

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 512/90 199  
T. A. No.

DATE OF DECISION 31.7.1991

V. Abdul Kader Applicant (s)

Mr. OV. Radhakrishnan, & Advocate for the Applicant (s)  
R. Radhamani Amma.

Versus

Chief Postmaster General, Respondent (s)  
Kerala Circle, Trivandrum &  
Six others.

Mr. P. Sankarankutty Nair, Advocate for the Respondent (s)  
ACGSC.

CORAM:

The Hon'ble Mr. SP Mukerji

Vice-Chairman

The Hon'ble Mr. N. Dharmadan

Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
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

SHRI N. DHARMADAN, JUDICIAL MEMBER

A retired postal employee seeks for a direction to the respondents 1 to 3 and 7 to fix his pension and other retiral benefits taking into account his last pay in the H.S.G. II without regard to the termination of his officiating promotion as Deputy Post Master (HSG II) on the basis of Ext.A 22 and for a further direction to grant the benefit of fixation of pay in the Cadre of LSG w.e.f. 23.2.1976.

..../-

2. The applicant entered service in Malabar Division of Posts and Telegraphs Department as a Clerk on 15.5.1953. The seniority in the clerical cadre was to be determined under OM dated 22.6.1949 on the basis of length of service in the grade. The seniority of the applicant was accordingly determined, but it was on the basis of the date of confirmation under an O.M. dated 22.12.1959. There arose a controversy as to whether the date of entry or date of confirmation in a cadre is to be taken as the basis for determining seniority. This was settled by the Supreme Court in Union of India Vs. Ravi Varma, AIR 1972 SC 670. The court held that the OM dated 22.12.1959 has no retrospective effect and does not apply to persons appointed before the date of the OM. So the applicant is entitled to count his seniority from the date of his entry in service. The Government also issued another OM dated 22.7.1972 laying down the general principles and criteria to be followed for determining the seniority of various categories of persons employed in central services. Subsequently the

...../-

seniority of the officials like the applicant who entered the service before 22.12.1959 were refixed by counting their length of service in the grade as per Ext.A 1. In Ext. A 2 gradation list of post office officials as on 1.7.1977 prepared on account of the refixation of the seniority<sup>the</sup> applicant became senior to many of the persons who got seniority because of the fixation of the same considering the date of confirmation. He was assigned rank at Serial No. 478 while Sri P. Balakrishnan Nair, his junior was given a place at Serial No. 498. But Bala krishnan Nair happened to be promoted to the post of LSG w.a.f. 23.2.1976 on the basis of his seniority fixed with reference to date of confirmation. In Ext. A 3 Circle gradation list of post office officials, Shri Balakrishnan Nair was given the date of commencement of continuous service in LSG as 23.2.1976. According to Rule 272-A of P & T Manual Vol. IV Promotion to lower selection grade in the general line is to be made on the basis of seniority cum fitness to 2/3 of the LSG posts in an year. The 1/3 of the posts in each calendar year will be

.../-

filled up by selection. The respondents 4 to 6 while working as Time Scale Clerks were selected and promoted to the LSG (general line) against 1/3 quota of vacancies as per Ext A 4 Memo. The applicant was promoted to LSG on regular basis as per Ext A 5 memo against 2/3 vacancies of 1979 and the respondents 4 to 6 were promoted to LSG against 1/3 quota of the same year.

3. The applicant claimed seniority over respondents 4 to 6 and Shri Balakrishnan Nair<sup>because</sup> while the applicant was at Serial No. 20, Shri Balakrishnan Nair was at Serial No. 26 in Ext. A 5 Seniority list of LSG of general line. (He was already promoted to the said post w.e.f. 23.2.1976 but the date has not been shown in Ext 5)<sup>and</sup> according to Rule 272-A of the P&T Manual Vol. IV all persons promoted against 2/3 ~~vacancies in a year would enblock rank senior to those promoted against 1/3 quota~~ of vacancies by selection. ~~Under the~~ Under the above rule the applicant would rank senior to respondent 4 to 6 in the cadre of LSG. It was submitted that had the applicant been given his rightful

..../-

seniority based on his continuous length of his service as provided in the Ministry of Home Affairs OM No. 9/3/72 Estt. D dated 22.7.72 at the appropriate time he would have been considered for promotion in Feb 1976 along with his junior P. Balakrishnan Nair. But the applicant was not considered for promotion on any date prior to 30.9.79. In fact according to the applicant he ought to have been considered for promotion in implementation of Exts. A 6 & A 7 orders which are laying down the principles and procedure for seniority and promotion of officials who got appointed to the service between 22.6.1949 to 21.12.1959. On coming to know that the applicant's junior M/s P. Balakrishnan Nair and K. Gopalan were promoted to LSG cadre in February 1976 and 1978- the applicant submitted Ext. A 8 representation on 28.2.1985. It was rejected by Annexure A 9 dated 8.5.86 stating that Shri Gopalan was promoted on ad-hoc basis <sup>under</sup> ~~and~~ the memo dated 5.4.78 against the 2/3rd quota of vacancies and that the seniority of the officials was subsequently revised. The ad-hoc promotion given to Shri Gopalan does not confer any

..../-

claim on the applicant as he got his promotion from due date. Regarding Balakrishnan Nair's promotion it was stated that the said promotion was under 1/3rd quota of vacancies and cannot be related to that of the applicant. Since the reasons given in Ext-A 9 are wrong, the applicant again filed representation Ext A-10 for a review. This was also rejected by Ext A 12 dated 14/10/1988. Thereafter, the applicant submitted a representation Ext A-13 pointing out that his rank in the Circle Gradation List of 1982 is at Serial No. 297 while Shri Balakrishnan Nair is ranked at Serial No.303 and he is drawing higher pay on the basis of the earlier promotion. He requested review of his case under FR 27(7) and for granting stepping up his pay. This request was also rejected by Ext A 14. His further detailed representations were not considered in accordance with law. Ultimately he got Ext A 22 rejecting his requests.. The applicant has filed this application under Section 19 of the Central Administrative Tribunals' Act, 1985 challenging

...../-

Exts A 12, A 14 and A 22. He also seeks for a direction to the respondents, 1 to 3 & 7 to fix his pension and other retiral benefits granting his pay in the cadre of LSG w.e.f. 23.2.1976 under Exts A6 & A 7 and grant him all consequential benefits.

4. The respondents 1 to 3 and 7 in their counter affidavit admitted that there is a fixation of seniority in respect of those who have entered the service between 22.6.1949 and 21.12.1959 on the basis of the date of confirmation. But, when the Supreme Court settled the legal position regarding seniority of these officers considerable effort has to be made to revise the gradation list already prepared and circulated it among the officers. When the seniority was re-cast on the basis of Supreme Court judgment an anomalous position arose. Hence, it was further ordered that the pay of some of the officers who became senior under the revised orders<sup>to</sup> to be fixed under FR 27 notionally with effect from the date of promotion. The respondents further submitted that Balakrishnan Nair had<sup>^</sup> already been promoted to the post of LSG from 23.2.1976 much before implementation of the revised seniority orders under the then existing orders. When the seniority

...../-

position was recast, Shri Balakrishnan Nair who commenced service in the post office as clerk on 15.6.1953 became junior to the applicant who commenced service on 15.5.1953. But, since Shri Balakrishnan Nair was promoted to LSG from 23.2.1976 he was not reverted in terms of the orders of the Director General. The applicant could not be promoted to LSG for want of vacancy. So notwithstanding re-assignment of seniority in terms of the Supreme Court decision, the applicant could not be promoted as LSG till 1979 for want of vacancies. The turn of the applicant came only in 1979 and he was promoted w.e.f. 30.9.79 against the prescribed 2/3 quota of vacancies. The promotion of Shri Balakrishnan Nair to LSG was under fortuitous circumstances and it was given effect to from 23.2.1976 on the basis of his selection against the vacancies of 2/3rd quota of 1976, under the then existing orders and it cannot be altered at present. The respondents 4 to 6 while working as Time Scale Clerks were selected to LSG against 1/3rd quota of vacancies of 1977 but were promoted only in 1979. Accordingly, they will rank senior to the applicant since the applicant was



given promotion against 2/3 rd quota of 1979.

Under these circumstances this application is liable to be rejected as devoid of any merits.

5. We have heard the arguments and perused the records. The applicant's case is based on Ext A6 and A7 which were issued after the Supreme Court decision in view of the anomalous position and arose due to the fixation/recasting of the seniority based on the length of continuous service for the persons who have entered in the service between 22.6.1949 and 21.12.1959. Ext A 6 provided as follows:

" I am directed to invite a reference to the instructions issued in this office letter of even number dated 12.4.78 regarding fixation of seniority of officials in the operative offices appointed during the period from 22.6.49 to 21.12.59 and preparation of revised gradation lists and to say that the question of giving benefit in the matter of fixation of pay, to such employees as are promoted, or are deemed to have been promoted to LSG cadre from a date later than 4.1.72 in pursuance of the instructions contained therein, has been further examined by Government in the light of the decision conveyed in Departmental of Personnel & Administrative Reforms Office Memorandum No. 20011/1/77-Estt(D) dated 13.4.78 as amended vide that Department's corrigendum of even No. dated 16.6.78 (copy enclosed) and the following decisions have been taken.

The President has been pleased to decide that the pay of those employees who on the basis of their revised seniority in the cadre of clerks, sorters, telephone operators etc. assigned as per instructions issued in DG P&T letter No. 45/1/74-SPB II dated 12.4.78 are considered by the D.P.C. suitable for promotion to LSG from a date later than 4.1.72 may be notionally fixed w.e.f. 4.1.72 and their

...../-

pay on the date of actual promotion fixed accordingly under F.R. 27 provided the appointing authority satisfies itself in each case that employee in question would have been considered for promotion at the appropriate time, had he been assigned his rightful seniority ab-initio, viz. what is sought to be assigned to him under the instructions of 12.4.78. This benefit, will however, not be admissible if the employee concerned is not found suitable for promotion to the LSG by the DPC when his suitability for promotion w.e.f. 4.1.72 is considered on the first occasion. The arrears arising out of such notional fixation of pay, w.e.f. 4.1.72 or the later date, as the case may be, would, however, be admissible from the actual date of promotion only. The benefit of this pay fixation will not entitle the employee to any further benefits such as seniority in the grade to which he is promoted etc."

The OM No. 20011/1/77-Estt.(D) dated 13.4.1978 mentioned in Ext A6 is Ext A7. The applicant claimed the benefit of these orders. He joined ~~the~~<sup>and</sup> service on 15.5.1953 ~~who~~<sup>is</sup> is admittedly senior to Shri P. Balakrishnan Nair. He ~~along~~<sup>all</sup> claimed seniority above Shri Balakrishnan Nair who was promoted to LSG w.e.f. 23.2.1976 on the basis of his selection against the vacancies of 2/3rd quota of 1976. Both the applicant and Shri Balakrishnan Nair have been regularised correctly according to revised rule after the Supreme Court decision and placed together as promoted officers to LSG in 2/3rd quota of vacancies of 1979 as per Ext A 5 memo; Staff-5/1/79 dated 25.9.79. The applicant was at serial No. 20 while Shri Balakrishnan Nair was at Serial No. 26. Though Shri Balakrishnan Nair was promoted w.e.f. 1976, it has not been stated so in Ext. A 5. So much so the applicant was not aware of the promotion of Shri Nair with earlier date and posting thereof as LSG. In the Circle Gradation List of

h  
;..../-

of 1982 while the applicant was at Serial No. 297, Balakrishnan Nair was placed only at Serial No. 303.

The orders on revised seniority Exts. A 6 & A 7 protect those who suffered loss of seniority due to old seniority rules. Besides these orders also provide formula for fixing of notional pay to Pre. 1959 Entrance under FR.27. The applicant's request in the representations was only to implement the provisions of FR 27 as indicated in Ext A6 & A7. They were rejected without giving correct and convincing reasons.

6. It has been admitted in the reply statement that the respondents 4 to 6 were selected as LSG against 1/3 quota of 1977 but they were actually absorbed in that post in the vacancies in 1979. But, the applicant is eligible to be posted as LSG in the 1976 quota. So they cannot claim seniority over the applicant by virtue of their promotion and posting in 1979 quota. It is true that the applicant was given promotion as LSG against 2/3 quota of 1979 but really he is entitled to be promoted against the vacancies of 2/3 quota, 1976 before Shri Balakrishnan Nair as per Extract A 5 and his seniority in Circle Gradation List taking into consideration his date of commencement of service

..../-

viz., 15.5.1953. The respondents have admitted in the reply statement that considering the date of joining and length of service, Shri Balakrishnan Nair is junior to the applicant, but he was promoted to LSG cadre on selection against 2/3 quota of 1976. But his name was included in the 2/3 quota of the year 1979. This according to the respondents is a clerical mistake and Shri Balakrishnan Nair was promoted on the basis of the rules in force against 2/3 quota of 1976 and he was working in that post ever since then, <sup>and</sup> ~~he~~ <sup>is</sup> senior to the applicant in LSG cadre.

7. The fact that Shri Balakrishnan Nair was working as LSG for some time on a wrong promotion and posting would not confer on him any legal right to continue in that post. It would be perpetuating a wrong and illegal act. Hence, this argument of the respondents cannot be accepted in the light of Ext. A6 & A7. <sup>The</sup> ~~the~~ 1976 vacancy of LSG ought to have been given to the applicant since he was senior to Shri Balakrishnan Nair. There is no basis for the statement that the promotion of Balakrishnan Nair


.../-

was under fortuitous circumstances. In fact the applicant was shown as junior to Shri Balakrishnan Nair in the 1st Gradation List because the seniority was fixed on the date of confirmation in the post and not the date of entry. Accordingly Shri Balakrishnan Nair was given promotion to LSG Cadre w.e.f. 23.2.1976. This was done much before the implementation of the revised seniority orders issued on the basis of the Supreme Court decision settling the principle of promotion. As a result of giving effect to the Supreme Court verdict Shri Balakrishnan Nair became junior to the applicant taking into consideration the length of service and date of entry thereon. Necessary corrective measure ought to have been taken by the respondents immediately thereafter and Shri Balakrishnan Nair ought to have been reverted for giving place to the applicant for ~~the applicant~~<sup>b</sup> implementing the promotion and posting of LSGs in the light of Ext. A6 & A7 in terms in Ext. A 5 or at least the applicant should have been given the benefit of promotion from 1976 in the light of Ext. A6 & A7 when he claimed the same.


..../-

8. Having considered the matter in detail we are of the view that the impugned orders are unsustainable and ~~are~~ liable to be quashed. Accordingly, we quash them and direct the respondents 1 to 3 and 7 to grant the applicant the benefit of fixation of the pay in the cadre of LSG w.e.f. 23.2.1976 under Exts A6 & A7 and grant him all consequential benefits.

9. In the result this application is allowed. There will be no order as to costs.

  
(N Dharmadan)  
Judicial Member

31.7.91

  
(SP Mukerji)  
Vice-Chairman

31.7.91