



GOVERNMENT OF KERALA

Abstract

Home Department- Order dated 05.02.2024 of Hon'ble Kerala Administrative Tribunal in OA (EKM) No.292 of 2022, 1433 of 2022 & 1548 of 2023 filed by Sri Dileepkumar M.P, Assistant Public Prosecutor Grade I -Complied with- Orders issued.

HOME(S)DEPARTMENT

G.O.(Rt)No.1601/2024/HOME Dated,Thiruvananthapuram, 07-06-2024

Read 1. Circular No.19305/Rules-1/96/P&ARD, dated 9/9/1997

2. Circular No.5328/Rules-1/99/P&ARD, dated 3/6/1999

3. Order dated 05.02.2024 of Hon'ble Kerala Administrative Tribunal in OA (EKM) No.292 of 2022, 1433 of 2022 & 1548 of 2023 filed by Sri Dileepkumar M.P, Assistant Public Prosecutor Grade I.

ORDER

Since disciplinary action is pending against Sri Dileepkumar M.P, Assistant Public Prosecutor Grade-I, he is superseded from the select list for the promotion to the post of Assistant Public Prosecutor Senior Grade for the year 2023 and aggrieved by this he filed the OA 1548 of 2023 before the Hon'ble Tribunal. Earlier he had filed two more OAs, ie, OA No.292 of 2022, 1433 of 2022 and in the common judgement of the Hon'ble Tribunal read as 3rd paper above, the 1st respondent is directed to consider the case of the applicant for provisional promotion under Rule 31(a)(i) of KS & SSR to

the post of Assistant Public Prosecutor Senior Grade, within a period of three Weeks.

2. Government have examined the matter in detail. Temporary or provisional promotion under rule 31(a)(i) of Part II KS&SSRs is granted when it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and there would be undue delay in making such promotion in accordance with the rules. Temporary promotion as per the said rule is not specified as a statutory right conferred upon the employee, but as a power conferred upon the Government/Appointment Authority to fill immediately a vacancy otherwise than in accordance with the rules, subject to the satisfaction of public interest for allowing such temporary promotion. In other words, necessity in the public interest is a necessary precondition to be satisfied before allowing such temporary promotion.

3. Considering the rampant misuse of temporary promotions under rule 31(a)(i) leading to seniority disputes and litigations, as per Circular read as 1st paper above Government imposed a total ban on temporary promotions from 1/1/1998 onwards. But, in order to avoid the situation where employees are being deprived of their promotions for no fault of theirs due to non-finalisation of select lists, Government, as per Circular read as 2nd paper above, issued instructions to give temporary promotion in relaxation of the existing ban in very hard and genuine cases of promotions. As a necessary consequence of the said relaxation criteria, persons who are not eligible to get regular promotion as per rules are not entitled to avail the benefit of relaxation of existing ban on temporary promotion.

4. As per rule 28 (b)(i) of Part II KS&SSRs, promotion and

appointments to posts in a selection category or grade in a service shall be made from a select list prepared from among members eligible for appointment, on the basis of merit and ability, seniority being considered when merit and ability are approximately equal. Departmental Promotion Committee (DPC) is constituted for preparing the select list and subject to the procedure mentioned in rule 28(b)(i), the DPC has the authority to assess merit and ability of a member of service for inclusion in the select list for granting promotion to selection posts.

5. From the above, it is clear that Temporary or provisional promotion under rule 31(a)(i) of Part II KS&SSRs is not specified as a statutory right conferred upon the employee, but as a power conferred upon the Government/Appointment Authority to fill immediately a vacancy otherwise than in accordance with the rules, subject to the satisfaction of public interest. Considering the rampant misuse of temporary promotions under rule 31(a)(i) leading to seniority disputes and litigations, thereby adversely affecting public interest, as per Circular read as 1st paper above Government imposed a total ban on temporary promotions from 1/1/1998 onwards. But, in order to avoid the situation where employees are being deprived of their promotions for no fault of theirs due to non-finalisation of select lists etc, later Govt introduced certain relaxation criteria to the existing ban, as per Circular read as 2nd paper above wherein it was specified to give temporary promotion in relaxation of the existing ban in very hard and genuine cases of promotions where the incumbents are to retire within a period of six months. Here the merit of the petitioner have been examined by the DPC and superseded him from the select list of APP Sr. Gr. for the year 2023, as a departmental action is pending against him and there is no public interest in his case. Since his name is not included in the select list, he is not entitled to get regular promotion to the post of APP senior Grade as per rule 28(b)(i) of

Part-II, KS&SSRs. Hence his case is not a fit one to get exemption from the existing ban on temporary promotion.

6. In the above circumstances, Shri. Dileepkumar M.P, Assistant Public Prosecutor Grade-I is not eligible to get provisional promotion and accordingly the plea of the petitioner is rejected.

7. The order dated 05.02.2024 of Hon'ble Kerala Administrative Tribunal in OA (EKM) No.292 of 2022, 1433 of 2022 & 1548 of 2023, read as 3rd paper above is thus complied with.

(By order of the Governor)

BISHWANATH SINHA

ADDITIONAL CHIEF SECRETARY

To:

The Advocate General, Kerala, Ernakulam (With C/L)

The Director of Prosecution (Admn), Ernakulam

Shri Dileepkumar M.P, Assistant Public Prosecutor Gr.I, Judicial First Class
Magistrate Court No.II, Thrissur-680 003

The Principal Accountant General (Audit/A&E), Kerala,
Thiruvananthapuram

Law Department(ST-II/48/2024-Law dated 02.03.2024)

Personnel & Administrative Reforms Department (Adv-A1/98/2024-
P&ARD Dated 08/04/2024).

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Forwarded/By order
Signed by

Sheena. S

Date: 07-06-2024 11:04:59
Section Officer