

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 503 OF 2011

Wednesday, this the 9th day of November, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Leelamma Devassy
Sub Post Master
Kodakara
Irunjalakuda Opostal Division
Residing at Maliyakkara House
Vettukadu Road, Chalakudy ... Applicant

(By Advocate Mr. V.Sajith Kumar)

versus

1. The Superintendent of Post Offices
Postal Division Irunjalakuda
2. The Chief Postmaster General
Kerala Circle
Department of Posts
Trivandrum
3. Union of India represented by the Secretary
to the Government
Ministry of Communications
Department of Posts
Government of India
New Delhi ... Respondents

(By Advocate Mr.A.D.Raveendra Prasad, ACGSC)

The application having been heard on 09.11.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant entered the service as Postal Assistant in 1976 and was confirmed in 1981. In the Postal Department the seniority was based on Divisional seniority. Subsequently the same was changed into Circle seniority. The dispute arose when the Department chose to reckon

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the seniority from the date of confirmation which led to Annexure A-5 order wherein this Tribunal held that the seniority should be reckoned with effect from the date of entry and not from the date of confirmation. The said decision became final as the Writ petition was dismissed and the SLP filed before the Apex Court was also dismissed. Thus in Annexure A-5 order, this Tribunal moulded the relief in paras 10 and 11 of the order as follows:-

"10. In view of the above, preparation of Annexure A-1 promotion list to the grade of Lower Selection Grade on the basis of Annexure A4 seniority list which was prepared in the sequence as of confirmation, is liable to be quashed and set aside. We order accordingly.

11. The O.A Nos. 314/2007 and 408/2007 are thus, allowed. Respondents are directed to conduct a review of promotion to the post of LSG on the basis of Circle seniority prepared on the basis of the merit position in the initial grade of appointment and pass suitable orders of promotion. It is, however, left to the respondents that those who are at present holding the post but who on review may not figure in the list of promotees may be retained on supernumerary post. If the department would like to revert them, the same too shall not be made immediately, but after putting such affected persons to due notice, giving sufficient time to respond to the notice. Till then, they shall not be reverted. Further, those who were not earlier in the list of promotees but have now been included in the review list, would be entitled to only notional fixation of pay till the date they actually hold the higher responsibility. If the applicants are included in the promotion list, their pay shall be regulated, keeping in view their officiation in the post in the past, as per the rules."

2. Subsequently the respondents published the draft gradation list Annexure A-2 calling for objections. The applicant submitted Annexure A-3 objection claiming the benefit of Annexure A-5 and inter-alia contending that the benefit should be extended to her also as in the case of applicants in Annexure A-5 order. In Annexure R-1, the Assistant Post Master General has sought certain clarifications from the Director General (Personnel). paras 2 and 5 of the said letter is to be seen in this context. We may for the purpose of convenience refer paras 2 and 5 which is reproduced as

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under :-

"2. In this connection it is to be stated that from the year 1959 upto 04.11.1992 seniority in the Direct Recruitments were determined on the basis of the date of confirmation. Based on the Apex Court judgment dated 02.05.1990 in the Direct Recruit Engineer's Association Vs State of Maharashtra (AIR 1990 SC 1607) the Ministry of Personnel, Public Grievances and Pension, Govt of India issued orders vide OM No. 2011/5/11/5/90-ESTT(D) dated 04.11.1992 to the effect that the seniority of a person regularly appointed to a post would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. It was also stipulated therein that the seniority already determined according to the existing principles on the date of issue of the said orders will not be reopened even if in some cases the seniority determined on the basis of principles already existing prior to the date of issue of those orders.

5. Consequent on Revised Recruitment Rules dated 18.05.2006 for promotion to the cadre of LSG, We have already granted LSG promotion, on the basis of Circle seniority of postal Assistants in which seniority was fixed on the basis confirmation up to 4/11/1992 and thereafter on the basis merit at the time of initial appointment. Further promotion to HSG-II/HSG-I were also granted on the basis of LSG seniority. "

3. In the reply statement filed by the respondents it is admitted that a review DPC will be held and promotion of the official to the cadre of LSG from the date of her juniors promoted will be considered. Paras 4 and 6 of the reply statement is reproduced hereunder:-

"4. The position of Smt.Leelamma Devassy in the Circle Gradation list of PAs as on 1.7.1982 is at SI.2840. But in the draft list updated from Irinjalakuda Postal Division, the division omitted to furnish the details in respect of Smt.Leelamma Devassy and hence the name of the official was omitted to be included in the list of officials who were to be considered for LSG promotion.

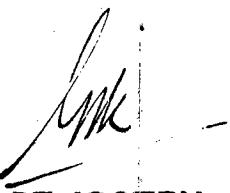
6. The official was eligible for promotion to the cadre of LSG while granting promotion in Circle level during 2007. The promotion of the official to the cadre of LSG from the date her juniors promoted will be considered in a Review DPC and her further promotion to HSG-II/HSG-I will be considered separately."

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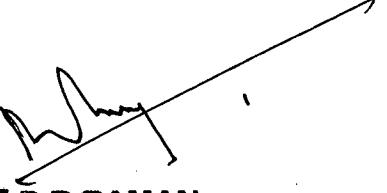
4. In view of the admitted position, the seniority has not been settled in the case of Postal Assistants since the Circle seniority was introduced for the first time which led to a dispute and culminated in Annexure A-5 order. Thereafter, objections were called for and the applicant submitted her objections. Thus it cannot be said that the seniority has been settled in the case especially in view of Annexure A-5 order and Annexure A-2 gradation list published thereafter calling for objections. If so, the decision of the Apex Court that settled position shall not be unsettled does not apply to the factual situation since the seniority is not yet settled as stated earlier. It is already admitted in the reply statement that a review DPC will be held to consider the promotion of the applicant from the date her juniors are promoted. Accordingly, we direct the applicant will be considered for promotion and the seniority will be reckoned from the date of entry into service and a review DPC will be conducted as already admitted in the reply statement. This shall be done within a period of three months from the date of receipt of a copy of this order.

5. OA is allowed as above. No costs.

Dated, the 9th November, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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