

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 433/98

FRIDAY, THIS THE 3RD DAY OF APRIL, 1998.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

Koshy P. Zachariah,
S/o late Oommen Zachariah,
Investigator,
Office of Census Operations, Kerala
Trivandrum.

...Applicant

By Advocate Mr. Philip Mathew

Vs.

1. The Deputy Director, Census
Kerala Census Operations
G.O. Complex, Poomkulam,
Vellayani P.O.
Trivandrum-695522.

2. The Dy. Director, Census Operations
Haryana Census Bhavan,
Plot No. 2 B
Sector 19-A,
Chandigarh.

3. The Registrar General of India,
2-A Mansingh Road,
New Delhi-110 011.

4. Ministry of Home Affairs
represented by its Secretary,
Union of India,
New Delhi.

...Respondents

By Advocate Mr. Mathews J. Nedumpara, ACGSC

The application having come up for hearing on admission on 19.3.1998, the Tribunal delivered the following on 3.4.98.

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicant was appointed to the grade of Investigator on transfer w.e.f. 11.5.1985, while working as a regularly appointed Tabulation Officer, in the office of the 2nd respondent, the Dy. Director, Census Operations, Haryana by



the orders of the 3rd respondent i.e. the Registrar General (of Census Operations), India dated 4.9.1985 (A1). The applicant was transferred on his request subsequently from the office of the 2nd respondent to the office of the 1st respondent i.e. the Deputy Director Census Operations, Kerala, Trivandrum, where he joined on 6.7.97. This transfer was made specifically contingent upon relinquishment of his previous seniority under the 2nd respondent and being placed at the bottom of the seniority list of Investigators under the 1st respondent. The applicant has admitted that he had agreed to so relinquish his seniority as relevant for the Investigators working under the first respondent.

2. The applicant's grievance is that the said relinquishment of seniority should not have affected his position in the All India eligibility-cum-seniority list prepared for the cadre of Investigators for the purpose of their consideration for promotion to the next higher post.

3. The applicant made a representation which is at A4 dated 29.12.97 protesting against non-inclusion of his name in the provisional All India Eligibility-cum-Seniority List of Investigators and Investigators (SS) in the office of the Registrar General, India and the Directorates of Census Operations in the States/Union Territories as on 1.10.97 (A3). He asserted in that representation that for the purpose of promotion to the next higher post his date of regular appointment as Investigator i.e., 11.5.1985 should be taken as the basis and his eligibility considered accordingly. On behalf of the Registrar General of India, i.e. the third respondent, in response to the said representation at A4, an order was passed dated 27.1.98 at A5 to the effect that the appointment by transfer of the applicant as Investigator in the office of the Dy. Director of Census Operations, Kerala,

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Trivandrum i.e. the 1st respondent was made at his own request, that it was on his acceptance of the terms that he would be placed in seniority below all regularly appointed Investigators in the office of the 1st respondent, that the cadre of Investigators in the office of the 1st respondent is different from that of the Dy. Director of Census Operations, Haryana, i.e. the 2nd respondent and that, therefore, the seniority of the applicant as Investigator for the purpose of eligibility for promotion to the next higher post can only be reckoned from the date of joining as Investigator in Kerala and treating him as juniormost Investigator in that cadre. On these grounds, his representation was rejected.

4. The applicant feeling aggrieved by the above action on the part of the respondent Department, i.e. the Registrar General of India, the 3rd respondent, has filed the present O.A.

5. He has sought the following reliefs:

"i) to declare that the applicant is eligible and entitled to be included in the eligibility cum seniority list of Investigators prepared by the 3rd respondent on all India basis for the purpose of promotion to the next higher post holding that he has completed the required minimum length of qualifying service as an Investigator; ii) to direct the respondents No. 1, 2 & 3 to treat 11.5.1985 as per A1 as the date of regular appointment of the applicant to the grade of Investigator further holding that the applicant has relinquished his claim for seniority only as against the present serving Investigators in Kerala under the 1st respondent; iii) to direct the respondent No. 3 to assign to the applicant his due rank based on his seniority in the Final Eligibility cum seniority list of Investigators/Investigators (SS) prepared by the

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respondent No.3 and promote him forthwith to the post of Assistant Director;

iv) to grant such other reliefs that may be prayed hereafter and this Hon'ble Tribunal may deem fit and proper in the interest of justice and

v) to award, the costs of this Original Application."

6. At the stage of admission, we have heard the learned counsel for the applicant and the Addl. Central Government Standing Counsel appearing for the respondents. We have also carefully gone through the O.A. and the Annexures thereto.

7. The learned counsel for the applicant has relied upon the dictum laid down by the Hon'ble Supreme Court in Renu Mullick (Smt) Vs. Union of India and another reported in 1994 SCC (L&S) 570. According to him following that dictum when the total service in a post of Investigator becomes the only criterion for determining the eligibility for placement in an All India eligibility-cum-seniority list, irrespective of the extinguishment of the seniority in a particular cadre in the wake of a transfer on request from that cadre to another, the total length of the service rendered in that post in all the different cadres should be taken into account.

8. We have carefully considered this basic argument advanced by the learned counsel for the applicant. Since this is the crux of the matter before us, we feel we should refer to the decision of the Hon'ble Supreme Court, examine the same at length and decide whether the dictum laid down by the Apex Court in the above case indeed applies to the facts of the present case.

9. The paragraphs 10 and 11 of that order of the Hon'ble Supreme Court are quoted below:



" 10. We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.

11. The provisions of the Rules reproduced above lay down that a UDC with 5 years' service or UDC with 13 years of total service as UDC and LDC taken together subject to the condition that he should have put in a minimum of 2 years of service in the grade of UDC, is

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eligible to be considered for promotion to the post of Inspector. The Rule nowhere lays down that 5 years or 13 years have to be spent in one collectorate. There is no indication, whatsoever, in the Rule that the service period of 5 years and 13 years is not applicable to an officer who has been transferred from one collectorate to another on his own request. On the plain language of the Rule, the appellant, having served the department for more than 5 years as UDC and also having completed 13 years composite service as UDC and LDC including 2 years minimum service as UDC, was eligible to be considered for promotion to the post of Inspector. The Tribunal failed to appreciate the elementary rules of interpretation and fell into patent error in non-suiting the appellant."

(underlined by us)

10. From the verbatim quotations of the relevant paras of the order of the Hon'ble Supreme Court above, it is evident that on transfer to the new cadre, the minimum service prescribed at the post for being considered eligible for promotion to the next higher post has to be rendered in the transferee cadre. Only thereafter, for the purpose of seniority, the entire service rendered at that post in different cadres will have to be reckoned.

11. In the present case, the applicant has not even averred that he has rendered the minimum prescribed service of 5 years as Investigator under the 1st respondent to be considered eligible for promotion to the next higher post. He cannot do so in all conscience, either. For, he was transferred to the transferee cadre and joined there admittedly only on 6.7.87.

12. Further, if we accept the contention of the learned counsel for the applicant that loss of seniority of service while joining at the bottom of the list of the Investigators under the 1st respondent has no relation to the rendering of



the minimum prescribed service there, we feel there can be no significance attached to the phenomenon of the loss of seniority consequent upon transfer on request to that cadre. It is difficult to appreciate that when the seniority of service in the previous cadre is extinguished and the seniority in the transferee cadre is deemed to commence at the bottom of the seniority list for that post from the time the incumbent joins the transferee cadre, that position should be completely ignored for the purpose of inclusion of the applicant in the eligibility-cum-seniority list of the incumbents of the post prepared for the specific purpose of promotion to the next higher cadre. If the list of seniority in the transferee cadre is to be considered as of no significance for the purpose of promotion to the next higher cadre, we fail to understand for what other significant purpose the list of seniority remains to be relevant.

13. We are thus not convinced that the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the applicant is ^{in the manner suggested by him,} squarely applicable to the facts and circumstances of this case. On the contrary, following the ratio decidendi of that case, the applicant has to meet the threshold requirement of completing the prescribed minimum period of 5 years service as an Investigator in the transferee cadre in Kerala to be eligible for consideration for promotion to the next higher post.

14. We are therefore unable to persuade ourselves that the applicant in the present O.A. can be considered to have any genuine grievance based on any legal right.

15. Since the matter does not require any further deliberation, we reject the Original Application under Section

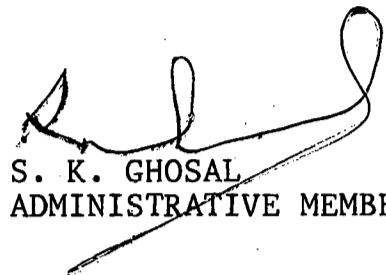


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19(3) of the Administrative Tribunals' Act, 1985.

16. There shall be no order as to costs.

Dated the 3rd April, 1998.


S. K. GHOSAL
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A-1 : Order No.18/25/85 Ad. 1 dated 4-9-85 issued by the Registrar General, India(Respondent No.3)
2. Annexure A-3 : Office Memorandum No.2/3/97-Ad-III dt. 9-12-97 from the Office of the Respondent No.3
3. Annexure A-4 : Representation dated 29-12-97 submitted by the applicant before the respondent No.3 the Registrar General, India, New Delhi.
4. Annexure A-5 : Reply by way Memorandum dated 27-1-98 received by the applicant (No.3821/2/97-Ad IV (pt. IX) dated 27-1-98 from the Office of the Respondent No.3.
