

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 226 of 2005

Tuesday, this the 1st day of April, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

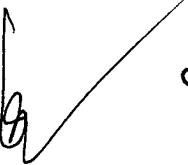
K. Balakrishnan,
S/o. Late K. Ayyappan,
working as Mazdoor Group-D
(Class-IV), Sales Emporium,
Publications Division,
Government of India, Ministry of
Information & Broadcasting,
Press Road, Thiruvananthapuram : 695 001 ... Applicant.

(By Advocate Mr.N. Unnikrishnan)

v e r s u s

1. The Union of India represented by
The Secretary to the Government,
Ministry of Information and Broadcasting,
Patiala House, New Delhi : 110 001
2. The Director General,
Publications Division,
Ministry of Information and Broadcasting,
Patiala House, New Delhi : 110 001
3. The Business Manager,
Sales Emporium, Publications Division,
Ministry of Information and Broadcasting,
Press Road, Thiruvananthapuram : 695 001
4. Shri U.S. Rawat, Lower Division Clerk,
Office of the Director, Publications Division,
Ministry of Information and Broadcasting,
Press Road, Thiruvananthapuram : 695 001 ... Respondents.

(By Advocate Mr. Sunil Jose, ACGSC (R1-3))


This application having been heard on 28.03.08, this Tribunal
on 01-04-08 delivered the following:

O R D E R
HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER

The short question involved in this case is whether the applicant (admittedly senior) and the private respondent (junior) belong to two distinct category (one participating in Central Secretariat Clerical services and the other not) as, by virtue of this distinction, the applicant, though senior was not considered for placement in the clerical grade, while the junior private respondent was so considered and positioned.

2. The facts: The applicant was appointed as Mazdoor in the Sales Emporium of the Publication Division at Thiruvananthapuram, in the scale of pay of Rs 196- 232 vide Annexure A-2 order dated 16-01-1979 issued by the Publication Division, New Delhi. Vide Annexure A-3, the applicant's initial appointment of Mazdoor had been made in a substantive capacity w.e.f. 01.04.1988. After a decade from the date of initial appointment, vide Annexure A-3 order dated 27-02-1989 read with Annexure A-5 order dated 05-04-1989, he was promoted as C.G. II and posted at the said Sales Emporium in the scale of 950 – 1500 on ad hoc basis. On his attaining the age of 45, he was exempted from passing the typing test and his withheld increments were released, vide Annexure A-7. However, the applicant was reverted as Mazdoor from January, 1998 and the applicant had made a representation in this regard, vide his representation dated 5th June, 1998 (Annexure A-8). He was not as such promoted, but was afforded the first financial upgradation on completion of 12 years of regular service i.e. w.e.f. 01-08-2000 vide Annexure A-10 and here again, not in the pay scale of clerk, but in the scale of Rs 2,610 – 3540 (S-2).

The applicant seems to have made a representation on 24-07-2000 for his appointment as a Clerk, under the 10% quota for Group D employees. The

respondents, vide Annexure A-14 informed the applicant that the 10% quota of appointment to the post of Clerk from among the regular Group D employee was already consumed and hence the applicant's case cannot be considered. The applicant could locate that while he was reverted as Mazdoor, and was to slog in that post, his junior was promoted and pointing out the same and also informing about the availability of a vacancy for the post of Clerk in Thiruvananthapuram Publication Division, he had requested that his case be considered. Annexure A-11 to A-13 refers. This was not accepted by the respondents. Hence, the applicant has challenged the following orders of the respondents and has prayed for declaration of the said orders as illegal in so far as the same related to the positioning of the private respondent to the exclusion of the applicant and for quashing and setting aside the same. Simultaneously he has requested for a direction to the respondents to consider him for promotion to the post of Clerk with retrospective effect from the date the private respondent was promoted and for all consequential benefits arising therefrom:-

(a) Annexure A-23 appointment order dated 17th September, 1999 in so far it relates to private Respondent Shri U.S. Rawat.

(b) Annexure A-22 order dated 07-10-2000 stating that there is a distinction as Attached Office and Subordinate Office and since the applicant belongs to the latter, he cannot be considered for promotion under the C.S.C.S cadre. (This was to reply to the Commissioner for SC/ST to their communication, as the applicant, who belongs to SC category had approached the said Commission).

3. Official Respondents have contested the OA. As stated earlier, they have contended that the applicant cannot be considered for promotion to the Clerical Grade as the CSCS Rules do not apply to other Publication Divisions. Copy of the relevant CSCS Rules and Recruitment Rules for appointment to the Ex-Cadre Post of Clerks was added to the reply. The private respondent, though served with notice on 24-08-2005 had chosen not to file any reply nor represent



in person or through his counsel.

4. The applicant had furnished certain additional documents, including the seniority list of Mazdoors, which contains the names inter alia, of the applicant as well as the private respondent. Certain document called for under the R.T.I. Act, have also been added to the file.

5. Counsel for the applicant precisely submitted that there is an artificial division being created by the respondents to justify their action. He has stated that the applicant belongs to Publication Division and vide Annexure A-26 read with Annexure A-25, the Publications Division under the Ministry of Information and Broadcasting is one of the organizations to which the CSCS Rules do apply. Again, the fact that common seniority list is maintained goes to show that there is no question of the private respondent being considered for appointment/promotion without the senior being considered.

6. Counsel for the respondents referred to the counter to contend that the orders impugned are legal and justified.

7. Arguments were heard and documents perused. The applicant was initially appointed as Mazdoor by Annexure A-1 and A-2 orders dated 22-12-1978 and 16-01-1979, issued by the Publication Division of the Ministry of Information and Broadcasting, New Delhi. The appointment order clearly states that the Sales Emporium at Thiruvananthapuram was of the Publication Division of the Ministry of Information and Broadcasting. Applicant's ad hoc promotion as C.G. II vide Annexure A-3 and pay fixation, vide Annexure A-5 order dated 05-04-1989 also emanated only from the said Publications Division. His

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substantive appointment as Mazdoor had also been issued from that very office only. Applicant's ACP had been granted by the Ministry of Information and Broadcasting, vide Annexure A-10. The impugned order has also been passed only by the Ministry of Information and Broadcasting. Annexure A-9 seniority list of educationally qualified Group D employees of the Publication Division as of 01-01-1999 contains the names of the applicant as well as the private respondent, the applicant being shown as senior to the private respondent. And this list was issued by the Publication Division of the Ministry of Information and Broadcasting, vide Annexure A-27. Similarly, the draft seniority list of Mazdoors in a Publications Division as on 01-09-2001 shows the applicant as senior to the private respondent. If there be two distinct classes from amongst the educationally qualified Mazdoors, one to be considered for selection to the clerical grade under the CSCS Rules and the other not so qualified, there would not be a common seniority list. This is trite knowledge. Further, Annexure A-23 clearly goes to show that the entire Publication Division comes within the provisions of the CSCS Rules. There is no inkling that there could be a distinction between the Publication Division at the Headquarters level and Regional Office level. Again, in so far subordinate offices are concerned, invariably, such orders of appointment/fixation of pay etc., are issued only by the Regional Office of the Subordinate Offices alone albeit, the same would be with the approval of the Head Office, and the fact that in none of the orders in the instant case as detailed above, was there any such order by the Regional Office, the same clearly goes to prove that the contention of the respondents that the applicant belongs to subordinate office (vide para 10 of the Counter) is without any basis and as such, the same cannot be accepted at all. All these should be viewed as only afterthought. For, had it been so, the respondents would have given the same as the reason for non-consideration of the case of the applicant

in their reply at Annexure A-14.

8. Non-consideration of the applicant for appointment/promotion to the post of clerk in preference to the junior private respondent is clearly illegal and the same cannot stand judicial scrutiny. The Apex Court as a general law has stated in the case of *Bal Kishan v. Delhi Admn.*, 1989 Supp (2) SCC 351, held as under:-

"9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."

The above dictum of the Apex Court squarely applies to the case and the action of the respondent is diagonally opposite to the above law laid down by the Apex Court.

9. In view of the above, the OA succeeds. It is declared that the applicant is entitled to be considered for promotion/appointment to the clerical grade on the basis of his higher position in the seniority list, in preference to the private respondent. And as the respondents have considered the appointment of the applicant on a wrong interpretation of the rules, they are to consider the claim of the applicant for appointment/promotion to the clerical grade from the date the junior i.e. the private respondent had been considered and if found fit, they should accordingly pass suitable orders for retrospective promotion and fixation of pay accordingly. Respondents shall accordingly act and pass necessary orders and on promotion, the same shall be on notional basis from the date of promotion, but actual from the date of actual positioning of the applicant in the higher post. Again, if the applicant is entitled to the benefit of



past ad hoc service as clerk, vide Annexure A-5 for fixation of his pay in the higher post, the same shall also be considered while fixing his pay. It is for the respondents to regularize the services of the private respondent in the post of clerk from the date of his promotion by creating supernumerary post, if so warranted. His further continuance in the said post is left to the respondents for their decision. If he is allowed to continue, he shall not be senior to the applicant in the higher post, as legitimately, it is the applicant who is to be considered for higher post on the basis of seniority. It is made clear that the applicant is entitled to the exemption in qualifying in the typing test as per rules.

10. The entire drill to comply with this order shall be completed within a period of four months from the date of communication of this order. If for any valid reasons, further time is required, it is for the respondents to apply before the expiry of the stipulated period, by providing the details of action completed till then and action to be completed and the time required for completion of the balance action.

11. Under normal circumstances, we would have levied cost in such a case where the legitimate claim of the applicants is rejected deliberately. However, the sober submission by the counsel for the respondents during the course of arguments, dissuaded as in imposing any cost. Hence, there is no order as to costs.

(Dated, the 1st April, 2008)



(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER