
(2019) 06 KL CK 0005

In the High Court Of Kerala

Case No : Original Petition (Cat) No. 53 Of 2017

Union Of India

APPELLANT

Vs

C.M. Parameswaran

RESPONDENT

Date of Decision : 04-06-2019

Acts Referred:

Citation : (2019) 06 KL CK 0005

Hon'ble Judges : V.Chitambaresh, J;Ashok Menon, J

Bench : Division Bench

Advocate : T.V.Vinu, M.R.Hariraj, P.A.Kumaran, K.Rajagopal, Priyada R Menon

Final Decision : Disposed Off

Judgement

Ashok Menon, J

1. The Union of India and the Postal Department are before us challenging Ext.P5 order of the Central Administrative Tribunal, Ernakulam Bench in

O.A.No. 180/00352/2014 dated 29.08.2016, directing upgradation of the respondent/applicant, a retired Postman to the post of Postal Assistant with

effect from the date of the appellate court order, which acquitted the respondent of all the accusations against him before the trial court. It was

ordered that the upgradation of the respondent to the post of Postal Assistant as noted above, and the pay and pensionary benefits be fixed

accordingly within a period of six months from the date of receipt of a copy of the order.

2. The facts is brief are thus:

The applicant was working as Treasurer Grade II in Kunnamkulam Post Office, when he was held up for misappropriation of postal stamps worth

Rs.53,040/-. Criminal complaint and disciplinary proceedings were initiated

against him simultaneously. In the disciplinary proceedings, charges against him were held to be proved, and he was reverted to the cadre of Postman, vide order dated 21.04.1997, until the competent authority found him fit, after a period of three years from the date of the order, to the original post of Postal Assistant. Statutory appeal was rejected. He challenged the action before the Tribunal by filing O.A.No.936/1998, which was disposed directing him to file a revision. The revision too was dismissed. He again approached the Tribunal and filed O.A.No.87/2002, which too ended in dismissal. W.P.(C) No.31637/2004 was filed by him, but that too was dismissed, in the year 2008.

3. In the criminal proceedings, the trial court found him guilty and sentenced to undergo imprisonment for a period of two years. He challenged the conviction in CrI.A.No.261/1999. The Sessions Court allowed the appeal and acquitted him on 05.03.2001. The appellate order was challenged before the High Court in Cr.R.P.No.989/2002. In the meanwhile, the respondent retired on 31.05.2002. He was paid provisional pension. Even as per the punishment, he could have been considered for promotion as Postal Assistant with effect from April, 2000, but that was not done. The CrI.R.P. was ultimately dismissed by this Court on 01.08.2012.

4. The respondent filed O.A.No.244/2012 before the Tribunal seeking full pensionary benefits. He has also filed a representation before the authorities seeking notional promotion with effect from April 2000 and to refix his pay and pension, but no action was taken. Hence, the present O.A. was filed before the Tribunal seeking the relief of promotion as Postal Assistant with effect from the date of entitlement, with all consequential benefits.

5. The petitioners herein contested the proceedings before the Tribunal contending that the taint of charges on the applicant, which stood proved in the disciplinary proceedings and the consequential punishment meted out by him has not been undone in the proceedings before the Tribunal as also in the O.P. before this Court. Hence, despite the acquittal in the appeal by the Sessions Court, the respondent cannot claim to be completely exonerated from the charges of financial embezzlement against him.

6. The petitioners are aggrieved by the impugned order. They contend that there was no evaluation of the respondent for the purpose of promotion to the post of Postal Assistant and therefore, the Tribunal could not have direct the

upgradation of the respondent to the post of Postal Assistant with effect from 05.03.2001.

7. Vide interim order dated 10.02.2017 a Division Bench of this Court had granted stay of the order of Tribunal to grant upgradation to the respondent without evaluation.

8. We heard the learned CGC appearing for the petitioners as also the learned Counsel appearing for the respondent.

9. There is no dispute that even after giving full effect to the punishment granted to the respondent in the disciplinary proceedings, the promotion due

to him could not have been further stalled beyond the period of three years. Hence, from April 2000 onwards, he could have been considered for

promotion to the post of Postal Assistant, which admittedly was not done. No action could have been taken against the respondent on the basis of the

conviction, because the conviction was set aside by the appellate court.

10. The finding of the Tribunal that the respondent had already completed the punishment period of three years, and hence, there is no embargo for his

being considered for promotion, is true and we agree with that finding. Had the criminal proceedings ended in conviction and imprisonment, further

action could have been taken against him. Even if the finding of the Sessions Court acquitting the accused stood challenged before the High Court,

there was nothing preventing the Department from considering the respondent for promotion on evaluation. Admittedly that was never done.

11. The Tribunal has referred to the CCS(CC&A) Rules regarding the sealed cover procedure. The Department has admittedly not adverted to the

procedures prescribed for such promotion. As a consequence of which, no evaluation, whatsoever, was made, despite the fact that the respondent

became eligible for promotion on completing the three year period consequent to the punishment meted out to him.

12. Nonetheless, we are of the opinion that the Tribunal could not have stepped into the shoes of the Evaluation Committee, and held that the

respondent was entitled to get promotion or upgradation with effect from 05.03.2001. The direction of the Tribunal to pass an order granting

upgradation of the respondent to the post of Postal Assistant and to fix the pay and pension accordingly also appears to be beyond its jurisdiction.

13. Considering the respondent for promotion at the belated staged years after

his retirement would probably be inconsequential. But still, the procedures cannot be brushed aside. Hence, the impugned order is hereby quashed.

14. However, considering the fact that the respondent was entitled to be considered for promotion, but the evaluation was never made, we hereby direct the petitioners herein to consider the respondent's claim for being evaluated for promotion to the post of Postal Assistant, and in case he is found to be eligible, upgrade him notionally and refix his pay and pension accordingly, within a period of six months from the date of receipt of this judgment.

The Original Petition is disposed accordingly. No costs.