

I/21

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 57/2005

Date of decision: 26-2-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Dr. K.S.Sugathan, Administrative Member.

Amba Lal Kataria, Son of Shri Pyar chand aged 56 years, Assistant Post Maste4r, Head Post Office, Udaipur, r/o village Delwara, District Rajsamand.

Applicant

Rep. By Mr. Vijay Mehta : Counsel for the applicant.

Versus



1. Union of India, through the Secretary to the Government, Ministry of communication (Deptt. Of Posts) Sanchar Bhawan, New Delhi.
2. Director Postal services, office of post Master General, Rajasthan, Southern Region, Ajmer.
3. Senior Superintendent of Post Offices, Udaipur,
4. Post Master General, Southern Region, Ajmer.
5. Chief Post Master General, Rajasthan, Jaiupr.

: Respondents .

Rep. By Mr. Mahendra Godara proxy

Counsel for Mr. Vinit Mathur

: Counsel for the respondents.

ORDER

Per Mr. Justice S.M. M. Alam, Judicial Member .

Applicant Amba Lal Kataria, who was working as Assistant Post Master at Head Post Office, Udaipur has preferred this O.A seeking the following reliefs:

Signature

- a) Impugned order Anne. A/1, Ann. A/1-A, Ann. A/2 and Ann.A/2-A and orders mentioned therein may kindly be quashed.
- b) The respondent may kindly be restrained from altering or modifying the circle level seniority position of the applicant and the circle level gradation list to the detriment of the applicant treating him as having not been promoted and not holding the post of LSG and HSG II.
- c) The respondents may kindly be directed to act further on the basis of orders Ann. A/20, Ann. A/16 and Ann. A/18, the seniority position of the

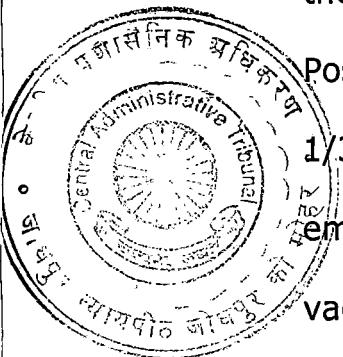
-2-

applicant and the current circle level gradation list and consider the case to accord promotion to the applicant on the post of HSG I.

- d) The respondents may kindly be restrained from posting employees who are junior to the applicant according to the seniority position of the applicant on circle level on the ground of norm based posts.
- e) The respondents may kindly be restrained from removing the applicant from present posting on the ground that employees holding norm based posts are now available.
- f) Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant.

2. The brief facts of the case are as follows:

The applicant was appointed as Postal Assistant on 21.09.68 and he was selected by DPC and promoted to the post of LSG Grade (TBOP) on 25.01.1984 and then HSG II (BCR) from 01.10.1991, on the basis of seniority cum fitness. Thereafter he was selected as LSG and was further promoted as HSG II w.e.f. 01.01.95. The services of the applicant are governed by Post & Telegraphs (Selection Grade Posts) Recruitment Rules, 1976, which provides for promotion to $\frac{1}{3}$ rd vacancies in LSG cadre through competitive examination for employees who had completed 10 years and the remaining $\frac{2}{3}$ rd vacancies were required to be filled up on the basis of seniority cum fitness. In the year 1983, the department had introduced a scheme called Time Bound one Promotion (TBOP for short) and Biennial Cadre Review (BCR for short) to group C and Group D of Postal Department and recruitment rules were amended and sought to be implemented with retrospective effect, which had resulted in change of seniority of the applicant without notice to him. The respondents are now claiming that TBOP and BCR are not promotion but only financial up-gradation. The respondents claim was challenged before the Central Administrative Tribunal Madras Bench in O.A. No. 679/2003 (K. Perumal and anr. Vs. UOI and ors.) and vide order



From

dated 19.03.2004, the Madras Bench of this Tribunal refused to accept the contention of the respondents that granting TBOP and BCR are only financial up-gradation and not promotion. The Bench also directed the respondents not to change the seniority position of the affected persons. It has been stated that the said order passed by the Madras Bench of this Tribunal is applicable to the case of applicant also. It is further stated that the applicant had earlier filed O.A. No. 310/2004 before this Bench of the Tribunal, which was disposed of vide order dated 24.12.2004 by giving direction to the respondents to treat the O.A as representation and decide the same keeping in view the order dated 19.03.2004 passed by the Madras Bench in O.A. No. 679/2003. Thereafter respondent No. 2, who was not a party to the O.A No. 310/2004, decided the representation vide order dated 03.02.2005 and rejected the claim of the applicant. Against the said order dated 03.02.2005, the applicant has preferred this O.A on the ground that the order passed by the respondent no. 2 was without jurisdiction and he was not competent to pass order.

3. On filing of the O.A, notices were issued to the respondents and in compliance to the notices the respondents have appeared and filed a joint reply. In the reply the respondents have taken the plea that the scheme namely TBOP/BCR are not promotional scheme but only financial up-gradation. The respondents have prayed for the dismissal of the O.A.

4. We have heard Mr. Vijay Mehta, learned counsel for the applicant and Mr. M. Godara, proxy counsel for respondents. During the course of hearing Mr. Vijay Mehta, learned counsel for the applicant submitted that before filing this O.A, the applicant Amba Lal Kataria had filed O.A. No. 310/2004, with regard to the same relief and the said O.A was disposed of on 24.12.2004 by a Single Member Bench with a clear direction to the respondents to treat the said O.A as representation of the applicant and decide the same in the light of the order dated 19.03.2004 passed by the Madras Bench of the Tribunal in O.A. No. 679/2003- **K. Perumal and anr. Vs. UOI and ors.** The learned advocate submitted that a perusal of the impugned order dated 03.02.2005 would show that the respondents while rejecting the representation of the applicant did not consider the decision referred to above. Therefore he submitted that it would be proper to issue a direction to the respondents to re-consider the issue raised in this O.A in the light of the decision given by the Madras Bench of the Tribunal and affirmed by Hon'ble High Court of Madras in W.P. No. 27062/2004 vide its judgement dated 24.09.2004.

5. At this stage, Mr. M. Godara, appearing for the respondents intervened and submitted that Ernakulam Bench had taken different view in the matter and in case if this Bench is inclined to direct the respondents to re-consider the matter in the light of the decision given by the Madras Bench in **K. Perumal's** case supra, direction may also be issued to the respondents to take into account the view taken by the Ernakulam Bench and Jodhpur Bench in similar cases.

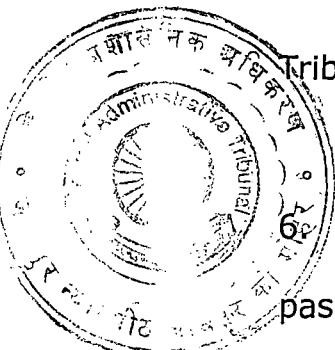
Shri M. Godara, advocate for the respondents have also filed the photo copies of the decisions given by the Ernakulam Bench ~~which are as follows and Jodhpur Bench while reconsidering the representation of the applicant.~~

Decided by the Ernakulam Bench

- i) K. Velayuthan vs. Post Master General decided on 24.01.2000
- ii) S. Sudhakaran vs. CGM BSNL decided on 14.09.2009
- iii) M. Velayudhan vs. UOI and ors. decided on 20.10.2009
- iv) Mariamma Abraham vs. UOI and ors

Decided on 11.03.2009

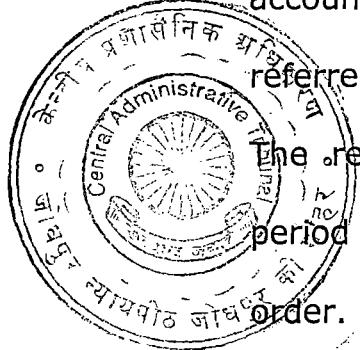
U.K. Rao vs. UOI and ors. decided by **Jodhpur Bench** of this Tribunal on 10.11.2006.


We are of view that since the impugned order has not been passed by taking into consideration the decision rendered by the Madras Bench of this Tribunal in O.A. No. 679/2003, as affirmed by the Hon'ble High Court of Madras, the impugned order is not in consonance with the direction given by this Tribunal in its order dated 24.12.2004 in O.A. No. 310/2004, filed by the applicant and as such the same is liable to be quashed.

7. Accordingly, this O.A is allowed and the impugned order dated 03.02.2005 (annex. A/1) is hereby quashed with a clear direction to the respondents to re-consider the matter in the light of the decision /directives given in O.A. No. 679/2003 by the Madras Bench. We

also direct the respondents that while reconsidering the representation of the applicant, the respondents shall also take into account the law laid down by the various Benches of this Tribunal, referred to by Mr. M. Godara, learned counsel for the respondents.

The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order. In the facts and circumstances of this case there will be no order as to costs.



{Dr. K.S. Sugathan}
Administrative Member.

Jsv

{ Justice S.M.M. Alam }
Judicial Member.

W. H. G.

W.
93