

BEFORE THE CENTRAL ADMINISTRATIVE TRI BUNAL
MADRAS BENCH

Dated the twenty ninth December, One thousand
nine hundred eighty seven

PRESENT

Hon'ble Shri S.P.Mukerji - Administrative Member
&
Hon'ble Shri G.Sreedharan Nair - Judicial Member

ORIGINAL APPLICATION NO. 571/86

K. Raja Raja Varma Thampan &
another - Applicant

Versus

Union of India & another - Respondents

Shri M.R.Rajendran Nair - Counsel for Applicants

Shri K.Karthikeya Panicker
ACGSC - Counsel for Respondents

ORDER

(Order pronounced by Hon'ble Shri S.P. Mukerji, Admve. Member)

The applicants Shri Thampan and Smt.Namboodiri who retired as Senior Supervisors from Telephone Department have moved this application dated 14-7-86 under Section 19 of the Administrative Tribunals Act praying that the impugned order dated 7.1.86 denying their promotion as Senior Telephone Supervisor should be set aside and they should be promoted as Sr. Supervisors with effect from the dates of promotion of their juniors with all consequential benefits of enhanced pay, pension etc.

The brief facts of the case are that they were promoted as Junior Supervisors on 2.9.59 and 28.10.59 respectively. But the respondents fixed their

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seniority on the basis of their dates of confirmation instead of on the basis of their length of service in the grade of Junior Supervisors. As a result, Shri Pillai, Shri Vijayan and Shri Bhaskaran who were promoted as Junior Supervisor later but confirmed earlier than the applicants were shown as senior to the applicants. On 12.4.78 the Director General, Posts & Telegraphs issued orders that those who were promoted between 22.6.49 and 21.12.59 should have their seniority fixed on the basis of length of continuous service in the grade. When the applicants found that their seniority has not been revised on the basis of the directions of the Director General they filed separate Writ Petitions ^{in the High Court of Kerala} challenging the promotions ^{of} those who were to be considered to be junior to the applicants on the basis of length of service praying that the applicants should be promoted from the dates of promotion of their juniors. The High Court directed that seniority of the applicants with all consequential benefits should be refixed within six months from the date of receipt of the judgment. The respondents went up an appeal which was dismissed on 19.3.85 with the direction to refix the seniority and giving consequential benefits to the applicants within two months of the appellate order. The applicants thereafter moved the General Manager, Telecommunications for re-fixation of their seniority and consequential benefits. The

impugned order dated 7.1.86 was issued stating that on reconsideration of their cases, ^{the} Departmental Promotion Committee found that their records of services were not as good as that of Shri Pillai, who was their junior, but was promoted as Senior Supervisor.

We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The contention of the applicants is that on the basis of the revised seniority their cases had not been considered properly in accordance with the prescribed procedure and by comparing their service records with that of a promoted junior, it cannot be stated that the prescribed procedure for their consideration has been fulfilled. Their plea is that on the basis of their revised seniority their cases should have been considered earlier than the date of promotion of Shri Pillai, when Shri Pillai perhaps would not have ^{even} come [^] within the zone of consideration. The respondents have not prepared any revised seniority list either. In accordance with the respondents, in compliance with the directions given by the High Court the seniority of the applicants was refixed in the gradation list of 17.7.78 and it was found that Shri A.K. Pillai ^{is the only officer} who ~~is~~ became junior to the applicant in the revised seniority list and

had been promoted as Sr. Supervisor on merits on 16.6.1976. Accordingly the service records of the applicants and those of Shri A.K.Pillai were placed before a duly constituted Departmental Promotion Committee who found that Shri Pillai's performance was far superior to that of the applicants. Accordingly the respondents rejected the claim of promotion of the applicants.

The action taken by the respondents in considering the cases of the applicants for promotion as Sr. Supervisor on the basis of their revised seniority suffers from a great fallacy. ^{respondents} They have presumed that ^(the applicants') their claim of promotion lies ^{only} vis-a-vis their junior Shri A.K.Pillai and rejected the claim ^{of} of the applicants on the facile plea that the Departmental Promotion Committee found the service records ^{was} of Pillai's ^{is} far better than ^{that} those of the applicants. The Department of Personnel and Administrative Reforms have been issuing detailed instructions culminating in their O.M.No. 22011/3/76-Est(D) of 24.12.1980 and 20.5.1981. This series of instructions make it clear that where promotions are to be made on the basis of merit with due regard to seniority, a zone of consideration in the seniority list,

equal to 3 to 5 times the number of vacancies to be filled has to be identified. Within the zone of consideration, assessment of performance of each candidate per se has to be done and he should be graded by the Departmental Promotion Committee either as "Outstanding" or "Very Good" or "Good". In drawing up the merit list, those who are graded as "Outstanding" are to be placed 'en bloc' at the top following by those in a block who have been graded as "Very Good" and thereafter those who are graded as "Good" are to be placed. Within each block the candidates should be placed in the order of their seniority. It has also been laid down that the panels should be prepared on an annual basis by regular meetings of the Departmental Promotion Committee and if the Departmental Promotion Committee has not met for some years, year-wise panels should be prepared by taking into account the vacancies of that year and the Confidential Reports of the candidates upto and not after that year.

It will thus be clear that in the preparation of the panels for promotion the question of comparative assessment of the performance of candidates does not arise. Once a candidate has been graded "Outstanding" or "Very Good" or "Good", his place in the panel is determined by the gradation given to him and within the grade his place is determined by his seniority inter se the officers

who have been placed in the same grade.

In the above ^{context} ~~contents~~, therefore, the respondents should have identified the zone of consideration of each of the years between 1972 and the years of retirement of the applicants, on the basis of the revised seniority list, which was to take effect from 4.1.1972. Thereafter panels for each year should have been prepared for promotion as Sr. Supervisors both in the merit category as well as in the seniority category. If on the basis of the revised panels for either of these categories the applicants find their place in any of the panels of any of the years ^{above} ~~above~~, any officer who has already been promoted as Sr. Supervisor, the applicants should have been given notional promotion as Sr. Supervisor with effect from the date ^{that} ~~any~~ officer below him or her in the panel was so promoted. In preparing the panels the revised seniority lists valid from 4.1.72 when the Supreme Court gave their judgment in Civil Appeal No. 1845/1968 etc. ^{should be taken into account.} In the above context the question of inter se merit between the applicants on one hand and Shri A.K. Pillai on the other does not arise.

In the circumstances, we allow the application on the following lines:

- (a) The respondents are directed to issue

a revised seniority list based on the DGP&T's letter of 12.4.1978 as interpreted by the High Court of Kerala in Civil Writ No.381/1979, 2639/1979 and Writ Appeals No. 425 & 447 of 1982.

- (b) The respondents should prepare year-wise panels of promotion both in the 'seniority quota' as well as 'merit quota' for the post of Sr. Supervisors from 1972 to the years of retirement of the applicants, in accordance with the prescribed procedure laid down by the Department of Personnel & Administrative Reforms from time to time and with particular reference to their O.M. dated 24.12.1980 and 20.5.1981 as explained in the preceding paragraph.
- (c) Either of the applicants should be given notional promotion as Sr. Supervisor if any officer ranking below him or her in the panel was so promoted. The date of such promotion of the applicant should take effect from the date of actual promotion of the officer ranking below them.
- (d) In case of such notional promotion all consequential benefits in terms of enhanced pay, allowances, pension etc., should be computed

and arrears thereof paid to the applicants
within 4 months from the date of communicat-
ion of this order.

There will be no order as to costs.

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29-12-1987
(G.Sreedharan Nair)
Judicial Member
29.12.1987

S.P. Mukerji
(S.P. Mukerji)
Administrative Member
29.12.1987

Index: ~~Yes~~/No