
(1982) 11 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 888 of 1981-R

Sukumaran Nair

APPELLANT

Vs

The Postmaster General and Others

RESPONDENT

Date of Decision : 26-11-1982

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 11, 16

Citation : (1982) 11 KL CK 0012

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan and K. Radhamani Amma, for the Appellant;
M.M. Abdul Aziz, for the Respondent

Final Decision : Allowed

Judgement

M.P. Menon, J.—The Petitioner was a Postal Assistant. He was sufficiently senior to be considered for promotion to the Lower Selection Grade. Under Rule 272-A of Volume IV, P. & T. Manual, promotion to the cadre is made in the order of seniority subject to fitness.

2. It is said that when the petitioner's turn arrived, some disciplinary proceedings were pending against him. Those proceedings ended by the imposition of a penalty of censure. After the conclusion of the disciplinary proceedings, his case was placed before the Departmental Promotion Committee for assessing whether he was suitable for promotion, notwithstanding the imposition of the penalty. The D.P.C. found him suitable and on that basis Ext. R-3 order was issued on 29th October 1980 promoting him to the Lower Selection Grade. But soon thereafter Ext. R-4 order was issued on 14th November 1980 keeping Ext. R-3 in abeyance on the ground that some other disciplinary proceedings under Rule 16 of the Classification, Control and Appeal Rules was being contemplated. The second disciplinary proceedings ultimately ended in the postponement of his increment for two years, and the department has taken the view that he could not be promoted till the expiry of the said two

years.

3. According to the department, the Petitioner has been dealt with under rules 156 and 157 of Volume II of P.&T. Manual. It is possible to think that Rule 156(2) applies only where promotion is made by the method of selection. The rule specifically refers to "Zone of selection", "select list", and "position in the list". In the case of adjudging a person's suitability for promotion on the basis of seniority subject to fitness, the list prepared is not usually called a select list. It is not a "selection" and the selected persons have no "position" or rank except in accordance with the seniority in the feeder category. The reference in Rule 156(2) to selection, select list and rank would probably indicate that the Sub-rule applies only to selection posts and not to non-selection posts.

4. The Andhra Pradesh High Court has taken the view, in *D.P.S. Andhra v. C.M. Rao* 1980 (2) S.L.R. 662 that Rule 156(2) of Volume III of the P.&T. Manual" is opposed to Rule 11 of the Classification, Control and Appeal rules and is therefore void and inoperative. I do not think it is necessary to go to that extent for disposing of the case on hand. Assuming that Rule 156(2) is valid and further assuming that it applies to non-selection posts also, it is clear that on the date Ext. R-3 promotion was ordered, no disciplinary proceedings were pending against the petitioner. The charge sheet in respect of the second disciplinary proceedings was issued only a month later, i.e., in November, 1980 (Ext. P-1). In other words, at the time when Ext. R-3 was issued, there were no disciplinary proceedings pending against the petitioner, to attract Rule 156(2). I may confess that Rule 156 uses different phraseology in different contexts as regards commencement and pendency of proceedings. The heading speaks of pendency of "enquiries". Sub-rule (1) speaks of "investigation" and disciplinary proceedings. In any event, the rule does not provide that when disciplinary proceedings are simply in contemplation, an officer's promotion even after being found fit by the D.P.C. could be postponed. Ext. P-4 only mentions that disciplinary action was in contemplation. To postpone promotion in the manner done after clearance by a review D.P.C. would be to extend the scope of Rule 156(2), which prima facie imposes some restrictions on the right of an employee to be promoted. By a process of interpretation, the scope of the Sub-rule cannot be widened so as to bring within its mischief matters which are only in contemplation.

5. In the above view, I hold that the authorities were not justified in keeping in abeyance the order evidenced by Ext. R-3. They are directed to give effect to it.

O.P. allowed as above. No. costs.