

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

553/91

~~199x~~

DATE OF DECISION 27.7.1992

Mr P Raghava Menon Applicant (x)

Mr Mathai M Paikaday Advocate for the Applicant (x)

Versus

Union of India & others Respondent (s)

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, Shri P Raghava Menon, officiating as Junior Technical Assistant in the office of the Registrar who of Companies, Kerala at Ernakulam is aggrieved by the transfer of Shri KR Venkiteswaran, the 4th respondent as Superintendent Grade II to the office of the Registrar of Companies, Kerala has in this application prayed that the respondents 1 to 3 may be directed to retransfer the 4th respondent back to the post held by him at Karnataka and to promote and post him in that vacancy which arose on

1.3.1991. The facts as averred in this application and the rejoinder can be briefly stated as follows.

2. The applicant who joined the service as Lower Division Clerk in the Western Region, Bombay in the office of the Registrar of Companies, Maharashtra on 26.4.1960 and on request got transferred to Ernakulam in the year 1965. He was later promoted as UDC on 12.4.1977. He was confirmed in the post of UDC in the year 1979. The Department maintains regional seniority list and makes promotion to higher posts on the basis of region-wise seniority, if necessary by transfer. On 26th February, 1990, the Registrar of Companies Kerala (the 3rd respondent) by memorandum at Annexure II called for the willingness of the applicant to be promoted as Office Superintendent Grade II in Karnataka State on adhoc basis subject to regularisation by the next Departmental Promotion Committee (DPC). The applicant by letter dated 27.2.1990 expressed his inability to accept the adhoc promotion, but requested that as and when a vacancy arose in Kerala his case might be considered. The 4th respondent who entered service as Lower Division Typist on 29.10.1965 was promoted as Superintendent Grade II on adhoc basis and was transferred Bangalore in the month of September, 1990. Now, by the impugned order dated 27th March, 1991, the 4th respondent has been retransferred to Kerala as Superintendent Grade II at his request and he joined the post on 3.4.1991. In the provisional seniority list published in the year

1989, the applicant's date of entry into service had been shown as 26.4.1970 which in fact is 26.4.1960 and the representation made against this error by the applicant on 29.8.89 has not so far been responded to. The applicant is aggrieved by the transfer of the 4th respondent to a regular vacancy of Office Superintendent Grade II in the Ernakulam office. Since the 4th respondent entered service 5 years after the applicant has commenced his service, he feels that injustice has been done to him in the matter of promotion. It is in these circumstances that the applicant has filed this application praying that the respondents 1 to 3 may be directed to promote him to the post of Office Superintendent Grade II and to post him in the office at Ernakulam retransferring the 4th respondent back to Karnataka.

3. The respondents 1 & 2 have filed a reply statement. The 4th respondent has also filed a separate reply statement. The respondents 1 & 2 in their reply statement have raised the following contentions:-

4. According to the recruitment rules, the posts of Superintendent Grade II are to be filled by the Regional Director, Department of Company Affairs on the basis of the recommendations of the regional DPC. The UDCs who have three years' experience in that grade and Stenographers who have three years' experience either as Stenographer or as Upper Division Clerk or as both, are eligible to be considered for selection to the post of Superintendent Grade II.



Reservation of 12-1/2% and 5 % of the vacancies for Scheduled Castes and Scheduled Tribes respectively is to be followed in the promotion to be made by selection. Before holding the DPC meeting, willingness of officials working in various offices, including the applicant, was called for in order to fill the vacancies in the posts of Superintendent Grade II initially on adhoc basis subject to regularisation by the DPC making it clear that the adhoc promotion would not confer on them any preferential treatment in the matter of regular promotion. The applicant expressed his unwillingness to be posted out of Kerala. The DPC which met on 19.7.1990 considered the suitability of candidates drawn from the categories of UDCs and Stenographers for 3 vacancies, one of which arose on 1.4.1990 at Bangalore, another on 1.8.1990 at Bangalore and the third on 1.3.1991 at Ernakulam, Kerala. The 2nd vacancy at Bangalore was a reserved vacancy. So, the DPC considered 8 persons for the 2 general category vacancies and prepared a panel of 8 persons against the 2 vacancies in the order of their seniority. As the applicant was far below in the eligibility list at Sl No.13, he was not considered. Many of the seniors who came in the zone of consideration had expressed their unwillingness to be promoted to the said vacancies. The applicant had expressed willingness to be promoted only against a vacancy in Kerala. But as he was not senior enough, the DPC did not include his name in the panel. Shri R Lakshminarayanan, who was No.1 in the panel declined promotion and, therefore, the next

man, Shri B Basavaraju was promoted as Superintendent Grade II on regular basis and was posted in Bangalore. As the ST candidate Shri S Krishna Babu declined the promotion, the post of Superintendent Grade II in the office of the Registrar of Companies, Karnataka was filled on an adhoc basis by the next person Shri KR Venkiteswaran, the 4th respondent, who had expressed willingness and whose name occurred at Sl No.7 in the panel, was promoted on adhoc basis to that post. When a post of Superintendent in the office of the Registrar of Companies, Kerala fell vacant, the 4th respondent officiating as Superintendent Grade II on hadhoc basis, who had expressed his willingness for posting at Kerala and who had been cleared by the DPC was transferred and posted to the post of Superintendent Grade II at Ernakulam. and in the light of the policy of the Government, a ST candidate selected for the post of Superintendent Grade II was promoted to that post and accommodated at Hyderabad.

Stenographers and UDCs are both feeder categories of Superintendent Grade II. The scale of pay of UDCs and Stenographers are identical. While the 4th respondent was holding the post of Junior Stenographer from 1.8.1969 on a regular basis, the applicant was promoted to the post of UDC on regular basis only from 12.4.1977. Going by the length of service in the equivalent cadre, the 4th respondent is senior to the applicant by 8 years. No one junior to the applicant has been considered for promotion as Superintendent Grade II. The applicant's name was not

included in the panel by the DPC because he did not come within the zone of consideration. In fact, there are other persons who are senior to the applicant and not yet considered for promotion. The error in the gradation list published in 1989 by which the date of entry of the applicant into service shown as 26.4.1970 instead of 26.4.1960 has been noted by the Department and this has not stood in the way of the applicant at all in the matter of consideration for promotion. The applicant has no locus standi to challenge the transfer of the 4th respondent. Therefore, the applicant has no legitimate grievance to be redressed and hence, the application is liable to be dismissed.

5. The 4th respondent in his reply statement has contended that since he was regularised in the post of Junior Stenographer in the scale of Rs.330-560/- which is the same as the scale of the UDC with effect from 1.8.1969 and confirmed in that post with effect from 1.2.1979 and as the applicant was regularly appointed as UDC only on 17.4.1977 and confirmed in that post on 13.11.1979, the contention of the applicant that he is senior to the 4th respondent is fallacious. He has also contended that as the criterion for promotion to a higher grade is the seniority position in the combined eligibility list in the immediate lower grade, the applicant who is comparatively junior to the 4th respondent can have no grievance against the promotion or transfer of the 4th respondent.

6. We have carefully perused the pleadings and documents and have also heard the learned counsel for all the parties. It is a common case that the posts of Junior Stenographer

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and UDC carry identical pay scales and that both these cadres form feeder categories for promotion to the post of Office Superintendent Grade II. When two different categories of posts carry identical pay scales are considered feeder categories to a higher post, the seniority inter se is to be determined on the basis of the length of service in the equivalent grades. It is a fact undisputed that the 4th respondent was regularised in the post of Junior Stenographer with effect from 1.8.1969 while the applicant was promoted as UDC only on 17.4.1977. So undoubtedly, the 4th respondent has longer length of service in the cadre of Junior Stenographer which is equivalent to that of UDC. Therefore, there is no basis for the contention of the applicant that the 4th respondent is junior to him. The fact that the applicant commenced service in the Department earlier than the 4th respondent is no consideration at all. For the purpose of promotion to a higher post, seniority in the feeder category alone is ~~the relevant~~ ^{relevant}. Further, it is evident from the pleadings that the applicant was not placed in the panel containing 8 names prepared by the DPC on 19.7.1990 as he did not come within the zone of consideration. The respondents 1 & 2 have contended in paragraph 10 of their reply statement that while 8 persons ~~from~~ ^{were empanelled} the combined eligibility list of the categories of UDCs and Junior Stenographers ^{the} applicant was at Sl No.13 as per the eligibility list. This has not been controverted by the applicant. In fact, it is admitted that there are persons senior to the applicant in the cadre of UDC even in Kerala who have not been promoted as Office Superintendent Grade II. Smt Chinnamma whose

name is at Sl No.8 in the panel is senior to the applicant and she has not been promoted. It is evident from Annexure R1, a copy of the minutes of the DPC held on 19th July, 1990 that those who had expressed ^{un} willingness for promotion outside their States also had been considered for inclusion in the panel and that they were actually included. The applicant's name was not included in the panel not because he expressed unwillingness to be posted out of Kerala, but because he was much below in the combined eligibility list. Therefore, we find that no irregularity in the panel prepared by the DPC on 19.7.1990. As the 4th respondent was senior to the applicant in the combined eligibility list, the promotion of the 4th respondent as Superintendent Grade II cannot be faulted. There is nothing wrong in transferring the 4th respondent to the post which became vacant in Kochi. Even otherwise, the applicant who is not senior enough would not have been promoted to the post. The applicant has no case that he is the senior-most person to be promoted as Superintendent Grade II. Therefore, the applicant can have no legitimate grievance in the transfer of the 4th respondent as Superintendent Grade II to the office of the Registrar of Companies at Ernakulam.

7. In the conspectus of facts and circumstances of the case, we do not find any merit in the application and, therefore, we dismiss the same without any order as to costs.

(AV HARIDASAN)
JUDICIAL MEMBER

27/7/92

(SP MUKERJI)
VICE CHAIRMAN

27.7.92

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