

**Central Administrative Tribunal
Ernakulam Bench**

CP(C)/180/00090/2018
in OA 380/2012

Wednesday, this the 19th day of June, 2019

CORAM

**HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER**

V.Sarada, aged 42 years, W/o.C.Bhaskaran
presently working as Asst. Superintendent of Post Offices
Kasaragode Sub Division
Kasaragode 671 121
Residing at “Vellamthatta”, Bekal Fort
Kasaragode 671 316 Petitioner

(By Advocate: Mr. Shafik M.A)

Versus

1. Sri.A.N.Nanda
Secretary
Department of Posts
Ministry of Communications
New Delhi – 110 001
2. Smt.Sarada Sampath
Chief Postmaster General
Kerala Circle
Trivandrum – 695 033 ... Respondent

(By Advocate: Mr.T.C.Krishna, Sr.PCGC)

The CP(C) having been taken up on 18.6.2019, this Tribunal delivered the following order on 19.6.2019.

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

CP 180/00090/2018 in O.A 380/2012 has been filed by Smt.V.Sarada

alleging non-compliance of the directions contained in Annexure P-1 order of this Tribunal. This Tribunal had ordered as follows:

“ 8. Respondent admits that clause 23(2) of FR-9 lays down that in all cases where pre-service training is considered necessary before actual appointment to the post, the period spent by an officer on training immediately before such appointment would count as qualifying service for the purpose of eligibility for appearing in departmental examinations even if the officer is not given the scale of pay of the post or is only given a nominal allowance. Hence, the respondent while drawing up the Recruitment rules for PSS Group-B should have taken cognizance of this FR provisions by adding the same. One of the apprehensions expressed by the counsel for respondent is that sometimes due to inconvenient posting the persons who undergo training may not join the post after training as he is already drawing the higher pay. To cover such an inconvenience, the person who passes the exam and undergoes training would avail available and admissible leaves which is permissible under the rules and which is also treated as duty.

9. No Recruitment Rule can be drawn in a vaccum and the same has to take cognizance of the provisions already laid down and provided under other rules particularly the FR as quoted in this case. Respondent needs to amend their Inspector of Post Office Recruitment Rules to incorporate the provisions of FR-9. Applicant no.2 who has qualified in the PSS examination was eligible for appearing in the examination and be given appointment as PSS Group-B with effect from the date of appointment of her immediate junior who was qualified and was appointed in the said examination. Ordered accordingly.”

2. The respondents had challenged the order in OP(CAT) 323/2016, which was dismissed by the Hon'ble High Court on 17.09.2018.

3. The petitioner is the second applicant in the Original Application. Along with her colleague, she had filed the Original Application seeking to quash the decision of the respondents rejecting the candidature of the petitioner for competing in the 2012 Limited Departmental Competitive Examination for

promotion to PSS Group-B. The petitioner alleged that the respondents have failed to comply with the order of this Tribunal till date and have not passed any orders appointing her with effect from the date her junior was posted.

4. Heard Shri.Shafik.M.A who appeared for the petitioner and Shri.T.C.Krishna,Sr.PCGC for the respondents. An affidavit has been filed by respondent no.2 in December 2018 explaining the procedures involved and expressing readiness on the part of the respondents to comply with the order within minimum time.

5. When the Contempt Petition was heard on 10.6.2019, Shri.T.C.Krishna, learned Standing Counsel for the respondents submitted a copy of the order dated 5.4.2019 issued by the Department of Posts which reads as follows:

“On the basis of result of LDCE held on 3.6.2012 declared by DE Branch letter No.A 34013/03/2012-DE dated 01.04.2019, in partial modification of order No.9-01/2018 SPG II (H) dated 06.09.2018, approval of the competent authority is hereby conveyed that the vacancy year for which Ms.V.Sarada has been promoted and posted is 2011-12 (Supplementary Result) and her notional date of promotion will be w.e.f 19.7.2018 (f/n), the date from which his immediate junior Shri.Prasad Yarlagadda has been promoted. Also, she will not be entitled for any back wages.

The above order is in pursuance of direction of Hon'ble CAT, Ernakulam Bench in O.A No.380/2012 and is subject to the outcome of O.A No.810/2018 in CAT Ernakulam Bench.”

6. Shri.Shafik M.A appearing for the petitioner argued that a transfer order posting the petitioner to Tamil Nadu region has been issued wherein it is stated

that she had been adjusted against 2012-13 - 2015-16 vacancies and this is challenged in O.A 810/2018, which is pending before this Tribunal.

7. Shri.T.C.Krishna, learned counsel for the respondents submitted that there is no ambiguity in the order complying with the direction of this Tribunal and she has been and will be assigned to 2011-12 seniority list and her date of promotion will be with effect from 19.7.2018 i.e, the date from which her immediate junior Shri.Prasad Yarlagadda had been promoted.

8. When the CP(C) was finally heard on 18.6.2019, learned counsel for the respondents Mr.T.C.Krishna, Sr.PCGC submitted an affidavit by respondent no.2 enclosing copies of orders issued on behalf of respondent no.1 dated 1.4.2019 (Annexure M.A 1), promotion and postings order dated 6.9.2018 (Annexure M.A 2) and a copy of the order issued on behalf of respondent no.1 dated 5.4.2019 (Annexure M.A 3) granting the applicant promotion and posting on the basis of her position in 2011-2012 (supplementary result) seniority list and indicating that her notional promotion will be with effect from 19.7.2018, i.e, the date from which his immediate junior Shri.Prasad Yarlagadda has been promoted. The order under implementation had granted no other relief and none can be claimed through the C.P, going beyond the order in the Original Application.

9. Considering the limited scope available to us in contempt proceedings, we are of the view that in this case compliance with our order is complete. The

matter of her transfer to a different region is a relief which was not part of this Original Application and in any case this issue is being adjudicated in O.A No.810/2018, pending before us. Hence, taking note of the fact that there is substantial compliance with our directions contained in Annexure P1 Order, CP(C) is closed. Notices shall stand discharged.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure P1 - True copy of the order dated 18.12.2015 of this Hon'ble Tribunal Original Application No.380/2012.

Annexure P2 - True copy of the letter F.No.A-34013/03/2012-DE dated 26.2.2018 issued by the Asst. DG .(DE)

Annexure M.A1 - True copy of the letter No.A-34018/67/2016-DE dated 6.12.2018

Annexure M.A 1 - True copy of the letter No.A-34018/67/2016-DE dated 4.1.2019 along with copy of Directorate E.O No.320825/A/2018 dated 11.12.2018 from the Ministry of Law & Justice, Department of Legal Affairs.

Annexures in affidavit filed by the respondents on 18.6.2019

Annexure M.A-1 - True copy of the letter F.No.A-34013/03/2012-DE dated 01/04/2019

Annexure M.A-2 - True copy of Notification dated 6.9.2018

Annexure M.A-3 - True copy of the order No.11-06/2018-SPG-II dated 05.04.2019

Annexure M.A-4 - True copy of the acknowledgment dated 10.04.2019.

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