

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

....

O.A. 348/92

Thursday, this the 20th day of January, 1994

CORAM

SHRI N.DHARMADAN, JUDICIAL MEMBER
SHRI S. KASIPANDIAN, ADMINISTRATIVE MEMBER

Applicant

Shri T.X.Zacharia,
Sub Post Master,
Alapuzha Iron Bridge P.O.,
Alapuzha-11.

By Advocate Shri C.M.Suresh Babu

Versus

Respondents

1. Director of Postal Services,
Central Region,
Cochin-16.
2. Post Master General,
Kerala Circle,
Cochin-16.
3. Union of India, rep. by its
Secretary, Min. of Communications,
New Delhi.

By Shri Karthikeya Panicker

ORDER

N.Dharmadan, JM

The real grievance of the applicant is that his seniority in the cadre of LSG has not been correctly fixed vis-a-vis his juniors, Smt. P.Leelavathy and Shri K.Balan. The facts are not in dispute. The applicant is at present working in the L.S.G. cadre as Sub Post Master at Alappuzha. He appeared for the qualifying test held on 10.12.78 for selection and promotion to L.S.G. cadre against 1/3 quota of vacancies for the year 1980 and passed. Accordingly his name was included in the list of qualified candidates prepared by the PMG dated 8.5.79. Before exhausting the list another examination was held for filling up the vacancies

in the subsequent year. A combined list of candidates passed in the examination held in 1978 and subsequent year was prepared and 68 officials were promoted from the same. But the applicant was denied promotion. Based on the principles of Rule 272 A of the P&T Manual, Vol.IV, priority for promotion is to be given ^{depending} ~~on~~ on the date of passing of the examination. A number of original petitions were filed before the High Court of Kerala by persons similarly situated, like the applicant. They were allowed. In implementation of the directions promotions to LSG cadre were effected retrospectively in the 1/3 quota. Applicant was also promoted. Ann.A2 seniority list of LSG was issued. In that list applicant is Sl.No.127 while Smt. P.Leelavathi Ammal and K.Balan were at Sl.No.128 and 139 respectively. One Smt. K.Lekshmi and four others including K.Balan (5th respondent in that case) filed OAK 476/88 before the Tribunal. It was allowed. In the meantime another gradation list of officials as on 1.7.87 was issued. It is at Ann.A4. Applicant is at Sl.No.342, while Leelavathi Ammal and Balan were at Sl.No.343 and 355 respectively. But they were given promotion as LSG with effect from earlier date. Aggrieved by the same the applicant filed representation Ann.A5. Reply is Ann.1. It is extracted below:

"With reference to your letter cited above it is intimated that as Smt. P.Leelavathy is promoted retrospectively earlier than Mr. T.X.Zacharia. Smt. P.Leelavathy is senior in the promoted post to Sri T.X.Zacharia unless and until Sri T.X.Zacharia's promotion is altered.

In view of the above Sri T.X.Zacharia is not entitled to step up of pay equal to the pay drawn by Smt. P.Leelavathy."

2. Applicant filed Ann.A5 representation only mentioning about the stepping up of pay considering his earlier pass in the test for fixing of the pay. It was considered and disposed of by the Director of Postal Service as per the impugned order Ann.1 dated 27.2.90. The only reason stated in the order is that Smt. P.Leelavathy is senior to the applicant and he will not get the benefit of the promotion as also higher pay unless and until his promotion is also altered

so as to give him seniority above Smt. Leelavathy.

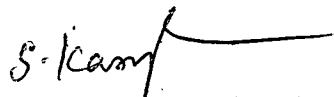
3. According to the applicant, the reasons given in the impugned order cannot be sustained in the light of the judgement of this Tribunal as also the judgement of the High Court and gradation list Ann.2 and 4. Smt. P.Leelavathy and Shri Balan are admittedly juniors to the applicant and this is evident from the seniority list of officials appointed as LSG against 2/3 and 1/3 quota for the year 1979 to 1982 as revised and issued as per the direction of the High Court in the case filed by Smt. Leelavathy and Shri K.Balan. The seniority of the applicant as shown in Ann. 2 and 4 is even now in force. But Smt. Leelavathy got an earlier promotion on account of the direction of the High Court in OP No. 229/81. Similarly Shri Balan who was 5th applicant in OAK 476/88 got a direction from this Tribunal as per Ann.3 judgement dated 15.1.90 for getting a promotion on account of their pass in the departmental test held on 10.12.78. The applicant also passed in the same departmental test. He is also eligible for earlier promotion in the light of the principles stated in the judgement referred to above. But he did not get earlier promotion only because he did not approach the judicial forum for getting a direction as in the case of other 2 juniors ~~xxxxxxx~~ Smt. Leelavathy Ammal and Shri Balan referred to above. It appears the denial of the benefits of earlier promotion to the applicant really is an injustice.

4. Considering the seniority and the pass in the test held on 10.12.78, the Director of Postal Services should have granted the relief of earlier promotion to the applicant as well when he considered his representation Ann.A5 filed on 1.8.90. There is no justification for the Director to take

a technical view of the matter and deny earlier promotion and proper fixation of his pay vis-a-vis his juniors.

5. In the reply the respondents have not denied any of the points raised by the applicant. The case of the applicant that he is senior to Smt. Leelavathy and Sri Balan has been accepted by the respondents. It is also proved beyond doubt from Ann.2&4 seniority lists. Applicant was admittedly successful in the departmental examination held on 10.12.87. Under these circumstances the eligibility of the applicant for getting earlier promotion cannot be questioned. Considering these aspects the Director ought to have granted the relief to him. It is only the failure to discharge his official duty that compelled the applicant to approach this Tribunal for getting a direction in this behalf.

6. However, having regard to the facts and circumstances, after considering the grievance of the applicant, we quash Annexure-A1 and declare that the applicant is entitled to promotion to the post in the LSG with effect from 6.9.80 the date on which his juniors were promoted. It goes without saying that the applicant is also entitled for a fixation of pay in the promoted post with all consequential benefits. Arrears shall be disbursed to him without any delay. Above directions shall be complied with within a period of four months from the date of receipt of a copy of this order. The OA is accordingly allowed to the extent indicated above. There will be no order as to costs.



(S.Kasipandian)
Member (A)



(N.Dharmadan)
Member (J)

20.1.94