

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: 24/92.

~~Transfer Application No.~~

Date of Decision : 24.9.95

Shri N. K. Devassy & 4 Others, Petitioners

Shri M. S. Ramamurthy, Advocate for the
Petitioners

Versus

Union Of India & Others, Respondents

Shri P. M. Pradhan, Advocate for the
respondents


C C R A M :

The Hon'ble Shri B. S. Hegde, Member (J)

The Hon'ble Shri M. R. Kolhatkar, Member (A).

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 24 OF 1992.

Shri N. K. Devassy & Applicants.
4 Others

Versus

Union Of India & Others Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri M. S. Ramamurthy,
Counsel for the applicant.
2. Shri P. M. Pradhan,
Counsel for the respondents.

JUDGEMENT :

DATED : 29.9.95

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. The applicants filed this O.A. challenging the promotion order dated 28.11.1991 at exhibit - 'I' promotions and postings in the grade of Senior Personal Assistant in the GCS Group 'B' (Gazetted) and finalisation of the eligibility list for promotion to the grade of Senior Personal Assistant vide dated 05.09.1990.. According to them both the orders are unconstitutional, illegal and bad in law.

2. The brief facts are - undisputedly the applicants at present are working as Senior Personal Assistants on adhoc basis in the scale of Rs. 2000-3200

on the following dates :

Applicant No.	Date from which working	
	Scale Rs. 1640-2900	Scale Rs. 2000-3200
1	02.04.1990	06.08.1990
2	24.06.1988	01.04.1991
3	08.11.1990	24.05.1991
4	14.02.1991	25.06.1991
5	-	25.06.1991

whereas the respondent nos. 7 to 15 were appointed as Personal Assistant Grade-III in the scale of Rs. 1200-2040 subsequent to the appointment of the applicants, the details of which are given as under :

Sl. No.	Name	Date of regular appointment in the post of Stenographer- Grade-II scale Rs. 1400-2300	Date of regular appointment in the post of Stenographer Grade-III scale Rs. 1200-2040
1	2	3	4
1.	N. K. Devassy Applicant No. 1	06.08.1983	04.03.1972
2.	Suvarna G. Nair, Applicant No. 2	22.03.1984	19.06.1973
3.	V.P. Balakrishnan Applicant No. 3	23.05.1984	13.06.1973
4.	Shri E.V. Joy, Applicant No. 4	29.01.1987	30.07.1975
5.	K. P. Sundereshwaran, Applicant No. 5	10.06.1988	10.07.1975
6.	V. S. Ramnani Respondent No. 7	06.02.1981	01.08.1972
7.	M. R. Unni, Respondent No. 8	23.06.1981	25.07.1972
8.	V. G. Kambli Respondent No. 9	09.06.1981	Not known

1	2	3	4
9. Rosy Fransis Respondent No. 10		16.02.1982	11.09.1973
10. Annama Matham Respondent No. 11		16.02.1982	01.09.1973
11. C. S. Asokan, Respondent No. 12		20.02.1982	27.08.1973
12. D. R. Suvarna Respondent No. 13		27.02.1982	25.03.1974
13. K. S. Rajpal Respondent No. 14		30.05.1982	03.02.1976
14. R. Rajani, Respondent No. 15		27.11.1982	02.01.1976

Admittedly, the respondent nos. 7 to 15 have joined M.T.N.L. and are promoted in MINL to the post of Personal Assistant Grade-II and further promoted in M.T.N.L. except respondent No. 14 and 15 who on their promotion to Senior Personal Assistant Grade-I have been posted in Maharashtra Telecom Circle.

3. The main thrust of arguments on the part of the Learned Counsel for the applicant is that those persons who were appointed subsequent to the applicants in Grade-III have been promoted earlier than them keeping in view the eligibility list prepared by the respondents and the promotion order issued in accordance with the eligibility list vide dated 28.11.1991 and it is bad in law, whereas, the applicants, though they have put in more number of years of service in Maharashtra Telecom Circle, have not been promoted to the post of Senior Personal Assistant on account of the eligibility list prepared by the Respondents vide dated 05.09.1990. The main contention of the applicants



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issued on 28.11.1991. The contention of the Learned Counsel for the applicants is that the promotions were confined to respective Circles prior to 1988, however, for promotion to the post of Senior Personal Assistant, the respondents keep it open on All-India basis and while preparing the eligibility list the length of service including Grade-III should have been taken into consideration. The promotion to the post of Personal Assistant Grade-II was granted to respondent nos. 7 to 15 in Maharashtra Telecom Circle and M.T.N.L. respectively, depending upon the availability of post in the respective circles. As stated earlier, all the respondents from 7 to 15 were working as Personal Assistant Grade-II in M.T.N.L. and only on their promotion to Senior Personal Assistant respondent nos. 14 and 15 have been posted in Maharashtra Telecom Circle and all others have been absorbed in the M.T.N.L. itself. Promotion to the next higher grade of Senior Personal Assistant in the scale of Rs. 1640-2900 from the grade of Personal Assistant Grade-II was confined to the respective Circles prior to 1988. Therefore, the contention of the Learned Counsel for the applicants is if the promotion to the said post came to be placed in the revised scale of Rs. 2000-3200 it confined to the respective Circles, as was done till 1988 and the applicants would not have been superseded by the juniors. It is the decision of the Government Of India to throw upon the promotions to the revised scale of Rs. 2000-3200 of Senior Personal Assistants to all the Personal Assistants Grade-II on all India basis, that has given cause for complaint, because while doing, instead of considering the total length of service in the

Stenographer's cadre starting with the commencement of service as Stenographer Grade-III, only the service rendered as Personal Assistant Grade-II was taken into account to fix the relative seniority of Personal Assistants Grade-II on all-India basis, which resulted in Personal Assistant Grade-II like the applicants being left out of consideration whereas respondent nos. 7 to 15, who were appointed or promoted as Stenographer Grade III at later dates and came to be included in the eligibility list. The respondents have thrown open the field on All India basis and called for the compliance of the eligibility list prepared on the basis of their respective experience in Grade-II and promoted further to the post of Senior Personal Assistant and posted them accordingly. It is true that the Personal Assistant Grade-II is a feeder cadre to the post of Senior Personal Assistant. The promotion to Personal Assistant Grade-II is from Stenographer Grade-II with 5 years regular service in the grade as per Recruitment Rules dated 19.11.1981. Similarly, promotion to the grade of Senior Personal Assistant (Rs. 1640-2900) are from the grade of Personal Assistant Grade-II and was based on the principle of seniority-cum-suitability. Based on the recommendations of the 4th Pay Commission, the posts of Senior Personal Assistants in the scale of Rs. 2000-3200 were gazetted status Group 'B' and was placed in the revised scale of Rs. 2000-3200. The Department of Telecommunication published rules regulating promotions to the said post of Senior Personal Assistants and the said rules known as Department of Telecommunication Senior Personal Assistants Recruitment Rules, 1988 published on 30.05.1988. As per this rules, promotion to Grade-I

with two years regular service in the grade failing which with combined regular service of 7 years as Personal Assistant Grade-I and II failing both with 7 years regular service in the post of Personal Assistant Grade-II (Rs. 1400-2300).

4. In the light of the above, we shall have to see whether the preparation of the eligibility list calling for the names from the respective Circles and after considering the objections, promotions and postings pursuant thereafter has it in any way contrary to the Recruitment Rules or violated any of the conditions of the Constitutional provision. Admittedly, the eligibility list is prepared in Grade-II from various Circles and interse Seniority List is prepared on the basis of the respective appointment in Grade-II. There is no complaints whatsoever in this regard. The eligibility list dated 05.09.1990 does not violate the provisions of the Recruitment Rules 1988. The services rendered by the applicants in Grade-III can be considered in the next promotion Grade-II and the services rendered in Grade-II can be considered to the next promotion Senior Personal Assistant Grade-I, this is perfectly in order and not violative of Article 14 and 16 of the Constitution. The pre-condition is 7 years service in the post of Personal Assistant Grade-II, and this is very much necessary to the promotion of Senior Personal Assistant and the Recruitment Rules is clear on the subject. On perusal of the records, we find that the applicants have been appointed to Personal Assistant Grade-II subsequent to respondent nos. 7 to 15 and they do not have any grievance whatsoever.

5. The respondents in their reply negated all the contentions raised by the applicants and submitted that the feeder cadre to Senior Personal Assistant is Stenographer Grade-II and not Grade-III and it is of no use ⁱⁿ making a comparative ^{study of} rules of P & T. Though the applicants have been shown as senior in the Grade-III, they have been shown as junior in Grade-II, which is a feeder cadre for the purpose of promotion to Senior Personal Assistant, thereby, there is no discrimination and the promotion have been effected in accordance with the recruitment rules. Though the respondents have brought out a circular vide dated 15.04.1994 reverting back to the circle inter-se seniority list, however, the eligibility list prepared pursuant to the Recruitment Rules, 1988 shall hold good. In that circular the respondents have stated that the posts existing or likely to become vacant may be filled up at Circle level by constituting a DPC. This procedure is to be adopted for filling up of the posts on purely adhoc basis, till the Recruitment Rules are modified to this extent. Other conditions as given in the Recruitment Rules issued by this office notification dated 08.06.1988 may have to be scrupulously followed till further orders. As against this circular, the Learned Counsel for the applicant Shri Ramamurthy, vehemently urged that since the respondents have promoted the people from Grade-III to Grade - I on all India basis, they have not reverted them to the Circle wise seniority list. Such a contention is not sustainable, since it is a policy decision taken by the respondents without any bias, it is open to the department to change the policy in the facts and circumstances of the case. Since the applicant has not challenged the vires

of the Recruitment Rules and the eligibility list still holds good, there is no arbitrariness or injustice caused to the applicants. Since the applicants have already been promoted to the post of Senior Personal Assistant with effect from 09.08.1989, except Shri K.P. Sundereshwaran, who is likely to be promoted by recommendations of the D.P.C. in due course of time. So far as the other applicants are concerned, the appointment is made on adhoc basis pending finalisation of the Recruitment rules, *which could not have been decided by the respondents being regularised*

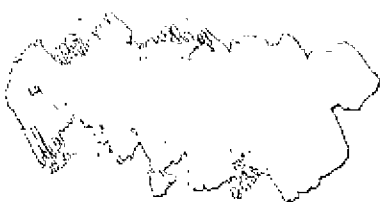
6. The Learned Counsel for the applicant, in support of his contention that the seniority list prepared by the respondents is not in accordance with the principle of equity and the ratio laid down by the Court, *have* from time to time, cited the following decisions :-

- (i) AIR 1988 SC 394 .. Nirmal Kumar Choudhary V/s. State of Bihar.
- (ii) AIR 1977 SC 2051 .. S. B. Patwardhan V/s. State of Maharashtra.
- (iii) 1989 (9) ATC 864 .. K. Ranganathan & Others V/s. Accountant General, Bangalore & Others.
- (iv) (1987) 5 ATC 325 .. K. S. Vora & Others V/s. State of Gujarat & Others.

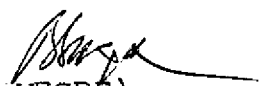
BSH
We may reiterate *here* that the aforesaid cases have been decided in the past *and are binding between the parties to the case* and the ratio laid thereunder would not apply to the facts of this case, Hence those case are distinguishable from the present one.

7. In the light of the above, even on the ground of equity, the applicants claim to seniority over the respondents cannot be sustained and the Recruitment

Rules are perfectly legal and sound in law and the eligibility list has been prepared strictly in accordance with the provisions of the Recruitment Rules and it ~~thus~~ cannot be faulted with. Once the Stenographer Grade-III are promoted to the post of Personal Assistant Grade-II, their earlier service in Stenographer Grade-II has no bearing in the eligibility for further promotion to a still higher grade in all India cadre of Senior Personal Assistants, hence the contention of the applicants that the services rendered by them in Stenographer Grade-III should be taken into account for the second promotion is not maintainable. Though they have challenged the all India eligibility list, for the reasons stated above, that is neither arbitrary nor unjust. // We are, therefore, of the view that the appointments already made are in accordance with the rules and there is no allegation of bias or arbitrary on the part of the respondents in preparing the eligibility list or granting promotion or the posting order, as the case may be. In the circumstances, we see no merit in the application and the same is dismissed without any cost.



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(B. S. HEGDE)
MEMBER (J).

(Per Shri M.R.Kolhatkar, Member(A))

9. I am inclined to agree with my learned brother Member(J) that the OA is liable to be dismissed. However, I would like to give my own reasons.

10. The applicants are Senior Personal Assistants (Gazetted) in the Maharashtra Telecom Circle. In this O.A. they have challenged the All India Eligibility list for promotion to the grade of Senior Personal Assistant dt. 5.9.1990 (Ex. 'E') to the O.A. at page 55 and the subsequent order dt. 28.11.1991 on the subject of promotions and postings in the grade of Senior P.As in the GCS Group 'B' Gazetted in which Respondents No.7 to 15 figure. The applicants' further prayer is to direct official respondents to notionally treat all applicants as having been promoted as P.As Gr.II from the dates their juniors in the grade of Stenographer Grade III have been promoted and ^{further} to declare as unconstitutional, ^{which} (the) Rule in 1988 Recruitment Rules ¹⁹⁸¹ provides for 7 years' service in the grade of P.A. Grade II for promotion to the grade of Senior P.As Group 'B' Gazetted. According to these Recruitment Rules the posts of Stenographer Gr.II are declared as non-selection posts for which (the method of Recruitment is promotion and the feeder grade is Stenographer Gr.III with a minimum of five years' regular service in the grade. The Departmental Promotion Committee is headed by Postal Head of Telecom Circle. The applicants are all initially recruited as Stenographer Gr.III and they have no quarrel so far as (the) ¹⁹⁸¹ rules relating to Stenographer Gr.II are concerned. According to the applicants these rule indicate that their cadre is essentially a circle cadre. However, subsequently Department of Telecommunications Senior ^{Personal Assistant} C.S.S. Group 'B' Gazetted Recruitment Rules, 1988 were promulgated on 30.5.1988 vide Ex. 'B' page 37 of the O.A.

These rules provide for Recruitment by non-selection and the method of recruitment is promotion failing which by transfer or deputation. So far as the feeder grades are concerned, it is provided that the promotion will be from amongst P.A. Grade 'A' (Rs.1640-2900) with two years' regular service in the grade failing which with combined regular service of 7 years as P.A. Grade I and ^{II} failing both, with 7 years' regular service in the post of P.A. Grade II. The DPC is headed by Member (Personnel), Telecom Board. According to the applicants it is significant that both the rules show that the posts are non-selection posts and so far as the method of recruitment is concerned it is by promotion based on seniority. The non-selection seniority rule is common to both rules. However, what is objected to by the applicants is that instead of making 7 years' regular service in the posts of P.A. Grade .II as the sole criterion, the Recruitment Rules have also introduced the criterion of two years regular service as P.A. Grade.I or 7 years service as P.A. Grade.I and II. Since the chances of promotion vary from circle to circle, this amounts to giving weightage to service in the circles in which chances of promotion are better. In empirical terms, the Respondents No.7 to 15 who were initially working in Bombay Telephones (M.T.N.L.) have stolen a march over applicants who were initially employed in Maharashtra Circle. It is also observed that Respondents Nos.14 and 15 both of whom are junior to any of the applicants have been promoted and posted in Maharashtra Circle, whereas, the applicants who were from the very beginning working in Maharashtra

circle were not included in the eligibility list and in the promotion panel. Respondents No.7 to 13 some of whom are juniors to some of the applicants have also have been promoted within their own circle viz. M.T.N.L.

11. The contention of the counsel for the applicant is that their cadre is basically a circle cadre and distortions were introduced by the Recruitment Rules, 1988 and the department has realised the damage done and they have therefore subsequently issued instructions on 15.4.1994 declaring cadre of Senior Personal Assistants (Rs.2000-3200) C.S.S. as circle cadre. Specifically in para 1 it is stated as under:

"Presently promotion to the grade of Senior PA's of Group 'B' (Gazetted) is being ordered on centralised basis from DOT HQ. Of late, representations have been pouring in from various quarters highlighting the problems faced by the affected officers. In view of this, the case has been considered in detail and it has been decided to declare the cadre of Senior PA, GCS Group 'B' (Gazetted) as Circle Cadre with immediate effect."

According to the applicants, the only criterion for promotion from Stenographer Grade III to P.A. Grade II and also Senior Personal Assistant Gazetted is ~~seniority-cum-fitness~~ seniority-cum-fitness, and although the applicants are senior and have not been declared unfit they have been denied their rightful promotion. The eligibility list is bad because it violates the seniority principle^{is} which is enshrined in 1981 and 1988 Recruitment Rules. The eligibility list ~~is~~ drawn is not fair, just and equitable because it gives undue advantage to Stenographers in certain circles. Since the promotion order dt. 29.4.1991 is based on

illegal eligibility list and ignoring eligible seniors, the same is liable to be quashed.

12. The learned counsel for the respondents has argued that the OA is time barred and also hit by the vice of multiplicity of relief. The respondents have not challenged the vires of the rules as such except relief claimed at 'E' to which we have made a reference above. The Recruitment Rules of 1988 are All India Rules, this is evident from the nomenclature of the rules, as well as, the fact that the DPC is headed by Member (Personnel) of Telecom Board. According to the respondents, there is nothing illegal or inequitable in counting seniority by three alternative methods viz:

- (1) P.A. Grade 'A' with 2 years regular service.
- (2) P.A. Grade 'A' with combined regular service 7 years of P.A. Grade (I) and P.A. Grade II and
- (3) P.A. Grade II with 7 years regular service.

13. The respondents have pointed out that the post of P.A. Grade II was in the scale of Rs.1400-2300 and the post of P.A. Grade I Rs.1640-2900 and that consequent on the recommendation of the IVth Pay Commission these grades were merged into a single grade of Rs.2000-3200 in the Gazetted grade and it was in this context that All India Recruitment Rules were required to be framed and were framed. It was only because of certain practical difficulties that the cadre has been made a circle cadre.

14. In any case, ^{it is argued by respondents} in practical terms the applicants can have hardly any grievance any longer because consequent on declaration of the cadre of Senior Personal Assistant as a circle cadre by the orders dt. 15.4.1994, the various applicants

...15.

have been promoted from the dates shown against their name :

<u>Name</u>	<u>Date</u>
1. Shri N.K.Devassy	9.8.1994
2. Smt. Suvarna G.Nair	9.8.1994
3. Shri V.P.Balakrishnan	9.8.1994
4. Shri E.V.Joy	9.8.1994
5. Shri K.P.Sundereswaran	9.8.1994

15. They have further pointed out that this is a joint application in which the applicants have been appointed in the post of Stenographer Gr.III on different grades from 4.3.1972 to 10.7.1975, whereas, Respondents No.6 to 12 have been appointed on different dates from 1.8.1972 to 25.3.1974. The Respondents No.6 to 12 are therefore all seniors to the applicants excepting applicant No.1 and moreover, Respondents No.14 and 15 are the only persons who are juniors to the applicants and they have not been served. The grievance, if any, can only be in relation to Respondent No.14 and 15 ~~only~~ and not in respect of other Respondents.

16. In support of the proposition that the total length of service should be the sole criterion when the posts are non-selection and the rule is promotion by seniority, the counsel for the applicant has relied on the case law as mentioned below.

17. First of all, reference is made to S.B.Patwardhan V/s. State of Maharashtra (AIR 1977 SC 2051). In that case it was laid down that the valuable right of seniority cannot be made ^{to depend} upon the mere accident of confirmation. In this particular case the question of confirmation is not at issue. The question is that of promotion to a higher grade in a different circle. In our view, therefore, the case of S.P.Patwardhan does not apply.

18. The next case on which reliance is placed is K.S.Vora V/s.State of Gujarat (1987) 5 ATC 325). In this case the question involved was that of integration into common cadres. The Court observed that making total length of service as a basis for refixation of seniority is not arbitrary. But these observations were made in the context of staff who were drawn from different sources and observations regarding seniority have to be seen in this context. or/otherwise It says nothing regarding ~~the~~ legality of the stenographers initially recruited as Gr.III getting differential dates of promotion by operation of Rules because of existence of different circles in the department. This case, therefore, does not help the applicant.

19. The next case relied upon is Nirmal Kumar V/s. State of Bihar (AIR 1988 SC 394). This was again a case in which the question involved was that of amalgamation of different wings of Engineers in the Department of Agriculture in which length of service test was applied and the same was upheld. The facts are similar to those of Vora's case and therefore, do not have applicability to the instant case.

20. The last case cited is K.Ranganathan V/s. Accountant General (1989) 9 ATC 864). In this case it is held that seniority list in the immediately below grade is only ^arule of practice and not ^arule of law. The Tribunal observed that action taken by the department in resolving the vexed problem of seniority in the context of widely disparate avenues available in the cadre of Accounts Officers in different units was a pragmatic one. In our view,

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the action taken by the department cannot also be faulted consequent on the merger of two lower grades into Gazetted grade on the basis of the IVth Pay Commission. Therefore, the case law cited by the applicant is not helpful to him.

21. I am therefore, of the view that the 1988 Rules are legal and valid and are not open to challenge on the grounds urged by the counsel for Therefore eligibility list and promotion panel are /also valid. the applicants. / The O.A. is therefore, has no merit and is therefore liable to be dismissed and is hereby dismissed. There will be no orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

B.

O R D E R

The O.A. is dismissed. There will be no orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J).

B.