

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

WP(C).No. 5447 of 2005 (Z)

(AGAINST THE ORDER/JUDGMENT IN OA 925/1996 of CENTRAL
ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 22.04.2004)

PETITIONER(S) :

GEORGE THOMAS
RETIRED ASSISTANT ECONOMIC AND STATISTICAL, ADVISOR
MARKET INTELLIGENCE UNIT, DIRECTOR OF
ECONOMICS & STATISTICS, MINISTRY OF AGRICULTURE
GOVERNMENT OF INDIA, NOW RESIDING AT CHAKKUTHARA
KURIANOOR

BY ADVS.SRI.ELVIN PETER P.J.
SMT.CHINCY GOPAKUMAR
SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SRI.M.T.KURIAKOSE
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH
SRI.B.GOPAKUMAR

RESPONDENT(S) :

1. UNION OF INDIA
SECRETARY TO MINISTRY OF FINANCE, DEPARTMENT
OF ECONOMIC AFFAIRS, IES DIVISION, NORTH BLOCK, NEW DELHI.
2. ECONOMIC AND STATISTICAL ADVISOR
DIRECTORATE OF ECONOMICS & STATISTICS, MINISTRY OF
AGRICULTURE, DEPARTMENT OF AGRICULTURE & CO-PERATION,
GOVERNMENT INDIA, KRISHI BHAVAN, NEW DELHI-1.
3. CHIEF ADMINISTRATIVE OFFICER,
DIRECTORATE OF ECONOMICS & STATISTICS
MINISTRY OF AGRICULTURE, GOVERNMENT OF INDIA
SHASTRI BHAVAN, NEW DELHI.
4. A. CHATTERJEE, I.E.S., EX-INSPECTING OFFICER, 40/2-A,
MOORI AVENUE, CALCUTTA.

R1-R3 BY ADV. SRI.GEORGE JOSEPH, ADDL.CGSC
R1-R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY SRI.JOHN VARGHESE, ASSISTANT SG

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1 : TRUE COPY OF ORIGINAL APPLICATION WITH ALL ANNEXURES NO.925/96, IN THE CAT, ERNAKULAM.

EXT.P2 : TRUE COPY OF ORDER DT. 21.7.98 RENDERED IN O.A. 925/96 BY CAT, ERNAKULAM.

EXT.P3 : TRUE COPY OF THE REPLYN STATEMENT FILED BY THE RESPONDENTS 1 TO 3 IN O.A. 925/96

EXT.P4 : TRUE COPY OF THE REJOINDER AFFIDAVIT FILED BY THE APPLICANT IN O.A. 925/96 DT. 22.12.1996

EXT.P5 : TRUE COPY OF THE STATEMENT FILED BY THE 3RD RESPONDENT ON 17.7.1998

EXT.P6 : TRUE COPY OF THE STATEMENT FILED BY THE 3RD RESPONDENT ON 19.8.98

EXT.P7 : TRUE COPY OF THE REJOINDER AFFIDAVIT FILE DBY THE APPLICANT IN O.A. 925/96 IN REPLYN OF EXTS.P5 AND P6 DT. 21.8.98

EXT.P8 : TRUE COPY OF ORDER DT. 22.4.94 IN O.A.NO.925/96 IN CAT, ERNAKULAM.

EXT.P9 : TRUE COPYN OF THE RELEVANT EXTRACTS OF RECORD RETENTION SCHEDULE FOR RECORDS.

EXT.P10 : TRUE COPY OF THE JUDGMENT DT. 11.6.1993 RENDERED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A.NO.79/92.

EXT.P11 : TRUE COPY OF THE JUDGMENTN IN OP.NO.25419 OF 1998 (S) DT. 1ST OCTOBER 2003 IN THE HON'BLE COURT.

RESPONDENTS' EXHIBITS:

EXT./R1 : TRUE COPY OF THE ORDER DATED 9.9.1998 IN O.A.NO.925/96 OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

/TRUE COPY/

PS. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.**

.....
W.P.(C)No.5447 OF 2005
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Dated this the 22nd June, 2015

J U D G M E N T

Sunil Thomas, J:

The petitioner challenges the order of the Central Administrative Tribunal, Ernakulam in O.A.No 925 of 1996. The petitioner, the 4th and 5th respondents were in the feeder category of Technical Clerks having joined the establishment on 08.12.1959, 12.03.1958 and 26.01.1960 respectively. Going by their seniority reckoned from the date of joining the service, the petitioner was placed above the 5th respondent/A. Chatterjee, but lower in cadre than that of the 4th respondent/K.V. Ramakrishnan. While so, they were promoted to the next cadre of Market Intelligence Inspector. A seniority list of Market Intelligence Inspectors is produced as Annexure-A2. The 4th respondent/K.V. Ramakrishnan is placed at Sl.No.2, the

W.P.(C)No.5447 OF 2005

2

petitioner at Sl.No.13 and the 5th respondent/A.Chatterjee at Sl.No.7, as on 12.07.1972. It is seen that all the three have passed the requisite departmental test. The petitioner herein passed the departmental test in March, 1962, the 5th respondent/A. Chatterjee on 27.09.1962 and the 4th respondent/K.V. Ramakrishnan on 11.07.1959. Evidently, when the seniority list was published there was a change in the sequence of seniority, by which, according to the petitioner, he was placed at a lower rank than the 5th respondent, who had joined the service subsequent to his joining service. This dispute has resulted in the present litigation.

2. It is seen that the petitioner had submitted a series of representations, the earliest being of 03.01.1989. This was followed by another representation dated 10.03.1993 , which is produced as Annexure-A1 . The crux of the contention that was advanced before us by the petitioner was that the passing of departmental test, as a condition for promotion was not required for him, he being a Graduate in Economics . The

contention was that graduates were exempted from undergoing departmental test. Hence his basic contention was that he should have been placed above, at least the 5th respondent/A.Chatterjee, who was junior in cadre to him on the basis of the seniority as on the date of entry in service. It is seen that the Administrative Tribunal had directed the authorities to place before it the relevant rules for the purpose of its consideration. It is seen that the relevant rules were produced before the Central Administrative Tribunal along with a rejoinder affidavit. The above rules are available on record. The relevant rules reads as follows:

" IV. TECHNICAL CLERK

(1) A technical clerk not possessing at least a Bachelor's Degree shall not be considered for promotion to the post of Technical Assistant.

(2) A Technical Clerk possessing a Bachelor's Degree in subjects other than Economics, Statistics, Mathematics, or Commerce and/or a Master's Degree in subjects other than Economics or Statistics or Mathematics or

Commerce with Statistics or Agricultural Economics shall be eligible for promotion to the post of Technical Assistant in Branches other than M.T. Branch, after he has completed three year's service in the grade of Technical Clerk or an equivalent grade and has qualified at the qualifying examination in Economics/Statistics for the post of Technical Assistant.

(3) xxxxxxxxx

(4)xxxxxxxxxx

(5)xxxxxxxxxxxxxx

(6)xxxxxxxxxxxxxx

(7) *A Technical Clerk possessing a Bachelor's Degree shall be eligible for promotion to the post of Technical Assistant in M.T. Branch only, after he has completed two year's service in the grade of Technical Clerk or in an equivalent grade and has qualified at the qualifying examination in Punch Card Mechanical Processing for the post of Technical Assistant.*

3. Both sides agreed that the post of Technical Assistant, which is a promotional post as mentioned in the above clause is equivalent to that of Market Intelligence Inspector .

4. A perusal of the above quoted rules clearly show that for the purpose of promotion to the next post, passing of qualifying departmental examination is mandatory, though experience required differed from category to category.

5. The representation submitted by the petitioner was rejected by Annexure-A3 communication dated 30.06.1989. It was clarified by the authorities that since the petitioner passed the qualifying promotion test subsequent to that of respondents 4 and 5, he cannot be considered as senior based on his entry to the higher cadre. Hence in the case of promotion passing of departmental test should govern the field. In the light of the above rules, none of the contentions raised by the learned Counsel for the petitioner would survive. It is also brought on record that the above rules remained in force from 1949 till 1968, which covers the period during which the disputed promotions were made.

6. In the light of the above rule, we find no merit in the contention of the petitioner that he had been exempted from

W.P.(C)No.5447 OF 2005

6

appearing for the departmental examination and consequently his seniority has to be reckoned atleast as against the 5th respondent /A.Chatterjee , on the basis of entry in the cadre. We find no reason to interfere with the order of the Administrative Tribunal. The writ petition is hence dismissed.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**SUNIL THOMAS,
JUDGE.**

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