

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 83/93

Tuesday, the fifteenth day of March, 1994

MR. N. DHARMADAN (J)

MR. S. KASIPANDIAN (A)

V.K. Mohanan
LSG Clerk, Mail Motor Service
Cochin-16

Applicant

By Advocate Ms. Daya K. Panicker

vs.

1. Union of India represented by
the Secretary, Ministry of
Communications, New Delhi
2. The Chief Postmaster General
Kerala Circle, Thiruvananthapuram
3. The Manager, Mail Motor Service
Cochin-16
4. The Postmaster General
Central Region, Cochin-16

Respondents

By Advocate Mr. Mathew G. Vadakkal, ACGSC

ORDER

N. DHARMADAN (J)

Applicant is an LSG Clerk working in the Mail Motor Service at Cochin. He is aggrieved by Annexure A-10 communication issued by the third respondent to the second respondent on 23.6.92 in which it has been indicated that the applicant is not eligible for promotion to LSG cadre on 29.11.83.

2. The facts are as follows. Applicant joined the Postal Department as a Time Scale Clerk on 24.11.73. He was confirmed as per Annexure A-1 order dated 1.6.76. The gradation list of time scale Clerks as on 1.7.76 has been issued and is produced as Annexure A-2. Applicant is at Sl. No. 4 and he is a member of the Scheduled Caste. Twenty percent LSG Promotion Scheme was introduced by the

Postal Department w.e.f. 1.6.74. Under the scheme, Time Scale Clerks are eligible for promotion to the next cadre of LSG in the ratio of 5 : 1 i.e. for every 5 post of Time Scale Clerks 1 post of LSG is available. Time Scale Clerks who have completed 10 years of service is entitled to promotion to LSG cadre. Forty point Roster is applicable and the same is clear from the clarification letter Annexure A-4 issued on 10.2.82. The relevant question and answer from Annexure A-4 are extracted below:

" X	X	X
2. If a common gradation list is to be maintained for the staff of MMS and for other units under the charge of Divl. Supdts. it is presumed that a common a special roster for promotion and also for recruitment, if decided, will be maintained at Circle Office.		For Circle cadres like LSG, Special rosters will be maintained by Circle office. But for other cadres each unit should maintain its own roster."

3. According to the applicant, he was duly qualified to be promoted as LSG under the aforesaid scheme on 24.11.83 even before the introduction of the Time Bound One Promotion Scheme, which came into effect from 30.11.83. Applicant's claim for promotion to LSG cadre under the 20% LSG Promotion Scheme was not properly considered. In fact, it has been rejected as per impugned order Annexure A-10. But in answer to the communication Annexure A-8, third respondent has sent a letter to the second respondent stating that the decision contained in Annexure A-8 requires reconsideration. The said letter is extracted below:

"With reference to above letter it is to be intimated that LSG posts sanctioned in the MMS prior to introduction of TBOP Scheme was operative and not supervisory. So the orders regarding 15% cut in respect of supervisory posts envisaged under TBOP Scheme are perhaps not applicable in respect of LSG posts in MMS. As such disposal of the issue on this point does not appear to be correct. It is therefore requested to reconsider the issue if deemed necessary."

4. Applicant's main contention is that the forty point roster is not being followed in the matter of promotion under the 20% LSG promotion scheme introduced w.e.f. 1.6.74. It is further stated that even though the applicant was fully qualified and a vacancy of LSG was available, respondents have not taken steps to fill up the same by promoting the applicant in accordance with the rules. Respondents have raised objection in granting promotion to the applicant on the ground that due to decentralisation of MMS units there are not sufficient posts to maintain the ratio referred to above. As a consequence of decentralisation, the staff strength at the MMS Unit at Ernakulam was depleted to 9 from 14 and hence, there was no justification for creation of a third post of LSG as per Annexure R-2 sanction order issued by the Government. But they have admitted that when the 20% promotion scheme was introduced on 1.6.74 there were 14 Time Scale Clerks and there were ample justification for creation of the third post. Accordingly, approval was also accorded by the FMG Kerala Circle as per Annexure R-2 for creation of the third post of LSG. This sanction order is dated 22.4.78. The said sanction order has not been cancelled so far.

5. Admittedly, applicant was qualified for promotion to LSG cadre w.e.f. 1.10.83. A third post of LSG was created as per Annexure R-2 order. This order had not been cancelled so far. That third post was also not filled up. The contention of the respondents that after decentralisation there is reduction of posts in the Postal Division and subsequent reduction of post in the Ernakulam Unit is misconceived. According to us that is not relevant particularly when Annexure R-2 order remains in force even now. We are ^{not} prepared to accept that contention of the respondents in the light of Annexure A-2 Gradation

list and clarification Annexure A-4 produced by the applicant.

6. The decentralisation programme affected the chance of the applicant causing disadvantage to him for getting promotion under the 20% LSG Promotion Scheme. After hearing the learned counsel on both sides, we pronounced the judgment in open court on 16.2.94. But before signing the judgment we felt a doubt about the number of posts available with the Division for applying the roster indicated above. Accordingly, we posted the case 'to be spoken to' on 22.2.94 and passed orders to clarify the doubt. The learned counsel for respondents filed a statement on 12.3.94. The relevant portion in the statement is as follows:

"The number of posts of Time Scale Clerks and Lower Selection Grade Clerks existed at each of the MMS Units throughout 1983 are shown below:

Name of Unit	Number of Time Scale Clerks	Number of Lower Selection Grade Clerks
Ernakulam	7	2
Trivandrum	2	Nil
Trichur	1	Nil
Calicut	2	Nil

From the above statement it is clear that at the relevant time there were 14 posts including 2 posts of LSG Clerks and the decentralisation has not affected the chance of promotion of the applicant in the light of Annexure R-2 and A-4 and our findings shown above.

7. The contention of the respondents that MMS in Kerala Unit was decentralised and consequently four postal Divisions were formed cannot stand in the way of the applicant's claim being considered in the light of the specific issues raised by him in this case and the reasons given by us above after adverting to the order Annexure R-2, creating additional post and the fact that the applicant is a member of Scheduled caste community and eligible for promotion from 24.11.84 itself.

8. In the result, after careful examination of the grievances of the applicant in the light of Annexure A-2, A-4 clarifications and the letter Annexure A-11 sent by the third respondent to the second respondent, we are fully satisfied that the applicant has made out a case for promotion to the LSG cadre under the 20% LSG Promotion Scheme when he was fully qualified.

9. Accordingly, we quash Annexure A-10 and allow the original application with a declaration that the applicant is eligible for promotion to LSG cadre under the 20% LSG Promotion Scheme w.e.f. 23.11.82³ with all consequential benefits. The respondents shall consider the promotion of the applicant either notionally or actually as the case may be, according to law after issuing appropriate notice to all affected parties based on the declaration of the right of the applicant in this judgment. It goes without saying that the applicant is eligible for consequential benefits including further promotions as well. The above directions shall be complied within a period of six months from the date of receipt of a copy of this judgment.

10. The application is allowed as above.

11. There shall be no order as to costs.



(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE)

 15.3.94

(N. DHARMADAN)
MEMBER (JUDICIAL)

15.3.94

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