

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 44 of 2006

Tuesday, this the *10th* day of July, 2007

C O R A M :

**HON'BLE MR. A.K. AGARWAL, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

Santha Narayanan,
D/o. Late K.P. Achuthan,
Postmaster (HSG-I Officiating),
Kunnamkulam P.O.,
residing at 'Swathi', S.K. Road,
Thrissur : 11 ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr. with Mr. Antony Mukkath)

v e r s u s

1. Director General of Posts,
Dak Bhavan, New Delhi.
2. Chief Postmaster General,
Kerala Circle, Trivandrum.
3. Director,
Postal Services (HQ), Kerala Circle,
Thiruvananthapuram : 695 033.
4. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.
5. P.K. Mathew,
Assistant Postmaster (Accounts),
Mavelikkara. ... Respondents.

(By Advocates Mr. P.M. Saji, ACGSC (R1-4) & Mr. P.C. Sebastian (R5).

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The legal issues: The following are the legal issues involved in this case:-

**(a) How to work out seniority for consideration for promotion to the
L.S. Grade of Assistant Post Master – normal seniority in the feeder**

grade of eligible candidates (i.e. candidates who had qualified in the departmental examination) or seniority designed on the basis of date of passing the departmental examination, which is in variation from the normal seniority based on length of service in the feeder cadre?.

- (b) What is the relevant instruction on this subject?
- (c) Can the Respondents be permitted to unsettle a promotion, which remains settled as early as 18 years when the applicant had secured, in fact, one more promotion.

2. The facts capsule:

- (a) The applicant, who entered the Postal services in 1971, qualified for the PO & RMS examination as per the result declared on 18-08-1981, which made her eligible to be considered for further promotion to the post of Accountant. On completion of 16 years of service in 1987, the applicant opted for Accounts stream and was on 13-07-1990 appointed as Accountant on regular basis under the Time Bound One Promotion (TBOP for short). She was promoted to the Cadre of Assistant Post Master (Accounts) (LSG) on 07-12-1990. This latter promotion was based on seniority cum eligibility i.e. passing of the aforesaid PO & RMS examination in 1981.
- (b) The 5th Respondent was appointed in 1976 as postal Assistant and had qualified in the Departmental Examination for becoming eligible for promotion in the L.S. Grade, in 1980 i.e. one year prior to passing by the applicant of the said examination and was appointed to the L.S. Grade on 18-02-1991. He was initially not considered for promotion in 1990 when the applicant was considered and promoted but was, under a review DPC conducted after he filed a representation dated 28-01-1991. While so promoting, the date of promotion of the fifth respondent was only posterior to the date of appointment of the applicant.
- (c) The applicant was further promoted to the grade of HSG II

against the 1/3rd Quota of vacancies for the year 2005 on 07-06-2005 (Annexure A-4) and allotted to Trissur Division (Annexure A-5). This promotion was on the basis of length of service and seniority position in the LSG Grade. In fact, the applicant was asked to officiate as HSG I Postmaster, Kunnamkulam, even earlier than the above i.e. 9-5-2005 vide Annexure A-6..

(d) The applicant was, while serving in the capacity of HSG II, served with a notice dated 27-10-2005 (Annexure A-7), which reads as under:-

"NOTICE"

No. ST/5-5/1/2005
Dated: 27.10.2005

WHEREAS Smt. Santha Narayanan (presently APM (A/C)), who passed the PO & RMS Accountants examination in the year 1981 was promoted to the cadre of LSG APM (A/C) as per the Office memo No. ST/5/3/90 dated 12.7.1990.

AND WHEREAS promotion to the cadre LSG APM (A/C) was to be made from among PAs having 10 years of service in the grade and who have qualified in the PO & RMS Accountants examination in the order of seniority subject to fitness, under the Posts and Telegraphs (Selection Grade Posts) Recruitment Rules, 1976.

AND WHEREAS in accordance with the clarifications issued by Directorate under letter No. 9/6/79-SPB.II dated 21.03.1979, year of passing of the examination is the criterion for fixing seniority of PO and RMS Accountants.

AND WHEREAS it is noticed that Smt. Santha Narayanan who passed the PO & RMS Accountant's examination in the year 1981 was promoted to the cadre of LSG wef 7.12.1990 overlooking the seniority of Shri P.K. Mathew (presently APM (A/C), Mavelikara) who passed the said examination in the year 1980 and who was promoted to LSG wef 18.02.1991 only.

AND WHEREAS Smt. Santha Narayanan was further promoted to the cadre of HSG II APM (A/C) as per this office memo No. ST/3-5/2005 dated 07.06.2005 taking into account the seniority in LSG acquired by her in pursuance of the erroneous promotion to the cadre of LSG.

AND WHEREAS it is proposed by the undersigned in terms of Govt. of India's orders below FR 31.A to rectify the erroneous promotions granted to Smt. Santha Narayanan in



LSG by postponing the date of promotion to LSG according to her entitlement and also to cancel the said subsequent erroneous promotion to HSG II.

NOW, THEREFORE, notice is hereby given to the said Smt. Santha Narayanan to make such representation as she may wish to make against the proposal within 15 days of date of receipt of this notice. If Smt. Santha Narayanan fails to submit any representation within the time specified above, it will be presumed that she has no representation to make and orders will be liable to be passed ex-parte.

Sd/-
M.P. Rajan
Chief Postmaster General"

3. The Applicant, in response to Annexure A-7 notice, submitted her explanation vide Annexure A-10.

"..... I was assigned rank and seniority at serial No. 763 while Shri P.K. Mathew presently APM Accounts, Mavelikkara was assigned rank at serial No. 773 in the Circle Gradation List as on 01.07.1993. The above rank and seniority assigned Sri P.K. Mathew below me was not challenged by him and he did not make any claim for seniority and rank above me till date. It is submitted that the mere fact that Shri P.K. Mathew passed the examination in the year 1980 does not entitle him for seniority over me so long as he was not promoted as Assistant Accountant/Accountant earlier to the date of my promotion as Accountant. Therefore, Sri Mathew is junior to me in the general line and and his non-promotion as Accountant based on his pass in the Accountant's examination in the year 1980 might be due to the fact that he was passed over as unfit for promotion by the appointing authority in terms of Rule 276A of the P&T Manual Vol. IV or due to declining promotion at that time. The above said Mathew was promoted as LSG Accountant with effect from 18.02.1991 while, I was promoted as LSG Accountant on 07.12.1990....."

In the circumstances, my right accrued consequent on my promotion to LSG Accountant cannot be infringed on the basis of the belated representation made by Sri P.K. Mathew or suo-moto as it would be violative of my fundamental right guaranteed under Articles 14 and 16(1) of the Constitution of India....."

4. The respondent No. 2 had, by Annexure A-11, rejected the representation



and ordered cancellation of the promotion of the applicant to the grade of HSG I as a change in the date of promotion in LSG in 1990 has telescopically affected the promotion of the applicant to the higher Selection Grade and the reasons for his decision as given in Annexure A-11 are as under:-

"..... 3. I have gone through the representation submitted by Smt. Santha Narayanan very carefully in the light of relevant records and rules on the subject. Smt. Santha Narayanan who commenced clerical service on 17.02.1971 passed the PO & RMS Accountants examination held in the year 1981 whereas Shri P.K. Mathew who commenced clerical service on 09.03.1976 passed the Accountants' examination in the year 1980. Thus in accordance with the clarification issued by Directorate under letter No. 9/6/79-SPB II dated 21.03.1979 according to which year of passing of the examination is the criterion or fixing seniority of PO & RMS Accountants, Shri P.K. Mathew is senior to Smt. Santha Narayanan though Shri P.K. Mathew is senior to her in the cadre of PO & RMS Accountant he was omitted to be considered by the Departmental Promotion Committee which met on 28.03.1990 which recommended Smt. Santha Narayanan for promotion to LSG APM (A/c). On the basis of the representation submitted by Shri P.K. Mathew against promotion of his junior, though his case was considered by a Review Departmental Promotion Committee and promoted to the cadre of APM (A/C) it is found that the promotion was not given effect wef from his actual date of entitlement against which Smt. Santha Narayanan was promoted on 7.12.1990 but only on 18.02.1991. Had he not been omitted to be considered by the Departmental Promotion Committee which met on 28.03.1990, he would have been placed above Smt. Santha Narayanan and thus he is entitled to be promoted to LSG APM (A/C) wef 7.12.1990, the date from which his junior Smt. Santha Narayanan was promoted and he will be placed above Smt. Santha Narayanan in LSG and accordingly I order so.

Smt. Santha Narayanan was further promoted to the cadre of HSG II APM (A/C) against 1/3rd quota of vacancies for the year 2005 as per memo dated 07.06.2005 taking into account the seniority in LSG APM (A/C) cadre acquired by her as above. Out of the three officials last promoted to the cadre of HSG II as per memo dated 07.06.2005, she find the third place in the list when her senior Shri P.K. Mathew who ought to have been promoted to the cadre of LSG wef from the same date from which she was promoted is available, it is clear that Smt. Santha Narayanan will not find a place in the said list of officials to be promoted to HSG II against 1/3rd quota of vacancies for the year 2005.

In view of the foregoing, I find that Smt. Santha Narayanan was not entitled for promotion to HSG II wef 01.01.2005 as ordered in memo No. ST/3-5/2005 dated 07.06.2005 and I order

that the said promotion to HSG II be cancelled. The representation dated 14.11.2005 from Smt. Santha Narayanan requesting to drop the proposal to review her promotion to LSG cadre and to cancel the subsequent promotion to HSG-II is accordingly rejected."

5. The applicant challenges the above Annexure A-7 and A-11 order and has also challenged the vires of order dated 21-03-1979 (Annexure A-8), whereby the inter se seniority of LSG candidates were to be drawn as under:-

(8) The year of passing the examination of PO & RMS Accountants will be the basis of seniority and of those passing in the same year according to their position in the divisional gradation list. The seniority of the officials already fixed before issue of orders on 12.03.70 will, however, be safeguarded and not be disturbed.

6. The following are the grounds of attack:-

(a) Revision in late 2005 of promotion order in the grade of LSG that took place 17 years ago in 1990 is patently illegal and the consequential cancellation of further promotion to the grade of HSG is equally illegal.

(b) The Show cause notice at Annexure A-7 indicates that the entire action of cancellation of promotion order has been taken under the provisions of Rule 31A of F.R., whereas, under that rule it is only the pay that may have to be re-fixed in the event of erroneous promotion and the said rule does not empower any authority to cancel a promotion already effected 15 years ago.

(c) The private respondent was, on the basis of his representation, considered for promotion under a review DPC conducted. However, he was not recommended for promotion and hence, there cannot be any second review. The entire proceedings are thus vitiated. Again, the 2nd Respondent cannot by-pass the recommendations of the DPC.

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(d) Admittedly, the private respondent is junior in the grade of PA, LSG and HSG. By reason of passing the departmental examination earlier than the senior, the respondent cannot claim any seniority in the grade unless of course he came to be promoted to the next higher cadre before the senior candidate got promoted. Law is settled that the eligibility is to be considered with reference to the date of occurrence of vacancy and as on the date of occurrence of such vacancy, when the senior is qualified he shall be considered notwithstanding the fact that any juniors to him would have qualified in the departmental examination earlier than the senior.

(e) Annexure A-8 is only a clarificatory communication and the contents thereof are not traceable to any of the statutory rules. The said order (i.e. Annexure A-8) has no statutory force. Again, Annexure A-9 order dated 3rd July, 1986 is issued by the Nodal Ministry and the same cannot be eclipsed by referring to Annexure A-8 clarification.

7. Both the official respondents and private respondent filed their respective reply. The private respondent inter alia contended that while his representation dated 28-01-1991 for consideration for promotion on the basis of his qualifying in the PO & RMS exam in 1980 and seniority position was considered and he was promoted, since, the date of promotion in his case was stated to be from a date posterior to the date of promotion of his junior (apparently, the applicant herein), he had submitted a further representation on 20-02-1991, which remained unattended to.

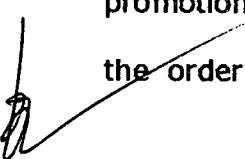
8. Official respondents contested the OA stating that the mode of fixation of seniority is as given in para 276 A of the P & T Manual and as the same was not properly interpreted, clarification was given vide order dated 18-12-1959 (Annexure R-2, attached to additional reply) followed by clarification dated 21-03-1979 (Annexure A-11). As the applicant's promotion in 1981 was made

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Without considering his senior (senior by way of having qualified in the departmental examination prior to the applicant), the same was to be reviewed in order to ensure that the fifth respondent gets his legitimate right of being considered for promotion on the basis of the seniority gained by him by virtue of his having qualified in the departmental examination prior to the date of passing by the applicant of the said examination, and in that event, the promotion accorded to the applicant vide order dated 07-06-2005, based on erroneous promotion granted to her in 1981 is required to be reviewed. Since such a review cannot be made without putting the applicant to notice, the show cause notice has been issued and the applicant asked to submit her version. And, her version had been considered by the competent authority, and the said authority had rejected the claim of the applicant vide impugned order dated 11-01-2006 (Annexure A-11, Impugned).

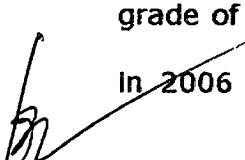
9. The applicant had filed her rejoinder, reiterating her stand as taken in the OA and also submitted that the respondents have deliberately suppressed the date of the representation of the private respondent which was the provocation for review of the promotion order effected in 2005 and which, if allowed to take place would amount to unsettling the settled affair of about 15 years. Additional reply had been filed by the official respondents.

10. Senior Counsel for the applicant argued that the sum and substance of the matter is that the respondents are trying to review the promotion order made in 1991 which is impermissible in view of the long years having passed. Secondly, provisions of Para 32 E of the P & T Manual if recruitment is by promotion and by way of pure selection, seniority should be fixed according to the order of preference and if it is on the basis of seniority subject to the



rejection of the unfit, seniority should be fixed according to the position of the official in the cadre from which promoted. This cannot, according to the counsel for the applicant, be changed by an executive instruction by way of clarification and similarly, when the Nodal Ministry has provided for a particular procedure, vide order dated 3rd July, 1986 (Annexure A-9) the respondents cannot issue any order which is inconsistent with the provisions contained therein. Thus, according to the senior counsel for the applicant, apart from fact that settled things cannot be unsettled, there is no competence or authority vested with the respondents to override the provisions of the DOPT OM, which were issued under the provisions of Art. 73 of the Constitution. The applicant has relied upon various decisions as detailed in one of the succeeding paragraphs.

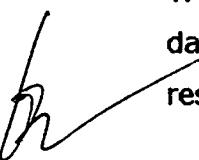
11. Counsel for the respondents submitted that there has been an error which in fact had the effect of depriving the private respondent of his legitimate right to be considered in preference to the applicant in the year 1990 as the private respondent had qualified in the departmental examination prior to the date of passing of the exam by the applicant. According to the provisions of Order dated 18-12-1959, which is in tandem with the provisions of Para 276A of the P & T Manual, the date of passing the exam would dictate the seniority position. This was omitted to be followed in the 1990 promotion when only the case of the applicant was considered and the case of private respondent not. As the error was pointed out by the private respondent, review DPC was conducted and he was also promoted. However, since the date of promotion was not advanced to be on the date or anterior to the date of junior's promotion, the same had telescopic effect while considering the promotion to the next higher grade of HS Gr.II. Thus, the applicant was considered and promoted to HSG II in 2006 and as the private respondent has represented against the same, it



became necessary to review the case. Thus, according to the respondents there is no illegality or irregularity.

12. Counsel for the private respondent referred to para 5 of the reply which *Inter alia* reads as under:-

"It follows that the 5th respondent was erroneously left out for consideration by the DPC resulting in the promotion of the applicant against the vacancy which was otherwise due to the 5th respondent. Since the applicant was working in a different Division, respondent No.5 had no occasion to come to know about her promotion in supersession of the 5th respondent. As soon as he came to know about the same, he made representation to the 2nd respondent on 28.01.91. And in consideration of his representation he was promoted to LSG with effect from 18.02.1991 after holding a review DPC. However, he was not given promotion from the due date or at least from the date of promotion of his junior. Hence he made further representation to the 2nd respondent on 20.02.1991 which remained unattended to. While so, the Department introduced a second promotion Scheme called Biennial Cadre Review with effect from 1.10.91 providing for a second promotion to the cadre of HSG II on completion of 26 years of total service including the service in LSG/TBOP with condition that all the supervisory posts in the selection grade were to be manned by such officials promoted under BCR, practically stopping all the promotions hitherto granted to LSG/HSG posts as per the existing statutory rules without amending them. The 5th respondent was promoted to HSG II BCR with effect from 1.10.91 as per Memo No. ST/8-3/96 dated 25.06.96 issued by Director of Postal Services (Southern Region) in pursuance of D.G. Posts, New Delhi letter No. 22-5/95 PE I dated 08.02.96. True copies of said memo dated 25.06.96 and the said letter dated 08.02.96 are produced as Annexures R-5(C) and R-5(D) respectively. In the same order [Annexure R-5(A)] applicant was



also promoted to HSG II but placed junior to the applicant. At that point of time TBOP/BCR Schemes were considered to be regular promotions for all practical purposes and all the promotions as per existing statutory recruitment only were stopped, until the mistake was realized in the year 2002 when it was decided to fill up all the norm based supervisory posts (LSG & HSG) to which regular promotion as per existing statutory recruitment rules were stopped consequent on the introduction of the TBOP/BCR Schemes by eligible officials notionally. New Recruitment Rules for the cadres of LSG and HSG were also came into force with effect from 7.2.02. The vacancies which arose prior to the issue of the new Recruitment Rules were ordered to be filled as per earlier rules by promoting eligible officials notionally. 5th respondent pursued his grievance against his supersession by the applicant in LSG cadre. On 20.05.2003, 5th respondent was informed by the Chief Postmaster General, through Superintendent of Post Offices, Mavelikkara, that his grievance would be considered and appropriate action taken after finalization of the process of notional promotions. In that process the applicant was promoted to HSG II on 07.06.05 ahead of the 5th respondent ostensibly in view of her earlier promotion to LSG. 5th respondent again represented to the 2nd respondent on 16.06.05. 2nd respondent, the competent authority, rightly found that the applicant was erroneously promoted to LSG earlier earlier to the 5th respondent to the prejudice of the legally protected rights of the 5th respondent. The impugned A/7 notice and the impugned A/11 order have been issued observing due process of law. There is absolutely no illegality in the matter warranting intervention of this Tribunal."

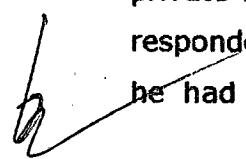
13. Arguments were heard and documents perused. Counsel for the respondents addressed the Court on the following main legal issues:-

(a) Recruitment Rules do not provide for the procedure to be adopted in respect of seniority and it is only the P & T Manual as well as the

General Instructions of the Nodal Ministry i.e. Department of Personnel that have provided for the method of working out the seniority and as such the same have to be followed in preference to the orders of the Indian Posts and Telegraph Department. Reason adduced was that the general instructions of the nodal ministry are issued under the powers conferred to the Department under the provisions of Art. 77 of the Constitution of India.

(b) The attempt of the respondents is to revise the promotion granted to the applicant as early as in 1990 and as a consequence to have the promotion recently granted in 2005 on the basis of the seniority attained by the applicant by way of the earlier promotion, cancelled with a view to promoting the private respondent. Respondents cannot do so at this distance of time. It amounts to unsettling the settled matter.

(c) For consideration by the DPC of persons who are eligible to be considered i.e. who have qualified in the departmental examination which is a pre-requisite for becoming eligible, the inter se seniority shall be maintained amongst the eligible persons and since the promotion took place in 1990, those who have all qualified till the DPC would be entitled to be considered provided they are within the consideration zone. Thus, the applicant having qualified in the departmental examination in 1981 and she being senior to the private respondent, her name should be above that respondent, notwithstanding the fact that the private respondent would have qualified in 1980. It was initially rightly done when the applicant had been promoted in 1990 to the exclusion of the private respondent and when the respondent represented, even though the Review DPC took place, the DPC chose not to grant any notional promotion to the private respondent from the date the junior had been given so as to maintain higher seniority to the private respondent in the promotional post. A conscious decision seems to have been taken in this regard, when the private respondent had been promoted only in 1991 which the private respondents had readily accepted. Though the respondent states that he had made representation but the same was not considered, he



cannot be permitted to agitate against the same at this point of time when the applicant had, on the basis of the seniority in the post of LSG had been further considered and promoted to the next higher post. The following are the citations preferred by the senior counsel for the applicant:-

AIR 1967 SC 1753
1973 KLT 151
AIR 1986 SC 2086
1988 (4) SCC 364
1991 (1) KLT 686
AIR 1997 SC 757
1999 (7) SCC 54
2005 (3) KLT - SN - 67

14. Counsel for the respondents both official and private, maintained that the issue of show cause is legal and the applicant has to face reversion as the private respondent's right to be considered had been infringed when in 1990 his name was not considered.

15. As stated at the very outset the legal issues involved in this case are as to the fixation of seniority when qualifying in the departmental exam is a pre requisite for consideration for promotion and the instructions governing fixation of such seniority. And another question is as to whether the respondents could be permitted to unsettle the settled affair.

16. Rule 276 A of the P & T Manual Volume IV reads as under:-

276.A. (a) Officials on the ordinary assistants time-scale of pay, who have passed the Accountant's examination, will be eligible for appointment to posts of Accountants or Assistant Accountants in the lower selection grade on on Rs. 425-15-560-EB-20-640, in preference to their seniors in the general gradation list, who have not passed the Accountant's examination even

though such seniors may have passed the old lowest selection grade examination. Such appointments will normally be made in order of seniority but the appointing authority may, in his discretion, pass over any senior official whom he does not consider fit for such promotion.

(b) Promotion to posts of Accountants in the Higher Selection Grade II of Rs. 550-20-650-25-750 will be made from officials in the Lower Selection Grade who have passed the Accountants' Examination and have, after passing the examination, worked as Accountant or Assistant Accountant for at least three years in that capacity. Such promotions will normally be made in order of seniority, but the appointing authority may, in his discretion, pass over any senior official whom he does not consider fit for such promotion. The appointment to these posts will be made alternately from the line of Inspectors and from the general line."

17. The P&T department had as early as on 18-12-1959 issued the following orders:-

"Copy of letter No. 9/12/58-SPB-II, dated 18th December, 1959, from the Director General, Posts and Telegraphs, New Delhi, to All Heads of Circles etc. etc.

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Sub: Seniority for appointment to the posts of Post Office and R.M.S. Accountants.

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A reference is invited to Rules 276 and 276-A(a) of P&T Manual Volume IV, according to which appointments to the posts of Time Scale Accountants and Lower Selection Grade Accountants in Post Offices and R.M.S. are made from those officials who have passed the Post Office/R.M.S. Accountants Examination in the order of their seniority in the clerical cadre. The question of revising the basis for appointment to these posts has been under consideration for some time past and it has now been decided as follows :

(a) Time-Scale Accountants: These are allowed posts and do not form a separate cadre. Appointments to these posts will, as at present, continue to be made from amongst such officials as have passed the Post Office/R.M.S. Accountants' Examination, according to their seniority in the Divisional Gradation List. When an official has been appointed in a regular vacancy of a Time-Scale Accountant or Assistant Accountant, he will not be displaced by a senior official, who may qualify in

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the examination subsequently. The senior official in such a case will have to wait for the occurrence of a clear vacancy.

(b) Lower Selection Grade Accountants: This is separate cadre and appointments to this cadre are made on a Circle basis. Appointments to these posts will, from the date of issue of these orders, be made according to the year of passing the Post Office / R.M.S. Accountants' Examination. Those qualifying in the same year will be appointed in the order of their seniority in the clerical cadre. These orders will not affect the seniority of officials, who have already been confirmed as Lower Selection Grade Accountants. Officials who were appointed before the issue of these orders against regular vacancies and are awaiting confirmation in their posts. They will, however, be confirmed in their turn in accordance with the revised orders. For this purpose, the seniority of all officials who have passed the Accountants' Examination whether officiating or not will be refixed in accordance with the present orders."

18. The question is whether the above order was the lone extant order at the time when the applicant was promoted as LSG in 1990 and even if it so prevailed, whether there is any justification in trying to rectify the error at this distance of time.

19. The senior counsel for the applicant referred to the general instructions of the DOPT. He has cited a number of cases as to the priority to rules compared to administrative instructions. However, no statutory rule has been furnished in respect of the specific issue. Para 276 A of the P & T Manual (or for that matter, the whole P & T Manual) is only in the nature of Administrative Instructions. (See 2006 (8) SCC 662 wherein it has been held that para 206 of the P & T Manual is an administrative instruction.) The further contention of the counsel is that the DOPT instructions cannot be stultified by DG P & T Orders. Though this argument may hold good, the fact is that there is no provision that has been exhibited in any such instructions of the DOPT which is stated to have been ignored while issuing the order dated 18-12-1959. Thus, it is to be held that when order dated 18-12-1959 is the lone order which governs fixation of

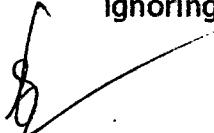
seniority when qualifying examination is prescribed, then it is that order that should prevail.

20. However, what is to be seen is whether any error committed by the respondents in ignoring the said order while considering the promotion of the applicant in 1990 could be rectified after 15 years, by which time the applicant had been considered for further promotion and was already promoted. Here comes the difficulty. It has been held in the case of **Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599** as under:-

9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time. (emphasis supplied).

21. In the Constitutional Judgment in **Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715**, the Apex Court has held, "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."

22. In the instant case, the earlier promotion granted to the applicant ignoring the case of the private respondent was no doubt represented by the



private respondent and the DPC had taken a conscious decision not to disturb the promotion of the applicant at that time. Otherwise the DPC would have recommended substitution of the name of the private respondent in the place of the applicant. This was not done – not by inadvertence but otherwise. Thus, the decision dealing with the promotion of the applicant after careful consideration cannot be scrutinized for its validity after 15 years.

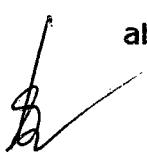
23. However, one aspect has to be seen. True, the order dated 18-12-1959 is the lone order. And, DPC would have been constituted to consider promotion to the grade of LSG from then. If in the past years it was the length of service that had been reckoned with, to work out seniority, then, notwithstanding the fact that provisions of order dated 18-12-1959 do exist, there has been a consistent practice to accord seniority as per the length of service. It is not the case of the respondents that this is an isolated case and in all other cases the provisions of order dated 18-12-1959 had been religiously followed. Had they been followed, obviously, at the time of grant of promotion to the private respondent in 1991, the mistake would have been rectified. This was not the case. Hence, it could easily be presumed that notwithstanding the existence of order dated 18-12-1959, the consistent practice has been to base the seniority on the length of service and not on the basis of the date of passing the departmental examination, as had been done in the case of the applicant at the time of his promotion to the post of LSG in 1990. If so, as held in the case of ***L. Chandrakishore Singh v. State of Manipur, (1999) 8 SCC 287***, "*There was no justification to disturb the consistent practice and to unsettle many settled matters in the service*".

24. Obviously, the Private respondent had not been vigilant about his

entitlement. After he got promotion as LSG, he ought to have pursued his representation dated 20-02-1991, stated to have been submitted by him. It is after 14 years that he seems to have woken up again to agitate the matter. The respondents should have rejected his latest application as the same, if allowed, would amount to reviewing the promotion made as early as 14 years ago. Assuming without accepting that such a step of the respondent would be justified, even then, when the Tribunal considers the same, while granting the relief, the same should be so moulded that it, as held in the case of ***State of Bihar v. Kameshwar Prasad Singh , (2000) 9 SCC 94,*** "may not amount to unsettle the settled rights of the parties"

25. Thus, it is to be held that there is no justification in revising the promotion order of the applicant granted in 1990 and to revise the consequential promotion in 2005.

26. The impugned orders are, therefore, liable to be quashed and set aside. Accordingly, orders dated 27-10-2005 (Annexure A-7), dated 11-01-2006 (Annexure A-11) are hereby quashed and set aside. The O.A. is allowed. Respondents are directed not to disturb the promotions granted to the applicant both in 1990 as well as in 2005. It is open to the respondents to consider the case of the private respondents by grant of notional promotion w.e.f. 1990 and accommodate the said respondent in the grade of HSG II by creating supernumerary post, if so desired and advised, without disturbing the promotion of the applicant. Of course, in the grade of HSG II, the private respondent's seniority could be suitably fixed. If the seniority position of the applicant happens to be disturbed, the same would be as a logical consequence of the above and there should be no grievance of the applicant in that regard, more



so, as the applicant is now running 58 and her chance for further promotion may not be that bright.

27. No costs.

(Dated, the 10th July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



A K AGARWAL
VICE CHAIRMAN

CVR.