

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Common order in O.A.Nos.314/07 & 408/07  
Ernakulam this the 20<sup>th</sup> day of June, 2008.

CORAM:

HONBLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HONBLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

O.A.314/2007:

1. P.M.Thomas, S/o P.T.Mathai,  
Manager, National Speed Post Center,  
Kottayam, residing at  
Knanan "Valyil, Devalokam Post,  
Kottayam.
2. V.T.Uthup, S/o Thomas,  
Sub Postmaster,  
Gandinagar Post Office, Kottayam,  
residing at Varavukalayil, Kallara,  
Kottayam. Applicants

(By Advocate Shri V.Sajith Kumar)

Vs.

1. The Senior Superintendent of Post Offices,  
Kottayam Postal Division, Kottayam.
2. The Chief Postmaster General,  
Kerala Circle,  
Department of Posts,  
Trivandrum.
3. Union of India represented by  
the Secretary to the Government,  
Ministry of Communications,  
Department of Posts,  
Government of India, New Delhi.
4. Antony C.A., Postal Assistant,  
Head Post Office, Palai.
5. P.N.Alexander,  
Assistant Postmaster (Mails),  
Chengannur. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC(R.1-3)

O.A.408/07:

N.J.Thomas, S/o Thomas,  
Assistant Post Master,  
Calicut Head Post Office, Calicut,

residing at Neriyampambil,  
Ramanattukara, Calicut -673 633. Applicant

(By Advocate Shri V.Sajith Kumar)

Vs.

1. The Senior Superintendent of Post Offices,  
Calicut Postal Division, Calicut
2. The Chief Postmaster General,  
Kerala Circle, Department of Posts,  
Trivandrum.
3. Union of India represented by  
the Secretary to the Government,  
Ministry of Communications,  
Department of Posts,  
Government of India, New Delhi.
4. S.Chandra Kanthi, Assistant Post Master,  
Calicut Head Post Office, Calicut.
5. M.O.Devassy, Postal Assistant,  
C/o Superintendent of Post Office,  
Thrissur Postal Division, Thrissur. Respondents

(By Advocate Shri Varghese P Thomas, ACGSC(R.1-3)

The applications having been heard on 22.4.2008,  
the Tribunal on .....20-06-08.....delivered the following:

**ORDER**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

As the above two O.As have common legal issue involved in them, this common order would deal with the same. However, in so far as the facts of the case are concerned, OA No. 314/2007 has been taken as the pilot case. The facts in the other OA are similarly.

2. The applicants were recruited into the service in 1973 and are the beneficiaries of TBOP scheme. The benefit under that scheme, according to the applicants, would be the relevant criteria for further promotion in the Grade of H.S.G. II and HSG I. In the Divisional level seniority list as published by the Kottayam Division as on 01-07-2006, vide Annexure A-2 their seniority position was 18 and 19 while that of the fourth respondent was 30. However, another

gradation list was prepared, vide Annexure A-4, which was based on the date of confirmation and annexure A-1 based on Annexure A-4 was prepared, whereby, juniors to the exclusion of the applicants were promoted to the L.S.G. Grade. Thus, the grievance of the applicants is that since the fixation of seniority vide Annexure A-4, based on dates of confirmation, is opposed to the decision the Apex Court in the Maharashtra Direct Recruit Engineers' case (AIR 1990 SC 1607) and since Annexure A-1 promotion order is based on Annexure A-4 seniority list, the said promotion is illegal and invalid. They have, through this OA prayed for quashing of Annexure A-4 and A-1 orders and have also prayed for a direction to the respondents to prepare a fresh list of Postal Assistants on the basis of their position in the respective merit list panel at the time of initial appointment and for further relief arising out of such revision of seniority. Private respondents have been impleaded. The applicants were officiating on ad hoc basis as LSG/HSG grades for a substantial period. It has also been contended by the applicants that earlier in 1982, a gradation list based on the dates of confirmation was issued, but the same was never circulated nor objections invited.

3. Respondents have contested the O.A. According to them, upto 18-05-2006, Lower Selection Grade was on Divisional basis, in accordance with the seniority position of the Postal Assistants in the respective Divisions and after the coming into force of amended Recruitment Rules, notified on 18-05-2006, promotion to the cadre of Lower Selection Grade is by way of selection as per the seniority of Postal Assistants in the Circle. Accordingly, a Departmental Promotion Committee held on 29-03-2007 as per the revised recruitment rules recommended 238 Postal Assistants for promotion to the L.S.G. The Selection was made on the basis of the Circle Gradation list of Postal Assistants published in 1982. The first applicant has been included in the extended panel for being promoted against the retirement vacancies of the officials in the select panel and would get his promotion in his turn, while in the case of the second Applicant, recommendation of the DPC has been

kept in sealed cover, as a department disciplinary case under Rule 14(2) of the CCS (CC&A) Rules, 1965 is pending against him. The fourth respondent has been promoted on the basis of his seniority position at the circle level. The applicants were officiating on ad hoc basis in the LSG/HSG II posts by way of divisional arrangement till regular promotion was made to the post at Circle level. The date of confirmation of the applicants is 01-03-1979, while that of fourth respondent is 01-03-1976. And according to Annexure A-4, the two private respondents were senior to the applicants. As regards 1982 list, the same was duly circulated and the applicants are trying to mislead the Tribunal. The L.S.G. is a Circle cadre and hence has to be on the basis of circle seniority and the circle seniority as in 1982 and also as on 01-07-2006 was based upon the dates of confirmation of the postal assistants.

4. Applicants have filed their rejoinder, wherein it has been averred that Lower Selection Grade was a divisional cadre and promotion to that cadre was based on the divisional level seniority, to the best of the knowledge of the applicants. When amendment to the Recruitment Rules took place, the respondents ought to have prepared a circle level seniority, based on the merit position in the initial recruitment examination. As regards the name of the applicant No. 1 being included in the additional panel and of the second applicant being held up due to pending proceedings, the applicants have stated that the first applicant had been included in the panel below his juniors which is illegal while in respect of the second applicant, it has been contended that there is no pending case against the second applicant and the proceedings were withdrawn.

5. Counsel for the applicant has furnished certain decisions of the Apex Court and this Tribunal to substantiate his case that seniority shall not be based on the fortuitous dates of confirmation but should be on the basis of the merit obtained at the time of initial appointment. The cases relied upon are as under:-

1984 (4) SCC 329  
1989 (1) SCC 285  
1989 (2) Sup. SCC 351  
1989 (1) Sup. SCC 615  
1977 (3) Sup. SCC 399  
1996 (7) SCC 751  
1990 (2) SCC 715  
Jt 1992 (3) SCC 243  
O.A.414/91 of Ekm.Bench.

6. Counsel for the respondents emphasized the contents as contained in the counter.

7. Arguments were heard and documents perused. The admitted fact is that the applicants and the private respondents were functioning as Postal Assistants right from 1973. The contention of the applicants is that there was no circle gradation list based on confirmation, alleged to have been published in 1982 and even if it were so, the same was not circulated, much less acted upon and thus, a list, not acted upon for decades cannot be pressed into service at this distance of time. Per contra, the respondents have denied the same.

8. The contention of the respondents that the 1982 circle gradation list had been published and objections called for, vide para 9 of the counter does not appear to be correct for more than one reason as under:-

- (a) First, if there were such a gradation list, then any Divisional gradation list prepared by various Divisions should have based their list on the consolidated circle gradation list, whereas, vide Annexure A2, the list is in complete deviation from the circle gradation list.
- (b) It is not only with reference to Kottayam Division but even in Tiruvalla Division, the list is not based on date of confirmation, as is evident from Annexure A-3.
- (c) Secondly, even as per the words of respondents, vide para 4 of the Counter that upto 18-05-2006, Lower Selection Grade was a divisional cadre

and promotion to this cadre was granted from among officials of the division on the basis of the Seniority in the Postal Assistant Cadre with are made in the divisions. If so, there was absolutely no purpose in preparation of the circle gradation list in 1982. Thus, what would have been prepared in 1982 could be a consolidated list of all the postal assistants who had been confirmed.

(d) Thirdly, if seniority were based on the date of confirmation as alleged by the respondents, then the applicants would not have been permitted to officiate in the selection grade for years together, to the exclusion of their seniors.

9. In view of the above, since officiating arrangements based on seniority as per the merit list had been made and the applicants had been provided the benefit of officiation, which had not been agitated by respondent No. 4 or 5 or for that matter by any one else, it is clear that seniority is based on the merit position in the initial appointment only. As such, the respondents cannot be permitted to vary the same at this distance of time. In the case of D.P. Sharma v. Union of India, 1989 Supp (1) SCC 244, the Apex Court has held, "*The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively.*"

The decisions relied upon by the applicants are applicable to the facts of this case as well.

10. In view of the above, preparation of Annexure A-1 promotion list to the grade of Lower Selection Grade on the basis of Annexure A4 seniority list which was prepared in the sequence as of confirmation, is liable to be quashed and set aside. We order accordingly.

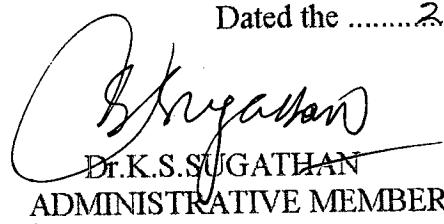
11. The O.A Nos. 314/2007 and 408/2007 are thus, allowed. Respondents are directed to conduct a review of promotion to the post of LSG on the basis of Circle seniority prepared on the basis of the merit position in the initial grade of appointment and pass suitable orders of promotion. It is, however, left to the

respondents that those who are at present holding the post but who on review may not figure in the list of promotees may be retained on supernumerary post. If the department would like to revert them, the same too shall not be made immediately, but after putting such affected persons to due notice, giving sufficient time to respond to the notice. Till then, they shall not be reverted. Further, those who were not earlier in the list of promotees but have now been included in the review list, would be entitled to only notional fixation of pay till the date they actually hold the higher responsibility. If the applicants are included in the promotion list, their pay shall be regulated, keeping in view their officiation in the post in the past, as per the rules.

12. The entire drill of conducting Review DPC and passing suitable orders be completed within a period of six months from the date of communication of this order.

13. No cost.

Dated the ..... 29<sup>th</sup> June, 2008.



Dr. K.S. SUGATHAN  
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN  
JUDICIAL MEMBER