A copy of the report is enclosed herewith. The D.A. has forwarded the copy of the report to both the complainant and the charged officer. The reply of the complainant and the charged officer on the enquiry report has been received by the D.A. The case has not yet been decided by the D.A. Hence the vigilance status is noted as “Not clear”.

6. This was followed by the proceedings of 5th respondent (Annexure A9 dated 18.1.2016) stating that the competent authority has decided to administer a severe warning to the applicant. He submits that the inquiry report was deliberately delayed and after submission, the case was kept without further action in order to withhold the vigilance clearance and thereby deny promotion to the applicant. He further submits that he is governed by CCS (Conduct & Service) Rules 1964 and CCS (CCA) Rules, 1965 for the purpose of inquiry and punishment for misconduct. Hence an inquiry under Rule 14 or Rule 16 of CCS (CCA) Rules ought to have been initiated if there was adequate ground and the applicant should have been given an opportunity to defend himself before a decision was taken in the case. Besides, severe warning does not amount to a punishment under the relevant rules. He also draws attention to the order of the Hon'ble Supreme Court in ***K.V.Jankiraman AIR 1991 SC 2010*** which makes it obligatory that denial of vigilance clearance for promotion can be resorted to only in the following three circumstances:

- (i) *Government servants under suspension*
- (ii) *Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending and*
- (iii) *Government servants in respect of whom prosecution for a criminal charge is pending.*

As can be seen, none of these contingencies exists in his case.

7. As a result of the tribulations that he was forced to go through, his confidential report was also given 'below bench mark' recording. However, as is seen from the facts above, denial of promotion by the DPC was on account of withholding of vigilance clearance and pendency of Rule 14 case and not on account of the grading in the APAR.

8. The applicant repeatedly represented his case to the authorities and he also received a reply which is at Annexure A14 whereby it is stated that his case is kept in 'sealed cover' as per vigilance status received from Kerala Circle and the matter is under consideration in consultation with the Vigilance Division of the Directorate. Further, as per communication from the office of the Chief Postmaster General, Kerala Circle at Annexure A15 dated 1.2.2016, it is stated as follows:

“The final order in the disciplinary case against the official has now been issued. The official is “severely warned”. A copy of the order dated 18.1.2016 is enclosed herewith for further necessary action. The vigilance status of the officer is now “CLEAR”.

9. By way of grounds, the applicants argues that the reliance placed by the authorities on Annexure A3 & Annexure A4 is irregular and illegal. The DPC recommendation, placing his case in 'sealed cover', is based on a false report. No vigilance case or departmental action was pending against the applicant when his vigilance clearance was withheld on that ground. The alleged complaint against him placed before the Compliant Committee on Sexual Harassment at Work Place was not dealt with as per the procedure. In any case the proceeding before such a committee does not amount to initiation of disciplinary proceeding and much less initiation of major penalty proceeding. Contemplation of disciplinary proceeding cannot be a bar for promotion as per extant rules and instructions.

10. The inquiry report in no way found the applicant guilty of the charges. In fact, it has found fault with the complainant for her delayed complaint as well as having had personal reasons for pursuing the complaint. Yet the Committee decided to recommend severe warning. The second respondent should have promoted the applicant with retrospective effect on receipt of vigilance clearance as contained in Annexure A15.

11. Per contra, the respondents maintain in the reply statement that while forwarding the records for consideration of the DPC, the complaint against the applicant was pending before the Committee for Prevention of Sexual Harassment of Women at Work Place, Kerala Circle. The report in no way exonerates the applicant from all wrong doing. After adhering to due process and after giving adequate opportunity to the applicant, the Committee had recommended a severe warning to be administered. The order at Annexure A9 imposing the punishment was issued only on 18.1.2016 because of representation made by the applicant against the recommendations of the Committee.

12. The applicant has filed a rejoinder wherein he has stated that he has been subsequently reverted from the post of Superintendent of Post Offices of Lakshadweep Administration as per order dated 8.5.2015 posting him in ASP Cadre as Manager, National Sorting Hub, Kochi. When charges of sexual harassment are not proved, it is not known how action under Rule 3 (C) of the CCS (Conduct) Rules, 1964 can be invoked. Annexure A31 is a letter dated 10.3.2016 from the office of the Chief Postmaster General which reads as follows:

“3. The name of the official was not included in the list of promotees communicated vide Directorate letter no.9-02/2015-SPB dated 10.11.2015. The Circle is not aware of the details as to why the official was not considered for promotion. In case the “sealed cover procedure” was followed at the time of DPC meeting, it is hereby clarified that disciplinary action under CCS (CCA) Rules was not initiated against the official and no charge memo was issued or pending against him at that time. As stated in Para 2, a complaint against the official was pending before the Complaints Committee on Sexual Harassment of Women at Workplaces and it was also decided to take disciplinary action. But the disciplinary authority, after considering the Committee's report, has now decided not to take any disciplinary action under CCS (CCA) Rules against him. The official was issued a “SEVERE WARNING” and the case was closed. The vigilance status of the official is now “CLEAR” and this was already reported to Directorate vide this office letter of even no. dated 1.2.2016.

4. It is seen that the three officials viz., (I) Sri Ranjan Kumar Srivastava (ii) Sri V.Mariappan (iii) Sri K.Prakash Rao, who are juniors to Sri V.V.Raman and against whom there were disciplinary cases pending, have now been promoted to PS Gr.B vide Directorate lr no.9-02/2015-SPG dated 26.2.2016. But Sri V.V.Raman whose vigilance status is clear, is not seen included in the list of promotees. It is not known whether official was considered by the DPC this time.

5. It is once again clarified that no disciplinary action under CCS CCA Rules has been initiated or is pending against the official. The matter is reported for further necessary action at Directorate. It is also certified that:

- (i) The vigilance status of the official is CLEAR*
- (ii) There is no penalty current against the official*
- (iii) The ACR/APAR gradings in Annexure I enclosed are final.*
- (iv) All APARs since 2008-09 onwards have been communicated and no representation is pending.*
- (v) The ACRs of the periods prior to 2008-09 having below bench mark grading have also been communicated and no representation is pending.”*

13. Heard Sri Shafik M.A., learned counsel for the applicant and Sri P.R.Sreejith, learned ACGSC for the respondents. All records and pleadings have been examined.

14. The applicant in this case has been subjected to a set of circumstances which have deprived him of promotion to the next grade. In fact, Sri Shafik pointed out that the applicant was working on ad-hoc basis in the promoted post but due to harassment and lack of understanding on the part of the respondents, has been

reverted to the subordinate position of of ASP and is apparently forced to work at a station under his own declared junior. Sri Shafik further pointed out the DPC had chosen to ignore his name for promotion on the ground that his vigilance status was not clear. The information that Rule 14 case is pending against the applicant is also offered at different stages in the communications which have been submitted. However, it is seen that at no point has action under Rule 14 or 16 of CCS (CCA) Rules been resorted to. When we examined the case on the bench mark that the Jankiraman (Supra) has to set, it is clear that the respondents were ill advised and were clearly at fault in excluding him. First of all, the report of the internal committee that examined the allegation relating to sexual harassment at work place did not give any unequivocal recommendation concerning his culpability. Yet while going to the extent of even imputing motives behind the complaint, the report recommended issuance of severe warning to the applicant.

15. Making the case even more curious is the firm plea made by the 4th respondent in the applicant's favour through communication at Annexure A31. It appears from the facts before us that the applicant has clearly been a victim of circumstances beyond his control and has been more sinned against than sinning. We have no hesitation in coming to the conclusion that the OA has merit on its side. The OA succeeds and all reliefs sought in the OA, excluding award of costs are allowed. This order should be implemented by the respondent No.4 within one month of receipt of copy of the same.

(E.K.Bharat Bhushan)
Administrative Member

(U. Sarathchandran)
Judicial Member

Annexures filed by the applicant:

Annexure A3: Copy of the Minutes of the DPC held on 13.10.2015 for promotion to 75% of the posts in Postal Services Group B, with Annexures I to IV.

Annexure A4: Copy of the Notification No.9-02/2015-SPG dated 10.11.2015.

Annexure A1: Copy of the relevant pages of the Draft All India Seniority List of IPO/IRM for 1992 examination.

Annexure A2: Copy of the letter dated 14.12.2015.

Annexure A5: Copy of the letter dated 28.11.2014 addressed to Smt.Vidya with copy endorsed to the 5th respondent.

Annexure A6: Copy of the complaint dated 8.12.2014 of Smt.Vidya.

Annexure A7: Copy of the report dated 17.6.2015 of the Committee for Prevention of Sexual Harassment of Women at Work Places, Kerala.

Annexure A8: Copy of the detailed report containing Annual Confidential Reports (ACRs) and vigilance status of the applicant sent by 4th respondent for consideration of the DPC vide letter No.ST/1/1/4/2015 dated 5.6.2015.

Annexure A9: Copy of the memo No.DPS/1/2015 dated 18.1.2016.

Annexure A10: Copy of the letter No.ST/1/1/5/2015 dated 28.9.2015.

Annexure A11: Copy of office memorandum No.F.No.22034/4/2012-Est (D) dated 2.11.2012 issued by Govt of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training).

Annexure A12: Copy of the representation dated 18.12.15 submitted by the applicant to the Member (Personnel) & Chairman of the DPC of PS Group B.

Annexure A13: Copy of the reminder representation dated 2.3.2016.

Annexure A14: Copy of the reply vide letter No.24-35/2016-SPG dated 21.4.2016.

Annexure A15: Copy of the letter dated 1.2.2016.

Annexure A16: True copy of the Notification No. 9-02/2015(1)-SPG dated 09.06.2016.

Annexure A17: True copy of the Notification No. 9-14/2016-SPG dated 09.12.2016.

Annexure A18: True copy of the OM No. 21011/1/2005-Estt(A) (Pt-II) dated 23.07.2009.

Annexure A19: True copy of the OM No. 22011/4/91-Estt (A) dated 14.09.1992.

Annexure A20: True copy of the Memo No. ST/63-3/2014 dated 30.05.2014 issued by the AD (Staff) of the 5th respondent.

Annexure A21: True copy of the Memo No. ST/63-4/2014 dated 04.03.2015 issued by the AD(Staff) of the 5th respondent.

Annexure A22: True copy of the Charge Report No. END No. SP/LKD/PF dated 21.04.2015.

Annexure A23: True copy of the Memo No. ST/42-21/2009 (Pt) dated 08.05.2015 issued by the AD (Staff) of the 5th respondent.

Annexure A24: True copy of the Charge Report No. END No. SP/LKD/PF dated 08.05.2015.

Annexure A25 : True copy of the Charge Report No. Endt No.SPC/Staff/Misc dated 08.05.2015.

Annexure A26: True copy of the Memo No. B-101 dated 27.05.2016 issued by the SSRM, EK Division.

Annexure A27: True copy of the Memo No. ST/63-4/2016(Pt) dated 08.05.2017 issued by the AD (Staff) of the 5th Respondent.

Annexure A28: True copy of the Tabular Statement showing the seniority position of the applicant vis-a-vis his juniors in ASP's cadre.

Annexure A29: True copy of the Tabular Statement showing the officiating promotions given to 12 ASPs junior in rank to the applicant.

Annexure A30: True copy of the Order No. ST/1/1/5/2016 dated 28.06.2017 issued by the APMG (Staff) of the 4th Respondent.

Annexure A31: True copy of the Letter No. ST/1/1/5/2016 dated 10.03.2016 of the APMG (Staff) of the 4th respondent.

Annexure A32: True copy of the letter No. D.O. No. ST/1/1/5/2016 dated 14.06.2016 of the 4th respondent.

Annexure A33: True copy of the Notification dated 09.12.2016 issued by the ADG (SGP) of the 2nd respondent.

Annexure A34: True copy of the letter No. VIG/RTI/GENL/2017 Pt. I dated 12.07.2017 issued by the APMG of the 4th respondent.

Annexure A35: True copy of the Order No. ST/63-5/2017 dated .14.07.2017 issued by the Asst. Director (Mails) of the 4th respondent.