

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD**

OA/021/00521/2021

Date of CAV: 07.09.2021

Date of Pronouncement: 21.09.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr.B.V.Sudhakar, Admn. Member

1.P.Nagaraj, Group "C" S/o. P.Suraiah,
Aged : 32 years, Occ : LSG SPM, Chegonda,
Medak District, Mobile No.9642800005,
e-mail.ID : nagaraju495@gmail.com

2.R.Bhaskar S/o R.Shankar,
Aged : 31 years, Occ : LSG SPM,
Akkanapet SO, H.No.: Attached Quarters,
Mobile : 9705485021

...Applicants

(By Advocate: Mr. B. Gurudas)

Vs.

1. Union of India, rep. by
The Secretary to the Govt of India,
M/o Communications & IT,
Dept of Post, New Delhi 110 001.

2.The Chief Postmaster General,
Telangana Circle, Hyderabad-500 001.

3.The Postmaster General,
Hyderabad Hqrs Region,
Telangana Circle, Hyderabad-500 001.

4.The Senior Supdt of Post Offices,
Secunderabad Division, Hyderabad-500 080.

5.Superintendent of Post Offices,
Medak Division, Medak-502 001.

6.G.Suresh Naidu S/o & Age Not Known,
Occ : Postal Assistant, Banjara hills PO,
Hyderabad-500 034.

7.S.Ramesh S/o & Age Not known,
Occ : PA Secunderabad HO,
Secunderabad – 500 003.

....Respondents

(By Advocate : Mr.B.Siva Sankar, Addl. CGSC)

ORDER
(As per Hon'ble Mr. B.V.Sudhakar, Admin. Member)

Through Video Conferencing:

2. The OA is filed challenging the orders of re-allotment of the unofficial respondents to Secunderabad Division vide letter dated 7.7.2021.



3. Brief facts are that the applicants and the unofficial respondents R-6 & R-7 were selected for the Lower Selection Grade (*for short LSG*) and initially allotted to Hyderabad Region. Thereafter, on their request, they were re-allotted to Hyderabad Headquarters region and thereon, the applicants were posted to Medak division. Accordingly, applicants joined on 12.5.2021 whereas unofficial respondents did not join the LSG grade on promotion after they were posted to Hanumakonda Division. Applicants requested for posting to Secunderabad Division and while their requests were pending, R-6 & R-7 were re-allotted from Hanumakonda to Secunderabad Division vide order dated 7.7.2021. Aggrieved, the OA is filed.

4. The contentions of the applicants are that they are seniors to R-6 & R-7 since they joined the LSG posts on 12.5.2021 and seniority is counted from the date of joining the LSG posts. The unofficial respondents despite having been promoted to LSG and allotted to Hanumakonda Division, continued to work as Postal Assistants in Hyderabad and Secunderabad Divisions. Seniors have to be given preference over juniors in respect of transfers.

5. Respondents filed detailed Standing Instructions wherein they do not dispute the fact that the applicants and the unofficial respondents were promoted to LSG by originally allotting them to Hyderabad Region and later, to Hyderabad Headquarters region. The unofficial respondents are seniors to the applicants in the Postal Assistant cadre and hence were posted to Secunderabad Division in LSG cadre on 7.7.2021. DOPT letter dated 11.11.2010 was cited in support of contention that the applicants are juniors to R-6 & R-7. LSG is a circle cadre and the seniority is based on the seniority as recommended by DPC. Without the disposal of the representations, the applicants have filed the OA.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about allotting the unofficial respondents R-6 & R-7 to Secunderabad Division in the LSG cadre without considering the requests of the applicants for posting to the said Division on the grounds that there were no vacancies. Respondents claim that R-6 & R-7 are seniors in the basic Postal Assistant cadre (*for short PA*), as given here under:

Sl. No.	Sl. No. CO Memo dated 30.03.2021	Name of the officials	Allotted to Region	Allotment to Division in Headquarters Region
1	93	G. Suresh Naidu	Hyderabad Region	NA
2	111	S Ramesh	Hyderabad Region	NA
3	152	P Nagaraju	Headquarters Region	Medak
4	153	R Bhasker	Headquarters Region	Medak

Respondents further assert that the seniority has to be based on the order in which the candidates are selected by the DPC, when promotions are effected on the basis of selection as per DOPT memo dated 11.11.2010, which is extracted here under:



“Where promotions are made on the basis of selection by a DPC, the seniority of such promotes shall be in the order in which they are recommended for such promotion by the Committee.”

Even the promotion to LSG, as per respondents’ version, was considered based on seniority in PA cadre as under, vide their memo dated 31.03.2021.

Sl. No.	Sl. No. CO Memo dated 30.03.2021	Name of the officials	Allotted to Region
1	93	G. Suresh Naidu	Hyderabad Region
2	111	S Ramesh	Hyderabad Region
3	152	P Nagaraju	Headquarters Region
4	153	R Bhasker	Headquarters Region

Therefore, according to the respondents, based on DOPT memo cited, applicants are junior to R-6 & R-7 and that the date of joining the LSG cadre is not the criteria to reckon seniority. We do not agree with this proposition for the reasons mentioned hereunder.

II. Applicants have represented on 31.03.2021, 04.05.2021 for posting to Secunderabad division and followed it up by submitting further representations on 08.07.2021 & 12.07.2021. Without disposing the representations of the applicants, respondents have allotted unofficial respondents on 07.07.2021 to Secunderabad Division. Respondents are silent in regard to the contention of the applicants that R-6 & R-7 were

initially allotted to Hanumakonda Division. Thus, without disposing the representations of the applicants, issuing orders posting R-6 & R-7 is violative of the Principles of Natural justice. Any administrative decision which is violative of the Principles of Natural Justice is vitiated.



The other aspect of relevance is that the applicants have joined the LSG cadre on 12.5.2021 by obeying the orders of the respondents, whereas R-6 & R-7 did not join, but continued as PAs in their Home divisions of Hyderabad and Secunderabad. As per the recent Judgment of the Hon'ble Supreme Court in ***K. Meghachandra Singh & Ors v. Ningam Siro & Ors*** in Civil Appeal No. 8833-8835 of 2019 & Batch, vide judgment dt.19.11.2019, as under, an employee will be shown in a cadre after he is born in it.

“40. The Judgment in N. R. Parmar (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in, inter-alia, J.C. Patnaik (Supra), Suraj Prakash Gupta & Ors. vs. State of J&K & Ors. (2000) 7 SCC 561, and Pawan Pratap Singh & Ors. Vs. Reevan Singh & Ors.(Supra). These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (Supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N. R. Parmar (Supra). Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement.”

Applicants have joined LSG cadre on 12.5.2021 while the unofficial respondents did not join the LSG cadre on the said date. Hence, R-6 & R-7 would not rank senior to the applicants when they are not a part of the LSG cadre itself by 12.05.2021. Hence, as per the legal principle cited, unofficial

respondents rank junior to the applicants in the LSG cadre. Therefore, DOPT memo cited by the respondents would not come to their rescue. In respect of transfers pending requests of seniors are not ignored and the juniors favoured. Therefore, the decision of the respondents of not allotting applicants to Secunderabad division is arbitrary, irrational, unreasonable and illegal on two counts namely violating the Principles of Natural Justice and the legal principle laid down in K. Meghachandra Singh judgment. Generally, Tribunal does not intervene in matters of transfers, but it has to, when the transfer/allotment orders are not in accordance with rules and law, as is seen in the present case.



III. Ld. Counsel for the applicants has submitted that there are vacancies in the Hyderabad City Divisions and prayed that the applicants may be posted to any of the existing vacancies in any of the Hyderabad City Divisions.

IV. Consequently, in view of the above, we direct the respondents to consider the request of the applicants to any of the City Divisions with Headquarters at Hyderabad/Secunderabad, based on the availability of vacancies and if not, the moment the vacancies arise in any of the City Divisions. Time period allowed to implement the judgment is 3 months from the date of receipt of this order.

V. With the above direction, the OA is disposed of with no orders as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER
 evr

(ASHISH KALIA)
JUDICIAL MEMBER