

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.02.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN  
and  
The Honourable Mr.Justice V.PARTHIBAN

W.P.No.39643 OF 2015

V. Balaraman ... Petitioner

versus

1. Union of India,  
Rep. by the Chief Postmaster General,  
Tamil Nadu Circle,  
Anna Salai,  
Chennai 600 002.
  2. The Postmaster General,  
Southern Region,  
Madurai - 625 002.
  3. The Director of Postal Services,  
Southern Region,  
Madurai-625 002.
  4. The Registrar,  
Central Administrative Tribunal,  
Chennai - 600 104.
- ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the 4th respondent Tribunal which is made in O.A. No.176 of 2013 dt 6.1.2015 and quash the same consequent to direct the respondents 1 to 3 to promote the petitioner to the cadre of H.S.G-I (Higher Selection Grade) on ad-hoc basis at par with his juniors namely Smt. K.Saraswathy M. Sampath L.Sonai S.Mani with all service benefits and thereby to revise and re-fix the pay and the retirement service benefits of the petitioner and pay the arrears thereon to the petitioner.

For Petitioners: Mr. R.Malaichamy

For Respondents: Mr.N.Sivabharathi, CGS-R1toR3  
R4 : Tribunal

## ORDER

(Order of the Court was made by V.PARTHIBAN, J.)

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal') dated 6.1.2015 in O.A.No.176 of 2013 dismissing the original application filed by the petitioner herein.

2. The petitioner herein approached the Tribunal, seeking the following relief:

"To call for the records in Order No.STA/76-140/06/HSC-I/Vol-II dated 09.05.2012 of the Chief Post Master General, Tamil Nadu Circle, Chennai-600 002, rejecting the prayer of the applicant for giving promotion retrospectively from 2005 and quash the same."

3. The petitioner was appointed as a Clerk in the Department of Posts on 8.4.1975 against quota reserved for ST community. He was promoted to UDC SBCO on 02.12.1982, then to Supervisory SBCO in 1987 and to Higher Selection Grade II with effect from 19.01.2004. The next avenue of promotion for higher selection Grade II is Selection Grade I. According to the petitioner, some of his juniors were promoted in 2005 and 2006 as Higher Selection Grade I overlooking the claim of the petitioner when admittedly, the petitioner was senior to those persons who were promoted. In the said circumstances, the petitioner has submitted his representation, which was not considered by the official respondents. Therefore, the petitioner was constrained to approach the Tribunal by filing O.A.No.387 of 2007 and the Tribunal, passed the orders on 20.01.2009 directing the respondents to communicate any adverse entry against the petitioner, which direction was issued on the basis of certain averments made in the said proceedings before the Tribunal. The petitioner was also directed to give a representation against any adverse entry and the same was directed to be considered by the competent authority.

4. In pursuance of the direction issued in the above said O.A., the Authority communicated the C.R. entries of the petitioner for a period from 1.4.2003 to 31.3.2008 which discloses 'average' remark for the said period. The petitioner represented to the competent Authority against the adverse entry, however, the same was rejected by order dated 30.10.2009. Thereafter, the petitioner was promoted as Higher Selection Grade I SBCO on 26.3.2010 and superannuated from service on 31.3.2010. Since according to the petitioner, he was wrongly denied promotion during 2005 and 2006, he approached the Tribunal with the prayer extracted supra.

5. According to the petitioner, his earlier promotion as Higher Selection Grade II was on regular basis with effect from 19.01.2004 and therefore, his record of service ought to have been 'satisfactory' for five years prior to that period and therefore, there was no justification for denying him further promotion to Higher Selection Grade I.

6. Per contra, it was contended on behalf of the official respondents that the petitioner had not completed minimum qualifying service of three years in Higher Selection Grade II as on 1.1.2005 and no junior of the petitioner was promoted in 2005 as claimed by him. The petitioner's claim was actually considered by DPC in the years 2006 and 2007 and his name was not recommended by the DPC in view of his poor service record during the relevant period. Since he was not fit to be promoted during the years 2006 and 2007, his juniors who were otherwise fit, came to be promoted. Therefore, the petitioner has no cause of action to complain against his non promotion for the years 2005, 2006 and 2007 etc. and for promotion of his juniors who were admittedly otherwise fit.

7. After hearing the rival submissions of the learned counsel of the parties, the learned Tribunal dismissed the application. The Tribunal has dealt with the issue in extenso and adverted to various averments and decisions of the various High Courts and the Hon'ble Supreme Court on the subject matter. Before concluding against the petitioner, the Tribunal after analysis of entire case from all perspective, has given supportive reasons, as found in para 10 of the order, which is extracted hereinbelow:

"10. It is clear from the decision of the Courts set out above that it is not possible for this forum to go into the correctness of the ACR gradings or other entires. The Applicant's name is said to have been considered for adhoc promotion to HSG-I (SBCO) cadre during October, 2006 and August 2007 but his case was not recommended by the DPCs which met on 18.10.2006 and 20.08.2007 considering his record of service. The overall grading in the CRs of the Applicant for the last 5 years was only 'Average'. Further he had not completed 3 years of regular service in HSG-II (SBCO). Hence his juniors Sampath, L.Soni and S.Mani were given ad-hoc promotion to HSG-I (SBCO) cadre. The Applicant has not demonstrated that others given ad hoc promotion in preference to him had a similar or inferior record. What weighed with the DPC earlier while considering the Applicant's case for promotion to GSG-II is not known. His plea that he should have been promoted to HSG-I (SBCO) as he had earlier been promoted to HSG-II (SBCO) cadre (on

regular basis w.e.f.19.01.2005) and there was no deterioration in his record of service during this interval, is not tenable."

8. As against the said order passed by the learned Tribunal, the present Writ Petition has been filed by the petitioner.

9. Shri R.Malaichamy, learned counsel appearing for the petitioner would strenuously contend that the petitioner has been unjustly overlooked in the matter of promotion. He reiterated his submissions made before the Tribunal and emphasized the fact that while granting promotion in 2004 as Higher Selection Grade II, the service of the petitioner was found to be satisfactory and hence, there was no reason for denying the promotion of next Higher Selection Grade immediately thereafter in 2005 and 2006 etc. The said argument advanced by the learned counsel for petitioner is misconceived and cannot be accepted in view of the fact that for promotion to Grade II in 2004, earlier period of service was taken into consideration and the service for the said period was found to be satisfactory unlike in the subsequent years where the petitioner got 'average' for five years from 2003-2008. In any event, the grant of promotion as Higher Selection Grade II for whatever reason, cannot be the sole basis for claiming promotion to Grade I de hors the average entries recorded in his service record.

10. Moreover, in 2005, the petitioner having not completed qualifying service of three years as on 1.1.2005 and therefore, the question of granting promotion to him in 2005 cannot arise at all. It was also factually recorded that none of his juniors were promoted in 2005, but it was only an officiating arrangement for a shorter period, which cannot be termed as appointment. In such circumstances, the petitioner cannot have any reason to complain about the promotion of his juniors overlooking him. In these circumstances, we do not see any merit in the contention of the learned counsel appearing for the petitioner and the learned Tribunal's decision was perfectly in order and therefore, we do not find any scope for interfering with the same.

Accordingly, the Writ Petition fails and it is dismissed. No costs. consequently, connected MP is closed.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Chief Postmaster General,  
Union of India,  
Tamil Nadu Circle,  
Anna Salai,  
Chennai 600 002.

2. The Postmaster General,  
Southern Region,  
Madurai - 625 002.

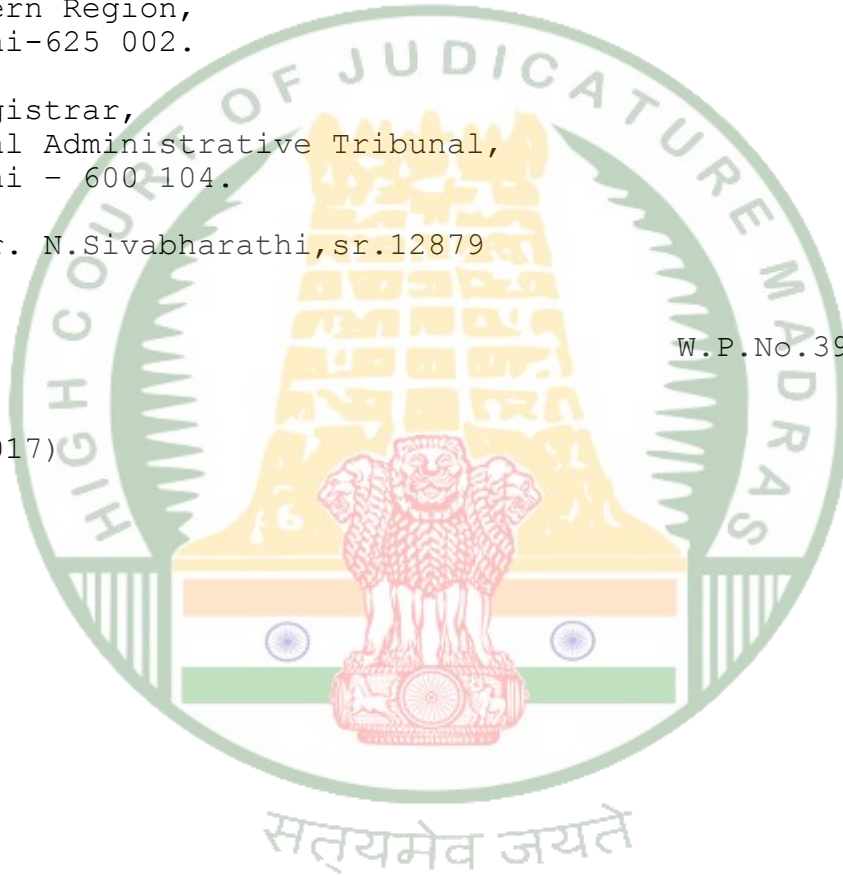
3. The Director of Postal Services,  
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4. The Registrar,  
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Chennai - 600 104.

+1cc to Mr. N.Sivabharathi, sr.12879

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pvs(co)  
ss(19/4/2017)



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