

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01107/2017

Friday, this the 14th day of September, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

E.T. Hari,
Aged 55 years, S/o. Thrathan Nampoothiripad,
Asst. Superintendent of Post Offices, (OD), Idukki Division,
Thodupuzha,
Residing at 'Elemprakodath Mana',
Eroor P.O., Ernakulam District – 682 306. **Applicant**

(By Advocate – Mr. Shafik M.A.)

V e r s u s

1. Union of India,
Represented by the Director General Posts,
Department of Posts, New Delhi – 110 011.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
3. The Asst. Postmaster General,
O/o. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
4. The Postmaster General,
Central Region, Kochi – 682 020. **Respondents**

(By Advocate – Mr. N. Anilkumar, Sr. PCGC)

This Original Application having been heard on 10.09.2018, the Tribunal on 14.09.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member -

1. The reliefs sought by the applicant are as follows:
 - (i). To call for the records relating to Annexure A1 to A12 and to quash Annexure A1, Annexure A2 and Annexure A3 being illegal and arbitrary;

- (ii). To declare that the applicant is entitled to be continued for promotion as per Annexure A7 and to direct the respondents to grant him Ad-hoc promotion in PS Group B;
- (iii). To declare that the applicant is eligible to be promoted on Adhoc basis on the basis of his seniority in Annexure A4 seniority list without supersession;
- (iv). To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case;
- (v). To grant the cost of this Original Application.

2. The brief facts of the case are:

The applicant was working as an Assistant Superintendent of Post offices. He has been promoted on Ad-hoc basis to PS Group B and later on he was promoted as Superintendent of Post offices in August 2015. In 2016, he was transferred to Idukki Division. The posting on Ad-hoc basis was for one year. At the end of one year, he was reverted as Assistant Superintendent on 27.06.2017 and was awaiting further orders of continuation. As per the order dated 10.07.2017 his posting in PS Group B was further ordered by the 2nd Respondent. One of his juniors was posted as Superintendent of Post Offices at Idukki itself. It was demoralising for him to work in an office, where he was working as the Head of Division. He has sought a transfer to Ernakulam. Thereafter on 07.09.2017, his promotion order was cancelled as the vigilance clearance was not given due to an incident in 2004, where he was appointed as an Inquiry Officer, in a departmental inquiry against a Postman and he has submitted two inquiry reports. The applicant has given a reply to the charge sheet on 12.12.2017 explaining that there is no misconduct on his part. The other charge sheet has been issued after an inordinate delay of 14 years and at this stage it was difficult to recollect anything. An OA was filed by the charged Postman, who was awarded

punishment of compulsory retirement, which was held to be a excessive disproportionate punishment by CAT and by the Hon'ble High Court. The applicant further submits that he is not responsible for issuing excessive punishment, which is the domain of the disciplinary authority and the respondents have necessarily passed on the responsibility upon the applicant. Being aggrieved by this, he has approached this Tribunal and sought quashing of Annexure A1, Annexure A2 and Annexure A3 and seeking promotion as in Annexure A7.

3. Notices were issued to the respondents to be appeared and filed a reply statement. In the reply statement, it was decided to take disciplinary action against the applicant as per the directions of the Hon'ble High Court in W.P. (C) No. 536/2008 dated 26.05.2016. Due to the said reasons herein, the applicant cannot be promoted and posted on Ad-hoc basis in any of the PS Gr. B vacancies at present. A charge memo was issued vide Annexure A3 to the applicant by providing him time to submit his representation against the statement of imputations.

4. Having justified the issuance of charge sheet pursuant to the decision taken by the higher authorities, a rejoinder has been filed by the applicant and an additional reply statement has also been filed by the respondents.

5. Heard learned counsel for the parties at length. The Hon'ble High Court has passed an order on 26.05.2016 in W.P.(C) No. 536/2008 as under:-

“8. After going through the materials on record this Court finds that the delinquent employee was proceeded against with reference to some misconduct and punishment was imposed after completing the procedural formalities. It is true that the concerned person who was occupying the office

of the 3rd respondent expired in the meanwhile and another person by name Sri. Ramachandran came to be posted in the said place, who had brought existence of only the 2nd enquiry report to the notice of the Tribunal. But in view of the particular facts and circumstances and the sequence of events followed and also since the Department has released the entire family pension for the service of the deceased original applicant has given compassionate appointment to his son, the 2nd applicant, we find it fit and proper to delete the imposition of cost, which is ordered accordingly. We also find it necessary to modify the direction given by the Tribunal to initiate disciplinary action against the officers mentioned therein, but for observing that, it will be open for the 2nd respondent/Chief Post Master General to consider whether any serious lapse or omission was there on the part of any of the officials in connection with the cause of action projected in the OA and if so, to consider whether any further action is be proceeded against them.”

6. After a careful reading of the directions issued by the Hon'ble High Court, we also find it is necessary to modify the directions as Board Directors, who initiated the disciplinary action against the officials but observes that it will be open for the 2nd Respondent, Chief Postmaster General, to consider any serious lapse or omission therein on the part of any of the officials. In an occasion that caused all action projected in the OA, in the light of the early order the Hon'ble High Court was of the view that the Chief Postmaster General, the 2nd Respondent, has to consider whether any serious lapse or omission were there on the part of the officials including the applicant or not. The crux of the directions of the Hon'ble High Court was the Chief Postmaster General has to examine before issuing the charge sheet whether there is any serious lapse or omission. He has to get information in this regard on the basis of the materials available. But as per the submissions made by the learned counsel for the applicant, Mr. Shafik M.A., the same has been done instead of this, straightforward charge sheet was issued. During the course of the argument Mr. Shafik M.A., learned counsel for the applicant, has submitted that the Chief Postmaster General has to form an opinion before issuing the charge sheet to the extent that any serious lapse or

omission is there or not, but the same has not been done. The Department straightforwardly issued again the charge sheet for the said misconduct. The Hon'ble High Court has already modified the directions passed by the Tribunal to initiate disciplinary action. Thus, there is no point for issuing another charge sheet unless or until an opinion is formed by the Chief Postmaster General that there is any serious lapse or omission on the part of the applicant. This is the exercise to be done.

7. We have called for the records of the Department and found that the Chief Postmaster General has observed and discussed in view of the Hon'ble High Court of Kerala's observations that suitable action should be taken against the officials for submitting two Inquiry Reports, one as charge proved and another as charge not proved. We may initiate action under Rule 16 as Ad-hoc promotion has been cancelled. By a plain reading by the Chief Postmaster General depicts that he has not applied his mind to the directions issued by the Hon'ble High Court as stated by Mr. Shafik M.A. The learned counsel for the respondents has also confirmed that the department has initiated further departmental action against him pursuance to the directions of the Chief Postmaster General.

8. We are of the view that the observations made by the Chief Postmaster General is misconceived. The Hon'ble High Court clearly observed that it is open for CPMG to consider whether there is any serious lapse or omission on the part of the applicant as noticed by CPMG. He has to form an opinion that whether the submission of two inquiry reports by the applicant is a serious lapse/omission or not. Instead of doing this, he has straightforwardly ordered departmental inquiry under Rule 16 of CCS Rules.

The CPMG has not formed any opinion considering the fact that two inquiry reports really has any impact on the punishment awarded by the disciplinary authority against the said Postman, rather, he has mechanically passed an order for further inquiry against the applicant as if he has not to form an opinion and is further inquiry against the applicant. The Inquiry to be held against the applicant as per the order passed by CAT was already modified by the Hon'ble High Court. The Hon'ble High Court was pleased to give a liberty to the department that in case they form an opinion that there is serious lapse or omission on the part of the applicant, then only departmental action can be taken against the applicant otherwise not. This observation of the CPMG is in clear violation of the directions of the Hon'ble High Court, which is not sustainable in the eyes of law.

9. Thus, we hereby set aside the impugned order passed by the Chief Postmaster General and as well as Annexure A1, Annexure A2 and Annexure A3 as illegal and arbitrary and the action directed by the CPMG in accordance with the directions, if he found that there is no serious lapse then the applicant is entitled to the consequential benefits. Thereafter, the applicant is entitled for all consequential benefits such as promotion etc. With this observations, OA is disposed of. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures of the applicant

Annexure A-1 - True copy of the Memo No. ST/63-4/2016(Pt) dated 27.06.2017 issued by the AD (Staff) of 4th Respondent.

Annexure A-2 - True copy of the Order No. ST/1/1/5/2017 dated 22.08.2017 issued by the 3rd Respondent.

Annexure A-3 - True copy of the Charge Memo No. VIG/17/CR/32/2017 dated 27.11.2017 issued by the 2nd Respondent.

Annexure A-4 - True copy of the All India Seniority list of ASPs/IPs in Kerala Circle as on 01.07.2005.

Annexure A-5 - True copy of the Memo No. ST/63-4/2014 dated 05.08.2015 issued by the Asst. Director (Staff) of the 4th Respondent.

Annexure A-6 - True copy of the Memo No. ST/63-4/2016(Pt) dated 27.05.2016 issued by the Asst. Director (Staff) of 4th Respondent.

Annexure A-7 - True copy of the Order No. ST/1/1/5/2016 dated 10.07.2017 issued by the 3rd Respondent.

Annexure A-8 - True copy of the Order of this Hon'ble Tribunal dated 10.11.2017 in MA 1016/2017.

Annexure A-9 - True copy of the OM F. No. 22034/4/2012-Estt. (D) dated 02.11.2012. issued by the Ministry of Personnel.

Annexure A-10 - True copy of the Order dated 02.07.2007 of this Hon'ble Tribunal in OA No. 859/2004.

Annexure A-11 - True copy of the representation dated 12.12.2017 submitted by the Applicant.

Annexure A-12 - True copy of the judgment dated 26.05.2016 of the Hon'ble High Court in WP (C) No. 536/2008.

List of Annexures of the Respondents

Annexure R1 - A true copy of Memo No. ST/1/1/5/2016 dated 21.06.2017.

Annexure R2 - true copy of the Rule 127 A of Postal Volume II.
