

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos. 7/2000, 293/2000 & 363/2000

Wednesday, this the 3rd day of July, 2002.

CORAM

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

(1) O.A.No.7/2000

N. Velayudhan, S/o N.P. Neelakandan Pillai,
Accountant (Time Bound One Promotion),
Neyyattinkara Head Post.
Residing at Priya Ragh, Parasala P.O.,
Thiruvananthapuram.

Applicant

[By Advocate Mr G. Sasidharan Chempapzhanthiyil]

vs

1. Superintendent of Post Offices,
South Postal Division,
Thiruvananthapuram.
2. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
3. Director General,
Postal Department,
New Delhi.
4. Union of India
represented by its Secretary,
Ministry of Communications,
New Delhi.
5. Saji Sam George,
Accountant (Office Assistant),
Postal Superintendent Office,
South Division,
Thiruvananthapuram.
6. R. Satya Das,
Accountant (Time Bound One Promotion),
Thycaud Head Post,
Thiruvananthapuram.
7. K.V. Kumar, Postal Assistant
(Time Bound One Promotion) Grade II,
Thycaud Head Post,
Thiruvananthapuram.
8. K.Kesavan, Accountant,
Thycaud Head Post Office,
Thiruvananthapuram.

Respondents

[By Advocate Mr M. Rajendra Kumar, ACGSC for R-1 to 4]



(2) O.A.No.293/2000

N. Velayudhan, S/o N.P. Neelakandan Pillai,
Accountant (Time Bound One Promotion),
Neyyattinkara Head Post,
Residing at Priya Ragh, Parasala P.O.,
Thiruvananthapuram.

Applicant

[By Advocate Mr G. Sasidharan Chempazhanthiyil]

Vs

1. Superintendent of Post Offices,
South Postal Division,
Thiruvananthapuram.
2. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
3. Director General, Postal Department,
New Delhi.
4. Union of India
represented by its Secretary,
Ministry of Communications,
New Delhi.
5. L.J. Mohandas,
Assistant Postmaster (Accounts),
Thycaud Post Office,
Thiruvananthapuram.

Respondents

[By Advocate Ms. A. Rajeswari, ACGSC]

(3) O.A.No.363/2000

K. Kesavan, Accountant,
Thycaud H.P.O (On Leave),
Thycaud,
Thiruvananthapuram.

Applicant

[By Advocate Ms K. Indu]

Vs

1. Union of India
represented by its Secretary,
Ministry of Communications,
Department of Posts, New Delhi.
2. The Chief Postmaster General,
Thiruvananthapuram.
3. The Director of Postal Service,
Office of the Chief Postmaster General,
Thiruvananthapuram.
4. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram-14.



5. K.V. Kumar, LSG PA,
(Accountant in Leave Vacancy),
Thycaud H.O., Trivandrum.

6. N. Velayudhan, Accountant,
Neyattinkara H.P.O.

Respondents

[By Advocate Ms. S. Chitra, ACGSC for R 1 to 4]
(By Mr Sasidharan Chempazhanthiyil for R-6)

[The applications, O.A.No.7/2000 & O.A.293/2000 having been heard on 20.3.2002, and O.A. No. 363/2000 having been heard on 30.6.2002, the Tribunal delivered the following common order on 3.7.2002.

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicants in O.As.7/2000, 293/2000 and O.A.363/2000 are working as Post Office and Railway Mail Service Accountant, Postal Assistant and Accountant respectively. Aggrieved the action of the respondents in transferring/reverting the applicants, they have filed these applications separately and since the issues involved in these applications are similar and one and the same, these are disposed of together by this common order.

(i) O.A.7/2000

2. The applicant was working as a Post Office and Railway Mail Service Accountant continuously for the last six years and aggrieved by the order of reversion from the post of Accountant to work as Postal Assistant is contrary to the rules and to favour his juniors in the Accountant cadre. There was a stay against that order in O.A.589/97 and then in O.A.517/98 and that stay ceased to have effect on 29.12.99 as directed by this Bench of the Tribunal, the 2nd respondent passed orders rejecting the claim of the applicant. Aggrieved by the said order, not against any transfer but against the reversion from the post of Accountant to the post of Postal Assistant, the applicant has filed this O.A. seeking the following reliefs:



- "1. Call for the records and quash Annexure A-6 in as much as it orders a transfer of the applicant from the post of Post Office and Railway Mail Service Accountant to the post of Lower Selection Grade Postal Assistant.
2. Call for the records and quash Annexure A-14.
3. Declare that the applicant is entitled to be given a placement in the seniority list of Post Office and Railway Mail Service Accountant as one passed in 1986 above respondents 5 to 8 and regulate his posting accordingly.
4. Declare that the applicant is entitled to continue as Post Office and Railway Mail Service Accountant under the first respondent and direct the respondents to regulate his posting accordingly.
5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice; and
6. Award the cost of these proceedings."

3. The applicant had alleged in the application that he was recruited as Postal Assistant in Tellicherry Postal Division on 9.10.80 as per order dated 5.11.86 (Annexure A-1) and he came on transfer under Rule 38 of P&T Manual (Vol.IV) to Trivandrum Postal Division as per order dated 19.11.91 (Annexure A-2). He came on transfer as Postal Assistant and not as Accountant and Accountant is a different post with different line of promotion in the Accounts Line. The next promotion post is Assistant Postmaster Accounts. The examination for posting as Post Office and RMS Accountant is conducted on Circle basis and a separate seniority list is also maintained on Circle basis for promotion to the post of Assistant Postmaster Accounts and it is based on the year of passing the examination. In the case of those passing in the same year the seniority is determined with reference to their respective seniority in the basic grade of Postal Assistant. The 2nd respondent by letter dated 6.4.70 conveyed the order of the 3rd respondent dated 12.3.70 (Annexure A-3) delinking the seniority of Post Office and Railway Service Accountants from the seniority of the basic grade of Postal Assistant and it is strictly followed which is evidenced by

letter dated 20.2.95 (Annexure A-4) issued by the 2nd respondent. On joining Trivandrum Postal Division, the applicant became junior-most Postal Assistant in that division, but he retained his seniority in the seniority list of Accountant to be maintained in the Circle on the basis of the passing year of the examination. The Accountants and Assistant Postmaster (Accountant) cadres were divisionalised by the 3rd respondent in 1994 as per order dated 10.8.94 (Annexure A-5) by which the position enjoyed by the applicant over respondents 5 to 8 in the circle gradation list was not altered in any way. and he continued to be senior to respondents 5 to 8 in the Trivandrum South Postal Division. The 1st respondent had not prepared a seniority list of Accountants of the South Postal Division and circulated consequent on divisionalisation of cadre as per Annexure A-5. But whether the seniority list is prepared or not, the inter se seniority of the applicant and respondents 5 to 8 is a reality recognized by the rules. There are four posts of Accountants and one post of Assistant Postmaster Accounts under the 1st respondent and the applicant was working as an Accountant continuously without interruption till date. While so, the 1st respondent passed orders dated 24.4.97 (Annexure A-6) reverting the applicant from the post of Accountant Neyyattinkara to LSG Postal Assistant in the same office. Respondent-7 was not working as Accountant and Annexure A-6 is issued only to favour him and post his juniors as Accountants. Therefore, there is no justification for reverting the applicant as Postal Assistant. Respondents content that by coming under Rule 38 transfer, the applicant became junior to respondents -5 to 8 not only in the basic cadre of Postal Assistant but also as Accountant is not correct. The applicant was promoted in the next higher grade under OTBP Scheme with effect from 14.10.96 (Annexure A-7) and other respondents were promoted in the same scheme later than the applicant.

Consequent on the OTBP Scheme, promotion to the 3rd respondent issued orders on 26.9.84 to regulate posting of officials who opt for the Accountant line and the same was communicated as per Postmaster General, Kerala Circle letter dated 25.10.94 (Annexure A-8). The applicant has exercised his option dated 14.7.93 to remain in the Accounts line and posting him as LSG Postal Assistant is against Annexure A-8 as per letter dated 5.8.93 (Annexure A-9). The option was to consider him for promotion to the cadre of Assistant Post Master (Accounts). It is clearly shows that the applicant's name reached the zone of consideration for promotion to the post of Assistant Postmaster Accounts on the basis of his circle level seniority in 1993. Therefore, the plan to shift him from the Accountant line to the general line is illegal and arbitrary. One Mrs. E.D. David was posted as Assistant Postmaster Accounts under the 1st respondent just two months before the issue of divisionalisation of the cadre in 1994. She was posted from another division as she was the senior most person in the circle at that time. Therefore, the appointment of Assistant Postmaster (Accounts) was on circle basis and that the seniority list based on year of passing was also maintained for the purpose. The applicant has made a representation dated 25.7.96 (Annexure A-10) and during the pendency of that representation, the 1st respondent passed the order at Annexure A-6. The applicant has thus filed O.A.589/97 which was disposed by this Tribunal on 14.1.98 (Annexure A-11). The applicant sent further representation dated 28.2.98 (Annexure A-12) before the 3rd respondent, but the respondent rejected the claim of the applicant. Pursuant to Annexure A-13, the 2nd respondent passed an order dated 29.12.99 (Annexure A-14). The clarification contained in para-5 of Annexure A-14 is clearly based on Annexure A-3 order and also Rule 38(3) of the P&T Manual (Vol.IV). The applicant is now doing the duties and responsibilities of higher nature than that

attached to the post of Postal Assistant. By Annexure A-6 order he has shifted from the supervisory post to work as a Postal Assistant to do the operative work. There is a fall in the status and required to work as a Postal Assistant in the very same office under his junior which is arbitrary and against the provisions of Article 14 and 16 of the Constitution of India.

4. Respondents 1 to 4 had filed a reply statement stating that while in the cadre of Postal Assistant, he was posted to work as Accountant at Thycaud Head Post Office on a purely ad hoc basis with effect from 2.4.94 in the vacancy caused by the posting of the regular incumbent as Development Officer, Postal Life Insurance, on tenure basis. The 5th respondent who was the senior most qualified person should have been posted as Accountant in the division in the said vacancy in the normal course. But since he was working as Accountant in the Postal Stores Depot, Trivandrum on deputation basis, the applicant herein got a chance of being posted as Accountant, Thycaud HO on ad hoc basis and until further orders as per order dated 31.3.94 (Annexure R-1) issued by the 1st respondent. While accepting the ad hoc appointment, the applicant never challenged the posting until he filed O.A.589/97. Even on return of the 5th respondent from deputation, the applicant could be retained continuously in the post of Accountant, as the 7th respondent in this OA, another official senior to the applicant in the Division, was posted to work as Sub Divisional Inspector, Nedumangad on ad hoc basis. On termination of the ad hoc posting of the 7th respondent, the applicant was ordered to work as LSG Postal Assistant in Neyyattinkara H.O. Thus, the applicant's placement only was changed in the same office without any adverse effect on his pay and allowances. Therefore, his contention that he was being reverted to the post of Postal Assistant is against facts.



5. The post of RMS Accountant is a Divisional cadre and the seniority of such qualified officials borne on the gradation list of a particular Division is fixed according to the year of passing the said examination and the seniority thus fixed will be confined only to the Division from where they qualified in the examination. In the event of an Accountant qualified official being transferred to a new Division on his own request under Rule 38 of P&T Manual (Vol.IV), he will lose his seniority with reference to the year of passing which he has been enjoying in the parent Division. In the new Division such an official will rank junior to all officials who are borne on the strength of that Division. Under Rule 38 of P&T Manual (Vol.IV), such transfers should not adversely affect the interest of the officials already borne on the strength of the new unit in any manner. Therefore, a PO & RMS Accounts qualified official awaiting absorption to the post of Accountant should not lose his chance due to the transferring of another qualified official from outside the Division. Transfers under Rule 38 of P&T Manual (Vol.IV), one has to forego the seniority to protect the interest of the officials already borne on the strength of the new unit. Annexure A-3 instructions are not intended to nullify the provisions of the said Rule 38. The post of Assistant Postmaster (Accounts) are being filled up by posting under BCR/TBOP officials with Accounts qualification. Annexure R-2 dated 15.9.92 instructions issued by the 3rd respondent will clarify the position that there is no relevant for a Circle level seniority list of PO & RMS Accountants. The induction to the post of Post Office Accountant is to be done not based on the Circle level seniority list but on the Divisional level seniority list as clarified in the letter dated 8.6.94 (Annexure R-3) issued by the 3rd respondent. The applicant gained seniority in the Trivandrum South Division only from November,

1991 for all matters decided at the Divisional level. Thus, the relevance of a Circle Gradation list became redundant. There was no occasion to include his name in the Circle graduating list of APM (Accounts). Hence, in Trivandrum South Division, the applicant continued to be junior to respondents 5 to 8. The 7th respondent passed the Accountant Examination prior to the arrival of the applicant and happens to be senior to the applicant in Trivandrum South Division. The applicant does not lose any pay and allowances on account of his transfer to the general line post in the same office. Thus, the question of maintaining a seniority of Accountants for the purpose of promotion as APM (Accounts) does not arise. There is no difference between Accounts line officials in the matter either of promotion or of posting. In this connection the 2nd respondent issued a clarificatory letter dated 13.2.97 (Annexure R-4). The applicant has not affected adversely. In the matter of placement of officials, seniors should naturally get responsible positions than the juniors. Annexure A-6 order does not violate any fundamental rights and the same cannot be held as illegal, arbitrary or discriminatory and Annexure A-14 has been issued after due examination of the issue. Annexure A-3 and A-8 are not applicable in the case of the officials brought under transfer under Rule 38(3) of P&T Manual (Vol.IV). An official senior to the applicant in the Divisional level has been posted against the post to be vacated by the applicant. In the circumstances, the O.A. has no merit and to be dismissed.

(ii) O.A.293/2000

6. The same applicant, N.Velayudhan, in the above O.A. (O.A.No.7/2000) is challenging the impugned orders Annexure A-7 and A-8 through this application on similar facts and grounds seeking the following reliefs:



1. Call for the records and quash Annexure A-7 in as such as it relates to the 5th respondent.
2. Call for the records and quash Annexure A-8 in as much as it does not take experience as Post Office and Railway Mail Service Accountants as a relevant factor to be considered for appointment as Assistant Postmaster Accounts.
3. Declare that the applicant is entitled to be considered for the post of Assistant Postmaster Accounts Thycaud in preference to the 5th respondent and direct the respondents to extend such a consideration to the applicant.
4. Direct the 2nd respondent to consider and pass orders in Annexure A-9.
5. Direct the 1st respondent to post the applicant in place of the 5th respondent as Assistant Postmaster (Accounts), Thycaud.
6. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
7. Award the cost of these proceedings."

7. The respondents have filed a detailed reply statement in which they have contended that the applicant came on transfer under Rule 38 (2) of P & T Manual (Vol.IV) and the seniority for posting as Accountants will count only from that date. Promotion to the post of APM (Accounts) was being made from the seniority list maintained at Circle level, prior to the divisionalisation of Assistant Post Master (Accounts) posts on par with general line officials and also implementation of BCR Scheme. When Trivandrum South Postal Division experienced acute shortage of qualified PO & RMS Accountants, volunteers were called for to work as Accountant on deputation basis and hence the applicant was posted to work as Accountant in Neyyattinkara H.O. on 14.8.87 and continued there till 31.5.91. On the strength of interim orders obtained for the maintenance of status quo in O. A.No.7/2000, the applicant is continuing as Accountant, Neyyattinkara H.O, which post he is not entitled to hold on regular basis. The post of APM (Accounts) was a circle cadre till it was divisionalised in 1994 on par with LSG General Line Officials and that the promotion to the post of APM

(Accounts) was made from the Accountants till the implementation of second time bound grade promotion after the completion of 26 years of qualifying service. But after the implementation of second time bound promotion under BCR Scheme, posting is made from among BCR officials with Accountant qualification according to seniority in the BCR cadre. The applicant is a BCR official. He was not promoted as APM (Accounts) in 1993 or subsequently for want of vacancy. Mere submission of option does not give the applicant any special rights for the post of APM (Accounts) which is now being filled up by the revised procedure. According to the revised procedure necessitated by the implementation of BCR promotions to Postal Accountants also, based on the length of service in the said cadre, the applicant does not come under the zone of consideration under the revised norms. The applicant is not at all discriminated. The 5th respondent is senior to the applicant in service, grade and the year of passing the qualifying examinations and therefore, there is no merit in the O.A.

(iii) O.A.363/2000

8. The applicant, K. Kesavan, in this O.A. is the 8th respondent in O.A.7/2000 and that the applicant in that O.A. Shri N. Velayudhan is the 6th respondent in this O.A. The challenge is against the same action of the respondents as that of in the other O.As. As per Annexure A-1 dated 24.4.97, the applicant was transferred to Neyyattinkara H.O. reverting N. Velayudhan, the 6th respondent in this O.A. as Time Scale Postal Assistant. This was consequent on the transfer of K.V. Kumar, the 5th respondent in this O.A. who is junior to the applicant, working as LSG PA, promoted and posted as Accountant in place of the applicant. This was challenged in O.A.589/97 and also in O.A. 517/98 by the 6th respondent. In O.A.589/97 this Bench of the Tribunal directed the D.G. P&T to issue



necessary clarification as per Annexure A-9 in that case and till that time, Annexure A-1 herein was kept in abeyance. Without getting a clarification, an order was passed by the Chief Postmaster General, which was challenged in O.A. 517/98 and by virtue of the order dated 16.11.99, the Tribunal disposed of the same directing the DG P&T to consider the representation of the 6th respondent which was rejected by the respondent. Thereafter, the 6th respondent challenged the order in O.A.7/2000 and as per the interim order passed on 30.3.2000 in M.A.30/2000 the status quo order is being maintained. The 4th respondent has passed an order posting the applicant as LSG PA, instead of Accountant as per order dated 31.3.2000 (Annexure A-2). The applicant is much junior to the applicant. On rejoining after medical leave, it is unjust and illegal on the part of the 4th respondent instead of reverting the 5th respondent, and posting back the applicant as Accountant, as the applicants transfer and reversion as LSG PA, Neyyattinkara is incorrect and illegal. He ought to have been posted back as Accountant. Aggrieved by this, the applicant has filed this O.A. seeking the following reliefs:

- "(i) to set aside Annexure A-2 issued by the 4th respondent.
- (ii) to allow the applicant to continue as Accountant at Thycaud H.O. itself; and
- (iii) to issue such other directions, order or declaration as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of this case."

9. Respondents have filed a reply statement contending that the 5th respondent is a qualified Accountant senior to N. Velayudhan, and the 6th respondent is a Rule 38 transferee and he was ordered to work as LSG Postal Assistant, Neyyattinkara. Aggrieved by the order Velayudhan initiated legal proceedings as discussed above. Velayudhan cannot claim seniority over others



who passed the PO & RMS Accountants Examination. Shri Kesavan, applicant, is an official promoted to Lower Selection Grade with effect from 14.10.96 under TBOP Scheme in the scale of Rs.4500-700 while he was working as Accountant, Thycaud H.O. He will continue to draw in the same scale of pay as LSG Postal Assistant even after the change of post. Therefore, there is no monetary loss to the applicant by the present post necessitated by the interim order dated 30.3.2000 in M. A. 30/2000 in O.A.7/2000 filed by Velayudhan. The next junior most official has to vacate the post of Accountant and work as LSG Postal Assistant since the post of Accountant, Thycaud is filled up by a qualified Accountant, senior to the applicant. The post of Accountant is not a promotional post, but interchangeable as LSG Postal Assistant on the operative side.

10. The applicant has filed a rejoinder and the respondents have filed additional reply statement and the 6th respondent filed a separate reply statement reiterating their respective contentions.

11. We have heard the learned counsel for the applicant and the respondents and perused the materials and records produced by the respective parties in all the above O.As and since the issues involved in all the O.As are similar, one and the same, and inter linked with each other, the above three O. As are disposed of by this common order.

12. Learned counsel for the applicant in O.A.7/200 and O.A.293/2000 submitted that order reverting and transferring the applicant from the post of Accountant to the post of LSG Postal Assistant in these O.As is illegal and arbitrary. It was mandatory on the part of the respondents to maintain a seniority list / additional seniority list and circulate to the affected



parties. The applicant has right to continue in the post of Accountant by virtue of his seniority position arising out of his passing of the examination in 1986, his transfer is under Rule 38 of P&T Manual (Vol.IV) as Postal Assistant and not as Accountant. His seniority list the Circle for the purpose of promotion to the post of Assistant Postmaster is not affected by the transfer under Rule. Hence, Annexure A-6 is illegal and the contentions in this O.A. are not sustainable. The right as enjoyed by him in the Circle is not at all affected. As per Rule 38(3), he is entitled to enjoy his seniority position as obtained in the Circle even after divisionalisation in 1994 in Trivandrum South Division. Therefore, his reversion and transfer is illegal. Learned counsel appearing for the respondents in this case submitted that the applicant, Velayudhan, has no locus standi nor any right to claim this post. By virtue of Annexure A-5 in O.A.7/2000, the relevance of Circle gradation list has become redundant. The contention that the Accountant being a feeder category for promotion as Assistant Post Master (Accounts) is not correct. The applicant was posted only on ad hoc basis with an intention to accommodate the 5th respondent as Accountant on cessation of his deputation terminating the appointment of the applicant. Therefore, the applicant cannot claim the post as a matter of right. It is quite material that the applicant is to suffer any financial loss on account of the shifting. The posting is not a reversion as alleged by the applicant, but only shifting of the position without any financial loss. There is no merit in both the O.As and these are to be dismissed.

13. Learned counsel appearing for the applicant in O.A.363/2000 has submitted that the applicant is senior to 5th and 6th respondents reverted by Annexure A-2 is unjust, arbitrary and illegal. The 5th respondent who was promoted as



Accountant in the leave vacancy of the applicant ought to have have been reverted as LSG PA instead of the applicant. The applicant is the senior most and should have been allowed to continue in the present post. Annexure A-1 and A-2 is passed reverting the applicant only to protect the interest of the 5th respondent. The said orders are arbitrary and against the provisions of the Article 14 and 16 of the Constitution of India. Learned counsel for the respondents 1 to 4 has contended that the action of the respondents is justified and there is no monetary loss to the applicant by the present posting which was necessitated by the interim order in 7/2000 by this Tribunal and the O.A. does not merit to any reasons and hence to be dismissed. Learned counsel for the 6th respondent repeated the arguments advanced in O.A. 7/2000 and 293/2000.

14. The whole matter basically revolves upon a issue when the applicant in O.A.7/2000 (Shri N.Velayudhan) came on transfer from Tellicherry Division to Trivandrum Division under Rule 38 of the P&T Manual (Vo.IV). The relevant portion of the said rule is produced as under:

RULE 38

XX XX XX XX

"(2) When an official is transferred at his own request arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date.

(3) If the old and the new unit from parts of a wider unit for the purpose of promotion to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit.

Example (i):- A Post Office Assistant transferred from Mehsana Division to Kaira Division in the same Circle will not lose his seniority in the Circle gradation list for promotion to the lower selection grade."

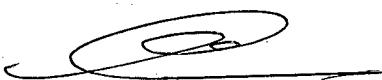
XX XX XX XX

15. This Tribunal as per order in O.A.517/98 (Annexure A-13) quashed Annexure A-12 order therein and directed the DG P&T, New Delhi, to issue necessary clarifications on Annexure A-10 therein and in consequence of that, Annexure A-14 order was passed which is one of the impugned orders in O.A.7/2000. In Annexure A-14, the above finding is made by the respondents which is as under:

xx xx xx xx

"5. In accordance with the above orders of the Hon'ble CAT in OA NO.517/98, the DG Posts has issued the necessary clarifications in the matter under No.6-5/97 SPB II dated 27.12.99. In the light of these clarifications the undersigned has carefully considered the representation dated 25.7.98 of Shri N. Velayudhan. The DG Posts has clarified that Shri N. Velayudhan who has transferred under Rule 38 of P&T Man Vol IV as PA cannot claim seniority over the officials, who passed the PO & RMS Accountant examination subsequent to the year of passing of that examination by Shri N. Velayudhan and that his posting is to be decided accordingly.

6. Shri Velayudhan passed the PO & RMS Accountant examination held in April 86 while working as a Postal Assistant in Tellicherry Division. He was sent on deputation to Trivandrum South Division to work as Accountant as there was no qualified PO & RMS Accountant in that Division. When qualified Accountants became available in Trivandrum South Dn., Shri Velayudhan's deputation was terminated and he was sent back to Tellicherry Division. The official was paid deputation allowance for the entire period of his stay in Trivandrum South Division from 14.8.87 to 10.3.91. Subsequently in February 92, he was transferred to Trivandrum South Division under the provisions of Rule 38 of P&T Manual Vol IV. The deputation service of the official prior to his Rule 38 transfer cannot be regarded as a regular service in Trivandrum South Division to allow any undue benefit of seniority over the regular officials of that Division and to permit him to work as Accountant ignoring the provisions of Rule 38 transfer to the disadvantage of those PO & RMS Accountants examination passed officials who were already in the Division. The official's contention that he should not have been transferred back to Tellicherry Division cannot be appreciated as it is the natural course of action to send an official back to his parent unit on termination of a deputation to another unit. In the light of the clarification offered by the Directorate, it is not possible to accede to the demand of the official not to take away his position as Accountant on account of his Rule 38 transfer from Tellicherry Division. Similarly his request for treating the deputation period as a case of transfer also cannot be accepted as the same is opposed to facts.



7. In the light of the foregoing, Shri N. Velayudhan is not entitled for the reliefs sought for and hence his representation is rejected. Superintendent of Post Offices, Trivandrum South Division may decide the question of the official's placement accordingly."

16. Thus, the question that comes up is whether the decision of the authorities contained in para 5 of the above letter that an employee like the applicant who was transferred under Rule 38 of the P&T Manual Vol. IV as Postal Assistant could claim seniority over the officials who passed the PO & RMS Accountant Examination subsequent to the year of passing of the examination by the transferred employee like the applicant. According to the respondents posting as Accountant is done on the Divisional seniority basis and the applicant having been transferred as Postal Assistant to Trivandrum Division is junior to all the other Postal Assistants who had passed the PO & RMS Accountants Examination on the date of his joining the Trivandrum Division. The applicant claims that the posting as Accountant is done on the basis of Circle Seniority. At the same time he admits that he while working in Tellicherry Sub Division went on deputation to Trivandrum Division to work as Accountant as there was a shortage of Accountants in the Trivandrum Division. If the applicant's averment that the posting as Accountant is to be done on Circle basis seniority, on the basis of the date of passing of the Examination is correct, the question of sending the applicant on deputation basis to Trivandrum prior to 1991 would not have arisen as the question of shortage of Accountants in Trivandrum Division due to non-availability of Postal Assistants who had qualified the PO & RMS Accountants Examination would not have arisen. According to the respondents, on the day of his request for transfer ^{under} Rule 38 to Trivandrum division, the applicant became juniormost Postal Assistant in the Trivandrum division. If the applicant is posted as Accountant on the basis that he had passed the PO &



RMS Accountants Examination in 1986 in preference to other Postal Assistants of the Trivandrum Division who had already passed the PO & RMS Accountants examination on the date of the applicant's transfer request under Rule 38, then in our view the very principle of Rule 38 transfer and the objective contained in Rule 38 (2) would not be served. This is for the reason that by the transfer of the applicant expectations of the officials who were in the Trivandrum Division looking forward to posting as Accountant should not be affected. In this view of the matter we cannot find fault with the decision of the Director General of Posts contained in para 5 of the impugned order. Accordingly Annexure A-6 order cannot also be faulted.

17. No doubt the cadre of Assistant Postmaster (Accounts) had been treated as a Circle cadre till 1994 when Annexure R-5 order dated 8.3.94 was issued. But the applicant's claim is not for being posted as APM (Accounts) but for being posted as PO & RMS Accountant. This will indicate that the applicant was well aware that he could not claim seniority over other PO&RMS Accountants Examination qualified Postal Assistants who were working in the Trivandrum Division. In fact the applicant had not produced the letter dated 8.6.94 which had been produced by the respondents as Annexure R-3. The posts to which the applicant claims posting i.e. those which are contained in Annexure A-6 are not those of APM (Accounts). They are either the post of LSG Postal Assistants or the post of Accountants. As we have already found the Accountants' post is a divisional cadre post and the applicant can claim posting as Accountant only on the basis of Divisional seniority we do not find any substance in the applicant's claim in O.A. 7/2000.



18. We feel that the applicant is using the word APM (Accounts) for the post of the Accountant being managed by an LSG Postal Assistant. Respondents rely on the Director General (Posts) Annexure R-2 letter dated 15.9.92 in support of the action taken by them. This letter dated 15.9.92 has been challenged by the applicant in O.A. No. 293/2000. The challenge against Annexure A-8 in O.A. No. 293/2000 is on the ground that Annexure A-8 did not take into account experience as a relevant factor in the matter of appointment as APM (Accounts). The applicant has also advanced the reason that it is opposed to Annexure A-3 dated 6.4.70 issued by the Director General (Posts), the third respondent herein. It would be worthwhile to reproduce Annexure A-8 which is the impugned order in O.A. No. 293/2000. The said order reads as under:

"Copy of letter No. 4-54/91-SPB.II dated 15.9.92 from R. Krishnamoorthy Asst. D.G. (SPN) Dept. of Posts, Dak Bhavan, Sansad Marg, New Delhi.

To

Sri V.B. Ambekar
Asst. P.M.G.(Staff)
O/o CPMG, Bombay-1

Sub: Clarification regarding implementation of the BCR Scheme.

Sir,

I am directed to refer your letter No. Staff/A/85/Orders dtd 14.5.92 on the above mentioned subject and to clarify as follows:

Regarding Para (1) it is stated that with the introduction of BCR Scheme promotion to HSG.II is on completion of 26 years of satisfactory service in the basic cadre and LSG put together.

Regarding para (2) your attention is invited to the guidelines regarding posting of BCR officials issued vide this office letter No.4-4/92-LSPB.II dated 30.3.92 and subsequent clarification dtd. 5.8.92. In regard to officials who decline promotion the general instructions which envisage debarring such officials for promotion for one year may be follows:



In respect of the LSG (Accounts) supervisory posts if the BCR-HSG-II officials with PO&RMS accountants qualification are available they have to be posted. If BCR HSG.II officials with PO&RMS accountants qualification are not available then TBOP LSG officials with PO&RMS qualification may be allowed to continue. If the official who opted for defunct cadre of PO&RMS accountants and are now in LSG accountants posts they should not be disturbed from LSG accountant posts.

As regards the clarification asked for in para 4 of your letter we have recently issued clarifications on 5.8.92 regarding posting of these HSG.II officials. Further if there are any specific cases as are envisaged in para 4 of your letter they may be intimated for further examination.

Yours faithfully,

Sd/- R. Krishnamoorthy
Asst. D.G. (SPN)"

The respondents have also produced this as Annexure R-3 in O.A. No. 7/2000. A reading of the above letter would indicate that the contents of the above letter is a policy matter giving certain clarifications by the Government. This Tribunal cannot sit over the decision of the executive as to what experience is required for manning a certain category of posts. We find that the applicant on receipt of the reply statement in O.A. No. 7/2000 where the respondents have referred to Annexure R-3 letter in support of the decision taken by them had challenged the said letter by filing a fresh O.A in O.A. 293/2000. As we hold that this Tribunal cannot substitute its wisdom over the decision of the respondents authorities as to how to run their organization, we do not find any reason to interfere with Annexure A-8 order in O.A. 293/2000. We also find that admittedly the 5th respondent in O.A. 293/2000 is senior to the applicant and has also passed the PO & RMS Accountants examination prior to the passing of the said examination by the applicant. The applicant has not denied that he is junior to the 5th respondent in O.A. 293/2000. Since the respondents



submitted that they have posted the 5th respondent as APM (Accounts) on the basis of the Director General (Post)'s letter dated 15.9.92 and we have declined to interfere with the said letter we hold that the applicant is not entitled for the reliefs sought for in O.A. No. 293/2000.

19. In O.A. No. 363/2000 the impugned order Annexure A-2 has been issued pursuant to the order of this Tribunal in M.A. 230/2000 in O.A. No. 7/2000. Since we find that the applicant is not entitled to the reliefs sought for in O.A. 7/2000, Annexure A-2 can no longer be sustained.

20. In the light of the above, we dismiss the Original Applications No.7/2000, and 293/2000 and allow O.A.No.363/2000. In the circumstances, the parties shall bear their respective costs.

Dated the 3rd of July, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

A P P E N D I X

OA No. 7/2000

Applicant's Annexures:

1. A-1: True copy of the order No. Rectt/19-3-/85-86 dtd. 5.11.1986 issued by 1st respondent.
2. A-2: True copy of the order No. B/Rule-38/TFR/Dns dtd. 19.11.1991 issued by the 1st respondent.
3. A-3: True copy of the Ltr. No. STA/101/Rlg-9 dtd. 6.4.1970 issued by the 2nd respondent.
4. A-4: True copy of the Ltr. No. Rectt/19-3/95 dtd. 20.2.1995 of the 2nd respondent.
5. A-5: True copy of the Order No. B/Actt/Rlgs dtd 10.8.1994 issued by the 1st respondent.
6. A-6: True copy of the Order No. B/Tfr dtd 24/4/1997 issued by the 1st respondent.
7. A-7: True copy of the memo No. B/LSG/1/Rlgs dtd 3.2.1997 issued by the 1st respondent.
8. A-8: True copy of the letter No. ST/5/1/Rlgs dtd 25.10.1984 issued by the 1st respondent.
9. A-9: True copy of the Ltr. No. B/ACTT dtd 5.8.1993 issued by the 1st respondent.
10. A-10: True copy of the representation (relevant portion) dtd. 25.7.1996 to respondent.
11. A-11: True copy of the order of the Hon'ble Tribunal Ernakulam Bench in O.A. No. 589/97 dtd 14.1.1998
12. A-12: True copy of the representation dtd 28.2.1998 to the 3rd respondent.
13. A-13: True copy of the order of the Hon'ble Tribunal, Ernakulam Bench in OA No. 517/98 dtd. 16.11.1999.
14. A-14: True copy of the Order No. ST/5/4/99 dated 29/12/1999 issued by the 2nd respondent.

Respondents' Annexures

1. R-1: True copy of the order No. B/ACCT dated 31.3.1994 issued by the first respondent.
2. R-2: True copy of the Letter No. 4-54/91-SPB-II dated 15.9.92 issued by the third respondent.
3. R-3: True copy of the letter No. 9-3/94-SPB-II dated 8.6.1994 issued by the third respondent.
4. R-4: True copy of the letter No. ST/5/4/90 dated 13.2.1997
5. R-5: True copy of the letter No. 93-13/99-SPB.II dated 23rd December, 1999.

OA No. 293/2000

Applicant's Annexures:

1. A-1: True copy of the order No. Rectt/19.3/86-86 dtd 5.11.86 issued by the 1st respondent.
2. A-2: True copy of the Order No.B/Rule-38/TFR/Dns dtd. 19.11.91 issued by the 1st respondent.
3. A-3: True copy of the Ltr.No. STS/101/Rlg-9 dtd. 6.4.1970 issued by the 2nd respondent.
4. A-4: True copy of the Order No.E/Actt/Rlgs dtd. 10.8.94 issued by the 1st respondent.
5. A-5: True copy of the Ltr.No. ST/5/1/Rlgs dtd. 25.10.84 issued by the 1st respondent.
6. A-6: True copy of the Ltr.No.b/ACTT dtd. 5.8.1993 issued by the 1st respondent.
7. A-7: True copy of the Ltr.No.B/TFR dtd. 4.10.99 of the 1st respondent.
8. A-8: True copy of the Ltr.No.4-54/91-SPB.I dtd. 15.9.1992 of the 2nd respondent.
9. A-9: True copy of the representation dtd. 1.1.2000 to the 2nd respondent
10. A-10: True copy of the Ltr.No.Rectt/19-3-/95 dtd. 20-2-1995 of the ~~xe~~ 2nd respondent.

OA No. 363/2000

Applicant's Annexures:

1. A-1: True copy of the Order Memo No. B/Tfr dated 24.4.1997 issued by the 4th respondent.
2. A-2: True copy of the Order Memo No. B/TFR dated 31.3.2000 issued by the 4th respondent.

Respondents' Annexures:

1. R-4(1): True copy of the Extract of Rule 38 of the P & T Manual Volume IV.
2. R-4(2): True copy of D.G. Posts Letter No.9/10/69/SPB-II dtd.12.3.70.
3. R-4(3): True copy of the Order in OA 589/97 dated 14/1/1998
4. R-4(4): True copy of the Post Master General's order dated 26.3.1998 in file No. ST/5/4/90.
5. R-4(5): True copy of the Order in OA No.517/98 dtd. 16.11.1999.
6. R-4(6): True copy of the Divisional Graduation List of Trivandrum South Division as on 1/7/1996.