

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 491 of 1999

Monday, this the 30th day of July, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. P.I. Sivaraman,
Lower Selection Grade Sorting Assistant,
Railway Mail Service, Ernakulam Division,
Head Record Office, Kochi-16Applicant

[By Advocate Mr. A.K. Avirah]

Versus

1. The Senior Superintendent,
Railway Mail Service,
Ernakulam Division, Kochi-11
2. The Post Master General,
Central Region, Kochi-11
3. A.J. Gopinathan,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
4. M.K. Abdhul Rahim,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
5. M.P. Viswanathan,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
6. K.S. Thejus,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
7. M.K. Thankappan,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
8. P.K. Raveendran,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
9. V.N. Rajappan,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
10. P.C. Hariharan Nair,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16

11. M.G. Noble,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
 12. N.K. Santhamma,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
 13. B. Thankamani,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
 14. T.C. Alice,
Lower Selection Grade Sorting Assistant,
Head Record Office, Kochi-16
-Respondents

[By Advocate Mr. T.C. Krishna, ACGSC (R1&2)]

The application having been heard on 30-7-2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to declare that he is entitled to seniority among LSG-SA on the basis of his appointment to that category, that respondents 3 to 14 are juniors to him in the grade of LSG-SA, that he is having every right for fixation of his basic pay by stepping up the same to that is drawn by his juniors, to set aside A1 and to direct respondents 1 and 2 to refix his basic pay on par with that of his juniors retrospectively with effect from 1-1-1996 with all consequential benefits.

2. The applicant was a Sorting Assistant. While working so, he was promoted as Lower Selection Grade Sorting Assistant (LSG-SA for short) under the TBOP Scheme with effect from 18-9-1994. Subsequently respondents 3 to 14 were promoted as LSG-SA as per order dated 18-3-1996. Respondents 3 to 14 are juniors to the applicant. Pay of the applicant was revised to Rs.4750/-, whereas pay of respondents 11, 12 and 13 was revised

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to Rs.4875/-. He is entitled to parity in fixation. The stand of the official respondents that private respondents are seniors to the applicant is incorrect.

3. Official respondents resist the OA contending that there was disciplinary proceedings against the applicant. After having found him guilty, he was removed from service. He preferred an appeal. The Appellate authority modified the said penalty as reduction to lower post of Mailman for a period of five years from the date of joining in the post of Mailman, with a further direction that the reduction in the post will have the effect of postponing his increments of pay on restoration to the higher post of Sorting Assistant and on restoration his seniority in the grade will be refixed from the date of his restoration i.e. without counting the service rendered in the grade of Sorting Assistant prior to the date of punishment. His seniority in the cadre of Sorting Assistant has been fixed in accordance with R-1 order and thus he has become junior to respondents 3 to 14. Though respondents 3 to 14 were promoted subsequently under the TBOP scheme, that does not imply that the applicant is in any way senior to respondents 3 to 14. Private respondents having been promoted with effect from 16-3-1996 got Rs.4625/- as their pay on that day with the next increment as on 1-3-1997. On 1-9-1996, getting the next increment, the pay of the applicant was Rs.4625/- and with effect from 1-9-1997 Rs.4750/-. As on 1-3-1997 private respondents got the pay of Rs.4750/- and on 1-3-1998 the pay was Rs.4875/-. The applicant will be getting Rs.4875/- on his next date of increment i.e. 1-9-1998.

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4. The specific case of the applicant is that the applicant is a scheduled tribe candidate, that respondents 11 to 14 are also scheduled tribe candidates and that he is drawing less pay than the said respondents, though the said respondents were promoted in the year 1996. A2 dated 6-12-1994 is the order as per which the applicant was promoted to the cadre of LSG under TBOP scheme. A3 is the order dated 18-3-1996 as per which the private respondents were promoted to the cadre of LSG under TBOP scheme. From A3 it is clearly seen that respondents 11 to 14 were promoted the cadre of LSG under TBOP scheme in the year 1996 and other private respondents during the years 1995 and 1996.

5. The applicant says that the refusal to refix his basic pay on the basis of stepping up of his basic pay on par with the pay drawn by his juniors on the principle of junior-senior pay fixation is illegal and violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

6. As per A1, the applicant was informed that he is not eligible for stepping up of pay upto that of other officials, since he is junior in the gradation list. So, the ground on which as per A1 the request of the applicant has been turned down is that as per the gradation list he is junior to the private respondents.

7. From A2 and A3 it is clearly seen that under the TBOP scheme the applicant was promoted to the cadre of LSG earlier to the private respondents and thereby in the LSG he is senior to the private respondents.

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8. In such a situation how the pay is to be fixed is governed by Rule 7 of CCS (RP) Rules, 1997. Note 9 under Rule 7 says that:

"In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1996, draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.
- (d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

The order relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay."

9. From the facts of the case it is clear that the applicant's case is one to be examined under Note 9 to Rule 7 of CCS (RP) Rules, 1997 and the official respondents have not examined it in the light of the said provision.

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10. That being the position, it is to be directed to examine the case of the applicant in the light of Note 9 to Rule 7 of CCS (RP) Rules, 1997.

11. Accordingly, A1 is quashed. The 2nd respondent is directed to examine the case of the applicant in the light of Note 9 to Rule 7 of CCS (RP) Rules, 1997 and pass appropriate orders within two months from the date of receipt of a copy of this order.

12. The Original Application is disposed of as above. No costs.

Monday, this the 30th day of July, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

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| 1. | A1 | True copy of the Order No. J/103 dated 30-10-98 of the 1st respondent. |
| 2. | A2 | True copy of the Memo No. R-142 dated 6-12-94. |
| 3. | A3 | True copy of the Memo No. B-142 dated 18-3-96 of the 1st respondent. |
| 4. | R-1 | True copy of the order of the Director of Postal Service dated 26-2-1988. |