

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 204/1989 199
XXXXXX

DATE OF DECISION 8.10.1990

K. Ayyappan Applicant (s)

M/s MR Rajendran Nair & PV Asha Advocate for the Applicant (s)
Versus

The Chief General Manager, Telecommunications, Kerala Respondent (s)
Telecom Board, Trivandrum & 2 others

Mr. AA Abulhassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

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

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

The grievance of the applicant in this application is that the respondents are not inspite of his repeated representations fixing his seniority in the lower selection grade on the basis of his total length of service commencing from 1.6.1955, erroneously stating that his service during 1.6.1955 to 13.2.1956 in the Postal Department cannot be reckoned for the purpose of seniority. The case of the applicant can be briefly stated as follows.

2. The applicant commenced his service in the Postal wing of the P & T Department at the Head Post Office, Trichur from 1.6.1955. He was then transferred in the interest of

service to the Engineering Wing and joined the Office of the ~~xxxxxx~~ Divisional Engineer, Telegraphs, Coimbatore on 14.2.1956. At the time when he joined service the criterion for seniority was length of service in terms of the instructions contained in the memo of the Ministry of Home Affairs dated 22.6.1949. But later Office Memorandum dated 22.12.1959 was issued directing that the seniority should be determined on the basis of date of confirmation in service. Though the applicant was entitled to have his seniority fixed on the basis of the date of entry into the service, the department wrongly fixed his seniority on the basis of the date of confirmation. On the basis of the seniority thus fixed he was promoted to lower selection grade (now Section Supervisor) with retrospective effect from 24.12.1970 by order dated 27.7.1977. The Supreme Court of India in Union of India -Vs- Ravi Varma, AIR 1972 SC 670 declared that the seniority of those who were appointed prior to 22.12.1959 was to be fixed on the basis of the date of entry into the service and not on the basis of the date of confirmation. Pursuant to this decision the Government issued Annexure-I Office Memorandum dated 22.7.1972 setting out the manner in which the judgement of the Supreme Court is to be implemented. Thereafter, ^{the} Director General, Posts and Telegraphs issued Annexure-I(A) letter dated 12.4.1978 laying down the principles for preparation of gradation list of officials belonging to the cadre of clerks, sorters and telephone operators, etc. in the operative offices appointed during the period from 22.6.1949 to 21.12.1959

Their seniority were directed to be refixed expeditiously on the basis of the instructions contained in Annexure-I(A).

The applicant's seniority should have been fixed in the cadre of Time Scale Clerk on the basis of his length of service considering his entry into service on 1.6.1955.

But the circle seniority list as on 1.7.1971 was prepared and published without properly implementing the direction contained in Annexure-I(A). Anyway, in that seniority list the applicant was ranked No.21 among the officiating LSC Clerks, while M/s M Radhakrishnan, K.D.Antony and K.A.Annamma were ranked as No.23, 26 and 28 respectively. Among the permanent Time Scale Clerks(Pre-59) the applicant was shown as rank No.21 with the date 14.2.1956 as the date of continuous entry in the grade. In this list also M/s M Radhakrishnan, K.D.Antony and K.A.Annamma were ranked No.23, 26 and 28 respectively. The applicant submitted a representation dated 31.3.1979 pointing out that the date of entry in service as Time Scale Clerk was 1.6.1955 and requesting that his seniority may be refixed accordingly. To this representation the applicant received reply (Annexure-IV) dated 14.9.1979 from the General Manager, Telecommunication, Trivandrum, stating that as his appointment during the period from 1.6.1955 to 13.2.1956 was on temporary deputation, the same could not be reckoned for the purpose of fixing seniority, and that he could be assigned seniority only with effect from 14.2.1956. But it was stated in this order that if he had any document to substantiate his claim

b2

the same may be forwarded. The applicant therefore sent a further representation dated 30.10.1980 stating that he was No.3 among the 12 trainees of Kottayam Postal Division, that he was not surplus, that he was sent to Trichur as the Superintendent of Post Offices wanted some trained hands urgently, that all the remaining trainees were appointed in Kottayam division, that he was transferred to Coimbatore Engineering Division in the interest of service and not on his request, and that, therefore, there is absolutely no justification for denying the benefit of his service from 1.6.1955 to 13.2.1956. To this representation the applicant received Annexure-VI reply stating that his seniority already fixed was correct. He made further representations to have his seniority fixed on the basis of his date of continuous entry in service from 1.6.1955 onwards. The department went on denying him the proper seniority and by Annexure-XVIII order dated 5.1.1989 stuck to the earlier stand. Aggrieved by these orders the applicant has filed this application claiming that his seniority should be fixed in the cadre of Time Scale Clerk w.e.f. 1.6.1955, and that his promotion to the L.S.G and High Selection Grade should be antedated to the date of promotion of his juniors, on the basis of the ruling of the Supreme Court in Union of India-Vs- Ravi Varma, AIR 1972 SC 670. He has also relied on the decision of the High Court of Kerala in OP 381/79 wherein the High Court has held that the revision of seniority in the light

of the judgement of the Supreme Court has to be effected in the higher cadre also. The applicant has also referred to the judgement of this Tribunal in OA 571/86 in the case of M/s K Raja Raja Varma Thampan and Smt. P.K.Pankajakshi dated 29.12.1987.

3. The application is resisted by the respondents. In the reply statement it has been conceded that the Supreme Court has declared that for officials appointed prior to 22.12.1959, seniority is governed by length of service in the cadre and not by the date of confirmation. It has also conceded that the applicant was first appointed in the Postal Wing on 1.6.1955 and was subsequently transferred to the Engineering Arm on 14.2.1956 consequent on bifurcation of Engineering Division. But the respondents seek to justify their stand in assigning seniority to the applicant only from 14.2.1956 on the ground that his transfer from the Postal Arm to the Engineering Arm could only be either under Rule 38 or by a fresh selection, and that, therefore, he is entitled to seniority only from 14.2.1956 onwards. It is averred that, though the period from 1.6.1955 to 13.2.1956 would be counted for leave and other benefits, the applicant could claim seniority only from 14.2.1956. It is further contended that the decision of the Hon'ble High Court of Kerala and that of this Tribunal mentioned in the application applied to the parties to the said cases only, and that the applicant is not entitled to any relief as claimed.

4. In the rejoinder the applicant has stated that his transfer to the Engineering Arm was purely for the interest of service and not on his request as can be seen from his service book and that in the gradation list of temporary officials T.S. Clerks of the Trichur Engineering Division as on 1.4.1959, the date of his continuous entry in the service is shown as 1.6.1955, and that, therefore, there is no truth or justification in contending that for the purpose of seniority the date of his entry into the service is 14.2.1956. The applicant has also produced Annexure-XIX, an extract of the leave account maintained by the department in which the date of continuous service in his case has been shown as 1.6.1955.

5. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced.

6. The Supreme Court has in Union of India -Vs- Ravi Varma AIR 1972 SC 670 laid down that in the case of persons appointed prior to 22.12.1959, their seniority has to be fixed on the basis of the date of entry into service and not the date of confirmation. In OP 381/79 the High Court of Kerala has held that the revision of seniority in the light of the judgement of the Supreme Court in Ravi Varma's case will have to be effected in the higher cadre also. The respondents also agree that

in the case of persons who entered service prior to 22.12.1959 in the light of the judgement of the Supreme Court and as instructed in the DGP&T's letter dated 12.4.1978 the date of continuous entry is the criterion for fixing the seniority. But the claim of the applicant is resisted solely on the ground that his transfer from Postal Wing to Engineering Wing could only have been under Rule 38 or by fresh selection, and that, therefore, he can be assigned seniority only from 14.2.1956. The entry in the service book of the applicant shows that the date of his first appointment is 1.6.1955. There is nothing in the service book to indicate that his transfer from Postal Arm to the Engineering Arm was as per his request under Rule 38 or that he was newly selected and appointed in the Engineering Arm on 14.2.1956 as contended by the respondents.

Annexure-XVIII extracted from the gradation list of Trichur Engineering Division as on 1.4.1959 temporary officials Time Scale Clerks produced along with the rejoinder of the applicant also shows that his date of entry was 1.6.1955.

This entry was obviously made after the transfer of the applicant from Postal Arm to the Engineering Arm. At that time/for any valid reason his continuous entry in the grade can be treated only as 14.2.1956, the department would not have made the entry as 1.6.1955 as is seen from Annexure-XVIII.

in which is an
Similarly Annexure-XIX extracted from the leave account
and maintained by the department of Telecom. which was checked
during local audit inspection on 15.12.1989 upto 26.9.1959

the date of commencement of continuous service of the applicant is shown as 1.6.1955. Therefore, we find that the contention of the respondents that the service of the applicant from 1.6.1955 to 14.2.1956 could not be counted for the purpose of seniority has absolutely no merit, and that the applicant is entitled to have his seniority reckoned from 1.6.1955 onwards.

7. In the result, we allow the application and declare that the applicant is entitled to have the seniority reckoned on the basis of the date of commencement of continuous service in the cadre from 1.6.1955, and that he is entitled to be promoted to Lower Selection Grade and Higher Selection Grade with effect from the date prior to the date on which any person junior to him has been promoted and we direct the respondents to refix the applicant's seniority taking the commencement of his continuous service in the cadre of Time Scale Clerk from 1.6.1955 to consider the applicant for promotion to the cadre of LSG and HSG, etc. on the basis of the above seniority in accordance with law and to promote him to the respective posts on a date or dates prior to which any person junior to him was promoted and to grant him all consequential benefits, including arrears. Action in the above lines should be completed within three months from the date of communication of this order. There is no order as to costs.

(A.V.HARIDASAN)
JUDICIAL MEMBER

(S.P.MUKERJI)
VICE CHAIRMAN