

## KERALA HIGH COURT

Balakrishnan

Vs

Comptroller And Auditor General Of India

(Kochu Thommen, J.)

22.10.1975

### JUDGEMENT

#### **Kochu Thommen, J.**

( 1. ) The petitioner who is an Upper Division Clerk in the savings Bank Control Organisation (shortly stated SBCO) in the Posts and telegraphs Department seeks a direction from this court to the Director General of Posts and Telegraphs, New Delhi to grant the petitioner selection grade in the category of UDC with effect from 1968 or 1969 or earlier with all attendant benefits and privileges.

( 2. ) THE petitioner was working in the Audit and Accounts department, where he was appointed as a Lower Division Clerk on 9-7-1952. He was confirmed with effect from 1-3-59. On 2-4-59, after having passed the Departmental Examination, he was promoted to officiate as UDC in a substantive and regular vacancy, in 1960, the Department had formulated certain terms and conditions under which transfers could be effected from the Audit Office to SBCO. Under these orders, 10% of the operative UDCs shall be in the selection grade as in the case then in vogue in the Audit Office. Selection grade was to be given to the UDCs based on seniority to the 10% vacancies earmarked for them. Relevant orders with regard to that have been produced along with the counter filed by respondents 1 to 5 marked as R4 and R3. In Ext. R4, which is a letter from the director General of Posts and Telegraphs addressed to the Accountant General, p&t, the terms and conditions for Absorption of surplus Audit staff in the p&t on the abolition of duplicate SB ledger cards in Branch Audit Offices are specified. THERE it is stated that 10% of the operative UDCs' posts shall be in the selection grade as is the case at present in the Audit Offices. Ext. R3, which is a subsequent circular issued from the Office of the Accountant general, P & T dated 31-3-64 also contains terms and conditions of transfer of the staff from the Accountant General's Office to the Posts and Telegraphs department. In Ext. R3, it is stated that the seniority of Upper Division clerks and Lower Division Clerks appointed as upper Division and Lower Division clerks in the Posts and Telegraphs Department will be fixed after taking into account the service rendered by them as Upper Division Clerks and Lower division Clerks in the

Audit Offices and that 10% of the sanctioned strength of posts of UDCs is likely to be in the scale of Rs. 210-10-290-15-320-EB-15-380 and promotion to these posts is likely to be made on conditions similar to those obtaining in the Audit Department. THE petitioner was transferred to the SBCO in 1963. Ext. P3 is the order of transfer. It is stated therein that the transfer of the official is in the interest of public service. THE SBCO comprises of the following four distinct group of officials. (i) UDCs from Audit Offices who opted for service in the sbco, (ii) Post Office Clerks who were appointed in the SBCO on selection basis or who qualified in the merit rating test, (iii) Outsiders recruited through competitive examination, (iv) LDCs of SBCO on passing the merit rating test or on a seniority-cum-fitness basis. The petitioner's grievance arose because it was decided by the Director General, Posts and Telegraphs in consultation with the accountant General, P & T that as the posts of UDCs were filled up from different sources, it was found necessary to fill up the selection grade posts in an equitable manner from amongst the different categories of staff working in the UDC cadre, and that the number of selection grade posts for the UDCs of audit Offices should be 10% of the total number of Audit Office UDCs and the other three categories will be treated as a different unit and they will be entitled to 10% of the total number of such personnel. This has resulted in persons who became UDCs later than the petitioner being given the selection grade, while the petitioner is denied of such promotion. The petitioner has given instances of persons who became UDCs only subsequent to the petitioner, being given the selection grade. The petitioner made representations in the matter which had been of no effect. It is in such circumstances that he has approached this court as stated earlier, mainly for a direction for granting selection grade based on his seniority in the UDC Cadre. In the counter that has been filed on behalf of respondents 1 to 5, by the Director of Postal Services (South), Kerala Circle, it is stated that it would be detrimental to persons who had come in from the categories of Post Office Clerks, outsiders recruited and LDCs of SBCO on passing the merit rating test or on a seniority-cum-basis, if all the UDCs who had come from Audit Office opting for service in the SBCO, to which the petitioner belongs, are alone given promotion to selection grade. The representations made by the petitioner and his Association for going back to his original office were rejected since the official was transferred to the posts and Telegraphs Department on a permanent basis, and he has no claim for repatriation and if the petitioner's request had been acceded to, that might create administrative difficulties blocking the promotion of some one else to be promoted. It is stated that the petitioner volunteered for service in the sbco after knowing fully well that it was a permanent transfer. It is stated that the question of promoting him to the selection grade is purely a matter to be decided by the P & T Department, as he was transferred permanently to that Department according to the conditions of transfer and rules of recruitment to posts of selection grade UDCs. Promotion of the officials to the selection grade was made in accordance with the seniority in the two categories referred to earlier taken separately and no official junior to him belonging to the same category had been promoted.

( 3. ) I think the action taken by the respondents in the matter cannot be sustained. It has been repeatedly laid down by the Supreme court that once certain officials have come into a particular category or cadre, then they cannot be treated differently in the matter of service conditions.

Every UDC who has come to the new organisation must be given equal opportunity in the matter of promotion or selection to a selection grade. Where promotion is made by selection on the basis of merit-cum-seniority, every one of them should be able to enter the list; they should have equal opportunity with others for being considered for promotion. Where this selection or promotion is purely based on seniority, the seniority in that cadre alone should be considered. There must be one common door for entry into the cadre of selection list of UDC through which every UDC could be entitled to enter. There cannot be a classification among members of the same class; one door for one group and another door for another group. Such treatment will create inequality of opportunity in the matter of promotion or selection. I need only refer to the decisions of the Supreme Court in *Shankar Deodar v. State*<sup>1</sup> *Jogindar Nath v. Union of India*<sup>2</sup> *Roshan Lal Tandon v. Union of India*<sup>3</sup> and *Mervyn Continho v. Collector of Customs, Bombay*<sup>4</sup>. There can be no question of any quota being reserved to particular service or sources from which the persons have come into the UDC cadre. Therefore, in the circumstances of the case, I would direct that the petitioner be promoted to the post of UDC selection grade on the basis of seniority as UDC, without classifying the UDC into various categories on the basis of their source of original appointment. The petitioner would be entitled to all attendant benefits consequent on such promotion. The o. P. is disposed of as above, but I make no order as to costs. Allowed. . . ;

1(AIR 1974 SC 259)

2(AIR 1975 SC 511)

3(AIR 1967 SC 1889)

4(AIR 1967 SC 52 )