

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.33/2006

Thursday this the 2nd day of November, 2006

CORAM

HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Gopalakrishna Pillai,
aged 56 years, S/o N.Kesava Pillai,
Lower Selection Grade (S) BCR,
RMS TV Division, Sub Record Office,
Kollam, working as Head Sorting Assistant,
Kollam RMS-I, residing at Mangalath Puthen veedu,
Thrikkannamangal, Kottarakkara.691506Applicant

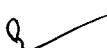
(By Advocate Mr. Shafik M.A)

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- 1 Union of India, represented by the
Chief Postmaster General,
Kerala Circle, Trivandrum.
- 2 The Senior Superintendent of
Railway Mail Service, Trivandrum
Division, Trivandrum.
- 3 R.Vijayan Nair, Accountant,
RMS TV Division,
Trivandrum.
- 4 Vasanth PA
LSG Supervisor HRO
RMS TV Division,
Trivandrum.Respondents

(By Advocate Mr. Varghese P. Thomas ACGSC for R.1&2
Advocate Mr. Sasidharan Chempazhanthiyil for R.3&4)

The application having been finally heard on 12.10.2006, the Tribunal on
2.11.2006 delivered the following:



ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant entered service in the Department of Posts as Sorter with effect from 30.4.69. With the introduction of the TBOP/BCR schemes based on length of service, he was upgraded as LSG (BCR) and later as HSG-II (BCR) with effect from 1.7.95 after about 26 years. Meanwhile, the applicant has also cleared the Departmental Fast Track Examination for 2/3rd vacancies of 2004 of Lower Selection Grade (LSG) and ranked third in the said examination and he was promoted to the norm based post of LSG with effect from 5.5.05. Shri R.Vijayan Nair and Smt. P.A.Vasanthy of the RMS TV Division were the other persons who ranked 1st and 2nd respectively in the said examination. The applicant presently being the senior-most LSG (BCR) official in the RMS 'TV' Division claims officiating promotion to the post of Sub-Record Officer, SRO, Kollam an HSG-I post which became vacant on account of termination of the officiating arrangement given to his senior in the LSG (BCR) Shri G.Philipose Panicker vide Annexure.A7 order dated 25.6.2004 on the strength of Annexures.A4 and A5 letters dated 14.1.2005 and 17.2.2005 respectively. According to Annexure.A4 letter, BCR officials can be deployed in leave/short term vacancies in HSG-I posts on adhoc basis even if they are not promoted to HSG-II on regular/adhoc basis and their pay is to be fixed under FR.35 and by the Annexure.A5 letter, some of the LSG (BCR) officials senior of the applicant were deployed to officiate as HSG-I in different RMS Offices in RMS TV Division. According to the applicant there are only three LSG (BCR) officials, namely, S/Shri G.Philipose Panicker,

R.Ravindran Nair and Shri P.K.Ittykunju who are senior to him and the first two of them are unfit for promotion because of the pending disciplinary proceedings. Shri Panicker was proceeded against under Rule 14 o the CCSW (CCA) Rules, 1965 vide Memo dated 23.8.2004. The third Sri Ittykunju, has declined promotion ordered vide Annexure.A5. The applicant has submitted that the Respondents are permitting Shri Panicker to continue in the same post even after terminating his officiating service against the Govt. of India Instructions (4) below Rule 11 of CCS (CCA) Rules, 1965 which states as under:

"The question whether a Government ServantWhere an appointment has been made purely on adhoc basis against a short-term vacancy or a leave vacancy or if the Govt. servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year the Govt. servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceedings is initiated against him."

2 Since the applicant was denied promotion to HSG-I on officiating basis as requested by him after the aforesaid Annexure.A7 order dated 25.6.2004 terminating the officiating assignment of Shri Panicker and others, he earlier approached this Tribunal vide OA 802/05 seeking a declaration that he was entitled to be granted the officiating promotion to HSG-I post like the officials covered by Annexures.A4 and A5 and sought a direction to the respondents to issue appropriate orders granting such promotion to him against the existing vacancy of HSG-I post available at Kollam. This Tribunal vide order dated 18.11.2005 disposed of the said OA directing the first respondent., Union of India represented by CPMG, Kerala Circle to consider and dispose of his representation and communicate the decision to him. Accordingly the respondents issued the Annexure.A1 order dated 21.12.22005.

3 The applicant challenged the Annexure.A1 order stating that even after the applicant and other two persons were promoted to norm based LSG Grade-I with effect from 5.5.05, the respondents were still following the procedure as prescribed in Annexure.A4 letter by filling up the post of HSG-I on officiating basis by promoting the LSG (BCR) officials. He has given the specific case of Shri R.Vijayan Nair, who was junior to him as an LSG (BCR) who was posted to officiate as HSG-I for the period from 19.7.05 to 17.8.05. He has also submitted that the National Union of RMS/MMS Employees Grade 'C' with DPS HQ in its bi-monthly meeting held on 18.11.2005 discussed the matter regarding denial of officiating arrangement in the cadre of HSG-I in the vacant post at SRM Kollam being occupied by Shri G.Philipose Panicker, an LSG (BCR), an ineligible official against whom disciplinary proceedings is pending and the respondents have assured that they would issue instructions to fill up the vacant HSG-I posts with the available LSG (BCR) officials. As regards the HSG-I post of SRO Kollam against which Shri Panicker is still continuing even after termination of his officiating arrangement w.e.f. 25.6.2004, the respondents submitted that the OA 2/2005 filed by Shri Panicker in this Tribunal is pending and legal opinion was being sought from Sr.CGSC regarding his reversion.

4 The respondents in their reply has submitted that they have issued instructions to the concerned officers vide the Annexure.A4 order dated 14.1.2005 to deploy LSG (BCR) officials to man leave/short term vacancies in HSG-I post by making officiating arrangements as against the normal procedure of filling up the post from the officials in the feeder cadre of HSG-II post as no qualified HSG-II norm based officials available for promotion to HSG-I post. Accordingly, a few vacant HSG-I posts in RMS

TV Division, where the applicant is working, had been filled up by the 2nd respondent by issuing the Annexure A5 order but II the officials covered by Annexure A5 order are LSG (BCR) who are senior to him. However, when LSG norm based officials became available, Shri R. Vijayan Nair who was senior to the applicant in the LSG Grade as per the merit in the LSG Departmental Fast Track Examination 2000 was given officiating promotion to HSG I upto 17.8.2005. They have further submitted that though the applicant is a senior LSG (BCR) official, he is the juniormost in the LSG norm based in the RMS TV Division and the officiating arrangement in HSG-I is being granted on the basis of Divisional Seniority in LSG.

5 During the pendency of the present OA, Shri R. Vijayan Nair and Smt. Vasanthi PA, the other two officials who qualified in the Fast Track Examination and ranked above the applicant at positions 1&2 respectively made application for intervention in the case and the same was allowed. In their reply they stated that the applicant being the juniormost among the LSG norm based officials, they have a better claim for officiating against the vacancies in the post of HSG-I.

6 We have heard Shri Shafik MA for the applicant, Shri Varghese P. Thomas, ACGSC for the respondents 1&2 and Shri Sasidharan Chempazhanthiyil for Respondents 3&4. We have also perused the service records of the applicant and the respondents 3 & 4 made available by the official respondents. There cannot be any denial of the fact that the promotions have to be made in accordance with the Recruitment Rules. According to the Recruitment Rules, the channel of promotion in the present case is from LSG to HSG-II and then to HSG-I. A norm based LSG official with a minimum of 10 years service in the LSG grade is first promoted to HSG-II subject to availability of vacancies and on putting

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minimum three years service in HSG-II norm based post, he is then promoted to HSG-I. It is an admitted position that qualified HSG-II officials were not available to fill up the vacancies in HSG-I post on regular basis. It was only to tide over the administrative exigency occurred by the non-availability of HSG-II officials for promotion to the post of HSG-I as per the Recruitment Rules, the respondents have issued the Annexure.A4 letter dated 14.1.2005 permitting the LSG (BCR) officials to be deployed in leave/short term vacancies in HSG-I posts on adhoc basis, though they may not have been even promoted to HSG-II on regular/adhoc basis and vide Annexure A5 order dated 17.5.05, the respondents have in fact promoted several such LSG (BCR) officials to officiate as HSG-I on short term period. The applicant being one of those LSG (BCR) officials could have been promoted on officiating basis in terms of the Annexure.A4 letter when an HSG-I post became vacant w.e.f. 26.6.2004 in SRO, Kollam on termination of the officiating service of Shri G.Philipose Panicker vide the Annexure.A7 order dated 25.6.2004. In the Annexure.A1 letter dated 21.12.2005 issued in pursuance to the directions of this Tribunal in OA 802/05 (supra) there is no explanation as to why the applicant who was the senior-most eligible LSG (BCR) officials was not considered for promotion at that time. There is also no explanation as to why Shri Panicker was permitted to continue in the same post of SRO Kollam without any remuneration even after his appointment was terminated. However, in the reply affidavit the respondents have submitted that there are 5 officials senior to the applicant eligible for appointment to HSG-I post on officiating basis are available and the applicant could be considered only in his turn after them. Obviously the respondents are referring to S/Shri G.P.Panicker himself, Shri B.Ravidnran Nair and Shri P.K.Ittikunju who belonged to the

LSG (BCR) and the intervenors in this OA Shri Vijayan Nair and Mrs.Vasanthy PA. In the case of Shri Panicker, disciplinary case under Rule 14 of the CCS (CCA) Rules were pending and in fact the respondents themselves have terminated the officiating arrangement already granted to him vide Annexure.A7 letter dated 25.6.2004. Shri B.Ravindran Nair at the relevant time was facing departmental proceedings and later he was under the currency of the punishment awarded to him vide order dated 31.3.2005. Both of them were thus unfit for promotion. The other two LSG norm based officials along with the applicant passed the test and secured appointment only on 5.5.05. As regards the OA No.2/2005 filed by Shri Panicker before this Tribunal is concerned, it was only to grant him promotion as HSG-I subject to the final outcome of the Memorandum dated 23.8.2004 issued to him under Rule 14 of the CCS (CCA) Rules, 1965. Neither there was any direction from this Tribunal to allow him to continue to man the post of SRO, Kollam as was done by the respondents on their own nor there was any stay against the Annexure.A7 letter dated 25.6.2004 terminating his officiation against the post of SRO, Kollam. Therefore, it is clear that the applicant was the senior-most LSG (BCR) eligible officials available as on 25.6.04 and he could have been very well considered for promotion. The respondents frustrated his claim by allowing Shri G.Philipose Panicker to continue to work as SRO, Kollam without even any remuneration when departmental action under Rule 14 of CCS (CCA) Rules, 1965 has already been pending against him vide Memo dated 23.8.2004. The submission of the respondents that the post of SRO, Kollam could not have been kept vacant is quite meaningless as the said post was vacant at the time when Shri Panicker was appointed ^{appointed} for the period from 26.11.2003 and if the applicant or any one else was ^{after the}



officiating arrangement of Shri Panicker was terminated, there would have been no occasion for the respondents to keep the post vacant. By efflux of time from 26.6.04 till now, the position has changed with the availability of 2 LSG norm-based officials, namely Shri R.Vijayan Nair and Mrs.Vasanthy P.A who have also staked their claim for officiating chance as HSG-I. They are intervenors in the present OA. With their availability, the contention of the Respondents is that the post of HSG-I can now be filled up only on the basis of the Recruitment Rules, and the aforesaid LSG norm-based officials being at merit positions 1st and 2nd respectively will have preference over the applicant who is at the 3rd position. In fact Shri Vijayan Nair has already been appointed to officiate as HSG-I at HRO, Trivandrum from 19.7.2005 to 17.8.2005.

7 Now the question is whether the circumstances under which the Annexure.A4 instructions regarding officiating arrangement in HSG-I posts are still existing or with the availability of the respondents 3&4 who are the qualified LSG norm based officials from 5.5.05 there is any change in the situation. According to the respondents 1-2 themselves, the Annexure.A4 order was issued because of the administrative exigency caused by the non-availability of the qualified HSG-II officials for regular promotion to the HSG-I. It is in this circumstances that the LSG (BCR) who have long years of service have been given the opportunity to officiate in HSG-I. Admittedly, both the respondents 3&4 are junior to the applicant as LSG (BCR) and as LSG norm based officials, they are also not eligible to be promoted as HSG-I on regular basis. The very reason of permitting the LSG (BCR) in the absence of qualified HSG-II officials to officiate as HSG-I was their long years of experience in the area of their work. The contention of the respondents that since the respondents 3&4 have qualified the



departmental examination for the LSG norm based post and got appointed w.e.f. 5.5.2005 in that capacity with better merit position than the applicant and, therefore, they have a better claim than the applicant for officiating chance against the post of HSG-I is absolutely misconceived and misplaced. It was in the absence of any qualified officials in the feeder cadre of HSG-II for promotion to HSG-I, the respondents have given preference to the LSG (BCR) officials who have long years of service and experience at their credit. The applicant having fulfilled this requirement as specified in Annexure A4, has a justified claim for consideration for appointment as HSG-I position on officiating basis. The claim of the respondents 3&4 and the justification given by the respondents 1&2 for the claim are absolutely wrong and unjustifiable. They could have staked their claim only if they are otherwise eligible to be considered for promotion to the post of HSG-I as per the Recruitment Rules or if they were senior to the applicant in their capacity as LSG (BCR). We also found that the circumstances under which the post of SRO, Kollam being continued to be allowed to be occupied by an official who is ineligible to hold that post even without remuneration is illegal and arbitrary. In the above circumstances, we allow the OA with the directions to the respondents 1&2 to consider the applicant for grant of officiating promotion to the HSG-I post of SRO, Kollam lying vacant since 25.6.2004 and they shall pass appropriate orders in this regard within one month from the date of receipt of this order. There is no order as to costs.

Dated this the 2nd day of November, 2006



GEORGE PARACKEN
JUDICIAL MEMBER
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N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER