

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 192/2001

Wednesday, this the 20th day of November, 2002.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. G. Narayanan Namboodiri,
S/o K. Govindan Namboodiri,
Higher Selection Grade-II,
Head Record Office,
RMS Trivandrum Division,
Trivandrum, residing at
Flat No.ASI, A-Block,
CR Complex, Pattom Palace,
Trivandrum.
2. K. Sreedharan Nair,
S/o P. Krishnan Nair,
Higher Selection Grade-II,
Head Record Office,
RMS Trivandrum Division,
Trivandrum, residing at
"Sreelam", No.TC-9/2222,
Kurup's Lane, Trivandrum.
3. N. Siva Prasad,
S/o Natesan,
Higher Selection Grade-II,
Head Record Office,
RMS Trivandrum Division,
Trivandrum, residing at
"Preetha Bhavan",
Kudiyala, Pulimath P.O.,
Pin Code - 695612. Applicants

(By Advocate Mr. T.C. Govindaswamy)

vs

1. Union of India rep. by the
Secretary to Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi.
2. Chief Post Master General,
Kerala Circle, Trivandrum.
3. Senior Superintendent,
Railway Mail Service,
Trivandrum Division,
Trivandrum.
4. Assistant Director(Staff),
O/o the Chief Post Master General,
Kerala Circle, Trivandrum.
5. N.D. Thomas,
Higher Selection Grade-II,
Sorting Assistant, RMS,
Sub Record Office,
Changanacherry.

6. Abraham Joseph,
Higher Selection Grade-II,
Sorting Assistant, RMS,
Sub Record Office, Kottayam.
7. G. Philipose Panicker,
Higher Selection Grade-II,
Sorting Assistant, RMS,
Sub Record Office, Kollam.
8. B. Ravindran Nair,
Higher Selection Grade-II,
Sorting Assistant, RMS,
Sub Record Office,
Trivandrum.
9. P.K. Itti Kunju,
Higher Selection Grade-II,
Sorting Assistant, RMS,
Sub Record Office,
Kottayam.
10. V.M. George,
Higher Selection Grade-II,
Sorting Assistant, RMS,
Sub Record Office,
Kottayam.
11. P.J. James,
Higher Selection Grade-II,
Sorting Assistant, RMS,
Sub Record Office,
Kottayam.

... Respondents

[Mr. K. Shri Hari Rao, ACGSC(R 1-4)
Mr. O.V. Radhakrishnan(R 5-11)]

The application having been heard on 20.11.2002, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

Applicants 3 in number, who were placed in the higher scale of TBOP in the year 1983 have filed this application aggrieved by the order in OA 1580/1997 dated 28.4.2000 as also the orders Annexure A2 to A4 by which respondents 5 to 11 have been given higher scale in the LSG in implementation of the order of the Tribunal in OA 1580/1997. It is alleged in the application that applicants are not parties to OA 1580/1997 and it is therefore not proper to change the settled seniority without adjudicating the rival claims with them in the party array. The applicants therefore filed this application for the following reliefs :-

(i) Call for the records leading to the issue of Annexures A2 to A4 and quash the same.

(ii) Declare that there were no vacancies against 1/3rd quota as of 1983 or thereafter for considering the party respondents and direct the official respondent accordingly.

(iii) Award costs of and incidental to this application.

(iv) Pass such other orders or directions as may be deemed just, fit and necessary in the facts and circumstances of the case.

2. The official respondents as also the party respondents have filed reply statements.

3. We have heard the learned counsel on either side.

4. An identical question whether the decision in OA 1580/1997 is not binding on persons like applicants, who are not parties to the said OA, was considered by this Bench of the Tribunal in OA Nos. 903/2000, 908/2000, 1004/2000, 1192/2000 and 1246/2000.

The Bench in para 20 to 23 observed as follows :-

"20. Sri Siby J. Monippally and Sri T.C. Govindaswamy, the learned counsel appearing for the applicants in these cases argued that DG, Posts had issued O.M. No.6/2/79-SPB-II dated 21st October, 1981 directing that 1/3 quota LSG vacancies arising on and from 1.1.1981 would be filled by competitive examination, that the qualified but unabsorbed candidates of earlier examinations held in 1975 to 1978 and February, 1981 would no more be in the list, that for their promotion to LSG cadre either they have to wait for their turn on the basis of seniority-cum-fitness against 2/3 quota vacancies or have to appear in the competitive examination and that the applicants in these cases having not appeared in the competitive examinations, the Tribunal had erred in granting them the relief. A copy of the DG, Posts letter referred to above has been marked as Annexure A5 in OA 908/2000. This argument is found to be absolutely untenable because the DG, P&T has issued a letter dated 18th May, 1983, the copy of which is marked as Annexure R5(c) in OA 908/2000 which reads as follows :-

"Sub:- L.S.G. - filling up of vacancies under the 1/3rd quota.

A reference is invited to this office letter of even number dated 21st October, 1981 on the above subject. The question whether vacancies in the Lower Selection Grade against the 1/3rd quota may be filled up by officials who have already qualified in the examination held in the previous years(i.e. prior to 1982) has been considered by this office. It has been decided that

vacancies against 1/3rd quota relating to the year 1981(for which examination has been held on 2.5.1982) as also the vacancies relating to the year 1982 may be filled up by officials who have qualified in the examinations held prior to 1982, in accordance with the procedure that was obtaining prior to the issue of this office letter dated 21st October, 1981 quoted above.

2. After accommodating the officials who have qualified in the past against the 1/3rd quota vacancies relating to the years 1981 and 1992, a report may kindly be sent to this office indicating the number of qualified officials who are still left over and the number of vacancies in the 1/3rd quota, if any, which are still pending to be filled up by qualified officials. Information in this regard may kindly be sent to the office not later than 31st July, 1983."

21. The next point argued by the learned counsel of the applicant is that even if as per the judgements in OA No.1622/93, 700/94, 1309/95 and 1580/97, the Department were bound to implement the judgement and promote the applicants in those cases against 1/3rd quota of vacancies in the LSG and to place them enbloc senior to those promoted under the TBOP Scheme, the Department was bound to give a notice to the applicants whose seniority has been adversely affected and that as the applicants in those cases have been assigned seniority above the applicants without even giving them a notice, the orders are vitiated for failure to apply with the principles of natural justice. We do not find any merit in this argument either. The applicants have not been promoted to LSG either under the 2/3 seniority quota or under the 1/3 examination quota. The applicants are persons who either did not appear in the examination or did not get through. They have been placed in the LSG and HSG scale under the TBOP and BCR Schemes while being retained in the cadre of Postal Assistants. Therefore all the applicants in these cases being only Postal Assistants and not LSG or HSG have no right to claim that their seniority has been affected. They being Sorting Assistants/Postal Assistants cannot contend that those promoted as LSG against regular posts have been wrongly placed above them. The declaration and direction in the judgements of the Tribunal were that the applicants in those cases were entitled to be considered for promotion to 1/3rd LSG vacancies which existed in the year 1981 or arisen thereafter and that they should be considered for promotion in their turn. It was this declaration and direction that has been implemented by the Department for which giving notice to the applicants who had not qualified in the examination and who have not been promoted to LSG does not arise. Since the applicants had not come to LSG or HSG cadre, there is no meaning in contending that their seniority in that cadre not affected. Therefore, the contention that the Department has issued orders in violation of the principles of natural justice also is absolutely untenable. The applicants whose interest or right were not affected by the orders promoting the applicants in OA Nos. 1622/93, 700/94, 1309/95 and 1580/97 are not aggrieved persons enabling them to maintain these applications against the orders.

22. The learned counsel of the applicant next argued that even if the applicants in OAs 1622/93, 700/94, 1309/95 and 1580/97 were to be promoted to LSG, so many vacancies did not exist in the cadre and therefore the orders are not sustainable. Here again as the applicants are not persons who have been inducted into the LSG cadre by promotion

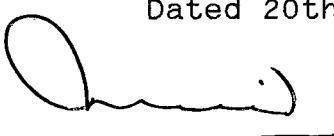
either under 2/3 quota or 1/3 quota, but are only PA/SA even now are not at all affected and are therefore not entitled to challenge the promotion. Moreover it is the look out of the department how to accommodate them.

23. The last limb of the argument of Shri Siby J. Monippally and Shri T.C. Govindaswamy, the learned counsel of the applicants is that when OA Nos. 1622/93, 700/94, 1309/95 and 1580/97 were filed after efflux of a long time, the Tribunal should have rejected the applications as time barred on the basis of doctrine of sit-back. It is to be noted that in T.A. 747/86, the Tribunal had declared that those who had appeared in the examination which was held in February, 1981 were entitled to be absorbed against 1/3 LSG vacancies which existed in 1981 and which arose thereafter till all those who were placed in the panel were absorbed, the Department was bound to implement the judgement. It is not disputed that SLP filed against the order has been dismissed and that the order has become final. The judgement in the above T.A. being declaratory in nature, the Department would not be justified in denying the benefit to similarly situated even if they did not approach the Tribunal. It was taking this view that the Tribunal in the later cases OA Nos. 1622/93, 700/94, 1309/95 and 1580/97 directed the respondents to absorb the applicants against the 1/3rd LSG vacancies which existed in 1981 and arose thereafter especially noting the contention of the respondents that the matter was still under the consideration of the Government. We therefore do not find any force in the argument advanced on behalf of the applicants."

5. The issue involved in this case is identical and is therefore covered by the said observations of the Bench. We are informed that OP No.14909/02 filed against the judgement R5(e) has been dismissed by the Hon'ble High Court of Kerala on 14.11.2002. Since the issue involved is identical and the applicants in this OA are at par with the applicants in the batch cases i.e. OA Nos. 903/2000 etc., we follow the above judgement and find no merit in this case.

6. In the light of what is stated above, the application is dismissed. No costs.

Dated 20th November, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1: True copy of the order of this Hon'ble Tribunal in O.A.No.1580/97 dated 28.4.2000.
2. A-2: True copy of letter No.B-29/DGL/99 dated 11.8.2000 issued by the 3rd respondent.
3. A-3: True copy of order No.ST/18/7/98 dated 27.7.2000 issued by the 4th respondent.
4. A-4: True copy of Memo No.ST/18/7/1/2000 dated 18.8.2000 issued by the 4th respondent.
5. A-5: True copy of the Gradation list of time scale Sorting Assistants as on 1.7.93 published by the 3rd respondent.
6. A-6: True copy of the order No.6/2/79 SPB/II dated 21.10.81 issued by DG, P&T.
7. A-7: True copy of the Seniority List of Lower Selection Grade Sorting Assistants (Norm based) published by the 3rd respondent as on 1.7.93.
8. A-8: True copy of the order No.31-26/83-PE.I dated 17.12.83 issued by the DG, Posts.
9. A-9: True copy of the order of Hon'ble High Court in CMP No.48805/2000 in O.P.No.Nil/2000 dated 17.10.2000.

Respondents' Annexures:

1. R-5(a): True copy of the Order NO.B-29/DGL/99 dated 16.5.2000 of the 3rd respondent.
2. R-5(b): True copy of the O.M.No.137-18/2001-SPB-II dated 23.4.2001 received vide PMG, Kochi letter No.ST/1-60/97/R1gs (Part) dated 25.5.01 of the Asst. Director General (SPN).
3. R-5(c): True copy of the Order G.G.P&T Letter NO.6-2/79-SPB-II dated 18.5.1983 circulated by the 2nd respondent.
4. R-5(d): True copy of the Order No.ST/120/15/83 dated 2.4.1985 of the 2nd respondent.
5. R-5(e): Photo copy of the common Order dated 22.3.2002 in OA No.908/2000 and connected cases of this Hon'ble C.A.T.
6. R-5(f): Photo copy of the Order dated 2.7.2002 in OA No.1082/2000 of this Hon'ble C.A.T.
7. R-5(g): True copy of the Judgement dated 15.2.1983 in OP No.229/81 of the Hon'ble High Court of Kerala.
