

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 369/2008

this the 11th day of March, 2009

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 Mariamma Abraham W/o George P.Thomas
APM (Delivery Officiating DPM-1
residing at Padathara, Devalokam
Kottayama District.
- 2 Cicily K.M. W/o Baby Chandy,
APM Kottayam H.O.
Residing at Puthanparambil
Olissa PO, Ayamana, Kottayam District.
- 3 V.K. Sreenivasan S/o Kitten PRI (P)
Changanassery H.O.
Residing at Vadakkemuriyil House,
Kudamalloor PO
Kottayam.

..Applicants

By Advocate Mr. V. Sajithkumar

Vs.

- 1 Union of India represented by the
Secretary to the Government
Dept. of Post,
Government of India
New Delhi.
- 2 The Postmaster General
Kerala Circle,
Trivandrum.
- 3 The Sr. Supdt.
Kottayam Postal Division
Kottayam
- 4 P.S. Subhash,
PRIP,
Pathanamthitta Postal Division
Pathanamthitta.

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5. V.R. Sobhana, APM,
Head Post Office,
Kottayam Postal Circle
Kottayam.
6. K. Rajan, APM, CT HO
Calicut Postal Division,
Calicut.
7. H. Ganeshan, APM,
SB Ernakulam HPO
Ernakulam
8. G. Muraleedhran DPM(SB)
Pathanamthitta Postal Division
Pathanamthitta.
9. K. Rama, SPM Poothole
Trichur Postal Division
Trissur.
10. K.T. Sheela,
SPM, Koratti
Irinjalakuda Postal Division
11. V.S. Jayasree,
SPM, Koduvayur
Palghat Postal Division
Palghat.
12. K. Satheesan, APM (A/c)
OLKTHO, Palghat.
13. M.K. Sudheer,
PM Azhikode,
Kannur.
14. K.E. Balagopalan,
SPM CT MCPO
Calicut Postal Division
15. E.K. Narayanan,
APM, Kannur HO
Kannur.
16. A. Sivasankaran,
SPM, NIT Campus
Calicut.

..Respondents

By Advocate Mr. TPM Ibrahim Khan SCGSC for R 1-3

By Senior Advocate Mr. O.V. Radhakrishnan for R 4 to 7, 9, 10, 12, 13 to 16

The Application having been heard on 23.1.2009 the Tribunal delivered the following

74

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants are aggrieved by Annexure A-1 gradation list of LSG officials dated 1.7.2007 in which Postal Assistants promoted to LSG cadre through the Fast Track Scheme were given preference over the applicants.

2 The facts in brief are as follows: The applicants are Postal Assistants who entered service in the years 1969, 1973, and 1973 respectively. On 30.11.1983 consequent on an agreement between the staff side and the Department, a Time Bound Promotion Scheme was introduced according to which all the officials belonging to the basic grade of Group-C to which there is direct recruitment and who have completed 16 years of service were placed in the next higher grade having the same scale of pay as that of LSG (A-2). Accordingly, the applicants were granted financial upgradation in the higher scales under TBOP in the year 1985, 1985 and 1988 respectively on completion of 16 years of service in the basic cadre of Postal Assistant. They were given pay equivalent to LSG officials and were working against such supervisory vacancies wherever available. With the introduction of TBOP scheme, promotion to 1/3rd quota of LSG by departmental competitive examination stood abolished w.e.f. 1.1.83. On introduction of the Time Bound Scheme, the respondents were not effecting promotion to LSG cadre even when the applicants worked against supervisory posts. The Posts and Telegraph (Selection Grade post) Recruitment Rules 1976 governing promotion to the LSG, HSG-II and HSG-I were not followed (A4). On completion of 26 years of service, the applicants were given BCR introduced vide A-3 with equivalent pay to HSG-II. However, in 2002 the Department introduced a

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scheme of Fast Track Promotion under Director General, Department of Posts vide letter dated 11.2.2002 (Annexure A-5) according to which 33.34% of the vacancies arising in the cadre of Lower Selection Grade were to be filled up on the basis of selection-cum-seniority and 66.66% of the vacancies were to be filled up by means of promotion through a Departmental Competitive Examination with subjects relating to functional needs. It was clarified that norm based LSG/HSG-II post may be filled up in terms of the relevant Recruitment Rules from the year from which norm based promotions have not been carried out. The promotions to HSG-1 will be based on notional seniority in HSG-II. The ways and means to have adequate personnel in HSG-II, were laid down in A-6. Subsequently it was clarified that the vacancies in LSG and HSG-II posts that arose after 7.2.2002 will be filled up in terms of revised Recruitment Rules (A-7). These instructions were implemented in Kerala Circle (A-8). Thereafter, on 30.5.2006 the respondents withdrew A-5 amendment and revised rules were notified by which 100% promotion was introduced in LSG, HSG-II and HSG-I based on seniority and that the unfilled vacancies were directed to be filled as per the revised Recruitment Rules based on seniority (A-10). The LSG cadre which was till then a Divisional Cadre was converted to a Circle cadre. All the vacancies in the LSG from 1983 to 2007 have been filled by a single order dated 3.5.2007. Had the Administration effected LSG promotion at the right time, the applicants would have been eligible for LSG scale at least 10-20 years back. The appointment of the 5th respondent in HSG-1 ahead of the applicants will adversely affect the applicants promotion prospects. Pointing out the anomalies, the 1st and 3rd applicants submitted A-13 and A-14 representations which are not yet disposed of. Hence they have filed this O.A. seeking the following reliefs:

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(i) To declare that the applicants are entitled to be considered for notional promotion against the norm based LSG and HSG-II vacancies based on the seniority in the basic cadre with effect from the date of occurrence of vacancies (i.e. Vacancies occurred from 30.11.1983 to 7.2.2002) and that the respondents 4 to 16 are only be entitled to be accommodated into the LSG vacancies which were fallen between 7.2.2002 and 18.5.2006 and that the placement of the respondents 4 to 16 in Annexure A-1 above the applicant is highly illegal and arbitrary

(ii) To quash Annexure A1, A-11 and A-12

(iii) To direct the respondents to consider the applicants for notional promotion against the norm based LSG based on seniority with effect from the date of occurrence of vacancies (i.e. Vacancies occurred from 30.11.1983 to 7.2.2002) and to grant them HSG-II and HSG-I promotions with all consequential benefits and not to grant seniority to the respondents 4 to 16 over the applicants.

(iv) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(v) Grant the cost of this Original Application.

3 The grounds urged by the applicants are as follows:

(i) The applicants are the seniormost officials to be considered against vacancies of LSG in view of A-6 to A-10. Had they been placed in the seniority list of LSGs in the year in which the vacancies arose, they would have become eligible to be promoted against norm based HSG-II and HSG-I on their due turn. The promotions were delayed .

(ii) The applicants are entitled to seniority w.e.f. the date of occurrence of vacancies. The respondents 4-16 are comparatively junior officials. The respondents ought to have considered the applicants against the vacancies which arose from 1983 to 2002 whereas the party respondents are entitled only to prospective vacancies

(iii) If the party respondents are placed above the applicants it will prevent the promotion of the applicants to norm based HSG-1 for ever. The

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party respondents have only the right to be accommodated against the vacancies that arose from 7.2.2002. Certain divisions made attempt to grant notional seniority based on the date of occurrence of vacancies which was not implemented uniformly throughout the Circle.

(iv) Annexure A-1 has been finalised without following the procedure required. None of the applicants were given opportunity to raise objections.

4 The official and contesting respondents have filed separate reply statements opposing the O.A.

5 In the reply filed by the official respondents, they have admitted that the applicants entered service as Postal Assistants and were given placement in the higher scales under TBOP and BCR Schemes on completion of 16 and 26 years of service respectively in the basic cadre of Postal Assistant. The Department w.e.f. 11.2.2002 introduced a Fast Track Promotion Scheme (A-5) according to which 33.34% of the vacancies arising in the cadre of LSG were to be filled up on the basis of selection-cum-seniority and 66.66% of the vacancies were to be filled up by means of promotion through Departmental examination. Subsequently Recruitment Rules for LSG and HSG amended the LSG cadre which was till then a Divisional Cadre was changed into a Circle Cadre vide A-10 notification and the scheme of Fast Track Promotion introduced was abolished. Respondents 4 to 16 appeared for the Fast Track Promotion and were promoted to LSG cadre against vacancies which arose from 2002 upto 18.5.2006 when the Fast Track Promotion Scheme was in force whereas the applicants remained as Postal Assistants. The vacancies in the LSG cadre which arose from 30.11.1983 to 2002 which remained unfilled were

also filled up on notional basis in each Division. The updated Circle Gradation List of LSG Officials in Kerala Circle as on 1.7.2007 (A-1) was prepared strictly as per instructions of DG Posts dated 13.3.86. The applicants 1 & 2 were promoted w.e.f. 3.5.2007 (A-11) whereas the respondents 4 to 16 who qualified in the Fast Track Promotion Examination in 2004 were promoted in the year 2004. Hence they rank senior to the applicants in A-1 gradation list. The applicants did not appear for the Fast Track Promotion Examination. The officials promoted as per Annexure R1 for the period from 30.11.1983 to 2002 were all seniors to the applicants in the O.A. They further submitted that the grant of placement under the TBOP Scheme on completion of 16 years of service in the basic cadre of Postal Assistant without taking into account availability of vacancy in the LSG cadre, is only a financial up-gradation and this cannot be equated with regular promotion to the cadre. Since LSG was a Divisional cadre upto 18.5.2006, promotions to this cadre were confined to the vacancies which arose within the respective Divisions. Similarly in the case of TBOP Scheme the placement of officials in the higher grade under BCR Scheme was merely a financial up-gradation to enable officials to draw higher pay on completion of 26 years of service in the basic cadre and so it cannot be equated with regular promotion to the HSG-II cadre which is made against specific vacancies in the cadre according to the Recruitment Rules. They have reiterated that promotion to vacancies which arose from 30.11.1983 to the year 2002 were notionally carried out in terms of A-4 Recruitment Rules and this exercise was carried out in all the Divisions including Kottayam Division and that the applicants could not find a place as their turn had not come. They also relied on the order of this Tribunal in O.A. 314/2007 dated 20.6.2008 in support.

71

6 The respondents 4 to 7, 9, 10, and 12 to 16 have filed reply statement opposing the claim of the applicants. They submitted that the applicants have no case that they were promoted to LSG cadre. Their main contention is that they were eligible and entitled for promotion from an earlier date. They averred that employees placed in the higher scale under TBOP scheme were treated as equivalent to LSG officials is contrary to facts. The applicants even after their placement in higher grades after 16 and 26 years respectively, have continued in the basic post of Postal Assistant. They also submitted that those promotions against the vacancies remaining unfilled from 1.1.1983 to 7.2.2002 cannot be granted seniority with reference to the dates of occurrence of vacancies and their rank and seniority would be reckoned only from the respective dates of their regular promotion to LSG in accordance with the Recruitment Rules 1976. They also took the contention that the claim of the applicants are belated and they cannot seek promotion retrospectively as a matter of right. The applicants have not challenged Annexure R-1 order dated 10.6.2003 and they are estopped from raising any contention or claim that they ought to have been promoted against the vacancies which arose prior to 7.2.2002.

7 The applicants have filed separate rejoinders to the reply statements filed by the official respondents and party respondents.

8 The applicants in the rejoinder to the reply filed by the party respondents submitted that Postal Assistants in various Postal Divisions like Kollam, Kasargode, etc. were not given chance to write the examination based on Fast Track Scheme formulated in Annexure A-5. They submitted that even 2002 rules were flouted in granting promotions and seniority to the party respondents in the ratio of 1: 2 is to be followed

between candidates based on seniority cum fitness and on examination. They submitted that the term **notional promotion** is meant only to grant seniority to eligible officials w.e.f the date of occurrence of vacancies. The applicants have no grievance against senior persons in Annexure R-1 which came to light for the first time along with the reply statement. The grievance of the applicant is that in spite of Annexures A-8 and R-2, norm based vacancies of LSG remained unfilled.

9 The applicants have filed rejoinder to the reply statement of official respondents reiterating their stand in the rejoinder filed against the reply statement of the party respondents. According to them the respondents have filled the vacancies which existed in Kottayam Division only and that the department was not acting on the Recruitment Rules from the year 1983 to 2003 when there were vacancies available for accommodating the applicants and other similarly situated.

10 We have heard learned counsel for the parties and have gone through the pleadings.

11 The learned counsel for the applicants argued that the applicants are entitled to be considered for notional promotion against the norm based LSG and HSG-II posts based on their seniority in the basic cadre of Postal Assistant w.e.f. the date of occurrence of vacancies from 30.11.1983 to 7.2.2002 and that the placement of party respondents above applicants vide Annexure A-1 gradation list are highly illegal and arbitrary and that they are entitled to be accommodated in the LSG vacancies which arose from 7.2.2002 to 18.5.2006.

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12 The learned counsel for the respondents submitted that the applicants were promoted to the LSG cadre only w.e.f. 3.5.2007 whereas the party respondents qualified in the Fast Track Promotion Examination for the year 2004. The applicants did not appear in the Fast Track Promotion Examination. Therefore, in Annexure A1 gradation list the respondents were given their due position based on their appointment to LSG grade which is prepared as per instructions contained in DG Posts Letter dated 13.3.1986.

13 What emerges from the rival contention is the solid fact that ACP scheme introduced in Department of Posts in 1983, i.e. much ahead of the same in other Central Government departments in 1999, has created a lot of confusion leading to the present scenario. The 1st and 2nd ACP schemes introduced in 1983 and 1991 in the Department of Posts are termed as TBOP and BCR, to be given on completion of 16 and 24 years in the basic cadre of Postal Assistant. The TBOP and BCR schemes were implemented purely as a measure of relief against stagnation in the basic cadre and to give financial up-gradation to the next higher post, in the ordinary channel of promotion to higher grades. Therefore, those who got TBOP/BCR can be given supervisory posts if available. Otherwise, they continue to do operative duties.

14 The posts in higher grades in Department of Posts are in LSG, HSGII and HSG-I, which are treated as norm based and these posts are created at the supervisory level. With the introduction of TBOP the limited Departmental competitive examination for 1/3rd vacancies in LSG cadre was kept in abeyance. It was inevitable to hold DPC to grant financial up-gradation envisaged in TBOP and BCR schemes. The individuals so

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promoted could work in supervisory posts too.

15 To progress to HSG-II and HSG-I, Postal Assistants have to be placed in LSG. It is necessary to hold DPC for elevating them to LSG/HSG-II cadres. This requirement appears to have been given a go by on introduction of TBOP/BCR, as supervisory posts could be manned by TBOP and BCR officials. Therefore no DPC for LSG appears to have been conducted at the office of the first respondent to place officials in the LSG to fill up vacancies which arose from 1983 to 1986, as LSG was a Circle cadre till 18.5.2006.

16 This is clearly seen in the Circle seniority list of LSG as on 1.7.2005 produced as Annexure A-4 in O.A. 1/09. The list starts with 2/3rd quota of 1982 and shows those who are qualified in 1/3rd quota of LSG examination for 1983. After 1983, but for one solitary promotion to LSG in 1986, no placement in LSG is done till 1990. By 1986, LSG has become a divisional cadre. A few Postal Divisions might have conducted DPC, as very few officials are shown to be promoted from 1991 onwards till 2006. As per the seniority list as on 1.7.2007 (A-1) in the LSG cadre with a sanctioned strength of 228, 178 officials got placement in a single year from 3.5.2007 to 1.6.2007. The list does not indicate those under the 2/3 quota who got qualified between 2002 and 2005 under the fast track promotion scheme. It is crystal clear that on receipt of A-10, ie DG's letter No. 137-4/2006-SPB-II dated 30.5.2006, discontinuing fast track promotion and throwing open 100% vacancies in LSG cadre to promotion quota, promotion to LSG was effected at one go taking into account all the left over vacancies and placing officials who could have been considered earlier, also from the year 2007. In the process a few of their juniors who were successful in the

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limited departmental competitive examination could rank senior to them.

17 Such obvious errors could have been eliminated, had instruction contained in A-6 been followed scrupulously.

18 Postal Directorate's letter dated 12.11.2002 (A-6) was issued to give necessary guidelines/clarifications to tide over the problems of inadequate number of eligible officials in the feeder cadre of LSG and HSG-II when 1622 HSG-II posts were upgraded to HSG-II and DOPT refused to relax recruitment rules to permit consideration of BCR officials with 3 years service for promotion to HSG-I. The relevant portion of aforesaid letter is reproduced below:

DG Posts No. 4-16/2002-SPB.II dated 12.11.2002

I am directed to invite a reference to this department's letter No. 22-1/89-PE.I (Vol. II) dated 18.4.2002 by which certain clarifications in connection with the upgradation of 1622 HSG-II posts to HSG-I were issued. References were received from various Circles stating that they were facing difficulties in filling up these HSG-I posts due to non availability of eligible officials who had completed 3 years of service in HSG-II cadre as prescribed in the relevant Recruitment Rules. The question of relaxing the Recruitment Rules to allow the Circles to fill up these posts from among officials who had completed 3 years of service in BCR was taken up with Department of Personnel and Training. That Department advised that norm based LSG/HSG-II posts must be filled up notionally in terms of the relevant recruitment Rules from the year when the norm based promotions have not been carried out and promotions to the upgraded posts in HSG-I could be made in accordance with the Recruitment Rules from amongst those formally appointed in HSG-II with the requisite 3 years actual/notional service in the grade, as the case may be.

2. It has been decided to implement the advice of the Department of Personnel and Training. You are requested to immediately carry out the exercise as above and fill up the upgraded posts of HSG-I accordingly, by convening Departmental Promotion Committee (DPCs) as required.

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19 Further clarification in fixing notional promotion and placement in LSG and HSG-II were issued vide A-7.

Point 8- In the Recruitment Rules, 2002 it is laid down that PA/SA having not less than 16 years of service are eligible for consideration for promotion against 1/3 LSG norm based posts. There is no maximum service limit prescribed in the Recruitment Rules. BCR officials can also claim against these posts. Otherwise, they will have to work as Postal Assistant under the supervision of LSG supervisor drawing less pay scale.

Clarification.- BCR is only a financial upgradation given whereas LSG is a sanctioned cadre. In future, only service rendered in LSG including notional service in LSG will be reckoned for promotion to HSG-II. In view of this, an official who has been given BCR scale and who has not been formally appointed to LSG may be given the option for being considered for promotion to LSG. If he declines appointment in LSG, he will not be considered for promotion to HSG-II and HSG-I when vacancies arise in these grades.

Point 9- Most of the PA/SA having 16 years of service are promoted to LSG grade under TBOP scheme. Whether selection of such officials against supervisory LSG posts will involve transfer/placement only or involve higher responsibilities warranting fixation of pay and benefit under FFR 22(1)(a)(i).

Clarification- Selection of TBOP/BCR officials for LSG norm based posts is to be treated as placement. Benefit of fixation of pay under FR 22 will not be admissible. Financial benefit allowed under the TBOP/BCR scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in LSG.

20 In such circumstances, there is no alternative but to recast the seniority list of LSG officials in the Circle. Major chunk of work has to be done in the divisions as till recently i.e. 2006, it was a divisional cadre. That the failure to afford timely promotions from 1983 to 2002 has impacted the seniority of applicants and many similarly placed is highlighted in the O.A. Assigning the proper seniority in LSG till 2002 is crucial, as the recruitment rules are amended and only 1/3rd quota is available for promotion as opposed to 2/3 quota till 2002, and the influx of those who

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qualified in the examination from 2002 to 2005. With the help of registers maintained for superannuation as well as establishment registers the vacancies in LSG for the promotional quota, right from 1983 can be correctly assessed so that placement of eligible officials in LSG cadre, to grant them notional seniority can be done. This has to be indicated yearwise. The seniority list of PAs, TBOP and BCR officials will be of definite help for placement in LSG since seniority in the basic cadre of Postal Assistant is the criterion. The remarks column should note details like Rule 38 transfer and 2/3 quota of those who came out successful in the fast track aptitude test during 2002-2005. Instructions of the DG on inter-se seniority for such officials is to be followed. Officials borne in Accounts line have to be shown separately, unless they have opted to go to the general line or assigned seniority in general line as per DG's extant rules on the subject. Similar is the case of SBCO staff also.

21 From such lists prepared in the Division, the DPC has to be held at Circle level for the years from 1983 to 1986 and from 2006 onwards. It will be at the divisions during the intervening period. The Divisional seniority list will show placement of LSG, year-wise from 1983. Sanctioned strength also will be indicated. Since the number of posts in LSG ranges from 15 to 30 or less depending on the size of the Division, and attempts to do this exercise must have commenced from 2002, onwards, in view of Annexure A-6 the quantum of work may not pose much problem.

22 The Circle seniority list of LSG may be suitably modified based on the updated seniority list received from divisions. The provisional seniority list so drawn up may be circulated and representation received dealt with on priority. Also notional fixation of seniority, for vacancies of HSG-II, needs

to be done, based on the revised seniority list.

23 In our considered opinion, a Cell has to be set up - at the level of the second respondent and the Regional PMG to ensure expeditious completion of this important item of work. Any delay will tell upon the promotional prospects of a large number of employees besides affecting the smooth functioning of post offices.

24 In view of what is stated above, the O.A is allowed to the extent Annexure A-1 gradation list of LSG officials is quashed. The respondents are directed to prepare revised seniority list granting promotion to LSG cadre year-wise, subject to availability of vacancies at the divisional level and Circle-wise seniority list is to be drawn up based on the revised divisional seniority. The entire drill of preparing seniority list as directed above and conducting of DPC be completed within a period of four months from the date of communication of this order. The consequential promotion to HSG-II/HSG-I will be governed by the instructions of the DG Posts letter dated 12.11.2002 (Annexure A-6). As the officials would have already availed two financial up-gradations, there may not be any monetary benefits flowing out of the placement in LSG/HSG-II cadres. There shall be no order as to costs.

Dated 11th March, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR. K.B.S. RAJAN
JUDICIAL MEMBER

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