

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.431 of 2013

.....*MONDAY*..... this the *15th* day of *SEPTEMBER*, 2014

C O R A M:

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Ms.MINNIE MATHEW, ADMINISTRATIVE MEMBER

Lovely Thomas,
W/o.Prof.V.T.Thomas,
Postal Assistant Pathanamthitta (HO).
Residing at Vettimoottil House,
Makkan Kunnu, Pathanamthitta – 689 645.

...Applicant

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Department of Post, Government of India,
New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 101.
3. The Superintendent of Post Office,
Pathanamthitta Postal Division,
Pathanamthitta – 689 645.
4. K.Komalavalli,
Postal Assistant,
Ottappalam Postal Division, Ottappalam – 679 101.
5. Sobhana Bai T.S.,
Postal Assistant,
Thiruvalla Postal Division, Thiruvalla – 689 101. ...Respondents

(By Advocate Mr.M.K.Aboobacker,ACGSC [R1-3])

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This application having been heard on 23rd July 2014 the Tribunal on ~~15th September~~, 2014 delivered the following :-

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is a Postal Assistant. She is aggrieved by the order effecting promotions to the Lower Selection Grade (LSG for short) without finalizing the circle seniority of Postal Assistant based on the length of continuous service/merit position instead of basing on their date of confirmation as directed by the Tribunal in O.A.No.314/2007. She submits that the aforesaid order of this Tribunal, a copy of which is marked as Annexure A-4, was confirmed by the Hon'ble High Court of Kerala in W.P.C.No.37673/2008 and thereby has attained finality. Applicant states that the recently released select list, marked as Annexure A-1, still shows the date of confirmation at the divisional level as the criterion for fixing circle seniority, which according to her, is violative of the directions of this Tribunal in Annexure A-4 which was taken by the respondents before the Hon'ble Supreme Court without success. Applicant further states that in another case ie. O.A.503/2011 also this Tribunal had directed the respondents to follow the seniority system based on the date of entry into service. According to the applicant, in spite of all these judicial directions respondents had not finalised the seniority list and the consequent promotion to LSG. She states that so far she has been waiting for a decision



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by the respondents. However, in reply to a request under the Right to Information Act, it was informed by the respondents vide Annexure A-9 that the date of confirmation is the criterion for determining the seniority of Postal Assistants appointed prior to 4.11.1992. On getting that information applicant sent Annexure A-10 representation dated 29.4.2013 to the 2nd respondent seeking placement into the LSG reckoning her seniority from the date of initial appointment. She has approached this Tribunal for the following reliefs :

1. To quash Annexure A-1 and Annexure A-2 to the extend seniority and LSG promotions are determined based on seniority, fixed as per the date of confirmation.
 2. To declare that Annexure A-2 provisional circle wise seniority list of Postal Assistants as on 1.7.2008 is inoperative and illegal being contrary to the judgment of the Supreme Court in *Direct Recruits Class II Engineers' Association v. State of Maharashtra* (AIR 1990 [SC] 1607).
 3. To direct the respondents to revise Annexure A-2 circle wise seniority list in the light of the directions in Annexure A-4 to Annexure A-7 granting seniority to the applicant according to the position in the select list and merit indicated at the time of initial appointment and consequential benefits including placement into LSG.
 4. Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
 5. Grant the cost of this Original Application.
2. Official Respondent Nos.1-3 filed a reply statement stating that based on the Apex Court judgment dated 2.5.1990 in *Direct Recruits Class II Engineers' Association v. State of Maharashtra* (AIR 1990 SC 1607),

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wherein it was held that seniority of a person regularly appointed to a post would be determined by the order of merit indicated at the time of initial appointment, not according to the date of confirmation the Department of Personnel and Training issued Annexure R-1 order wherein it is stipulated that the seniority already determined according to the existing principles prior to the date of issue of those orders will not be reopened. Accordingly, Annexure A-2 memo circulating the gradation list as on 1.7.2008 was prepared on the basis of the date of confirmation up to 4.11.1992 and thereafter, based on the merit position. Respondents state that applicant entered service on 22.9.1980 and got confirmation only on 25.5.1988. Therefore, in her case date of confirmation is the criteria adopted to determine the seniority. Respondents further states that applicant who entered service on 22.9.1980 in the Thiruvalla Division got transferred to Pathanamthitta under Rule 38 of the P&T Manual Volume IV on 7.9.1981 and she was confirmed in the cadre of Postal Assistant only on 25.5.1988. Respondents further state that Annexure A-2 memo circulating the circle gradation list had specifically mentioned that the officials can submit representations, if any, seeking alteration or corrections within ten days. No representation dated 19.12.2008 as stated by the applicant in the O.A - copy of which is marked as Annexure A-3- was received at the office of the respondents. Respondents contends that Annexure A-3 is falsely created document to gain favourable orders from this Tribunal. According to the



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official respondents *sans* such representation the applicant was keeping silence over the circle gradation list circulated vide Annexure A-2 memo for nearly five years without objecting to the seniority list and, therefore, the present O.A is vitiated by laches on her part. Since the cause of action arose on 27.11.2008, the present O.A is time barred. As an interim order was passed by the Tribunal in the present O.A on 2.7.2013 that any promotion made pursuant to the impugned order shall be subject to the outcome of the O.A., the 2nd respondent had ordered that promotions vide Annexure A-1 memo will be subject to the outcome of the O.A. Therefore, the official respondents prays for dismissing the O.A.

3. A rejoinder was filed by the applicant refuting the contentions of the official respondents and further stating that she would not be able to produce any further proof in support of Annexure A-3.

4. An additional reply statement also was filed by the official respondents stating that based on the orders of this Tribunal in C.P.(C) No.65/2010 and C.P.(C) No.1/2011 respondents convened a meeting of Departmental Promotion Committee. It is stated by respondents that in view of the gradation list prepared vide Annexure A-2 the applicant is nowhere near the zone of consideration for LSG promotion and there are still 390 officials senior to her awaiting LSG promotion. Nevertheless, she



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was not deprived of any financial benefits as she had been placed in MACP III, which is equivalent to HSG-I in the Grade Pay of Rs.4600/-, on completion of 30 years of service.

5. We have heard learned counsel for both sides. There was no appearance for the Party Respondent Nos.4&5 although notices have been duly served on them. One of the serious contentions of the respondents is that Annexure A-2 circle gradation list having been prepared on 1.7.2008 and circulated through Annexure A-2 communication, no representation was made by the applicant against the said gradation list, although an opportunity for doing so was specifically given in Annexure A-2 itself. According to the official respondents, the applicant has approached this Tribunal nearly five years after the circulation of Annexure A-2 circle gradation list and hence the O.A is time barred. The applicant, however, states that she had sent Annexure A-3 representation highlighting her grievances against the Annexure A-2 circle gradation list and that her junior Smt.Sobhana Bai T.S is shown much above her and therefore, requesting for revising her seniority based on the date of entry into service. Respondents swear that no representation as stated by applicant was received by them and that Annexure A-3 is a falsely fabricated one to gain orders from this Tribunal with the present O.A. In the rejoinder the applicant states that she has not kept any records of Annexure A-3 and hence not in a position to




produce the proof of having it sent to the 2nd respondent. We are not convinced by this plea of the applicant especially when receipt of Annexure A-3 is strongly refuted by the official respondents. It is well settled law that a mere submission of representation to a competent authority does not arrest the limitation set in Section 21 of the Administrative Tribunals Act, 1985. A Seven Judges Bench of the Apex Court in *S.S.Rathore v. State of Madhya Pradesh* reported in AIR 1990 SC 10 it was held :

“ In the case of a service dispute the cause of action must be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen.”

6. In *State of Orrisa v. Pyari Mohan Samantarav* reported in AIR 1976 SC 2617 it was held by the Apex Court that the petitioner approaching the High Court to quash the select list after some 11 years, though filed repeated representations one after the other, is not a satisfactory reason to condone delay.

7. In *P.S.Sadasivaswamy v. State of Tamilnadu* reported in (1975) 1 SCC 152 it was held that time limit for challenge of promotion should be at least within six months or at the most within an year of promotion of the junior.



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8. With regard to the contention of the applicant that Annexure A-1 promotion order and Annexure A-2 circle gradation list of Postal Assistants are not in accordance with Annexure A-4 order of this Tribunal in O.A.No.314/2007 and the subsequent orders, we need not examine this contention in the light of the findings above that the O.A is barred by limitation.


9. Respondents have made it clear in the reply that Annexure A-2 gradation list was prepared in the light of the administrative instructions contained in Annexure R-1 Office Memorandum issued by the Ministry of Personnel, P.G & Pensions (Department of Personnel & Training) on 4.11.1992. Annexure R-1 is extracted for a better understanding of the scenerio under which Annexure A-2 gradation list was prepared :

OFFICE MEMORANDUM

Sub :- Delinking seniority from confirmation.

The seniority of Government servants is determined in accordance with the general principles of seniority contained in MHA OM No.9/11/55-RPS dated 22.12.1959. One of the basic principles enunciated in the said OM is that seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in that grade.

This principle has been coming under judicial scrutiny in a number of cases in the post, that last important judgment being the one delivered by the Supreme Court on 2/5/90 (JT-1990(2) SC-264) in the case of Class II Direct Recruits Engineering Officers Association v. State of Maharashtra. In para 47 (A) of the said judgment the Supreme Court has held that once an incumbent is appointed to a post accordance to rule, his seniority has to be counted from the date of his appointment and not accordance to the date of his confirmation.



The General principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in Para 47 (A) of its judgment dated 2.5.1990. Accordingly in modification of the general principle 3, proviso to general principle 4 and proviso to general principle 5(i) containing in MHA (now DOP) O.M.No./11/55/-RPS dated 22.12.1959 and para 2.3 of this Department O.M.3.7.86 it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit and indicated at the time of initial appointment and not according to the date of his confirmation.

These orders shall take effect from the date of issue of this Office Memorandum. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders.

All Ministries/Departments are requested to bring these instructions to the notice of all concerned for guidance and compliance.

Sd/-
(Y.G.Parande)
Director

10. One can see that while Annexure R-1 O.M was prepared, the Government of India was fully conscious of the law laid down by the five Judges Bench of the Apex Court as quoted above.

11. Since the applicant has relied on the Apex Court decision in *Direct Recruits Class II Engineers' Association v. State of Maharashtra* (AIR 1990 [SC] 1607), we have perused the aforesaid ruling of the Apex Court also. The Apex Court laid down the law as follows :



"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.


(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.



(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinized for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

12. In Annexure R-1 Office Memorandum Government has taken into consideration the settled seniority based on the date of confirmation - which was the earlier method for fixing seniority. It is only justifiable that those who have been beneficiaries of the earlier method of fixing seniority shall not be disturbed as it would affect a large number of officials who have enjoyed the fruits of that seniority for a considerably long time.

13. In the circumstance, by making it clear that we have not examined the legality of Annexure A-2 circle gradation list in view of the bar of limitation, we hold that the O.A filed by the applicant is only to be dismissed. Accordingly, the O.A is dismissed. Party² shall suffer their own costs.

(Dated this the 15th day of September, 2014)


MINNIE MATHEW
ADMINISTRATIVE MEMBER


U.SARATHCHANDRAN
JUDICIAL MEMBER

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- Paragraphs 9,10 & 12 are deleted vide order dated 5th November, 2014 in R.A. 180/00024/2014 in OA 431/13 of the Hon'ble Tribunal.


4/12/2014
Deputy Registrar