

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 301/2005

Friday, this the 7th day of April, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

Smt Mable D'Cruz,
Assistant Postmaster (A/cs),
Kochi Head Post Office.

Applicant

By Advocate Mr PC Sebastian

v.

1. The Senior Superintendent of Post Office,
Ernakulam Division, Koch-682 018.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. The Director of Postal Services(HQ),
O/o the Chief Postmaster General,
Kerala, Thiruvananthapuram.
4. The Director of Postal Services,
Central Region, Kochi-682 018.
5. The Union of India
represented by Secretary,
Ministry of Communications,
Department of Posts, N.Delhi.
6. Smt.G.Sobhana,
O/o APM A/Cs,
Ernakulam, Kochi-682 011.
7. Smt.M.Valsala,
Accountant, Ernakulam H.O.
Kochi-682 011.
8. Shri Thankachan.V.G.
Accountant,
Ernakulam H.O.
Kochi-682 011.

Respondents

By Advocate Mr TPM Ibrahimkhan, SCGSC (for R.1 -5)

By Advocate Mr KS Bahuleyan (for R. 6-8)

The application having been heard on 30.3.2006, the Tribunal on 7.4.2006 delivered the following:

O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

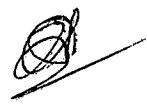
In this application, the applicant, Smt. Mable D'Cruz, Assistant Post Master (APM) (A/cs), Kochi Head Post Office, seeks a declaration that she is entitled to be considered for promotion to the cadre of Lower Selection Grade (LSG for short) APM (A/cs).

2. The facts are that she started her career as Postal Assistant with effect from 27.11.67 in Alleppey Postal Division. Upon coming out successful in the departmental examination for appointment as accountant in the PO and RMS Accountants held in 1972, she was appointed as Accountant in Alleppey Division and worked as such from 10.4.73 to 16.5.82. She was transferred to Ernakulam Division on her request as Postal Assistant, as there was no vacancy of Accountant at Ernakulam.

3. As per Rule 272-A of the P&T Manual, 1/3rd vacancies arising from 1-1-81 were to be filled in by competitive examination. She appeared for such examination for General line held on 15.2.81, in which she was declared as passed vide R-6-D communication dated 5.10.81. Vide A-4 order dated 11.5.89, 38 Postal Assistants, who had qualified in the examination for promotion to 1/3rd quota of LSG held on 15.2.81 were promoted and appointed in the general line in Post Offices against 1/3rd quota of vacancies for the year 1983. The applicant was one among them. She was allotted to the Division in which she was working, Alleppey, corrected as Ernakulam. In that order, it was mentioned that seniority of these officials were to be between the official promoted against 2/3rd quota of 1983 and officials promoted under TBOP scheme with effect from 30.11.83 and they were to rank senior en bloc senior to the officials promoted under the



TBOP scheme in 1983. Evidently, this order passed in 1989 had retrospective operation. Subsequent events which held different connotations had to be viewed in this context. Vide A-2 document dated 3rd September, 1984, details of DPC for promotion of PO and RMS Accountants to the cadre of LSG Accountants were announced. Reference had been made therein about the applicant along with four more, who had declined promotion, earlier from whom fresh willingness or otherwise were to be obtained for participating in the said examination. Such fresh options were to be sent on 5.9.84. It is not known whether she did send any option. But, the applicant submitted her option for Accounts line for future promotion vide Annexure A3 document dated 9.3.85. This was in response to a memo No. BB 33 dated 5.3.85 from Senior Superintendent of Post Offices, Ernakulam Division. The said memo is not part of the material papers. It cannot be conclusively said whether this was the same option required vide A2 document or whether such option (A-3) was duly accepted and if so, for what purpose. Vide Annexure A1 document carrying endorsement No. B1/5/1/R1os dated at Cochin, the 09 April, 1985, a copy of the DGP&T, New Delhi, on the subject of applicability of Time Bound One Promotion Scheme to Post Offices and Railway Mail Service Accountants (PO & RMS) was circulated. It was clarified therein that officials who had qualified in (PO & RMS) Accountant Examination and were due for promotion to LSG on completion of 16 years of service were to exercise an option regarding their working in General Line or Accounts Line. According to the applicant, the option exercised by her was in pursuance of this instruction. This does not appear to be tenable as the date of A1 (9.4.85) is subsequent to the date of exercising of option by the applicant vide A3 dated 9.3.85, unless the option was exercised in pursuance of some earlier references, possibly O.M.No. 9-7/84-SPB-II dated 26 of September, 1984, referred to in A1. This O.M. again is not part of the material papers. According to the applicant, she was posted as Accountant at Kochi Head Post Office with effect from 30.5.1990 as per Memo No. BB-14/VIII/90 dated



30.5.1990 (not part of the material papers) . Such posting, according to the applicant, is in pursuance of the option she has exercised for Accounts Line. When a regular vacancy arose in the post of Assistant Postmaster A/cs. Kochi, the applicant was posted as such with effect from 2.1.2003 as per Memo No. BB-14/XX(Pt) dated 2.1.2003 (Annexure A/5). This contains the posting orders of R/6, Shri K.P. Varghese and the applicant, the former two being referred to as APM (A/c) and the applicant as Accountant . In the case of the applicant, there is no reference to any promotion . She has been continuing as such ever since. Vide A/6 memo (No.BB-23 dated 25.6.2003), the applicant, along with respondent-6 and respondent-7 among others, was promoted to LSG notionally with effect from the date noted against each. R/6 is assigned 1.8.91 as the date of promotion and she is shown in Accounts Line. The applicant is assigned 1.11.90 as the date of promotion and she is shown in 'General Line 1/3rd qualified awaiting absorption'. Respondent-7 is assigned 15.12.2001 as the date of promotion and she is shown in General Line. The applicant claims seniority over these two, presumably on account of the dates of notional assignment. Vide memo No. ST/5-5/2005 dated 7.3.2005 (A/7 impugned document), promotions were ordered of 15 officials, including R/6, R/7 and R/8 to the cadre of LSG AP (A/cs) on notional basis. The date of effect noted against these officials were the date of occurrence of the vacancies. Such dates in respect of R/6, R/7 and R/8 were respectively 7.8.92, 1.8.94 and 1.7.96. According to the applicant, all these promoted officials were her juniors. Apprehending a possible reversion as a result of Annexue A/7 order, she made A/8 representation on 22.3.2005. The main points made therein were that she was promoted to LSG under TBOP Scheme with effect from 30.11.83 (vide A/4 document), she had opted for Accounts Line vide her letter dated 9.3.85, she was posted as Accountant as such option was final and her prayer was that she be included in the list of LSG APM Accounts. This representation has not been responded to so far. Following A/7 which conferred notional benefits to 15



officials , A/9 (impugned) order dated 19.4.2005 was passed posting 7 officials and A/10 (impugned)order was passed on 26.4.2005 posting the applicant, described as officiating APM Accounts to be Accountant. It is against A/7, A/9 and A/10 orders that she has come before this Tribunal

4. She had sought the following main reliefs:

- i) quashing of A-7, A9 and A-10 orders to the extent of excluding applicant's name from among the Accountants promoted to the cadre of LSG, APM(A/cs and A-10 in so far it relates to the applicant.
- ii) to declare that applicant is entitled to be considered for promotion to the cadre of LSG APM (A/cs) and that the non-inclusion of her name in A-7 and A-9 before the names of respondents 7 and 8 is illegal, and
- iii) to issue appropriate orders or directions to the respondents to include applicant's name in the list of LSG APM (A/cs) in Ernakulam Division and allow her to continue as LSG(A/cs) Kochi Head Office subject to normal rules relating to tenure. However, subsequently, at the time of hearing, the first two reliefs were not being pressed.

5. The following grounds are relied upon by her to sustain her case.

- i) Her reversion to give promotion to her juniors was unconstitutional and arbitrary.
- ii) She is a qualified Accountant, she had given option for further promotion and such option is still in force.
- iii) She is senior to respondents 7 and 8 both in the cadre of Postal Assistants and Accountants

6. Both the official and party respondents, oppose the application. According to the official respondents, following points are relevant to such opposition.

- i) The applicant was already given promotion vide A-4 document in the LSG General Line with effect from 30.11.83 and hence she is not eligible for consideration for promotion to LSG APM Accountants.



Such promotion was on account of her having qualified in the examination for 1/3rd quota of LSG General Line.

- ii) The vacancies that arose from 6.2.2002 are to be filled up as per the amended Recruitment Rules, 2002. As per the said rules, 1/3rd quota of APM Accounts posts are to be filled up by Postal Assistants having 16 years of service and having PO and RMS Accounts qualification in the order of seniority and the balance, on the basis of a departmental competitive examination.
- iii) The posting of the applicant as per A-5 memo vide orders dated 2.1.2003 was done as a part of deployment vide instructions contained in R-2.
- iv) Though R-6 and R-7 were juniors in the cadre of Clerks and Accountants, once the applicant was promoted to LSG General Line with effect from 30.11.83, such junior positions lose all relevance for the purpose of promotion as LSG APM Accounts.
- v) Though the applicant is a qualified PO & RMS Accountant, she appeared for the examination for promotion to the 1/3rd quota of LSG General Line held on 15.2.81.
- vi) Though she had exercised option vide A-3 dated 9.3.85, with her retrospective promotion granted with effect from 30.11.83 such option became infructuous and nonoperational, especially when she has accepted the LSG General Line promotion. As per the rules, no simultaneous exercise of choice for accounts line is available. The description of the applicant as Accountant (BCR) in A-5 is, in fact, not correct. She should have been referred to as LSG (BCR) .
- vii) A-6 covers two separate categories of promotion to LSG, one Accounts Line and the other General Line. The applicant is shown against the second category. R-6 and R-7 appear at Sl.No.1 and 5 of A-7 and their promotions were ordered in the light of the Recruitment



Rules of 2002.

viii) There was no question of the applicant being reverted. She did not belong to the Accounts line and hence was not promoted to LSG APM Accounts and she has to be necessarily replaced by a regularly promoted LSG official.

ix) Admitting that the applicant should not have been posted as Accountant at Ernakulam, she should have been posted against a norm-based LSG General Line post.

7. The party respondents oppose the application on the following grounds:

(a) The 7th and 8th respondents are senior to the applicant as per the Divisional Gradation list.

(b) As per A-5 the 6th respondent was working as APM Accounts-II whereas the applicant was an Account in the SSP's office.

© A-6 dated 25.6.2003 categorizes the officials promoted to LSG as Accounts Line and General Line, the latter category being assigned to the applicant. This has not been challenged by the applicant. The two lines being different, the applicant cannot claim seniority or promotion vis-a-vis officials promoted in the Accounts Line.

(d) In any case, all the three party respondents (6th, 7th and 8th respondents) are actually senior to the applicant.

8. We heard the counsel for both sides and carefully perused the documents.

9. The following points are framed for consideration:

- i) What are the eligibility criteria for promotion as LSG Accounts, and
- ii) Is the applicant eligible for consideration in the light of the criteria.

10. The first point to be considered is what are the eligibility criteria for promotion as LSG Accountants. The respondents contend in the reply statement that the recruitment rules of 1976 cover the vacancies that arose during the period upto 6.2.2002 (R1) and, thereafter, the amended rules of 2002



cover the same (R-6 (f)). In the former, clerks with ten years service and pass in the PO & RMS Departmental Examination are eligible. For the latter, 1/3rd of the APM Accounts posts are to be filled up by Postal Assistants with 16 years of service and pass in the PO & RMS Departmental Examination and as per seniority; the balance 2/3rd vacancies with Postal Assistants having the aforesaid qualifications and on the basis of the departmental competitive examination. According to the impugned orders, A/7, the date of effect shown therein is the notional date of occurrence of vacancy. 13 out of 15 promotees were appointed against vacancies arising prior to 6.2.2002. Hence, the Recruitment Rules of 1976 (Annexure R/1) apply to these cases. The fact remains that in both these Recruitment Rules, the feeder category remains the same namely, Postal Assistants to which category, the applicant herein does not belong.

11. Next question to be considered is whether the applicant is eligible for consideration in the light of the above. The claim of the applicant has essentially the following dimensions- 1) she is essentially an Accountant and was always treated as such, 2) she is senior to the party respondents. As regards the first dimension, the respondents contend that, vide A/4 document, the applicant stands promoted to LSG General Line with effect from 30.11.83, having qualified in the examination of 1/3rd quota of LSG General Line as per Annexure A/4 memo. Such promotions have been ordered with retrospective effect vide A/4 document dated 11.5.1989. Hence, the respondents contend that the applicant ceases to be a member of the feeder category to the promotion under dispute. But, according to the applicant, the promotions in General Line were only in terms of the TBOP Scheme which was initially considered to be a regular promotion for all purposes. This is opposed by the respondents on the grounds that the promotion given to the applicant was the result of her successful qualification in the examinations of promotion to 1/3rd quota held on 15.2.1981 held, well before the introduction of the TBOP Scheme.



The applicant was separately considered under TBOP Scheme also which was introduced with effect from 30.11.1983 as orders promoting her to LSG (General Line) on passing the examination held on 15.2.81 was issued only on 11.5.1989. This point has not been countered by the applicant in her rejoinder. In any case, the following paragraph gathered from A/4 document is significant and relevant in this context. "Seniority and ranking of those officials will be between the officials promoted against 2/3rd quota of 1983 and officials promoted under TBOP Scheme w.e.f. 30.11.1983. They will rank en-bloc senior to the officials promoted under TBOP Scheme in 1983." This makes it clear that the above promotion is not the TBOP promotion as put in by the applicant. Vide A/2 document dated 3-9-84, as already referred to, mention has been made about declining of offer of promotion as LSG Accountant by 5 officers including the applicant. It is not known whether she had given her option to be considered as an Accountant thus canceling the earlier refusal. Vide A/3 document dated 9.3.85, she opted for the Accounts Line for future promotion. This document refers to a communication of No. BB.33 dated 5.3.85 in reply to which the option was being submitted in the said A/3 document. The original reference is not part of the material papers, which comes in the way of proper appreciation of the background against which the option was so exercised. The respondents acknowledge the fact of this option, but, according to them, exercising such option was incidental to placement in TBOP only and not otherwise. This point, again, has not been countered by the applicant in the rejoinder. The applicant also contends that she, along with two other Accountants, was promoted to the cadre of LSG Accountant and posted in such capacity vide A/11 and A/12 documents dated 17.6.1986 and 28.7.1986. It was another matter that she declined the promotion temporarily due to family reasons. The fact of promotion on the above line is admitted by the respondents in their additional reply statement, because, at that time, she was only an Accountant. But, with the orders in A/4 document issued on 11.5.1989, giving



retrospective promotion with effect from 30.11.83, the status of the applicant gets confirmed as a promotee in the LSG General Line. The same position is reiterated in Annexure A/6 dated 25.6.2003 wherein, she is being shown under the category of 'General Line 1/3rd qualified awaiting absorption'. With neither of these two documents, A/4 and A/6 under challenge either earlier or in this O.A, it should be only taken to mean that she has acquiesced in this status and she cannot be heard to claim otherwise in this application. The second dimension of her claim is about her being senior to the party respondents. Apart from making the above claim, no reason has been given as to the basis for making such a claim- in the light of any rule position on seniority or of any gradation list in which she has shown to be senior to them. She has produced A/16 document which is the true extract of the relevant pages of the circle gradation list of PO & RMS Accountant as on 1.7.1977. The import of this list is not clearly made out as no explanation is available relating to the columnar headings (there are 11 of them). If the serial numbers are reflective of seniority, such numbers assigned to R/6 ,the applicant, R/7 and R/8 are 61, 97, 128 and 142. But the party respondents have produced R/6(E), which is a subsequent gradation list of Postal Assistants including LSG officials promoted under TBOP Scheme of Ernakulam Division as on 1.7.1986, in which the R/6, R/7, R/8 and the applicant are given serial numbers 110, 133, 200 and 319 respectively. The specific point made by the party respondents is that this gradation list shows that the applicant was junior to all the party respondents and this position has not been challenged so far in any forum, including in the present O.A. There is no opposition from the applicant to this point either, in her rejoinder. Another point raised by the party respondents is that this O.A. suffers from non-joinder of necessary parties. In the surviving reliefs, the applicant's request is to issue appropriate orders or direction to the respondents to include her name in the list of LSG APM Accountants in Ernakulam Division. Obviously, the reference is to the lists in A/7 and A/9. In the absence of a specific reference to the location in the list



where her name should be so introduced and of inclusion of the affected officials in the array of the party respondents, it is not possible to adjudicate on this relief. In sum, the applicant has failed to validate her claim in all these dimensions of her claim – her status as accountant and her seniority.

12. In sum, we find that the applicant was promoted to LSG General line vide A4 document with effect from 30-11-83. She is no longer a member of the feeder category for being considered for promotion to the posts under reference. In any case, she was also not able to prove her status or seniority position. Hence she is not entitled to the surviving specific relief.

13. The fact however, remains that the impugned order at Annexure A/10 requires modification as admitted by the respondents in their reply statement that the action of the first respondent in posting her as Accountant is not in order and as she was promoted to the cadre of LSG General Line with effect from 30.11.1983 she should have been posted against one of the identified LSG General Line posts and to this extent, the posting ordered in A/10 needs revision.

14. In the light of the above, we order that:

- (a) the surviving specific relief is disallowed, and
- (b) respondents shall take action to modify appropriately and duly A-10 order reflecting her promotion in the light of A-4 order.

15. With the above directions, the O.A is disposed of. No costs.

Dated, the 7th April, 2006.



GEORGE PARACKEN
JUDICIAL MEMBER



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER