

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 666 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Surendra Kumar Nanda, aged about 58 years, S/o Late Krushna Chandra Nanda, presently working as Postmaster, Uditnagar Head Post Office, Rourkela-12.
2. Ramakanta Sahu, aged about 55 years, S/o Sri Biswaswar Sahu, presently working as Accountant, Uditnagar Head Post Office and residing at PTN-90, Sector-6, Old P&T Colony, Rourkela-2.

.....Applicants

VERSUS

1. Union of India, represented through its Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi-110001.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
3. Senior Supt. Of Post Offices, Sundergarh Division, Sundergarh - 770001.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Ms.S.B.Das, counsel

Heard & reserved on : 2.12.2019 Order on : 02.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicants have prayed for the following reliefs in this OA:-

- “(i) To admit the OA;
- (ii) To quash the communication dtd. 18.8.2015 & 9.9.2015 (Annex.A/6 series) holding same is illegal & discriminatory;
- (iii) To direct the Respondent to extend the benefit of order dtd. 23.07.2008, passed in OA No. 1196/2004 (Annex.A/2) and decision dtd. 23.01.2015 (Annex.A/3);
- (iv) To extend the all consequential benefits including promotion to the HSG-II & HSG-I respectively on completion of 8 years and 3 years thereafter from the date of initial promotion granted through TBOP/BCR;
- (v) To pass any other order/orders as deemed fit and proper for the ends of justice.”

2. The applicants have aggrieved by the orders dated 18.8.2015 and 9.9.2015 (Annexure-A/6 series) by which, the claim of the applicants for

retrospective promotion to the grade of HSG-II and HSG-I at par with the applicants of the OA No. 1196/2004 was rejected on the ground that the benefit of the Tribunal's order in OA No. 1196/2004 is applicable to the applicants in the said OA. The applicants in OA No. 1196/2004 were granted the benefit of promotion by this Tribunal vide order dated 23.7.2008 (Annexure-A/3) and the said order had been upheld by Hon'ble High Court, since the applicants are similarly situated as the applicant in the OA No. 1196/2004. The representations of the applicant Nos. 1 and 2 at Annexure-A/5 series have been rejected by the respondents vide the impugned orders dated 9.9.2015 and 18.8.2015 respectively on the ground that as per the decision of the respondent no.1, the order of the Tribunal in OA No. 1196/2004 will be applicable for the applicants in that OA only.

3. The case of the applicants is that they were similarly placed as the applicants in OA No. 1196/2004 and not extending similar benefits to the applicants will amount to violation of Article 14 and 16 of the Constitution of India. The applicant Nos. 1 and 2 claim that they were granted LSG promotional benefit w.e.f. 5.7.1005 and 24.12.1998 and claim that they were entitled for the next promotion to HSG-II grade after 8 years of service in LSG post and to HSG-I grade after 3 year from the date of promotion to HSG-II and these are as per the order dated 23.7.2008 (Annexure-A/3) of the Tribunal.

4. The respondents, in their Counter, have denied the contention that the date of allowing TBOP benefit would be same as the date of promotion to the LSG post. It is stated that as per the order of Government, TBOP and BCR schemes were financial upgradation schemes, where as posting of an employee to LSG posts is done through promotion after examination of the case in the DPC. On completion of specific number of years of service in LSG grade, the employee is made eligible for promotion to HSG-II grade. It is further averred that the number of LSG, HSG-II and HSG-I posts in the department are limited and "the employees are selected for the same posts through Departmental Promotion Committee (DPC) on seniority-cum-fitness basis and following other

departmental norms.” It is further stated that the order in OA No. 1196/2004 was implemented for the applicants in that OA only.

5. The applicants in the Rejoinder, have not disputed the contention that the posting of LSG or HSG was promotional posts, where as TBOP and BCR schemes were financial upgradation, which are not linked to vacancy. But it is averred that the DPC was not held since 1983. It is stated that as per the Recruitment rules, a Postal Assistant with 10 years of experience is eligible for promotion to LSG cadre. An employee with 8 years of service, is eligible for promotion to HSG-II cadre. For promotion to HSG-I grade, 3 years of experience in HSG-II is essential. It is stated that TBOP promotion is equivalent to promotion to LSG as contended in the OA.

6. Learned counsel for the applicants and the respondents were heard in the matter and the pleadings on record were perused by us. The issue to be decided is whether the applicants are entitled for the similar reliefs as granted to the applicants of the OA No. 1196/2004 vide order dated 23.7.2008. Like the benefits allowed in OA No. 1196/2004, the applicants have claimed that the date of their placement in TBOP be considered as promotion to LSG cadre and they be allowed the benefit of promotion to HSG-II cadre after completion of 8 years service in TBOP/LSG grade in view of the order dated 23.7.2008 of the Tribunal, which was implemented by the respondents in the year 2015. The applicants have represented the authorities after implementation of the order dated 23.7.2008 by the respondents after it was upheld by Hon’ble High Court.

7. Learned counsel for the respondents have submitted note of arguments enclosing a copy of the order dated 24.7.2018 of Hon’ble High Court in the case of Union of India & others vs. Sri Kanhu Charan Das, in which, under similar circumstances, delay in raising the claim on the part of the applicant-employees was considered to be an important factor. In this case, the dispute was similar and Hon’ble High Court has held in the case of Sri Kanhu Charan Das (supra) in W.P. (C) 7018/2017 as under:-

"The Tribunal has formulated the issue that whether the orders of promotion be treated as regular promotion or to consider promotion to HSG-II after 8 years of service in LSG and to HSG-I after 3 years experience in HGS-II. The Tribunal referring to the decision rendered by the Madras Bench Tribunal in O.A. No. 679 of 2003 dated 19.3.2004 which was confirmed by the Madras High Court and the said decision is binding effect on the Tribunal, has disposed of the O.A. No. 1196 of 2004 by order dated 23.7.2008. The said order was challenged in W.P.(C) No. 16269 of 2008. This Court while dismissing the said writ petition on 17.1.2012 does not find any infirmity in the order of the Tribunal which was challenged before the Apex Court in SLP. The Apex Court also dismissed the SLP.

The applicants-opposite parties contended before the Tribunal that they joined the Department of Posts as Postman then joined as Postal Assistant by passing the Departmental Examination. Under the TBOP Scheme on completion of 16 years of service they joined as Postal Assistant. Thereafter promoted to BCR. They further contended that as per the Departmental Circular TBOP/BCR are promotions corresponding to LSG/HSG-II cadres. They are entitled to promotion HSG-II on completion of 8 years of service as LSG cadre and promotion to HSG-I on completion of 3 years of service in HSG-II. As such they should have been promoted to HSG-II in the year 2005 and on completion of 3 years HSG-I in the year 2008.

The Apex Court in the case of State of Uttar Pradesh and others Vrs. Arvind Kumar Srivastava and others reported in (2015) 1 SCC (L&S) 191 at paragraphs 22.1, 22.2 and 22.3 held that:-

"22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma V. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

So also the Apex Court in the case of Union of India and others Vrs. M.K.Sarkar held that:-

“When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

Further the Apex Court in Civil Appeal Nos. 7328-7329 of 2013 held that:-

“There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective.”

The applicants have already retired from service. Thereafter they have filed their representations to give them such benefit which was extended to the applicants pursuant to the order of the Tribunal in O.A. No. 1196 of 2004 dated 23.7.2008. Their representations were made in the year 2015. The authorities have rejected the same. Thereafter they have approached the Tribunal when the other set of employees who have approached the Tribunal to get those benefits. The applicants-opposite parties have never claimed such benefit nor they have approached the Court of Law when cause of action arose in the year 2005 or in 2008 rather they approached the Tribunal in 2015 after their retirement even when the decision was rendered and other employees get that benefit in the year 2008. They have also not approached the authority to extend such benefit to them. No doubt they have slept over the matters for years together and they can be treated as fence-sitters. Considering the aforesaid facts and the settled principles, we set aside the impugned order dated 18.8.2016 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 318 of 2017 along with O.A. Nos. 384, 385, 386 & 387 of 2015 in exercising the jurisdiction under Article 227 of the Constitution of India.

Accordingly the writ petitions are allowed.”

8. Learned counsel for the respondents has also enclosed copy of the orders of the Tribunal in OA No. 849/2015 and OA No. 505/2018 with a batch of similar OAs, which were dismissed following the order dated 24.7.2018 of Hon’ble High Court as referred in the preceding paragraph. In the case of the applicant-employee in W.P. (C) 7018/2017, the claim of promotion to HSG-II and HSG-II was from the years 2005 and 2008. Similarly, in the present OA, the applicants claim the benefit of promotion to HSG-II from the year 2003 (for applicant No. 1) and 2006 (for applicant No. 2). They did not raise their claim about the promotion before the authorities or the Court till 2015. They did not approach within a reasonable period from the date of order in OA No.

1196/2004 i.e. 23.7.2008. Applying the ratio of the judgment dated 24.7.2018 of Hon'ble High Court to the present OA, which is squarely covered by the said judgment, we are of the view that the applicants in this OA have also slept over the matter and they can also be treated as fence-sitters.

9. Further, it is not the case of the applicants that any of their junior was promoted while ignoring the applicants before their retirement. The applicants have claimed the benefit only on the basis of the order dated 23.7.2008 claiming the benefits from the year 2003 and 2006, which is clearly barred by limitation.

10. In the circumstances and following the order dated 24.7.2018 of Hon'ble High Court as discussed earlier, this OA is liable to be dismissed. Accordingly, the OA is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath