

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 223 of 1989
T.A. No.

DATE OF DECISION 30-4-1991

K Balasubramanian, Smt. Valsamma Samuel,
Smt Ponnamma Kurup & _____ Applicant (s)
K Sadanandan

Mrs Daya K Panicker Advocate for the Applicant (s)

Versus
Union of India & 13 others Respondent (s)

Mr K Prabhakaran, ACGSC Advocate for the Respondent (s) 1-3

Mr EV Philip - Advocate for the respondent-11

CORAM: M/s KA Easwari Amma & EV Philip - Advocates for the
respondents-12, 13& 14

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

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

JUDGEMENT

AV Haridasan, Judicial Member

The applicants who are working as Junior Accountants in the office of the Deputy Director of Postal Accounts, Kerala Circle, Trivandrum, the second respondent, are aggrieved by the Annexure-B, C and E orders by which the respondents 4 to 14 were regularly appointed as Junior Accountants before the applicants were so appointed and by the refusal on the part of the respondents 1 to 3 to entertain their claims to seniority above respondents 4 to 14 and have filed this application praying that the Annexure-B, C and E orders may be quashed and that the respondents 1 to 3 may be directed to appoint the applicants in substantive capacity on earlier dates than the respondents

4 to 14 and to prepare a seniority list placing the applicants above ~~the~~ respondents 4 to 14.

2. The applicants who joined the services of the Postal Accounts Department as Lower Division Clerks on 30.10.1973, 6.4.1970, 11.7.1967 and 16.6.1972 respectively after having passed the Departmental Qualifying Examination were promoted as Junior Accountants on an adhoc basis in 1979. The first applicant was appointed on 9.1.1979 and the others were appointed on 12.1.1979. The fourth respondent joined the office of the second respondent on 1.10.1978 under Rule 38 transfer. The respondents 5 to 9 also joined the second respondent's office on different dates after 12.7.1979 ^{on} Rule 38 transfer. All of them joined there as Junior Accountants on an adhoc basis. Respondents 10 to 14 were appointed as Junior Accountants on direct recruitment and they joined the office of the second respondent on 2.5.1980, 5.4.1980, 5.6.1980, 19.6.1980 and 12.6.1980 respectively. While the applicants and the respondents were continuing in the department as Junior Accountants in an officiating capacity, the respondents 4, 6, 7 & 9 to 14 were appointed in a substantive capacity as Junior Accountants w.e.f. 1.3.1982. By Annexure-B order the 8th respondent was appointed in a substantive capacity w.e.f. 1.3.1982 by Annexure-C order dated 30.9.1983. The 5th respondent was also appointed as Junior Accountant in a substantive capacity w.e.f. 1.3.1982 by Annexure-E order dated 23.11.1987. As the applicants were officiating as Junior Accountants earlier than the respondents 4 to 14, they

filed representations before the second respondent requesting him to revise the seniority position and to appoint the applicant on dates prior to the date of appointment of the respondents 4 to 14 ~~and~~ as Junior Accountants ^{amt} on regular basis. While the above representations were pending before the second respondent, the second respondent by order No.0069/Admn.I/E.I/52/ Vol.II dated 23.11.1987 appointed the applicants in substantive capacity as Junior Accountants w.e.f. 1.6.1985, 1.8.1985, 1.3.1986 and 1.3.1986 respectively by Annexure-E order. Claiming that respondents 4 to 14 are juniors to the applicant and that the applicants should be placed above the respondents 4 to 14 in the seniority list, the applicants made representations at Annexure-F1, F2, F3 and F4, but without any result. Hence the applicants have filed this application for quashing the Annexure-B, C and E and praying that their seniority over respondents 4 to 14 may be restored.

3. Though the respondents 11 to 14 have filed a reply statement and respondents 1 to 3 have filed another reply statement raising various contentions, the controversy in this case has been considerably reduced by the following statement in the reply statement of the respondents 1 to 3:

"..... However, the Postal Directorate has since clarified that Rule 38 transferees have to be given seniority according to the provisions of Rule 38 of P&T Manual Vo.IV and all other past cases have to be reopened and decided in accordance with the above said letter dated 13.3.1985 and OM dated 3.7.1986. Accordingly, the seniority of all Junior Accountants has been refixed and the proposed provisional list was circulated under Circular No.1401/Admn.I/E.I/52 dated 17.3.1989. In the proposed revised seniority list, the applicants are

placed at serial Nos. 60, 61, 63 and 64 respectively. The respondents are placed at serial Nos. 58, 62, 75, 76, 66 77 and 81 to 85 respectively. The 4th respondent joined the office of the 2nd respondent on 1.10.1978 on transfer under Rule 38 from the Postal Accounts Office, Bangalore and he has accordingly been assigned seniority from 1.10.1978 in the juniormost position of all the Junior Accountants on roll. All the applicants were promoted to the grade of Junior Accountants in 1979 and hence they cannot claim seniority over the 4th respondent who joined in 1978 as Junior Accountant. The 5th respondent who was a Junior Accountant in the Postal Accounts Office, Bangalore with effect from 12.7.1979 joined ~~in~~ the office of the 2nd respondent under Rule 38 in mutual exchange with one Smt. S Chellammal, Junior Accountant who was recruited in the D.R. quota on 30.7.1973 and hence the applicants cannot also claim seniority over the 5th respondent. According to Rule 38 of P&T Manual Vol. IV, in the case of mutual transfer the official brought in should take the place in the new office according to the date of his entry in the grade or the place vacated by the official with whom he has exchanged the position whichever is the lower. As the 5th respondent was junior to Smt. Chellammal, he was given the position of a Direct Recruit~~ment~~ as 12.7.1979, the date of his appointment to the grade of Junior Accountant and according to the rotation of vacancies between D.R. and D.E. of 1979 for the purpose of seniority/confirmation he had to be placed below Shri Mathai Yahannan and applicants 1 and 2, all the D.E. candidates and above applicants 3 and 4 and one Shri P Soman who were also D.E. candidates. In 1979, the ratio for recruitment of Junior Accountants between Departmental Examination passed candidates and

Direct Recruitments was 3:1. It is submitted that the applicants 1 and 2 have been given seniority over the respondents 5 to 14 and applicants 3 and 4 have been placed senior to respondents 6 to 14 in the revised seniority list published in Circular dated 17.3.1987. The claims of all applicants for seniority over 1st respondent and that of applicants 3 and 4 for seniority over the 5th respondent are not justified as per the rules and orders stated above."

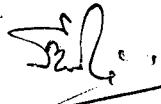
In view of the above statement, the respondents 1 to 3 have proposed to revise the seniority placing the first applicant above respondents 5 to 14 and respondents 3 and 4 above respondents 6 to 14. The placement of the 4th respondent above the applicant ~~has~~ been sought to be justified on the ground that the 4th respondent ~~has~~ joined the second respondent's office on 1.10.1978 ~~before anyone of the applicants~~ ^{was} ~~were~~ promoted as Junior Accountants ^{as} because the first applicant was promoted only on 9.1.1979. This is a fact admitted even in the application. In the face of this, the applicants cannot claim seniority over the 4th respondent. Therefore, the claim of the applicants for seniority over the 4th respondent cannot be upheld. The only question that is remaining to be considered is whether the placement of the 5th respondent above applicants 3 and 4 is justified. It is a common case that the respondent-5 joined the office of the second respondent as a Junior Accountant on 26.7.1980 on mutual transfer with one Smt Chellamma. The placement of the 5th respondent above respondents 3 and 4 is sought to be justified on the ground that ^{is} as Smt Chellamma/a direct recruitee. Though the 5th respondent joined the second respondent's office only on 26.7.1980, the 5th position of respondents was considered as that of a direct

recruitee and therefore by rotation of vacancies between direct
recruitee and departmental candidates in the ratio 1:3 as it
was then prevalent, the 5th respondent had to be accommodated
in the ~~slalot~~ ^{slot} a
in the ~~slalot~~ of/direct recruitee and therefore he happened
to be placed above respondents 3 and 4. The learned counsel
for the applicant argued that the 5th respondent who joined
on 26.7.1980 has to be placed under ~~juniormost~~ ^{the} existing
Junior Accountants and he being not a direct recruitee to say
that he was given the ~~slalot~~ of direct recruitee is unjustified.
We are in full agreement with this argument of the learned counsel
for the applicant. Though Smt Chellama in whose place the 5th
respondent came to the second respondent's office on 26.7.1980
the 5th respondent does not become a direct recruitee to be
fitted against the quota of direct recruitment. Therefore the
placement of the 5th respondent above applicants 3 and 4 is not
justified.

4. In the conspectus of facts and circumstances, the application is allowed in part. The respondents 1 to 3 are directed to place the respondents 5 to 14 below the applicants in the seniority list of Junior Accountants varying the date of substantive appointment of the 5th respondent, treating him as the juniormost ~~promotee~~ Junior Accountant as on 26.7.1980. The impugned orders stand modified to that extent. The claim of the applicants for placing/above the 4th respondent in the order of seniority is disallowed. The respondents 1 to 3 are directed

to finalise the seniority list in the manner indicated above within a period of 3 months from the date of communication of this order. There is no order as to costs.


(AV HARIDASAN) 30/4/91
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

30-4-1991

trs