

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 475/03

.....TUESDAY.....THIS THE 6th DAY OF JUNE, 2006

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**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

- 1 Damodaran U, S/o V.Kelappan,
retired Sub Postmaster,
Nut Street,
Vadakara, Uralath House
PO.Mudadi North
Via.Kollam, Koyilandi 673305
Calicut.
- 2 Gangadharan M, S/o M.Kunjikannan Nayar,
retired Assistant Postmaster,
Head Post Office,
Koyilandi, Sreepadam,
Kothamangalam,
Koyilandi 673305 Calicut.Applicants

(By Advocate Mr. R.Sreeraj)

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- 1 The Superintendent of Post Offices,
Vadakara Division,
Vadakara.
- 2 The Chief Postmaster General,
Department of Posts, Kerala Circle,
Thiruvananthapuram.
- 3 Union of India, represented by its
Secretary to Government of India,
Ministry of Communications,
Department of Posts,
New Delhi.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 23.5.2006, the Tribunal on 6.6.2006
delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Both the applicants Shri U.Damodaran and Shri M.Gangadharan, entered continuous service with the respondent department with effect from 5.8.63 and 6.8.63 respectively and they were granted the BCR status with effect from 1.10.91. They claim that they should be treated at par with LSG Grade for the purpose of their promotion to the post of HSG I is concerned. In order to substantiate their claim, they have relied upon Annexure.A3 letter dated 17.5.2000 issued by the Respondent No.3, namely, Ministry of Communications, Department of Posts, Government of India, New Delhi revising the guidelines for considering placement under the TBOP/BCR Scheme in cases where seniors are considered for placement at par with their juniors. Earlier vide letter No.22-5/95-PE.I dated 8.2.96 (Annexure.R.1), the respondents have issued instructions to the effect that all the officials such as UDCs in the Circle Office and SBCO/LSG (both 1/3rd and 2/3rd) Postal Assistants and RMS Accountants whose seniority was adversely affected by the implementation of the BCR Scheme placing their juniors in the next higher scale of pay to be considered for next higher scale of pay from the date their immediate juniors become eligible in the next higher scale. The inter-se seniority of the officials in the lower grade was kept intact for the purpose of eligibility for promotion to the next higher grade. Subsequently the Hon'ble Supreme Court in its judgment in the case of **R.Prabhadevi and others Vs. Union of India and others** held as under:-

"Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A

person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post."

On the basis of the aforesaid judgment of the Hon'ble Supreme Court, the following revised guidelines was issued vide the aforementioned letter dated 17.5.2000 :

"It is further reiterated that placements under Time Bound One Promotion (TBOP) and Biennial Cadre reviews (BCR) Schemes are based on the length of service of the official(s) concerned and not on the criterion of seniority. Seniors in the gradation list, therefore cannot claim higher scale of pay at par with their juniors, if their juniors have got higher scale of pay by virtue of their completion of the prescribed period of service ie., 16/26 years respectively. Juniors have been placed in the higher scale of pay based on their completing the requisite number of year's service which their seniors have not completed. In other words, TBOP/BCR schemes are not promotions against the norm based posts in LSG & HSG-I grades but only placements in the same scale of pay on completion of 16 and 26 years of service respectively. Eligibility condition for placement in the higher scale of pay under the scheme is 16 and 26 years of service respectively. Clearly, seniors in gradation list will not be considered for next higher scale of pay from the date their immediate juniors become eligible for next higher grade without completing the prescribed period of service as per the eligibility condition of placements in the higher scale of pay.

However, seniority on the gradation list will remain intact. TBOP and BCR officials will also be considered against norm based posts (supervisory posts) as per their seniority and fitness basis in their turn."

The applicants were placed at Sl.No.465 and 469 of Annexure.A1 Circle Gradation List of HS II (BCR Officials) of Kerala Circle as on 1.7.93. They have submitted that the TBOP Scheme and the BCR Scheme were introduced in 1983 and 1991 respectively in contra distinction to the promotions which were being made to the LSG to the HSG-II grades and placing in the higher scales of pay under these schemes ought to have

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been viewed distinctly and differently from the promotions to the LSG and HSG II with a quota of their own for promotion whereas the respondents have been treating the two streams as one and have been maintaining combined Circle Gradation List of BCR/HSG II officials by placing the 1/3rd quota of the LSG Officials above BCR officials. According to the applicants, by treating both the streams as one, those placed to the 1/3rd quota of the LSG gained undue advantage by giving them seniority above those placed in the higher scale of pay under TBOP/BCR schemes.

The respondents in their reply have submitted that according to the Recruitment Rules, three years regular service in HSG II is essential for consideration for promotion to HSG I. The applicants in the present OA, have been given placement in the higher grade under TBOP/BCR schemes and they have never been promoted to the post of LSG/HSG II in accordance with the Recruitment Rules. Consequent to the introduction of the TBOP/BCR Schemes, promotions to norm based LSG/HSG II were not being made and these supervisory posts were being manned by deploying senior/willing BCR officials. But the the norm based HSG II officials and the BCR Officials are treated distinctly and differently and separate gradation lists are also maintained for both the cadres. As regards the applicants are concerned they have never been promoted to the HSG II and they were promoted to LSG on notional basis with effect from 1.4.90 and 30.11.90 only and they cannot claim seniority over the officials who were promoted to norm based LSG posts before the introduction of the TBOP Scheme. According to the respondents Annexure.A3 letter never stipulated that BCR officials are eligible to be promoted to HSG -I without

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being promoted to HSG II but the applicants are trying to interpret the Annexure.A3 in a different manner for their benefit, which is not tenable.

3. We have heard Mr.R.Sreeraj, learned counsel for the applicant and Shri TPM Ibrahim Khan, learned SCGSC for the respondents. In our considered opinion the reliance of the applicants to Annexure.A3 letter dated 17.5.2000 is misplaced. A reading of the said letter itself would reveal that the respondents have issued this letter after the judgment of the Hon'ble Supreme Court in the case of R.Prabhadevi and others Vs. Union of India and others in which it was held that seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules and seniority cannot be substituted for eligibility nor it can override it in the matter of promotion in the higher higher post. In fact Annexure.A3 letter is only the revised guidelines for considering Postal Assistants/Sorting Assistants for placement under TBOP/BCR Scheme, doing away with the instructions contained in Annexure R.1 instruction dated 8.2.96. Annexure.A3 never stipulates that the BCR officials could be straightaway promoted to HSG I without being promoted to LSG and HSG II. Para 3 of Annexure.A3 only says that the TBOP/BCR officials will also be considered against the norm based posts. In other words, though the TBOP/BCR officials are drawing scales equivalent to that of LSG and HSG II they will also be considered for promotion against norm based posts. Annexure.A3 also does not stipulate that the BCR officials can be promoted to HSG I without being promoted to LSG/HSG.II and without satisfying the conditions laid down in the statutory Recruitment Rules.

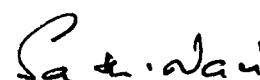
4. In the above facts and circumstances of the case we are of the

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considered view that the applicants' claim to treat the BCR officials as a distinct feeder category with a quota of their own for promotion to HSG I on the basis of their seniority and fitness and to promote them in their due turn cannot be accepted. The OA is without any merit and, therefore, the same is dismissed. There shall be no order as to costs.

Dated this the 6th day of June, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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