

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 31ST DAY OF MARCH 2016/11TH CHAITHRA, 1938

WP(C).No. 30628 of 2008 (S)

AGAINST THE ORDER IN OA 178/2007 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 18-01-2008

PETITIONER:

K.P.VARUGHESE, S/O.PAULOSE, 61 YEARS,
RETIRED POSTMASTER, KOCHI FOREIGN POST,
RESIDING AT KOTTARAM HOUSE,
CHEMBUMUKKU, THRIKKAKARA.P.O,, ERNAKULAM DISTRICT.

BY ADVS.SRI.P.C.SEBASTIAN
SRI.MARTIN G.THOTTAN

RESPONDENTS:

1. THE DIRECTOR OF POSTAL SERVICES (HQ),
O/O.THE CHIEF POSTMASTER GENERAL, KERALA CIRCLE,,
THIRUVANANTHAPURAM-695033.
2. THE CHAIRMAN, DEPARTMENTAL PROMOTION
COMMITTEE (FOR PROMOTION TO HSG I),O/O THE CHIEF
POSTMASTER GENERAL, KERALA CIRCLE,, THIRUVANANTHAPURAM.
3. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF COMMUNICATIONS, DEPARTMENT OF
POST, NEW DELHI.

R1-R3 BY ADV. SRI.N.NAGARESH, ASGI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-03-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WPC NO.30628/2008

APPENDIX

PETITIONER'S EXHIBITS

P1: COPY OF MEMO NO.ST/3-4/2004 ISSUED BY R1

P2: COPY OF MEMO NO.ST/3-3/2004 DT.13.12.04 ISSUED BY R1

P3: COPY OF THE ORDER DT.18.1.08 OF THE HON'BLE C.A.T.ERNAKULAM BENCH
IN OA NO.178/07

P4: COPY OF THE ORDER DATED 18.6.08 OF THE HON'BLE CAT ERNAKULAM
BENCH IN RA NO.11/08 IN OA 178/07

P5: COPY OF MEMO NO.ST/3-3/2007 DT/11.4.08 ISSUED BY ASST.POSTMASTER
GENERAL O/O CHIEF POSTMASTER GENERAL KERALA, THIRUVANANTHAPURAM

RESPONDENTS' EXHIBITS: NIL

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TRUE COPY

PA TO JUDGE

**K.SURENDRA MOHAN &
P.V.ASHA, JJ.**

W.P.(C) No.30628 of 2008

Dated this the 31st day of March, 2016

JUDGMENT

Surendra Mohan, J.

The petitioner is aggrieved by the final order of the Central Administrative Tribunal (hereinafter referred to as "the CAT" for short) in O.A.No.178 of 2007, to the extent it has been held that the petitioner would not be entitled to the pay in respect of the post to which he was illegally denied promotion, though notional promotion has been ordered. The petitioner had filed O.A.No.178 of 2007 aggrieved by the denial of promotion to the post of Higher Selection Grade I (HSG-I) when his juniors were promoted as per order dated 13.12.2004 issued by the first respondent.

2. The petitioner had entered service as Time Scale Postal Clerk (now Postal Assistant) on 20.7.1967. He was promoted as Lower Selection Grade with effect from 1.7.1986. With the object of ameliorating the promotional prospectus of the staff, like the petitioner who were facing stagnation, a time bound promotional

scheme was introduced in the Postal department in the year 1983. Accordingly, an upgradation to the next higher post was on completion of 16 years of qualifying service in the lower post was contemplated. It was followed by another scheme called Biennial Cadre Review providing a second promotion on completion of 26 years of total service in the lower grade. Though the juniors of the petitioner were granted the 2nd upgradation, he was overlooked, on the ground that, disciplinary proceedings were pending against him. The petitioner contended that, the disciplinary proceedings against him were over and that the punishment of reduction to a lower stage of six months had also expired on 13.9.1995. The petitioner had approached the CAT for appropriate reliefs. Accordingly, he was placed in the HSG II Grade with effect from 1.1.1996. It was thereafter that the juniors of the petitioner were granted promotion to the next higher grade of HSG I. It was challenging the said action of the respondents that the petitioner has approached the CAT by filing O.A.No.178 of 2007.

3. The claim of the petitioner was disputed by the

respondents, contending that disciplinary proceedings were pending against him and for the said reason he was not entitled to be considered. However, later on, it was admitted that the action of the respondents in rejecting the claim of the petitioner was unjustified and that he ought to have been promoted.

4. The CAT considered the contentions of the parties elaborately and referred to the previous proceedings initiated and found that the denial of promotion to the petitioner when his juniors were promoted was without any justification. However, while granting the final relief, the CAT has ordered in Ext.P3 as under:

"Hence we declare that the applicant is entitled to be considered for promotion and direct that a review DPC may be held for considering his promotion to HSG-I cadre in the light of extant rules and if he is found otherwise eligible shall be promoted from the date of promotion of his immediate juniors as per Annexure A-4 with all consequential benefits. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. As the applicant has already retired from service any such promotion granted will be only on notional basis.

Consequential benefits would be restricted to refixation of last pay drawn for pensionary purposes only. O.A. is accordingly allowed”.

5. According to the petitioner, the promotion that was legitimately due to him having been denied for no fault. He had been prevented from working in the higher post, though he was at all time willing to do so. Therefore, he had actually been denied the benefit of working in the promotional post and drawing a higher salary due to an illegal act committed by the respondents. In view of the above, denying to him his salary in the promotional post for the only reason that he had retired from service was unjustified. Therefore, putting forward the above contention, the petitioner moved a review application R.A.No.11 of 2008 before the CAT. The Review Application was considered and was dismissed by Ext.P4 order. The CAT has set out its reasons for rejecting the Review Application in paragraph 4 of Ext.P4, which reads as under:

We have heard the counsel for review applicant Shri. O.C.Sebastian as well as the counsel for the respondents Sri.Shaji V.A. For Mr.TPM Ibrahim Khan, SCGSC. The aforesaid

contention of the applicant that there is error apparent on the face of the record and contradiction in the order of this Tribunal is misplaced. It is a conscious decision of this Tribunal that the applicant was not entitled for any enhanced pay and allowances and arrears if he was found fit by the Review DPC for promotion and if he was promoted as HSG-I from the date of promotion of his immediate juniors. Since the applicant has not worked against the promoted post and retired from service later, he is entitled only notional promotion. We, therefore, do not find any merit in this Review application and accordingly the same is dismissed.

6. What emerges from the above is that, though the petitioner had been found to have been denied the legitimate promotion by the illegal acts of the respondents, the CAT has by a conscious decision held that the petitioner was not entitled to arrears of salary in the promotional post in which he has not worked. The salary has been denied to him on the principle of "no work no pay". Though the counsel for the petitioner has been at considerable strain to point out that in the facts and circumstances of the present case, it was only appropriate that the arrears of salary also should have been granted, we are not

W.P.(C) No.30628 of 2008

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persuaded to interfere with the order of the CAT. We remind ourselves on the fact that, we are exercising the supervisory jurisdiction of Article 227 of the Constitution of India. Therefore, as the Tribunal has exceeded its jurisdiction, there is no warrant for interference. In the present case, the petitioner has admittedly retired from service and the direction of the CAT has not been implemented as evident from Ext.P5. Therefore, we do not find any justification for interfering with Exts.P3 or Ext.P4 orders of the CAT.

In the result, this writ petition is dismissed.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
P.V.ASHA
JUDGE

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