

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

O.P (CAT).No. 142 of 2015 (Z)

AGAINST THE ORDER IN M.A. NO.180/00004/2015 IN R.A. NO.180/00001/2015 DATED 31.07.2015 AND ORDER IN O.A NO.722/2008 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 30.11.2009.

PETITIONER(S)/PETITIONERS IN MA & RA/RESPONDENTS 1 TO 6 IN O.A:

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF POSTS,
GOVERNMENT OF INDIA, NEW DELHI.
2. THE POST MASTER GENERAL,
KERALA CIRCLE, TRIVANDRUM.
3. THE SR. SUPERINTENDENT OF POST OFFICES,
THIRUVALLA
4. THE SUPERINTENDENT OF POST OFFICES,
THIRUVALLA
5. THE SENIOR SUPERINTENDENT,
KOLLAM POSTAL DIVISION, KOLLAM.
6. THE SUPERINTENDENT,
MAVELIKKARA POSTAL DIVISION, MAVELIKKARA.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

RESPONDENT(S)/RESPONDENTS 1 TO 19 IN MA & RA/APPLICANTS 1 TO 19 IN OA:

1. SIVAPRASAD G, AGED 58 YEARS,
S/O.GOVINDAN, DY. POSTMASTER, KOLLAM HEAD POST OFFICE,
RESIDING AT MUNICHEZHAKAM, PATTATHANAM, KOLLAM- 691 021.
2. V.T. UTHUP, AGED 54 YEARS,
S/O.THOMAS, SUB POSTMASTER, GANDHINAGAR POST OFFICE,
KOTTAYAM, RESIDING AT VARAVUKALYAYIL, KALLARA,
KOTTAYAM -686 611.

3. PM. THOMAS, AGED 55 YEARS,
S/O.P.T. THOMAS, S/O.P.T MATHAI, MANAGER,
NATIONAL SPEED POST CENTRE, KOTTAYAM,
RESIDING AT KANAN "VALYIL", DEVALOKAM POST,
KOTTAYAM 686 004.
4. LOUSCY THOMAS, AGED 59 YEARS,
W/O.K.T. THOMAS,
POST MASTER (OFFICIATING HSGI) MAVELIKKARA HEAD POST OFFICE,
KAIPURAYIDAM, MAVELIKKARA- 690 101.
5. THRESIAMA JOSEPH, AGED 59 YEARS,
W/O.M.N. JOSEPH, APM (MAILS) THIRUVALLA,
RESIDING AT MEKARINGATTU, MALLAPPALLY WEST -689 585.
6. K.N.CHANDRABOSE,, AGED 58 YEARS,
S/O.K.N.PILLAI, POSTMASTER (OFFICIATING), THIRUVALLA,
RESIDING AT PONNANTTINKUZHIL, PADMAVIHAR,
KANJARETTUKARA P.O. 689 611.
7. PS SUBHASH,
PRIP, PATHANAMTHITTA POSTAL DIVISION,
PATHANAMTHITTA- 689 645.
8. V.R. SOBHANA ,
APM, HEAD POST OFFICE, KOTTAYAM POSTAL DIVISION,
KOTTAYAM- 686 001.
9. K.RAJAN,
APM, CT HO, CALICUT POSTAL DIVISION,
CALICUT- 680 121.
10. H.GANESHAN,
APM, SB, ERNAKULAM HEAD POST OFFICE,
ERNAKULAM - 682 011.
11. G.MURALEEDHARAN,
DPM (SB), PATHANAMTHITTA POSTAL DIVISION,
PATHANAMTHITTA- 689 645.
12. K.RAMA,
SPM POOTHOLE, TRICHUR POSTAL DIVISION, TRISSUR 680 001.
13. K.T. SHEELA,
SPM, KORATTI, IRANJALAKUDA POSTAL DIVISION- 680 121.
14. V.S.JAYASREE,
SPM, KODUVAYUR, PALAGHAT POSTAL DIVISION,
PALAGHAT- 678 501.

15. K.SATHEESAN,
APM(A/C) OLKTHO, PALAGHAT 678 001
 16. M.K. SUDHEER,
PM AZHIKODE, KANNUR 670 009.
 17. K.E.BALAGOPALAN,
SPM CT MCPO, CALICUT POSTAL DIVISION- 673 001.
 18. E.K.NARAYANAN,
APM, KANNUR HO, KANNUR 670 001.
 19. A. SIVASANKARAN,
SPM, NIT CAMPUS, CALICUT 673 601.
- R1 BY ADV. SRI.SAJITH KUMAR V.

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 30-09-2015, THE COURT ON 16.10.2015 DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE OA.NO.722/2008 DATED 09.12.2008 FILED BY THE RESPONDENTS 1 TO 16.
- EXHIBIT P2: TRUE COPY OF THE REPLY STATEMENT DATED 27.03.2009 FILED BY THE PETITIONERS.
- EXHIBIT P3: TRUE COPY OF THE ORDER IN OA.NO.722/2008 DATED 30.11.2009 OF THE CAT ERNAKULAM BENCH.
- EXHIBIT P4: TRUE COPY OF THE ORDER IN OA.NO.369/2008 DATED 11.03.2009 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH.
- EXHIBIT P5: TRUE COPY OF THE RA NO. 180/00001/2015 DATED 12.11.2014 FILED BY THE PETITIONERS.
- EXHIBIT P6: TRUE COPY OF THE MA.NO.180/00004/2015 DATED 03.12.2014 FILED BY THE PETITIONERS.
- EXHIBIT P7: TRUE COPY OF THE REJOINDER IN MA.NO.04/2015 DATED 18.05.2015 FILED BY THE 1ST RESPONDENT.
- EXHIBIT P8: TRUE COPY OF THE INTERM ORDER DATED 18.05.2015 IN RA.NO.180/00001/15.
- EXHIBIT P9: TRUE COPY OF THE ORDER IN MA.NO.180/00004/2015 DATED 31.07.2015 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

RESPONDENT(S)' EXHIBITS:

- EXHIBIT R1(A)- A TRUE COPY OF THE JUDGMENT DATED 12.10.2009 W.P.(C) NO.37673 OF THE HONOURABLE HIGH COURT.
- EXHIBIT R1(B)- A TRUE COPY OF THE REVIEW PETITION NO.226/2010 IN W.P.(C) NO.37673/2008 WAS DISMISSED BY ORDER DATED 08.06.2010.
- EXHIBIT R1(C)- A TRUE COPY OF THE ORDER DATED 25TH OF JULY, 2011 IN C.P.(C) 79/2009 IN O.A. 314/2007.
- EXHIBIT R1(D)- A TRUE COPY OF THE PROCEEDING DATED 28.02.2011 ALONG WITH THE REVISED GRADATION LIST.
- EXHIBIT R1(E)- A TRUE COPY OF THE ORDER IN O.A.503/2011 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P.T.O.

- EXHIBIT R1(F)- A TRUE COPY OF THE ORDER DATED 14.02.2014 IN M.A. 867/2013
IN O.A. 722/2008.
- EXHIBIT R1(G)- A TRUE COPY OF THE ORDER DATED 19.03.2014 IN M.A. 867/2013
IN O.A. 722/2008.
- EXHIBIT R1(H)- A TRUE COPY OF THE ORDER DATED 09.07.2014 IN M.A. 867/2013
IN O.A. 722/2008.
- EXHIBIT R1(I)- A TRUE COPY OF THE LETTER NO.ST/101/9/2014 DATED 06.08.2014
ISSUED ON BEHALF OF THE CHIEF POST MASTER GENERAL.

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) No.142 of 2015

Dated this the 16th day of October, 2015

JUDGMENT

Shaji P. Chaly, J.

This Original Petition is filed challenging the order of the Central Administrative Tribunal, Ernakulam Bench in M.A. No.180/00004/2015 in R.A. No.180/00001/2015 dated 31.07.2015 in O.A.No.722 of 2008 dated 30.11.2009 and also the order in R.A. No.180/00001/2015 by the review applicants therein who were the Respondents in O.A.No.722 of 2008. By the order in M.A.No.180/00004/2015, the Tribunal declined to condone the delay of 1813 days in filing the Review Application, holding that no sufficient reasons are shown for the condonation of delay and consequently, the Review Application was also dismissed. It is challenging the said orders, this Original Petition is filed.

2. Brief facts for the disposal of the Original Petition are as follows:

O.A.No.722 of 2008 was filed by Respondents 1 to 6 seeking to declare that the applicants are entitled to be considered for notional promotion against the norm based Lower Selection Grade (LSG in short) and HSG-II vacancies, based on the seniority in the basic cadre with effect from the date of occurrence of vacancies (that is vacancies that occurred from 30.11.1993 to 07.02.2002), that Respondents 7 to 19 in the O.A. are only entitled to be accommodated into the 2/3 LSG vacancies which have fallen due between 07.02.2002 and 18.05.2006 and that the placements of Respondents 7 to 19 in Annexure-A1 above the Respondents herein is highly illegal and arbitrary and for other consequential reliefs. After evaluating the rival submissions and materials on record, the Tribunal followed its earlier order in O.A.No.369 of 2008, allowed the O.A. and directed the preparation of a revised seniority list granting promotion to LSG cadre year-wise, subject to availability of vacancies at the Divisional level and Circle-wise seniority list to be drawn up based on the revised Divisional seniority. The said order was

directed to be complied with within a period of six months.

3. Pursuant to a direction issued by the Tribunal in O.A.No.369 of 2008, a Cell was formed to review the LSG promotions made in various Postal Divisions from 1983 to 2002 and for the 1/3rd quota of LSG vacancies from 2002 to 2005, when LSG was a Divisional cadre. The review carried out by the Cell revealed that the Division had correctly filled up all the unfilled LSG vacancies from the Postal Assistants cadre based on the Divisional seniority as per appropriate orders of the Directorate. As per these orders, the Postal Directorate directed the Circles to fill up all LSG vacancies which were remaining unfilled during the period from 1983 to 2002 and 2002 to 2005 when LSG was a Divisional cadre, with effect from the dates of occurrence of vacancies notionally.

4. The further contention of the petitioners is that they have initiated action to prepare the revised Circle seniority list based on the merit position of the officials in the entry cadre of the Postal Assistants. It is submitted that recruitment to the Postal Assistants Cadre is done at the Divisional Level and establishment of the Cadre is also maintained at Divisional level prior to 04.11.1992 and even thereafter. It was further

submitted that the recruitment to the Postal Assistants cadre is based on the merit of marks obtained in the Matriculation or equivalent examination. That the petitioners had called for the merit list from all the Postal Divisions and it was thereupon found that the required information was not available in Divisions as the records relating to the relevant periods were not traceable. It is the further case of the petitioners that in order to comply with the orders of the Tribunal, compiled details from the recruitment files of the officials dating back to 1969 were necessary but, the concerned files were not available at this distance of time in many Postal Divisions and only the merit position was available. Therefore, it was contended that physically and practically, it was impossible to re-construct the seniority list in accordance with the directions of the Tribunal. This necessitated the petitioners to prefer the Review Application along with a petition to condone the delay of 1813 days.

5. Learned Assistant Solicitor General who appears for the petitioners contended that in view of the absence of relevant materials and documents necessary for complying with the directions of the Tribunal, the seniority on the basis of

the entry cadre could not be finalized and therefore the order of the Tribunal has become impossible to be complied with. The 1st Respondent has filed a rejoinder in the delay petition and after evaluating and appreciating the facts and circumstances of the case, the Tribunal dismissed the application to condone the delay by a speaking order holding that the order was passed in O.A. No.722 of 2008 on 30.11.2009, granting reliefs to the Respondents of time bound one time promotion during the years 1985-1988 who have been officiating against the norm based vacancies of LSG for a substantial period. That the Biennial Cadre Review (BCR) was brought into force with a view to provide promotion particulars and on functional justification. The Tribunal also found that in spite of the direction in O.A. No.722 of 2008, the petitioners have failed to constitute DPC and thereupon gross negligence was committed by the petitioners. It was also found by the Tribunal that even though the direction is dated 30.11.2009, the petitioners directed the Postal Division to prepare and forward the Divisional Gradation List only on 06.08.2014 and thus the delay has occurred solely due to lethargy on the part of the petitioners. Having found so, the Tribunal dismissed the

application for condonation of delay stating that there are no justifiable reasons put forth by the petitioners in order to condone the delay in filing the Review Application and therefore the same was dismissed and consequently the Review Application was also dismissed.

6. We heard the learned Assistant Solicitor General of India, Sri. N. Nagaresh for the petitioners and Advocate Sri. Sajith Kumar V. for the Respondents, who has also filed a counter affidavit to the Original Petition narrating the entire factual aspects, the history of the case and the long run battle for several years in several petitions and therefore he contended that the attempt of the petitioners is only to somehow or other protract the direction issued by the Tribunal in the O.A. and thereby avoid a contempt action likely to be initiated against them.

7. Learned counsel for the petitioners contended that the order passed by the Tribunal in O.A. is impossible to be performed since sufficient and required details of the Respondents are not available in the Department so as to recast the seniority list. Learned Assistant Solicitor General therefore contended that if the seniority list is re-casted

without following the Rules, that will lead to several discrepancies and anomalous situations and the same will generate litigation pursuant to the recasting of the list in violation of the Rules. Learned A.S.G.I also contended that voluminous records are required in order to recast the list and without getting the required details, the same has become impossible. On the other hand, learned counsel for the Respondents contended that the petitioners have not initiated any action to compel compliance with the direction of the Tribunal. It was also contended that if the petitioners were vigilant and enthusiastic to comply with the directions of the Tribunal, they ought to have secured the details from the concerned personnel, since it is not a difficult process, for the reason that the employees are receiving pension and therefore the details can be secured without any difficulty at all. But the petitioners have not taken any action and therefore the order passed is remaining unimplemented, warranting proceedings against them for Contempt.

8. Having considered the rival submissions, we are of the considered opinion that there are no illegalities or other legal infirmities in the order passed by the Tribunal in

dismissing the application for condonation of delay and the consequential order in Review Application. From the records made available to us, we are unable to find that the petitioners have made any earnest efforts to secure the details of the personnel in order to recast the seniority list even though the order of the Tribunal is of the year 2009. Therefore, there is no justification on the part of the petitioners in contending that the order is impossible to be performed and therefore the order is to be reviewed. Learned A.S.G.I also contended that if they proceed to recast the seniority list against the Rules in vogue, there will be utter chaos and the ultimate result will be litigations before the Tribunal.

9. After appreciating the facts and circumstances, we are of the considered opinion that the order in O.A. No.722 of 2008 has become final and conclusive and there are no justifiable reasons at all to review the same. We are also of the opinion that having failed to initiate action to comply with the order of the Tribunal within a reasonable time, the petitioners were not entitled to get the delay condoned. But, at the same time, we feel that there should be a practical approach to the situation now at hand. Therefore, if records

are not available in order to recast the seniority list, the petitioners shall take appropriate steps to secure the documents from the concerned personnel with the object of complying with the directions of the Tribunal. If the details in accordance with the Rules are not available, the petitioners shall make endeavour to see that equivalent records or materials are referred to in order to ascertain the seniority of the personnel and accordingly comply with the direction of the Tribunal to recast the seniority list.

10. Therefore, we direct the petitioners to recast the seniority list in accordance with Rules and if required materials are not available in spite of the efforts to secure the necessary details for the purpose, petitioners will be at liberty to finalize the seniority list by considering any of the equivalent records or other materials for fixing the seniority. The whole exercise shall be done within a period of three months from the date of receipt of a copy of this judgment.

The Original Petition is disposed of accordingly.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
16.10.2015