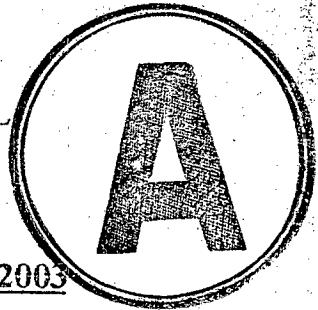


CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH



Common order in O.A. Nos.563/2003 AND 564/2003

Wednesday this the 4th day of January, 2006.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.563/03:

1. A.T.Thomman,
S/o Late Thomman,
(Retired Postmaster, Irinjalakuda),
Residing at Ambattu House,
Karoor P.o.,
2. Smt. Rosamma Thomas,(legal heir)
W/o late AT Thomman, Residing
at Ambattu House,
Karoor P.O. Palai.

Applicants

(By Advocate Shri PC Sebastian)

Vs.

1. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
2. The Director of Postal Services (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. The Union of India, represented by
Secretary, Ministry of Communications,
Department of Posts,
New Delhi.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC

O.A. 564/03 :

Shri A.N.Gopinathan Nair,
S/o Late R. Neelakantan nair,
Residing at " Surabhi House", Vallapad, Palai P.O.,
Now working as Sub Postmaster (HSG I),
Kottayam Collectorate P.O.,
Kottayam - 686 002.

Applicant

(By Advocate Shri PC Sebastian)

Vs.

1. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
2. The Director of Postal Services (HQ),
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. The Union of India, represented by
Secretary to Govt. of India,
Ministry of Communications, Department of Posts,
New Delhi. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The applications having been heard on 4.1.2006, the Tribunal
On the same day delivered the following:

ORDER (Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

There are two applicants in O.A.563/03 and one applicant in O.A.564/04.

The second applicant in O.A.563/03 is the legal heir of the first applicant. Since the issues involved and the reliefs sought for in both these O.As. are identical, both these O.As. are disposed of with consent by a common order. For convenience, the facts of O.A.563/03 have been taken in this order.

2. The applicants entered service as a Time-scale Postal Clerks (now Postal Assistant) in the year 1961 and after rendering 35 years of service retired from service on superannuation on 31.8.1996 while working as Postmaster Irinjalakuda which is a post in Higher selection Grade I. He appeared for the departmental examination for promotion to the Lower Grade (LSG) against 1/3rd quota set apart as per Rule 272 A of Posts and Telegraphs Manual vol. IV, held in the year 1978 and came out successful. (A1). He was promoted to LSG cadre with effect from 23.7.1979 on a permanent basis against 1978 vacancy. The seniority list (A2) was issued revising the seniority and ranking of all the officials appointed to LSG against 2/3rd and 1/3rd quotas for the years 1979 to 1982 and the names of S/Shri

K.Sreenivasan Nair and A.J.Chandy, who are juniors to the applicant was found but, the applicant's name was not included since the applicant was promoted to LSG for the year 1978. He was placed in Higher Selection Grade (HSG) II w.e.f. 1.10.1991 under the Biennial Cadre Review Scheme vide order dated 22.1.92. Vide Annexure A-3 he was promoted to HSG II on a regular basis. Pursuant to Annexure A3, the applicant was promoted as Postmaster Palai in the HSG II cadre vide order dated 31.3.1992. The applicant was retired from service on 31.8.1996 while working in HSG I cadre on officiating basis. His junior Shri Chandy was promoted to HSG I w.e.f. 26.10.1995 overlooking the seniority of the applicant. He submitted a representation claiming promotion on par with the juniors and the same is not yet responded to. Aggrieved by the inaction on the part of the respondents, the applicant has filed this O.A. seeking the following reliefs.

- i. To declare that the applicant is entitled to be considered for promotion to HSG-II and HSG-I cadres with all consequential benefits, retrospectively from the date which applicant's junior Shri A J.Chandy was promoted to the said cadres as reflected in Annexure A5 order;
- ii. To issue appropriate direction or order directing the respondents to extend the benefits of A-9 orders of this Hon'ble Tribunal to the applicant who is senior to the applicants in O.A.No.1292/96;
- iii. To issue appropriate direction or order directing the respondents to promote the applicant to the Cadre of HSG II with effect from 3.6.88 and to the cadre of HSG I with effect from 25.10.1995, if not earlier with all consequential benefits as ordered in Annexure A-5 Memo dated 16.9.2002;

3. The respondents have filed a detailed reply statement contending that the applicant was promoted to the cadre of LSG having qualified in the 1/3rd quota of LSG examination, with effect from 23.7.1979. He was placed in the next higher grade under Biennial Cadre Review Scheme w.e.f. 1.10.1991. Further he was promoted to the cadre of HSG-II as per A-3 order and he retired from service voluntarily w.e.f.1.8.96 forenoon. Shri P.V.Sreedharan Nambeesan who was an

Accounts Line Official was promoted to LSG w.e.f 26.11.1981 and was confirmed with effect from 2.12.1981 against a substantive vacancy vide order dated 17.11.1987. Subsequently, Shri Nambeesan was promoted to the cadre of Higher Selection Grade (HSG II) w.e.f 3.6.1988. Promotion to HSG II is governed by Rule 272-B(2) of Post & Telegraphs Manual Vol.IV according to which promotion to HSG is to be made from officials in LSG in the order of seniority subject to fitness. The seniority of Government servants is determined based on the general principles contained in the Ministry of Home Affairs O.M. dated 22.12.1959. One of the basic principles enunciated in the said O.M. is that seniority follows confirmation and consequently, permanent officials in each grade shall rank senior to those who are officiating in that grade. The general principle of seniority as mentioned above has been examined in the light of judicial pronouncements and it has been decided that seniority be delinked from confirmation as per the directive of the Hon'ble Supreme Court in its judgment dated 2.5.1990 in the case of Class II Direct Recruits Engineering officers Association Vs. State of Maharashtra (JT-1990(2)(SC)-264. Accordingly, in modification of the general principle, it has been decided that the seniority of a person regularly appointed to a post according to rule would be determined by the order of merit at the time of initial appointment and not according to the date of confirmation. Finally it is contended that, the applicant has not a good case. The case of one Shri Govindan Adiyodi and others also have no relevance as far as this case is concerned.

4. Shri P.C.Sebastian, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan, SCGSC appeared for the respondents.

5. Learned counsel appearing for the parties have taken us to various pleadings, evidence and material placed on record. Learned counsel for applicant

argued that the juniors to the applicant were promoted to the cadre of HSG-II with effect from 3.6.1988 and HSG-I with effect from 26.10.1995 without considering the applicant and overlooking his seniority in the LSG Cadre.

Learned counsel for the respondents on the other hand submitted that it is as per the seniority that has been fixed and the promotions have been done according to the rules.

6. We have given due consideration to the arguments advanced by the parties and also the pleadings, evidence and material placed on record. Learned counsel for the parties have taken us to O.A.809/02 and other connected cases dated 29.7.2005 and submitted that this is an identical case wherein the entire issue has been discussed and the applicants therein were granted the reliefs. We have perused the said judgement and we are in respectful agreement with the said decision. For better elucidation it is profitable to quote the operative portion (Pasas 6,7,8,9,10, 11,12,13 & 14. of O.A.809/02) of the said judgement, which reads as follows:

6. We have given due consideration to the arguments advanced by the learned counsel appearing for the parties and to the material and evidence placed on record. Admittedly all the applicants herein are seniors to Govindan Adiyodi, K Sreenivasan Nair, and AJ Chandy, the beneficiaries of OAs 1092/92 & 1292/98. There is no dispute with regard to the said proposition. We also asked specific query to the respondents' counsel as to this aspect, but they have neither disputed this fact in the pleadings nor there is any evidence to show otherwise. The entire episode started when PV Sreedharan Nambeesan was promoted to LSG with effect from 2.12.1981 and was confirmed in the LSG with effect from 2.12.1981 itself and further promoted to HSG II as per Annexure A-5 order dated 10.5.1988. On coming to know that one Govindan Adiyodi who was promoted to LSG cadre with effect from 6.9.1980 filed representations before the respondents for promoting him to HSG II with effect from 10.5.1988, the date on which his junior Sreedharan Nambeesan was promoted to HSG II as per Annexure A-5. As the representations did not yield any result he approached this Tribunal by filing OA 1092/92. The said OA was disposed of by order dated 9.7.1993 in which the Tribunal has held that :-

In the light of the settled legal position we hold that impugned order Annexure A-8 is unsustainable and it is only to be quashed. Accordingly we quash the same and direct respondents 1-4 to review the promotion of the applicant to the cadre HSG on the basis of revised seniority to be fixed taking into consideration the seniority of the applicant from the date of retrospective promotion as LSG as shown in Annexure A-2 viz 6.9.1988. It goes without saying that applicant is eligible to all consequential benefits in accordance with law.

7. Vide Annexure A-7 dated 11.7.1994 Govindan Adiyodi was promoted to HSG II cadre with retrospective effect from 3.6.1985 the date on which his junior P Sreedharan Nambeesan was promoted to HSG II cadre. Vide Annexure A-8 order Govindan Adiyodi was promoted to HSG I cancelling the promotion of PV Sreedharan Nambeesan to HSG I. Aggrieved, PV Sreedharan Nambeesan filed OA 868/97 before this Tribunal and vide order dated 22.12.1999 (Annexure A-21) the Tribunal has passed the following orders :-

In the light of what is stated above we are of the considered view that there is absolutely no justification for the action on the part of the respondents to alter the date of confirmation of the applicant from 2.12.1981 to 26.11.1983 as made in Annexure A-1 impugned order after the lapse of more than ten years.

In the result the application is allowed and the impugned order is set aside. There is no order as to costs.

8. In the meantime, K Sreenivasan Nair and AJ Chandy, the said juniors filed OA 1292/96 and vide Annexure A-9 the Tribunal has passed the following orders :-

In light of the discussion above, the prayer of the applicants is well founded. The impugned orders at Annexure A-11 are quashed. Respondents 2&3 are directed to consider the case of the applicants for promotion to the HSG I and HSG II with effect from the date on which Sreedharan Nambeesan was promoted and pass appropriate orders in the light of the decision of the Tribunal in OA 1092/92 within three months of today. Applicants would also be entitled to consequential benefits on such promotion.

Application is allowed as aforesaid. No costs.

9. Though an interim stay was granted to the said order by Hon'ble High Court in CMP No.44507/98 in OP No.25315/98-S subsequently, the stay was vacated by order dated 5.6.2002. The observation of the Hon'ble High Court is as follows :-

Therefore, *prima facie*, the Tribunal was justified in extending the same benefits which were extended to K Govindan Adiyodi, to the first respondent also. Hence, we do

not find any ground for staying the operation of Ext.P3 order pending disposal of the Original Petition. The CMP is dismissed. However, the implementation of Ext.P3 order will be subject to the final result of the Original Petition.

10. Thereafter, the benefit as directed was granted to Sreenivasan Nair and AJ Chandy vide Annexure A-13 memo implementing the orders granting all attendant benefits to the said officials. Representations were made by the applicants to the respondents but their requests were not acceded to stating that the benefit of CAT judgment is applicable only to the parties concerned and not applicable to others even if the cases are identical in nature. On a further representation the applicants were informed that their requests would be considered based on the decision taken by the Directorate. And again on a further representation, the applicants were intimated that the matter is under the examination of Circle Office. Therefore, it is very clear from Annexure A-16, Annexure A-18 and Annexure A-20 that the claims of the applicants were under active consideration of the officials. In none of the replies the respondents have taken the contention that the applicants are not entitled to the benefits. It is pertinent to note that Sreedharan Nambeesan was given notice directing him to show cause why his date of confirmation should not be altered to 26.11.1983 on the basis that he was confirmed with effect from 2.12.1981 erroneously. The notice was challenged by him in OA 868/97 and this Tribunal allowed the application setting aside the impugned notice by order dated 22.12.1999 (Annexure A-21). Aggrieved by Annexure A-21 order the official respondents filed OP 16613/00 before the Hon'ble High Court. The said OP was finally heard and dismissed by order dated 13.6.2000 the operative portion of which is as follows :-

At this distance of time the settled seniority of the 2nd respondent cannot be unsettled by issuing Annexure A-1 notice in O.A. For this reason we find that the conclusion arrived at by the Tribunal cannot be assailed. In the light of the above view which we are inclined to take in this case it is not necessary for us to express any view on the question whether there are statutory rules or administrative instructions which provides that a confirmation issued subsequently should not take effect on a date which falls before the expiry of the period of probation.

With the above observations, the petition stands dismissed.

11. In short, the fact remains that PV Sreedharan Nambeesan and Govindan Adiyodi are admittedly juniors to these applicants and all the benefits granted to these officials have been confirmed by the orders of the Tribunal which was approved by the Hon'ble High Court. Further, two other juniors, namely, K Sreenivasan Nair and AJ Chandy, applicants in OA 1292/96 were also granted the benefits. The question is now can these applicants who are identically placed be denied the benefits? Non consideration of the applicants for promotion to HSG II and HSG I while promoting his juniors is clear violation of fundamental right guaranteed under Article 16(1) of the Constitution of India. Learned counsel for the applicants has brought to our attention the judgment of the Hon'ble Supreme Court in

Amritial Vs. Collector of Central Excise, Revenue reported in AIR 1975 SC 538. The Hon'ble Supreme Court has observed as follows :-

We may, however, observed that when a citizen aggrieved by the action of the Government Department has approached the Court and obtained declaration of law in his favour, others, in the circumstances should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.

12. And in a later decision in Inder Pal Yadav Vs. Union of India reported in 1984 (2) SLR 248 the Hon'ble Supreme Court has held that :-

Therefore, those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not, by any one else at the hands of the Court.

13. Learned counsel for the applicants also brought to our notice a decision in Gopal Krishna Sharma Vs. State of Rajasthan reported in 1993 Suppl. (2) SCC 375 wherein the Hon'ble Supreme Court has clarified that the benefit of the judgment will be available to all similarly situated even if not joined as parties to the case in which the judgment was given. Learned counsel for the respondents, on the other hand, relying on a decision of Hon'ble Supreme Court in the case of Class II Direct Recruit Engineering Officers Association Vs. State of Maharashtra reported in JT 1990(2) SC 264 canvassed for a position that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. On going through the said judgment, we find that the said judgment is not applicable in these cases since it was relating to seniority to be conferred on the direct recruits vis-a-vis promotees. Here the question of seniority is neither challenged nor disputed since the seniority of the applicants are confirmed and approved in terms of Court orders. The respondents are not justified in contending that this Court has to look into the question of seniority afresh which is neither challenged nor disputed by any parties. Having found that the orders of the Tribunal have already been complied with and the dictum laid down has also been accepted by the Hon'ble High Court by the decisions quoted supra, learned counsel for the applicants urged that the contention of the respondents is hit by res judicata. He also invited our attention to a decision in State of UP Vs. Nawab Hussain reported in AIR 1997 SC 1677 and in 2001 (2) SCC 285 and submitted that as far as the claims of the applicants are concerned it has already been settled by judicial orders and that has become final and conclusive and any denial of benefits to the applicants will amount to multiplicity of litigations. Considering the above pleadings and the fact that the promotions of juniors to the applicants by virtue of the judicial pronouncements in OA 1092/92 &

1292/96 had become final it cannot now be reopened by a new set of averments by the respondents. The applicants in the circumstances are entitled to get the benefits.

14. It has been noticed that in an identical matter one PT Bhaskaran has filed OA 1034/98 before this Tribunal and this Tribunal has allowed the OA directing the respondents to issue orders of promotion to the applicant to HSG II with effect from 3.6.1988 and HSG I from the date on which one Sreedharan Nambeesan and Govindan Adiyodi were promoted with all consequential benefits including arrears of pay and allowances. This OA was taken in appeal in OP No.15522/01 and vide order dated 23.3.2005 the Hon'ble High Court has passed the following orders :-

It has come out now at least that OA 868/97 had been allowed and the proposal to review the orders passed in favour of Mr.Nambeesan has been set aside. The Writ Petition filed from the order as OP 16613 of 2002 also has been dismissed confirming the judgment of the CAT. Hence the position is that the grant of benefits to Mr.Nambeesan as well as Mr.Adiyodi were found to be in order. Therefore the benefit could not have been denied to the second respondent herein Mr.Bhaskaran who was their senior. The Tribunal has in effect found the above position acceptable and admissible and reliefs had been granted, taking notice of the scenario as above. At our instance, therefore the issue cannot be subjected to a fresh examination, as a finality to the issue as far as the department is concerned has already come. In view of the above facts, we do not think that we will be justified in interfering with the order to any extent.

The Original Petition is dismissed.

7. Since the issue has already been covered by the said judgement and the same has reported to have become final, we are of the view that the reliefs that have been granted to the applicants in O.A.809/02 and connected O.As. are also to be extended to the applicants in these O.As.

8. In the conspectus of facts and circumstances, we direct the respondents to extend the said benefits to the applicant as well, and we direct to grant all benefits including promotions to the Cadre of HSG-II w.e.f. 3.6.88 and to the cadre of HSG-I w.e.f. 25.10.95 if not earlier done to the applicants in both these O.As. including consequential benefits as granted in the case of his juniors, Shri AJ

Chandy and Sreedharan Nainbeesan. The order shall be complied with within a period of three months from the date of receipt of a copy of this order.

9. Accordingly, both the O.As are allowed. In the circumstances, no order as to costs.

Dated the 4th January, 2006.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.V.SACHIDANANDAN
JUDICIAL MEMBER

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