

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on:28.07.2017
Pronounced on:08.08.2017

Coram

THE HON'BLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.26892 of 2016
and

W.M.P.No.23120 of 2016

1. Union of India,
Rep.by Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
2. The Postmaster General,
Western Region (TN),
Coimbatore 641 002.
3. The Senior Superintendent of Post Offices,
Erode Division,
Erode 638 001. .. Petitioners

/versus/

1. R.Shanmugam
(Retired LSG, SPM, Anthiyur)
2. The Central Administrative Tribunal,
Rep.by its Registrar,
Madras Bench, Chennai 600 104. .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 2nd respondent dated 06.01.2016 made in O.A.No.1434 of 2013 and quash the same.

For Petitioners :Mr.V.P.Sengottuvel
For Respondents :Mr.R.Malaichamy for R1
R2-Tribunal

O R D E R

(Order was made by Dr.Justice G.Jayachandran)

By consent of both the counsels, the main writ petition is taken up for final disposal.

2. The first respondent herein entered into service in the Postal Department as Postal Clerk (later re-designated as Postal Assistant) on 22.11.1967 at Coimbatore Postal Division. On transfer, he joined in Erode Division on 10.06.1975 under Rule 38 of P&T Manual Volume IV. As per his circle seniority, he was promoted to Lower Selection Grade (in short 'LSG') cadre on 22.08.2007 and retired on 30.06.2008 as LSG cadre on attaining superannuation. During his service, he was given financial up-gradation under Time Bound One Promotion (TBOP) Scheme on 30.11.1983 and Biennial Cadre Review (BCR) Scheme with effect from 01.01.1994. While so, referring the order of the Central Administrative Tribunal (CAT) passed in the case filed by one T.Mani in O.A.No.73 of 2010, dated 26.07.2011, he made a representation to the authorities on 05.06.2013 to promote him to Higher Selection Grade-I cadre on par with his juniors with reference to the date of appointment and working in various Postal Divisions.

3. The Department declined his request on the ground that, as per the Department of Postal and Telegraphs (Selection Grade Posts) Recruitment Rules, 1976, for consideration to Higher Selection Grade-I (in short 'HSG-I') cadre, one should have put in 3 years of regular service in Higher Selection Grade-II (in short 'HSG-II'). Since the respondent retired in LSG cadre, the judgment in O.A.No.73 of 2010 is not applicable.

4. Aggrieved by the rejection of his request, the respondent filed O.A.No.1434 of 2013 and the same was allowed on the following terms:-

"8. It is not in dispute that the applicant retired from service while the LSG cadre post was organized as circle cadre. Many of the juniors marched over him while LSG cadre post was organized at divisional level. Once the LSG cadre post was brought under circle cadre, he was entitled to all the benefits that were extended to his immediate juniors. The relief sought for by the applicant in this OA is similar to that of the applicant in O.A.No.73 of 2010. The relief portion of the order passed by this Tribunal in O.A.No.73 of 2010 has been extracted supra. Following the judgment passed in O.A.No.73 of 2010, we direct the respondents to allow promotion to the applicant on notional basis that were granted to his immediate junior. The notional promotion would entitle notional fixation of pay on the analogy of 'no work no pay' at higher post and the applicant's pay fixation in the

higher grade on the date of his superannuation and his terminal benefits are to be revised accordingly."

5. Challenging the order passed by the Central Administrative Tribunal, the present writ petition is filed on the ground that during the year 1985, policy decision was taken to Divisionalise LSG cadre and the same was given effect from 13.12.1985 till circle seniority restored on 17.05.2006. As per the Rule prevailing during that time, promotion to LSG cadre in a particular division was according to the divisional seniority of the Postal Assistants of that particular division with reference to the vacancies occurred in LSG cadre in that Division. In Erode Division, no junior to the respondent was promoted to LSG cadre. The respondent cannot compare himself with officials promoted as LSG in different divisions, when LSG was divisional cadre. For promotion to HSG-II cadre, which is the feeder cadre for HSG-I, common circle seniority is followed. The modification of LSG cadre from Circle to Division and then, from Division to Circle was the policy decision of the Department. During the period, when LSG was a divisional cadre, promotion to LSG was made with reference to the Divisional Seniority of the Postal Assistants in their respective Division against the vacancies occurred during 13.12.1985 to 17.05.2006.

6. According to the writ petitioners, the case of T.Mani, the applicant in O.A.No.73 of 2010 is factually different. T.Mani was promoted to LSG cadre with effect from 01.07.2002 as per his seniority in the Namakkal Division, with reference to the vacancies in Namakkal Division at that time. Then, he was promoted to HSG-II on 08.12.2007 based on his circle seniority and retired on 30.06.2008. By virtue of the order in O.A.No.73 of 2010, he was given notional promotion as HSG-II from 13.05.2007 and HSG-I on Adhoc basis from 19.07.2007.

7. When any cadre with common seniority is bifurcated or trifurcated for administrative reasons and start following separate seniority for respective department, the possibility of juniors scoring march over the erstwhile seniors and occupying higher post due to availability of vacancy in the Department they are posted, cannot be ruled out. In case, if the cadres get amalgamated or unified at a later point of time, then the original common seniority has to be restored.

8. This preposition of law is settled by the Hon'ble Apex Court in Omprakash Sharma and others -vs- Union of India and others reported in 1985 (Supp) SCC 218 and followed by Kerela Electricity Board -vs- N.Sukesan reported in 1996 (9) SCC 397, in which the relevant portion of the order is extracted below:-

"The result of the trifurcation and amalgamation of the workshop with

the Bombay office was that the workshop staff including respondents 3 to 6 were taken over on the seniority list maintained by the Bombay office. It is admitted that on account of availability of vacancies in the Bombay office respondents 3 to 6 got some accelerated promotion in the cadre of head clerks. Surprisingly after a span of 23 years, Railway Administration reconsidered its earlier decision and detached the workshop staff from the office of the Chief Electrical Engineer, Bombay and brought it back to Jhansi and three former departments under Divisional Electrical Engineer were amalgamated. In other words situation ante as on August 31, 1956 was restored, and members of the staff were brought on common seniority list cadre wise. This factual averment is unambiguously admitted. Consequent upon amalgamation in 1979 a fresh common seniority list was drawn up in which cadre wise respondents 3 was shown senior to appellant 3. Obviously when the amalgamation took place, respondents 3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed some accelerated promotion. When workshop staff was amalgamated with the Bombay office. But when they were repatriated and re-amalgamated with the original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This is not a case where appellants were passed over at the time of selection or denied promotion on the ground of unsuitability. In such a situation, status quo ante has to be restored."

9. The tribunal, while deciding O.A.No.73 of 2010 has rightly applied the above proposition and granted the relief to the applicant T.Mani, since he was promoted as LSG based on Divisionwise seniority and his further promotion from LSG to HSG-II was based on circle seniority. Whereas the facts of the private respondent in this case is slightly different which

cause an embargo to apply the same principle.

10. The respondent was transferred from Coimbatore Division to Erode Division in the year 1975. As per Rule 38 of the Postal Manual Volume IV, in case of request transfer from one division to another division, the transferred official shall be placed bottom in the seniority list. Therefore, the date on which he joined the Erode division has to be reckoned for the purpose of fixing seniority. It is the admitted case that after restructuring the cadre in the year 1985, the division-wise seniority was followed for the purpose of promotion to LSG cadre. During that time, the respondent was not found eligible for LSG cadre. After 06.01.2016, on unification and restoring circle-wise seniority for the feeder cadre, the respondent was placed in LSG cadre on 22.08.2007. It is not the case of the respondent that so and so, who is junior to him, is promoted to LSG cadre prior to his promotion. Contrarily, the department has specifically stated that the seniority of the respondent never overlooked and none of the junior to the respondent in Erode Division was promoted as LSG ahead of the respondent. Further, Postal Department Service Rules prescribes three years regular service as LSG as a pre-requisite to enter into HSG cadre. The respondent even before completing 3 years service as LSG had attained superannuation. Hence, his request to give notional promotion as HSG-I cannot be countenanced. As far as T.Mani the applicant in O.A.No.73 of 2010 is concerned, he was placed in LSG cadre on 01.07.2002 itself and promoted as HSG-II in the year 2007. Therefore, the respondent herein cannot claim parity with T.Mani.

11. Since the facts of this case is not similar to the case of T.Mani, the benefit of the judgment in O.A.No.73 of 2010 cannot be extended to the first respondent herein. This Court find, the Tribunal has erroneously direct the Department to follow the judgment in O.A.No.73 of 2010, which is not similar to the facts of the present case.

12. As a result, the order of the Tribunal in O.A.No.1434 of 2013, dated 06.01.2016 is set aside. The Writ Petition is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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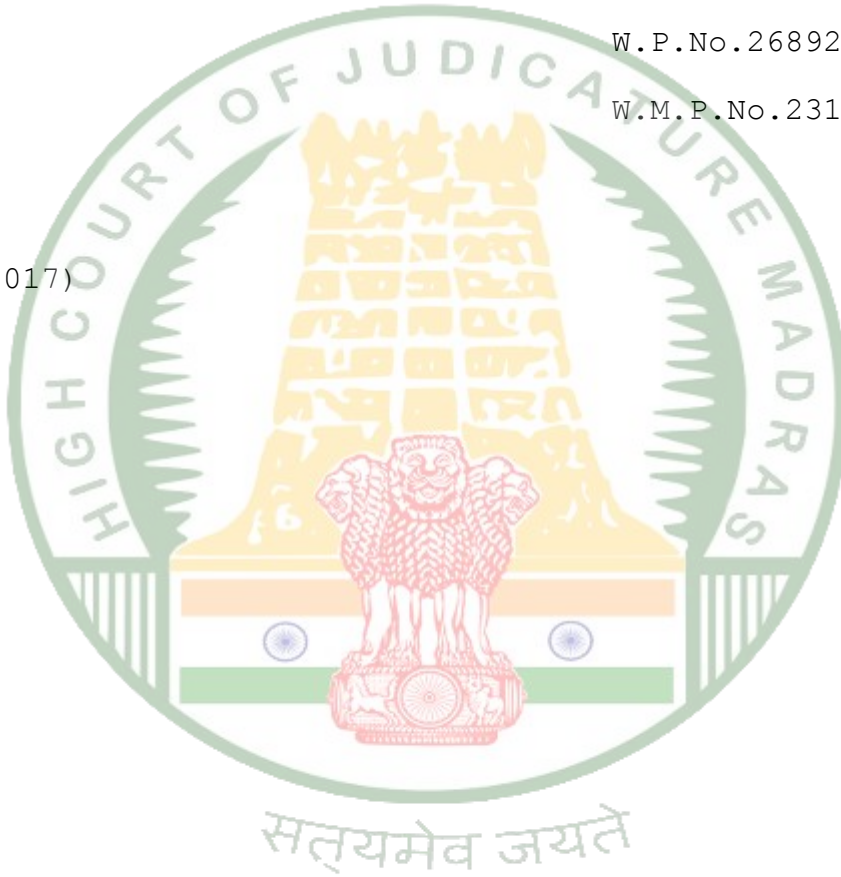
To

The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

+1 Cc to Mr.V.P.Sengottuvel, advocate sr 56970
+1 CC to Mr.R.Malaichamy, Advocate sr 57023.

W.P.No.26892 of 2016
and
W.M.P.No.23120 of 2016

MN (CO)
sp (22/08/2017)



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