

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 454 of 1989 199
~~1989~~

DATE OF DECISION 31-12-1990

VK Kannan Applicant (s)

Mr TM Abdul Latiff Advocate for the Applicant (s)

Versus

The Director General of Respondent (s)
Posts and Telegraph, New Delhi & 4 others

Mr AA Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *1/5*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant a retired employee of the Telecommunications Department has in this application filed under Section 19 of the Administrative Tribunals Act prayed that the respondents may be directed to refix his seniority on the basis of length of service rendered by him following the decision of the Administrative Tribunal, New Delhi in T/785/85, to give him notional promotion to the Cadre of Lower Selection Grade(L.S.G.) and Higher Selection Grade(H.S.G.) on the basis of seniority reckoned on length of service at least w.e.f. the date his junior Shri KD Antony was promoted to the respective cadres and also to pay him the arrears of salary and to fix his pension accordingly.

2. Now ~~that~~ the controversy involved in this case has been narrowed on account of the averment in the reply statement. The facts of the case relevant for the purpose of the disposal of the application can be stated as follows. The applicant was appointed as a Time Scale Clerk on 23.11.1953. At the time when he joined the service, seniority was ^{to be} reckoned on the basis of continuous officiation in terms of Rule 259 of P&T Manual Establishment Vol.IV 3rd Edition. But on 22.12.1959 a circular OM.9-11/55, RFS was issued which provided that seniority of personnel in the Clerical grade would ^{be} dependent on passing of the confirmation examination. The circular was not applicable to the applicant at all. The applicant was confirmed in the grade of Time Scale Clerk on 5.4.1962 while he should have been confirmed on 23.11.1958 on completion of 5 years service, but he did not challenge the later date given for his confirmation since it had no relevance in reckoning his seniority. One Shri KD Antony, Shri S Sasidharan and Shri Augustine Mathews who entered ~~in~~ service as Clerks in the years 1957, 1956 and 1958 respectively were shown as seniors to him in the gradation list published in the year 1966, challenging the position in the gradation list, the applicant filed an objection/^{and} later OP No.519/72 before the Hon'ble High Court of Kerala. The O.P was disposed of on the basis of submission made by the Standing Counsel for the P&T that the applicant would be placed above the 4th respondent in the said O.P. and that he would be confirmed w.e.f. 1.7.1960. The above said juniors were placed above the

*** applicant on the basis of circular OM.9-11/55. Giving retrospective effect to the said circular was under challenge before the Hon'ble High Court of Madras in an application filed by one Shri C Venkatesalu which was disposed of by the High Court by judgement, (copy at Annexure-A(3)), allowing the application striking down the OM.9-11/55-RPS dated 22.12.1959 in so far as it sought to give retrospective effect to the new basis for fixation of seniority as from the date of confirmation of the respective officers. The applicant filed OP No.1986/73 before the Hon'ble High Court of Kerala for a writ of mandamus directing the respondents to fix his seniority on the basis of length of continuous service. Though the O.P. was allowed in Writ Appeal No.416/75 by the Department, the order was modified and the writ appeal was disposed of directing the Department to fix seniority in accordance with law on the applicant making a representation. As per the rules and regulations the applicant was entitled to be promoted to the L.S.G. on completion of 10 years service. But the applicant was promoted only in the year 1974 while his immediate junior Shri KD Antony ^{had been} ~~was~~ promoted in the year 1968. Promotion was given to Shri Antony earlier on the wrong assumption that seniority depends on passing of confirmation examination. Thereafter Shri Antony was given promotion to H.S.G. on 27.12.1970. Taking the length of service into consideration, the applicant should have been promoted to the LSG on 22.11.1963 or at least in the year 1968 when his immediate junior Shri Antony was promoted. Though the applicant made a representation as

directed in W.A.No.416/75 the respondents by order dated 14.6.1979 at Annexure-A(5) rejected the representation holding that order No.45-1/74 SPB-II dated 12.4.1978 is inapplicable to the applicant, and that his seniority would depend only on his passing the confirmation examination in terms of OM.9-11/55/RPS dated 22.12.1959. The applicant made a further representation to the Minister for Telecommunication. This representation was forwarded ^{for enquiry} to Shri R Rajagopal, Divisional Engineer(M.IV), Ernakulam Telephones who reported that the contention that the applicant happened to be exempted category and therefore eligible for seniority along with others does not justify the denial of seniority to him basing ^{ed} on the _h length of his service. The applicant was hopefully expecting that on the basis of the report of the Commission, his seniority would be refixed. ~~When~~ ^h Finding that there was no response, _h he filed another representation before the Minister for Telecommunication and Prime Minister on 28.1.1986 through All India P&T Scheduled Caste Federation(Kerala Branch). In the meanwhile, the applicant retired from service on 30.11.1986 as Telephone Revenue Inspector. To his representation dated 28.1.1986 he received a reply that the matter was being looked into. But so far he did not get a final reply. Now the New Delhi Bench of the Central Administrative Tribunal has in application No.T/ 785 / 85 held that the seniority of officials who joined the service during the period from 22.6.1949 to 21.12.1959 should be on the basis of their length of service. On the basis of the above judgement, the

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Assistant Post Master General(Staff) Kerala Circle has issued orders dated 8.6.1987 for refixation of the seniority of the persons appointed during the period from 22.6.1949 to 21.12.1959 on the basis of their length of service. Therefore the Annexure-A(5) and A(9) communications are illegal and unsustainable. By reason of the wrongful stand adopted by the respondents in fixing ^{applicant's} ~~the~~ seniority only on the basis of his passing in the confirmation examination he was not promoted in due time to L.S.G. and H.S.G. which has caused the applicant considerable loss. Therefore the applicant prays that the respondents may be directed to refix the seniority on the basis of his length of service, to promote ^{him} ~~to~~ the post of L.S.G and H.S.G. notionally w.e.f. the dates on which he became eligible for such promotion or at least from the date on which his immediate junior Shri KD Antony was thus promoted, to pay him the arrears of salary and to fix his pension accordingly.

3. In the reply statement though the respondents have sought to justify the fixation of the applicant's seniority on the basis of his pass in the confirmation examination, it has been conceded in the last paragraph of the reply statement that according to the clarification letter No.271-113/89-STN dated 13.12.1989, ^{pre-1959} ~~entrants~~ entrants in the Department who suffered in seniority due to not passing confirmation examination within the period and chances prescribed as well as exempted from passing the examination are entitled ^{to} ~~for~~ revision of seniority irrespective of representation including such officials, who

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have retired from service and that the applicant's seniority would be refixed accordingly and that all consequential benefits would be given to him.

4. In view of the above averment in the reply statement, now practically the controversy has narrowed down. In fact there is no controversy at all because what the applicant has prayed for is fixation of his seniority on the basis of the length of his service and promotion to LSG and HSG cadre, notionally w.e.f. the date he would have become eligible for such promotion and also for disbursement of arrears of salary and fixation of pension. Now that the same has been conceded, what is required is only to work out the details of relief. But the applicant has filed a rejoinder stating that though the respondents have in the reply statement conceded that the applicant is entitled to have his seniority reckoned on the basis of the length of his service as has been held by the Delhi Bench of the Tribunal in the gradation list Annexure(13) and (15) published by them, many of his juniors have been placed above him which shows that the respondents do not still intend to give the applicant the benefits which he deserves. The applicant prays that the respondents may be directed to rectify this mistake and that the application may be allowed with costs.

5. We have heard the arguments of the learned counsel on either side and also carefully scrutinised the documents produced before us. Now the claim of the applicant that his seniority being a pre 1959 entrant into service is

to be reckoned on the basis of the length of service is no more a disputed proposition. Annexure-13 is a copy of the revised circle gradation list of the pre 1959 entrants in the TOA cadre of Kerala Circle. The complaint of the applicant regarding this list is that in this list, the names of two persons who are junior to the applicant and were promoted illegally have been omitted and that junior Shri Augustine Mathews was assigned rank No.5 while he was given rank No.40. Against this gradation list the applicant had submitted a detailed representation at Annexure-14. Annexure-15 is the revised seniority list. Against this list also the applicant has a grievance that the rank assigned to him below his juniors is not justified. In the latest revised seniority list Annexure-15, Shri Augustine Mathew who joined the services on 24.2.1958 is seen placed at Sl.No.6, whereas the applicant who joined the services on 22.1.1953 is shown at rank No.40. Similarly Shri John M.C. who joined the service on 25.3.1958 is seen placed at Sl.No.11. There are other infirmities in this gradation list also. Therefore the case of the applicant that the respondents should be directed to assign correct seniority position to him and to give him promotion w.e.f. the date when he became eligible for promotion to L.S.G. and H.S.G. or at least from the date on which his immediate junior was promoted has to be allowed.

6. In the conspectus of the facts and circumstances, we allow the application and direct the respondents to refix

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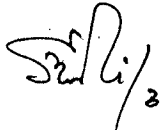
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the seniority of the applicant on the basis of his length of continuous service, to promote the applicant notionally to the cadre of LSG adopting the principles of continuous service and to promote him to the post of HSG on the date on which he would have become eligible for such promotion on the basis of his seniority reckoned taking into account the length of his continuous officiation or at least from a date on which his immediate junior Shri KD Antony was promoted to the LSG and HSG, to fix his pension in accordance with the pay he would have drawn in the HSG had he been thus promoted and to pay him the arrears of salary ^{pension} and allowances within a period of three months from the date of communication of this order. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

31/12/90

31-12-1990


(SP MUKERJI)
VICE CHAIRMAN

31.12.90

trs