

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application Nos. 50/2004 and 336/2005

Wednesday , this the 1st day of March, 2006

C O R A M :

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

O.A. No. 50/2004

1. P. Gangadharan Pillai,
S/o. Parameswara Kurup,
LSG (Norm Based), SRO, Kollam.
2. V. Sasidharan,
S/o. K. Velayudhan,
LSG (Norm Based), SRO, Kollam,
residing at 'Deepthi', Kadappakkada,
Kollam : 8
3. K. Sasidharan,
S/o. K. Kochummini Achari,
Ushus, Thazham North,
Chathannoor, Kollam. ... Applicants.

(By Advocate Mr. Shabu Sreedharan)

v e r s u s

1. The Chief Postmaster General,
Kerala Region,
Thiruvananthapuram.
2. The Senior Superintendent,
RMS 'TV' Division,
Thiruvananthapuram – 33. ... Respondents.

(By Advocate Mr. P.J. Philip, ACGSC)

O.A. No. 336/2005

K. Sasidharan,
S/o. K. Kochummini Achari,
(Working as Supervisor in the RMS, Kollam),
Residing at Ushus, Thazham North,
Chathannoor, Kollam. ... Applicant.

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(By Advocate Mr.P.A. Noor Muhammed)

v e r s u s

1. The Union of India represented by
The Chief Postmaster General,
Kerala Region, Thiruvananthapuram.
2. The Senior Superintendent,
RMS 'TV' Division,
Thiruvananthapuram – 33.
3. The Superintendent,
RMS 'TV' Division,
Thiruvananthapuram.
4. K. Gopalakrishna Pillai,
Sorting Assistant (BCR),
SRO, Kottarakara.

... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R1-3 and
Mr. Shafik M.A. For R4.)

(The applications having been heard on 20.02.06, this Tribunal
on.....1...3..2006 delivered the following:)

O R D E R
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Since the issues involved in both the cases are interlinked with each other, these were heard together and are being disposed of by this common order.

2. The grievances of the applicants in the O.A. No. 50/2004 are that while they were shown senior to S/Shri P.J. James, P.K. Ittykunju, B. Ravindran Nair, G. Philipose Panicker, Abraham Joseph and N.D. Thomas in



the Divisional Gradation List of Group 'C' officials in RMS TV Division as on 1.7.1999 issued by the second respondent, they were shown juniors to the aforementioned persons in the subsequent Divisional Gradation List as on 1.7.2002 issued by the same respondent. According to the applicants, they were relegated to a lower position in the Gradation List in an arbitrary manner without notice to them. The applicants have further contended that with the introduction of Time Bound One Promotion (TBOP, for short), the earlier practice of quota-based promotions, namely, 1/3rd promotions by departmental test and 2/3rd promotions by seniority has been abolished and the claim of the respondents that the applicants have not passed the departmental test and others have passed the same, is wrong. The applicants relied on the clarification/instructions contained in Annexure A/2 letter No. 31-26/83-PE.1 dated 17.12.1983, the relevant portion of the said letter is reproduced as under:

"22. (ii) Promotion to the LSG 1/3rd on the basis of the departmental examination will be abolished on introduction of the Scheme. However, vacancies falling under LSG 1/3rd quota upto 30.12.82 will be filled in accordance with the instructions on the subject.

(iii) The introduction of the Scheme will not affect officials who have already been promoted on regular basis from the basic grades to the next higher grades before 30.11.83 under existing rules. The officials who have already been promoted to the next higher scale of pay before 30.11.83 will rank on block senior to the officials who are placed in the next higher scale in pursuance of the Scheme."

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3. The applicants are also aggrieved by the identical A/3 and A/4 orders dated 18.12.2003 according to which the 2nd and 3rd applicants were promoted to the Lower Selection Grade (Norm Based), [LSG (NB), for short], as per the DPC held on 6.6.2003 by mistake as there was no post of LSG (NB) available on that date. The 9 LSG (NB) officials who were given promotions on the recommendations of the aforesaid DPC, were against the posts which were not in existence due to its upgradation to HSG II (NB) posts. The applicants were given notice, but no reply was given by them. Accordingly, the names of the applicants No. 2 and 3 were deleted from the promotion list issued on 11.8.2003.

4. In reply to the O.A, the respondents have submitted that originally there were 34 LSG (NB) supervisory posts available in RMS TV Division. Out of this 1/3rd of the LSG (NB) posts was filled by departmental examination and remaining 2/3rd was filled up on the basis of Divisional seniority. After introduction of the TBOP Scheme with effect from 30.11.1983, the departmental examination for filling up LSG (NB) posts under 1/3rd quota was abolished. The junior officials in the Gradation List dated 1.7.99 mentioned by the applicants in the O.A. had already qualified the LSG examination (1/3rd quota) held by the department in 1981 and they were residues enlisted for promotion in the vacancies that arose after 1981. On introduction of TBOP Scheme in 1983, the promotions under 1/3rd quota were abolished and the officials qualified were not given

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promotion to LSG (1/3rd quota) but were placed under TBOP Scheme. They challenged the said decision abolishing 1/3rd quota promotion vide O.A. No. 1580/97 which was allowed on 28.4.2000 declaring that the applicants therein were entitled to be absorbed in Lower Selection Grade in their turn against 1/3rd quota of vacancies earmarked for promotion on the basis of the result of the examination which was held on 15.2.81 with all consequential benefits. The respondents, thereafter, issued Annexure R/2 Memo dated 11.8.2000 promoting the applicants in the aforesaid O.A. to the cadre of LSG against 1/3rd quota of vacancies of the year 1983. It was further stated in the said R/2 Memo that those officials promoted against 1/3rd quota of LSG vacancies of the year 1983 will rank enblock senior to the officials promoted to LSG under TBOP Scheme in the year 1983 and below those promoted against 2/3rd quota of vacancies of the year 1983. Accordingly, their seniority positions were revised as per the Divisional Gradation List issued as on 1.7.1999.

5. The respondents have further submitted that both the Divisional Seniority Lists issued as on 1.7.1999 and 1.7.2002 are correct, but the positions assigned them are not under same part / head. The list dated 1.7.99 was issued under Part IV-A-HSG-II (BCR) whereas the list dated 1.7.2002 was under Part V LSG in the Divisional Gradation List (DGL, for short). The position shown under Part V in the DGL issued as on 1.7.2002 was arranged post wise and not based on seniority. Therefore,



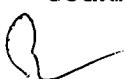
the DGL prepared as on 1.7.2002 was circulated among the staff for notice. Meanwhile, the 1st respondent, namely, the Chief Postmaster General, Kerala Region, Thiruvananthapuram, directed the second respondent that based on Postal Directorate instruction No. 4-16/2002/SPB-II dated 12.11.2002 the DGL of TBOP officials and Circle Gradation List of BCR officials has become redundant as after the introduction of TBOP/BCR Schemes, no promotion has been made against norm based posts in LSG/HSG II. It was also clarified that there is no necessity to separately show seniority of officials in TBOP/BCR Grades. It was on that basis that the respondents had issued Memo No. B-29/DGL/2002 dated 29.05.2003 cancelling the Part IV and Part V lists from the Divisional Gradation List of Group 'C' officials issued on 1.7.2002. The respondents have further submitted that the original position of the Group 'C' officials of the Division, including the applicants in the basic cadre (Sorting Assistant) has not been altered and hence there was no change in their original seniority. The promotions now awarded to LSG (NB) posts under Fast Track Promotion Scheme have not been ordered as per seniority of the officials that existed in 1990. The respondents have, therefore, rejected the contention of the applicants that they were degraded to a lower level than their juniors without giving any notice to them. They were well aware of the orders of this Tribunal passed in O.A. No. 1580/97 which was challenged before Hon'ble High Court of Kerala. In fact, the applicants have suppressed all these material facts before this Tribunal.



The respondents have also submitted that A/3 and A/4 orders were issued under the above circumstances and no injustice has been done to the applicants No. 2 and 3. The second applicant has already been promoted to LSG (NB) post with effect from 1.10.2002 and the 3rd applicant will be given promotion in the LSG (NB) post according to his turn.

6. We have heard the proxy counsel appearing for Mr. Shabu Sreedharan, learned counsel for the applicants in OA No. 50/04. There was none present on behalf of the respondents. In OA. No. 336/05 Mr. P.A. Noor Muhammed, learned counsel appeared for the applicant, Mr. TPM Ibrahim Khan, SCGSC for R1-3 and Mr. Shafik M.A. appeared for R4.

7. On going through the O.A. No. 50/04, we find first of all that the applicants have not made their alleged juniors as parties in the O.A. They have also suppressed the material facts that these so called juniors had filed O.A. No. 1580/97 in which this Tribunal directed the official respondents to promote them to LSG against 1/3rd quota of vacancies in view of their passing the examination held in 1981, i.e., before introduction of the TBOP Scheme with effect from 1983. Once the alleged juniors have been promoted before promotion of the applicants herein, obviously they have become senior to the applicants and the applicants could not have any valid grievance/objections. We, therefore, do not find



any merit in O.A. No. 50/04 and accordingly, the same is dismissed with no order as to costs.

8. As regards the O.A. No. 336/05, we find that the same was filed by the applicant No. 3 in above O.A. No. 50/2004 with the grievance that the respondent No. 4, namely, Mr. Gopalakrishna Pillai, who is much junior to the applicant has been granted promotion vide A/4 order dated 5.5.2005. As per A/4 orders, the 4th respondent, Shri K. Gopalakrishnan Pillai, SA (BCR), SRO, Kottarakkara, has qualified in the examination for Fast Track Promotion to 2/3rd quota of LSG vacancies for 2004 as LSG HAS, Kollam RMS/I in the existing vacancy. As the facts of the case have already been narrated in the above O.A., there is no need to repeat the same here again.

9. The respondents have submitted that after the introduction of TBOP Scheme with effect from 30.11.1983, the departmental examination for filling LSG (NB) posts under the 1/3rd quota was abolished. Thereafter, the supervisory posts (1/3rd as well as 2/3rd LSG [NB]) except those which had already been filled, were lying vacant and they were managed by local arrangement as per the Divisional/Unit seniority. On introduction of Fast Track Promotion Scheme for Postal Assistants/Sorting Assistants to fill up the LSG and HSG II posts in PO & RMS Offices, amendment to the Recruitment Rules for LSG/HSG II posts in POs/RMS was notified and the



same was published in the Gazette of India on 7.2.2002. As per this notification, the vacancies of LSG/HSG posts identified from 7.2.2002 are to be filled up by the norms prescribed in the Scheme of Fast Track Promotion. Accordingly, a Departmental Promotion Committee was constituted and in its meeting dt. 6.6.2003 the applicant was promoted to LSG (NB) post with effect from 1.4.2001 and later on it was understood that consequent upon the upgradation of nine HSG II posts available in the Division to HSG-I posts, nine LSG (NB) posts were upgraded to HSG II posts during 2001-02 and as such only 25 LSG (NB) posts were available in the Division. On the recommendations of the DPC met on 6.6.2003, 28 officials including the applicant were promoted to LSG (NB) as against the 25 posts available in the Division. A review DPC was held on 5.11.2003 and it was decided to delete the names of nine juniormost officials including the applicant who were promoted in excess of the LSG (NB) posts. Adequate notice was also given to the applicant. However, the applicant along with others filed above O.A. No. 50/04 before this Tribunal against the said decision deleting the name of the applicant. Subsequently, the DPC held a meeting on 21.5.2004 and decided to promote the applicant in this O.A. to the cadre of LSG Supervisor in the unreserved category with effect from 1.7.2003. It was also decided by the said DPC that the applicant will be promoted only after obtaining the legal opinion in view of the pendency of O.A. No. 50/2004. In these circumstances, the order promoting the applicant with

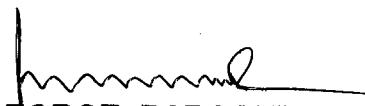
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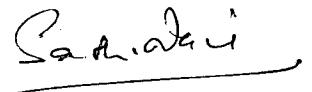
effect from 1.7.03 has not been issued so far.

10. During the course of arguments, the learned counsel for the applicant submitted that if the applicant is promoted with effect from 1.7.2003 in terms of the recommendations of DPC held on 21.5.2004, he will not have any further grievance in the matter.

11. Since the DPC has already recommended the promotion of the applicant with effect from 1.7.2003 and the applicant is satisfied with this promotion, nothing further remains in this O.A. and we feel that the O.A. can now be disposed of. Accordingly, the O.A. No. 336/05 is disposed of with a direction to the respondents to give effect to the recommendation of the DPC held on 21.5.2004 granting promotion to the applicant as LSG Supervisor in the unreserved category with effect from 1.7.2003. Orders may be issued accordingly. There will be no order as to costs.

(Dated, the ^{1st} March, 2006)


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

cvr.