

Superintendent of Post Offices Vs. K.K. Gopalakrishnan

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Jan-10-2011

Judge : P.R.Raman, Judicial Member & the Honourable Mr. K. George Joseph, Administrative Member

Appeal No. : R.A.No.46 of 2010 IN O.A.No.393 of 2009

Appellant : Superintendent of Post Offices

Respondent : K.K. Gopalakrishnan

Advocate for Pet/Ap. : For the Applicants: Sunil Jacob Jose, SCGSC. For the Respondent: O.V. Radhakrishnan, Sr. along with Ms. Rekha Vasudevan, Advocate.

Judgement :

HON'BLE MR. JUSTICE P.R.RAMAN, JUDICIAL MEMBER

1. This is an application for review of the order passed in O.A.No.393/09. That O.A was filed to issue appropriate orders directing the respondents No.1-3, who are review applicants herein, to hold DPC for appointment of the applicant to Group 'D' against the vacancies of the year 1997 and 1998 and to promote him against the vacancy arose on 31.12.1997, if not as on 14.6.1998 and to grant him appointment to Group 'D' with effect from the date of his entitlement with all consequential benefits immediately and issue appropriate directions to reckon the service from the date of his notional promotion to Group 'D' in implementation of Annexure A-1

order towards qualifying service for pension and to grant him retirement benefits.

2. Annexure A-1 order dated 14.6.2002 is the one passed in O.A.130/02. That O.A was filed by the applicant who was an Extra Department Agent acting as Group 'D' in the Head Post Office, Quilandi and he has sought for certain declarations that Annexure A-11, Annexure A-12 and Annexure A-13 orders produced therein are unconstitutional and to direct the respondents to consider him for promotion to Group 'D' against the vacancy which arose on or after 6.3.1996 on the basis of his seniority and appoint him to Group 'D' with effect from the date of his entitlement with all consequential benefits. Finally it was disposed of by this Tribunal and operative portion of the order in para 10 is as follows: -

"10. In the result, in the light of the above discussion, we declare Annexure A11 order dated 20.7.2000 illegal, incompetent and inoperative and the stipulation in Annexures A12 and A13 to observe the stipulation contained in Annexure A11 is also inoperative. These three impugned orders are therefore quashed to the said extent. The respondents are directed to consider the case of the applicant for appointment to Group-D vacancies which arose in the year 1998 and 1999 on the basis of his seniority, irrespective of the fact that he has crossed the age of 50 years and to give him appointment as Group-D if he is found suitable by the Departmental Promotion Committee. In that event, the applicant should be given notional seniority with effect from the date on which a person below him in the seniority list of ED Agents has been appointed against the vacancies of any of these years. The applicant shall not be entitled to arrears of pay and allowances on the basis of his notional appointment. The above directions shall be complied with within a period of two months from the date of receipt of a copy of this order. There is no order as to costs."

3. That order was challenged before the Hon'ble High Court in O.P.No.23876/02 (Annexure A-3). The Hon'ble High Court by judgment dated 24.5.2007 dismissed the O.P and held as follows: -

" We do not like to upset the appointments already effected on the basis of the direction of the Tribunal. We make it clear that the principle laid down by the Tribunal will be confined to the parties to O.A.130/02. Further, we notice that

statutory rules have already been framed and further recruitments will be governed by the statutory rules."

4. The said judgment was again appealed before the Apex Court by filing S.L.P.No.14431/08 which was allowed and numbered as C.A.No.3407/09 by order dated 4.5.2009. The Hon'ble Apex Court also disposed of the matter observing that "since the respondents has already been appointed in compliance with the directions made by the Central Administrative Tribunal and the High Court did not interfere with it, we are not inclined to interfere with the impugned orders exercising our jurisdiction under Article 136 of the Constitution." Thus the order passed in O.A.130/02 attained finality. In pursuance the review applicants who are respondents in the O.A passed an order dated 9.7.2008 giving notional promotion to the applicant as Group 'D' with effect from 25.10.2000 the date on which his next junior GDS was appointed in the cadre against the vacancy of 1998. It is also ordered that he will not be entitled to arrears of pay and allowances on the basis of this notional appointment. This was the subject matter of challenge in the subsequent O.A.393/09. The stand of the department as stated in para 4 of the order of this Tribunal in O.A.393/09 is as follows: -

"4. The Original Application has been admitted by this Tribunal and ordered notices to the respondents. The respondents are resisting the Original Application by filing a reply statement and also relying on Annexure R-1 order dated 9.7.2008. The stand taken in the reply statement by the Department is that though this Tribunal has directed the Department to consider the case of the applicant for promotion to the post which arose in the years 1997, 1998 and 1999, the DPC for consideration of promotion to Group-D only met on 30.8.2000 and as the junior of the applicant one Saranan has been promoted with effect from 2000 only, the applicant was also promoted with effect from that date i.e. 25.10.2000. The further stand taken in the reply statement is that during the period 1997, 1998 and 1999 there was no appointment given or promotion given to Group-D as the Department officials have not reported the vacancies in Vadakara Division. Further it is stated that as the Departmental Promotion Committee met on 30.8.2000 the applicant has been promoted. It is also stated in the written statement that the applicant has been given notional Group-D status with effect from the same date on which his

next junior has been appointed i.e. on 25.10.2000 and hence the order dated 9.7.2008 (Annexure R- 1) is in full compliance with the orders passed by this Tribunal."

5. Further the Tribunal did not accept the stand taken by the department and after an elaborate consideration of the matter in para 6 found that the applicant had received information under the Right to Information Act which shows that there were vacancies for the years 1997, 1998 and 1999 and further contended in Annexure A-12, the information received from Superintendent of Post Offices, Vadakara Division, that no appointments were given during the said period and appointments were only given for the years 1996 and 2000. These contentions of the respondents that there were no vacancies in 1997, 1998 and 1999 was gone into by the Tribunal by an adjudicatory process and finally rebutting the contention of the department it was clearly held in para 8 in the following lines "This stand of the respondents is not justifiable and we are not accepting such a stand taken by the Department in giving appointment to the applicant with effect from 2000 and consider his case for notional promotion, though it was a notional promotion for counting the period with effect from 1.1.1998 for the purpose of pension." Therefore, it was held that Annexure R-1 produced in the said case required re-consideration and the applicant should be assigned seniority and appointment position with effect from 1.1.1998 and he is also entitled for the entire period of his notional promotion for counting his pension and the department shall pass appropriate orders on that effect within a reasonable period at any rate within 45 days from the date of receipt of the order. That order has not been complied with. It is in the meantime that the present R.A has been filed.

6. We have heard Shri.Sunil Jacob Jose,SCGSC, learned counsel appearing on behalf of the review applicants and Senior counsel, Shri.O.V.Radhakrishnan appearing on behalf of the respondent/applicant in the O.A. The main contention of the review applicants is that the order of this Tribunal in O.A.393/09 is a mistake apparent on the face of the record and liable to be reviewed and that an opportunity was not given to rebut the averments of the respondent/applicant in the O.A. As we find that it was after adverting to the stand taken by the respondents and after considering the material on record that the Tribunal passed

the order in O.A.393/09. No new fact has been narrated subsequently nor any new material produced in the R.A. They are only reiterating the same stand as taken in the O.A which was not accepted by the Tribunal. Being not a re-hearing and since the contentions raised in the R.A has been gone into by the Tribunal the order eventually passed is not one suffering from any errors apparent on the face of the record. Further, we cannot re-hear the matter as points urged were considered and decided. Therefore, we find that there is no ground for review of the order passed by the Tribunal. In the circumstances, we dismiss the R.A.

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