

**(2024) 11 CAT CK 0017**

**Central Administrative Tribunal Ernakulam Bench, Ernakulam**

**Case No:** Original Application No. 180, 00118 Of 2020

Pradosh.P.Pai

APPELLANT

Vs

Union Of India Represented By  
Secretary To Government,  
Ministry Of Tourism, HRD  
Division, C-1, Hutments,  
Delhousi Road, New Delhi 11  
& Ors.

RESPONDENT

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**Date of Decision:** Nov. 11, 2024

**Hon'ble Judges:** Sunil Thomas, Member (J); V. Rama Mathew, Member (A)

**Bench:** Division Bench

**Advocate:** P.V. Mohanan, O.M. Shalina

**Final Decision:** Dismissed

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### **Judgement**

V.Rama Mathew, Member A

1. The brief facts of the matter are as under :

The applicant is a General candidate aspiring for promotion to the category of Senior Lecturer-cum-Senior Instructor in the Institute of Hotel

Management and Catering Technology managed by the 2nd respondent. The 3rd respondent belongs to the SC category and is junior to the applicant

in the cadre of Lecturer-cum-Instructor.

2. His claim is that the promotion of the 3rd respondent to the post of Senior Lecturer-cum-Senior Instructor against a reservation point is in violation

of the Post Based Reservation Roster framed on the basis of the judgment in R.K.Sabharwal & Ors., vs. State of Punjab & Ors., AIR 1995 SC

1125.

3. The applicant is senior to the 3rd respondent in the category of Lecturer-cum-Instructor in the confirmed seniority list as on 01.01.2019. The next higher post is of Senior Lecturer-cum-Senior Instructor, the cadre strength of which is 3. A vacancy of Senior Lecturer-cum-Senior Instructor arose

on 30.04.2019 consequent on retirement of Shri.Ivan Thomas and consequent of the formation of revised staff strength a new vacancy has been

sanctioned by order dated 02.04.2019. Thus, two vacancies arose in the year 2019.

4. As per the Post Based Reservation Roster maintained by the department the 7th point is set apart for SC category candidate. Therefore, the two

vacancies arose in the year 2019 by providing General category candidate to depend on seniority. It has been argued that overlooking the claim of the

applicant the newly arising vacancy was treated as reservation vacancy at point No.5 by the DPC and the 3rd respondent was recommended for the

post. Consequently the 2nd respondent vide Annexure A-4 order dated 09.10.2019 promoted the 3rd respondent as Senior Lecturer-cum-Senior

Instructor and this caused the applicant to file the O.A.

5. The applicant was selected and appointed as Lecturer-cum-Instructor in the Institute of 2nd respondent on 01.08.2001 and had successfully

completed probation in the category of Lecturer-cum-Instructor and has become full member of the service. The 3rd respondent commenced service

as Lecturer-cum-Instructor on 01.08.2001 and is junior to the applicant in the confirmed seniority list of Lecturer-cum-Instructor in the Institute as on

01.01.2019. The next higher post is Senior Lecturer-cum-Senior Instructor in the Pay Level-10 ie., Rs.56100-177500 as per the 7th Pay Commission.

The method of recruitment initially was direct recruitment. As per the Revised Rules, the method of recruitment is promotion failing which by direct

recruitment/short term contract. The post is a selection post. An extract of the Revised Recruitment Rules is produced as Annexure A-1. The

applicant being Sl.No.2 in the confirmed seniority list, he was, thus, eligible to be promoted. The cadre strength of the post of Senior Lecturer-cum-

Senior Instructor maintained by the department is 3. One Jolly Jospeh was directly recruited as Senior Lecturer on 02.09.1996 through open

competition and she was later promoted as Head of Department, the next higher post on 27.07.2010. The department issued orders on 27.07.2010

promoting Dr.J.Prem Chand and Shri.K.Rajasekharan and Shri.Ivan Thomas as Senior Lecturer-cum-Senior Instructor with effect from 27.07.2010.

The appointment/promotion of Shri.Ivan Thomas as Senior Lecturer-cum-Senior Instructor was challenged by Smt.Nirmala E Jacob before the

Tribunal in O.A.No.746/2010. Since there was no sanctioned post of Senior Lecturer-cum-Senior Instructor and to avoid the contingency of reversion,

the department promoted Shri.K.Rajasekharan as Head of Department and posted Smt.Nirmala E Jacob to the post of Senior Lecturer-cum-Senior

Instructor pursuant to the order passed by the Tribunal. Thus, Smt.Nirmala E Jacob was appointed as Senior Lecturer-cum-Senior Instructor with

effect from 27.07.2010. This as per the terms of the Tribunal's order was a notional seniority granted with effect from 27.07.2010 with actual effect

from the date she took charge. Although the direction of the Tribunal was to ensure that Smt.Nirmala E Jacob was accommodated with effect from

the date her immediate junior was promoted if necessary by creation of supernumerary post, there is no evidence of supernumerary post having been

created during this period. The date of Review DPC for the promotion of Smt.Nirmala E Jacob and the DPC for HoD were both 27.08.2011. The

vacancy of the post of HoD arose on 05.01.2011 when Smt.Jolly Joseph relinquished charge of the post. On 14.09.2011 Shri.K.Rajasekharan was

appointed as HoD and Smt.Nirmala E Jacob was substantively promoted as Senior Lecturer-cum-Senior Instructor with notional seniority from

27.07.2010, which is the date on which Shri.Ivan Thomas, her immediate junior was promoted.

6. The question to be addressed in this sequence is whether the fixation of notional seniority with reference to an earlier date is an actual vacancy

which occupies a roster point in the reservation roster. It is very clear from the order in the earlier O.A that it was not a substantive promotion from

27.07.2010 which was given to Smt.Nirmala E Jacob but a notional fixation of seniority. No additional post was occupied by Smt.Nirmala E Jacob

between the period from 27.07.2010, which is the date of her notional seniority and 14.09.2011, which is the date of her actual promotion. On the date

of her actual promotion Shri.K.Rajasekharan was no longer holding the charge of Senior Lecturer-cum-Senior Instructor and had been promoted as

HoD. Therefore, the number of posts remained constant. Therefore, there was no additional reservation point in the roster which had been occupied

by Smt.Nirmala E Jacob in the reservation roster. This being the case the roster goes as follows :

(i) Smt.Jolly Joseph occupied the unreserved point in the roster.

(ii) Dr.P.Prem Chand occupied the 2nd point in the roster.

(iii) Shri.K.Rajasekharan occupied the 3rd point in the roster.

7. In the case of replacement by promotion because it is a 3 post cadre which later became 4 post cadre, Shri.Ivan Thomas occupied the 1st

replacement point/position. Smt.Nirmala E Jacob occupied the 2nd replacement point when Shri.K.Rajasekharan became the HoD. When the two

vacancies arose in 2019 the 3rd replacement point, the 6th point in the roster was occupied by Shri.Dennis Joseph Mathew, a unreserved candidate.

So what remains was the 7th point which is a point reserved for SC candidate which went to Shri.Ashok.V.D., who is a SC candidate which led to

him superseding the applicant, who was a general candidate. This situation arises since the DPC for both HoD and for the accommodation of

Smt.Nirmala E Jacob in the post of Senior Lecturer-cum-Senior Instructor happens simultaneously and since Smt.Nirmala E Jacob's seniority with

effect from 2010 was only notional fixation and substantively she occupied the vacancy which has been created by Shri.K.Rajasekharan, no

supernumerary post has been created and as per the roster there was no additional occupation of the post. Hence, the 7 point scale as created under

R.K.Sabharwal's decision (supra) is fixed as indicated above.

8. In the light of the above, the O.A does not succeed and is accordingly dismissed. No order as to costs.

(Dated this the 11th day of November, 2024)