

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00327/2016

Monday, this the 8th day of October, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

- | | | |
|---|---|-------------------|
| 1. T.P. Beena
Aged 58 years, W/o K.S.Sivarajan,
Postmaster (Officiating), Karunagappally Post Office,
Kollam – 690 581,
(residing at Revathy, Govindamuttom P.O.
Kayamkulam, Alappuzha District Pin. 690527) | 2. T.P. Jeejabhai, Aged 56 years, W/o K. Reghu Varma,
Aged 56 years, W/o K. Reghu Varma,
Sub Post Master, Kavanad Post Office,
Kollam 691 003
(residing at Green Garden, Cutchery,
Ward, Kollam 691 013). | Applicants |
| (By Advocate – Mr. P.Mohandas) | | |

V e r s u s

1. The Chief Postmaster General,
P.M.G. Office, Kerala Circle,
Thiruvananthapuram – 695033.
2. Assistant Postmaster General (Staff)
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram 695 033.
3. Senior Superintendent of Post Offices,
Kollam Division, Kollam 691 001.
4. K. Komalavallay,
Assistant Postmaster (Mail)
Ottappalam Head Post Offices,
Palakkad 679 101.
5. K. Girija,
Assistant Postmaster (Counter)

Thrissur Head Post Office, Thrissur 680 001. **Respondents**
(By Advocate – Mr.K.S.Dilip, ACGSC)

This Original Application having been heard and reserved for orders on 28.09.2018, the Tribunal on 08.10.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

M.A.No. 180/450/2016 has been filed by the applicants praying for condoning the delay of 675 days in filing the O.A.

2. We have heard both sides on this M.A. and we are fully satisfied with the explanation given by the applicants for the above said delay. Accordingly having satisfied, the M.A.No.180/450/2016 is allowed by condoning the delay.

3. Applicants in the present O.A. are seeking the following reliefs:

- i) to set aside Annexe A-1 order No. St/5-2/2012 dated 2.5.2013 issued by the 2nd respondent to the extent of promoting respondents 4 and 5 to the cadre of lower selection grade;
- ii) to set aside Annexe A4 letter No.BB/16 dated 24.11.2015 issued by the 3rd respondent as the reasoning is patently erroneous and illegal;
- iii) to set aside Annexe A5 letter No. BB/16 dated 24.11.2015 issued by the 3rd respondent as the reasoning is patently erroneous and illegal;
- iv) to issue an order or direction to the 2nd respondent to promote the applicants to the lower selection grade based on their date of entry into the service and not on the basis of confirmation.
- v) to declare that the applicants are entitled for promotion to lower selection grade reckoning their service from the date of joining in the department.
- vi) to issue such other order or directions as this Tribunal may be deemed fit and proper in the facts and circumstances of the case.

4. Briefly stated the facts of the case are that the first applicant joined as Postal Assistant in Pathanamthitta Division on 22.09.1980 and transferred to Kollam Division on 19.03.1981 and after successful completion of training she was confirmed on 19.5.1981. On her completion of 16 years of service the first applicant was given TBOP with effect from 6.10.1996 and on completion of 26 years of service the she was given BCR with

effect from 11.2007. Whereas the second applicant joined as Postal Assistant in Pathanamthitta Postal Division on 22.09.1980 and confirmed on 17.08.1981 and received the first TBOP on completion of 16 years of service with effect from 6.10.1996 and on completion of 26 years of service the second applicant was given BCR with effect from 1.1.2007. The next channel of promotion of the applicants are Lower Selection Grade (LSG for short) as per the recruitment rules. They have been given notional promotion to the post of Postal Assistant in the cadre of LSG with effect from the date shown against each official and applicant is aggrieved by action of their two juniors respondent No.4 and 5 were given LSG with effect from 1.12.2009 and 21.12.2009. The case of the applicants are that they should be given seniority with effect from the date of their joining i.e. from 22.9.1980 when respondent Nos.4 and 5 were juniors would have found their names in the said list of LSG at Annexure A.1. The applicants cited O.M. No. 9/11/55-RPS dated 22-12-1959, the basic principle emphasised in which is that the seniority follows from the confirmation based on the judgement of the Hon'ble Supreme Court in the matter of *Class II Direct Recruits Engineering Officers Association v. State of Maharashtra JT 1990 (2) sc 264* in which the Hon'ble Supreme Court held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not from the date of his confirmation. Feeling aggrieved by this, the applicants approached this Tribunal for redressal of their grievances.

5. Notices were issued. Respondents filed detailed written reply resisting the claim of the applicants.

6. It is submitted on behalf of the respondents that the applicants Smt. T.P. Beena and Smt. T.P. Jeejabhai, entered into the department as Postal Assistants (PA in short) in Pathanamthitta Division on 22.09.1980. The applicants later got transferred to Kollam Division on request and were substantively appointed in the cadre of PA in Kollam Division with effect from 01.04.1988 vide their respondent's Memo No. BB/24 dated 29.11.1988. The promotional hierarchy of PA is Lower Selection Grade (LSG for short), Higher Selection Grade II (HSG II for short) and HSG I. Promotion to the cadre of LSG is given on the basis of seniority in the cadre of PA. Seniority of an official was determined

in accordance with DOPT OM No. 9/1/1/55-RPS dated 22.12.1959 according to which the basis of seniority of an official is the date of confirmation in the grade. The general principle of seniority with reference to the confirmation of Government servants was reviewed in the light of the judgement of the Hon'ble Supreme Court in the case of *Class II Direct Recruits Engineering Officers Association v. State of Maharashtra* (supra) and it was decided by the DOPT that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation. It is submitted by the respondents that OM No. 20011/5/90-Estt(D) dated 04.11.1992 issued by the Department of Personnel and Training governs the file with respect to fixing of seniority of Govt. Servants. True copy of the said OM No. 20011/5/90-Estt (D) dated 04.11.1992 is produced herewith and marked as Annexure R1(a). It has been further stipulated in para 4 of Annex R-1(a) that the said order shall take effect from the date of issue of that OM i.e. 4.11.1992 and that seniority already determined according to the existing principles on the date of issue of the O.M will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of the said OM. In accordance with the said OM which governs the file now, seniority of the officials in the Circle Gradation List (CGL for short) of Pas as on 01.07.2008 was fixed on the basis of date of confirmation in respect of those officials who joined service up to 03.11.1992. As per the said CGL as on 01.07.2008, the service particulars of the applicants and respondents 4 and 5 are as below:

Name of the official (Smt.)	Date of entry into service	Date of confirmation	Position in the CGL	Remarks
K. Komalavally	17.08.1992	21.01.1983	S1.320	Respondent No.4
K. Girija	09.10.1980	01.02.1983	S1.321	Respondent No.5
T.P.Beena	22.09.1980	01.04.1988	S1.877	Applicant No.1
T.P. Jeeja Bai	22.09.1980	01.04.1988	S1.879	Applicant No.2

7. It is further submitted by the respondents that as on 01.07.2008, the applicants did not come within the zone of consideration in the DPC held on 17.4.2003. Hence they were not promoted to the cadre of LSG vide Annexure A1. The representations submitted by the

applicants had also been disposed of in accordance with the extant rules on the subject.

8. The respondents have also relied upon the Hon'ble Apex Court judgement in the case of *M.L. Cecil D'Souza v. UOI (AIR 1975 SC 1969)* in which it is held as under:

"It is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. Raking old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would therefore appear to be in the interest of smoothness and efficiency of service that such matter should be given a quietus after a lapse of some time.

"

9. The applicants have filed rejoinder and reiterated the pleadings in the O.A. They have relied upon Annexe A.7 order of this Tribunal in O.A. No .314/2007 and 408/2007.

10. We have heard both sides and considered the rival submissions and have carefully perused the pleadings in the O.A. We have also carefully perused the case laws cited by both sides.

11. The only question raised by the applicants in this Original Application is whether they are entitled to reckon their seniority from the date of joining or from the date of confirmation. The Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training OM dated 4th November 1992 on the subject of Delinking seniority from confirmation reads as follows:

" No.20011/5/90-Estt.D
 Government of India/Bharat Sarkar
 Ministry of Personnel, Public Grievances & Pensions
 Department of Personnel & Training.

New Delhi, the 4th November, 1992.

Sub: Delinking seniority from confirmation.

The seniority of Government servants is determined in accordance with the general principles of seniority contained in MHA No. 9/11/55-RPS dated 22.12.59 (copy enclosed). One of the basic principles enunciated in the said OM is that seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in the grade.

2. This principle has been coming under judicial scrutiny in a number of cases in the past, the last important judgement being the one delivered by the Supreme Court on 2.5.1990 (JT-1990 92) SC-264) in the case of Class II Direct Recruits Engineering Officers Association v. State of Maharashtra. In para 47(A) of the said judgement the Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in para 47(A) of its judgement dated 2.9.90. Accordingly in modification of the general principle 3, proviso to general principle 4 and proviso to general principle 5(i) contained in MHA (now DOPT) O.M. No. 9/11/55-RPS dated 22.12.59 and para 2.3 of this Department OM dated 3.7.1986 (copy enclosed) it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation.

4. These orders shall take effect from the date of issue of this Office Memorandum. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders.

5. All the Ministries/Departments are requested kindly to bring these instructions to the notice of all concerned for guidance and compliance. “

As per this O.M. which has been issued on the guidelines of Hon'ble Supreme Court in the case of *Class II Direct Recruits Engineering Officers Association* (supra) it is decided by the Govt. that seniority should be counted from the date of appointment and not from the date of confirmation. Conspicuously the names of respondents No. 4 and 5 were inducted in the said Annexure A1 list taking into account the date of confirmation which is 21.1.1983 and 01.2.1983 respectively. Whereas the date of confirmation of applicants date of confirmation was 01.4.1988 which is contrary to the guidelines and principles laid down by the judgement of the Hon'ble Apex Court in the case cited above and also OM issued by the Govt. of India.

12. Thus, we are of the view that the claim of the applicants has merit on their side and the impugned order is liable to be set aside to the extent their names should be inducted at an appropriate position by reckoning their seniority from the date of joining and not from the date of confirmation.

13. Accordingly, the O.A. succeeds and the same is allowed on the above terms. Misc. Application No. 180/1207/2017 for directions also stands disposed of. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures of the Applicant in O.A. No. 180/000327/2016

- Annexure A-1** - True copy of the order No.ST/5-2/2012 dated 2-5-2013 issued by the 2nd respondent.
- Annexure A-2** - True copy of the representation filed by the first applicant dated 30.06.2015.
- Annexure A-3 :** True copy of the representation filed by the second applicant dated 25.06.2015.
- Annexure A-4** - True copy of the letter No.BB/16 dated 24.11.2015 given to the first applicant by the 3rd respondent.
- Annexure A-5** - True copy of the letter No.BB/16 dated 24.11.2015 given to the second applicant by the 3rd respondent.
- Annexure -A6** - True copy of the Chapter 7 of the Fundamental Rules.
- Annexure A7** - True copy of the order dated 20.06.2008 in O.A. No. 314/2007 dated 408/2007.
- Annexure A8** - True copy of the order dated 26.03.2012 in C.P. © No.1/2011 in O.A.No.777/2007 published in the website.
- Annexure A9.** - True copy of the order dated 11.03.2009 in O.A. No. 369/2008 published in the website.

1. List of Annexures of the Respondents in O.A.No.180/000327/2016

- Annexure R1(a);** True copy of OM No. 20011/5/90-Estt(D) dated 04.11.1992.
- Annexure R1(b):** True copy of letter No.ST/101/9/2007 dated 27.11.2008.
- : **Annexure R1(c)** True copy of the relevant page of the Circle Gradation List initialed by the second applicant.
