



# केन्द्रीय प्रशासनिक अधिकरण

## Central Administrative Tribunal

प्रधान न्यायपीठ

PRINCIPAL BENCH

श्री

Hon. Shri ..... K. Muthukumar, M.A. Chairman

16  
अध्यक्ष

हस्ता/मूल प्रतिवेदन सं० ..... १६६

का पूर्व-देय-आदेश विचारार्थ इसके साथ प्रेषित किया जाता है।

Pre-delivery ORDER in

I.A.I.O. A. No. 861/97 of 199.....

is sent herewith for Consideration. Regards.

*Lakshmi*

(Smt Lakshmi Swaminathan)  
M (S)

26.8.98

*BR*

*W  
KPS*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 861/97

T.A. No.

Date of decision 27-8-98

(17)

D. P. Baba ra

... Petitioner

Mrs. Rani Chhabra

... Advocate for the  
Petitioner(s)

**VERSUS**

UDI & Ors

... Respondents

Sh. K. C. D. Gangwani

... Advocate for the Respondents

**CORAM**

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or  
not?.

Yes

2. Whether it needs to be circulated to  
other Benches of the Tribunal?

No.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)

Member (J)

Central Administrative Tribunal  
Principal Bench

O.A. 261/97

(8)

New Delhi this the 27<sup>th</sup> day of August, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri K. Muthukumar, Member(A).

O.P. Babara,  
S/o Shri Kalu Ram,  
R/o G-2182, Netaji Nagar,  
New Delhi.

... Applicant.

By Advocate Mrs. Rani Chhabra.

Versus

1. Union of India through  
Director General Posts & Telegraphs,  
Dak Bhawan, Sansad Marg,  
New Delhi.
2. Chief Post Master General,  
Lucknow, UP Circle,  
Lucknow.
3. Post Master General,  
Dehra Dun Region,  
Dehradun.
4. Senior Superintendent of Post Offices,  
Muzaffarnagar Division,  
Muzaffarnagar. ... Respondents.

By Advocate Shri K.C.D. Gangwani.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the action of the respondents in not giving him the benefit of <sup>the</sup> Biennial Cadre Review (BCR) which, according to him, has accrued to him w.e.f. 1.10.1991 and further on 9.3.1992 when all his juniors were given the benefits. He submits that the respondents have withheld the benefits on the wrong assumptions that his name has been placed in a sealed cover pending departmental/criminal proceedings whereas according to him nothing was pending against the applicant on the relevant dates, including 1.10.1991.

18

(19)

2. The applicant joined the department in Group 'D' post on 1.1.1955. On 17.12.1983, he was promoted as Assistant Post Master. The respondents introduced the BCR Scheme by order dated 11.10.1991 w.e.f. 1.10.1991. The respondents have also stated that he became eligible for promotion to HS Grade-II under the Scheme w.e.f. 1.10.1991. The recommendation of the DPC held in November, 1991 was kept in a sealed cover due to the pendency of a disciplinary case. The respondents have stated that the applicant's case for promotion was again considered w.e.f. 1.7.1992 by the DPC held on 23.3.1992 but the recommendation was again kept in the sealed cover. The applicant retired from service on superannuation on 31.12.1992.

3. The applicant has submitted that from 1.1.1955 to 1.10.1991 there was no punishment, no adverse entries and no misconduct on his part which would have affected his promotion under the BCR Scheme. According to him, he was chargesheeted on 13.11.1991 for <sup>a<sup>28</sup></sup> minor offence for which he had submitted his explanation. The penalty of censure was awarded to him on 20.11.1991 which he claims is also no bar for promotion. Further, on a review application submitted by him to the Senior Superintendent of Post Offices, that persons junior to him have been approved in the DPC while his name has not been included although he had completed 36 years of unblemished service, he has stated all proceedings were quashed. Mrs. Rani Chhabra, learned counsel, has relied on the judgement of the Supreme Court in Union of India Vs. K.V. Janakiraman (AIR 1991 SC 2010) and Union of India & Ors. Vs. Dr. (Smt.) Sudha Salhan (JT 1991 (1) SC 622). The learned counsel submits that as the applicant was entitled to the higher scale w.e.f. 1.10.1991 and nothing was pending

(20)

against him on that date by way of disciplinary proceedings or ~~the~~ criminal proceedings, the respondents cannot withhold the benefits which have accrued to him under the BCR Scheme. She has, therefore, prayed that the applicant may be granted the benefit of HS Grade-II under the Scheme w.e.f. 1.10.1991 with all consequential benefits.

4. The respondents have in their reply taken a preliminary objection that the application is barred by limitation as the applicant has claimed the benefits of the Scheme from 1991 and this O.A. has been filed on 11.4.1997. They have also submitted that the letters relied upon by the applicant do not extend the period of limitation.

5. On merits, in reply to paragraphs 4.5 to 4.8, the respondents have stated that no disciplinary case was pending against the applicant on 1.10.1991. However, a charge sheet under Rule 16 was issued against him by Sr. P.M. Muzaffarnagar vide Memo dated 13.11.1991 and penalty of Censure was imposed vide Memo dated 20.11.1991. In another case, charge sheet under Rule 16 was issued to the applicant vide Sr. P.M., Muzaffarnagar Memo dated 16.8.1992. The applicant was awarded recovery of Rs.2,400/- vide SSPOs MZN. Memo dated 23.9.1992. They have submitted that at the time of DPC held in December, 1991 the disciplinary case was current and accordingly his case was kept in <sup>the P</sup> sealed cover which was communicated to the applicant by Memo dated 9.3.1992. They have submitted that the recommendations of <sup>the P</sup> DPC were kept in a sealed cover in accordance with the DOP&T O.M. dated 10.4.1989 and since the penalty of censure was imposed, the applicant was considered by the next DPC held on 23.3.1993 in the normal course. Shri K.C.D. Gangwani, learned counsel has

13

(21)

submitted that when the second DPC was held, applicant could not again be promoted because of the penalty order imposed on him on 23.9.1992 of recovery of Rs.2400/- . Therefore, when the DPCs met in December, 1991 and 23.3.1993, his recommendations were kept in a sealed cover. According to them, since in both the cases the disciplinary proceedings ended in imposition of penalty of censure and stoppage of increments, respectively, the sealed cover was not opened and the official meanwhile retired from service on 31.12.1992. They have, therefore, submitted that the applicant is not entitled to any relief.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. On the preliminary objection of limitation, it is settled law that repeated representations do not extend the period of limitation (See S.S. Rathore Vs. Union of India (AIR 1990 SC 10)). However, for the reasons given below, this Q.A. also fails on merits.

8. The BCR Scheme was issued by order dated 11.10.1991 and came into effect from 1.10.1991. As per the Scheme, it is seen that the first BCR for eligible officials <sup>were to</sup> was to be conducted immediately and orders to be issued before 31.12.1991. Thereafter, the BCR for eligible officers from 1.1.1992 to 31.12.1993 who will be completing 26 years of service or more on the crucial dates i.e. the dates of the review <sup>on 1.7.1992, 1.1.1993 and 1.7.1993</sup> were to be conducted. Admittedly, the respondents held the BCR in December, 1991, that is after the order of 11.10.1991 was issued. Although

12.

the respondents have also stated in their reply that no disciplinary case was pending against the applicant on 1.10.1991. When the Scheme came into effect, but when the DPC met in December, 1991, the chargesheet dated 13.11.1991 has been issued. According to the applicant, the penalty of censure which was imposed on him on this chargesheet was later quashed by the PMG, but Mrs. Chabra, learned counsel did not bring to our notice this order. However, we find from the letter of the Senior Supdt. of Post Offices dated 9.6.1992 (Anexure A-5) filed by the applicant himself that the CPMG, UP Circle, vide his letter dated 26.5.1992 has stated that since the applicant was not exonerated in the disciplinary cases pending against him, his promotion will be considered by the next DPC. By the time the next DPC was held on 23.3.1993, another penalty order in the second charge dated 16.8.1992 had been given in which recovery of Rs.2400/- was imposed against him vide order dated 23.9.1992. In K.V. Jankiraman's case (supra), the Supreme Court held that the sealed cover procedure is to be resorted to only after the charge-memo/chargesheet is issued. Following this decision, the Supreme Court in Dr. (Mrs) Sudha Salhan's case (supra) has held:

....We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion the departmental proceedings had been initiated or were pending or on its conclusion final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the

*WY*

(23)

recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to".

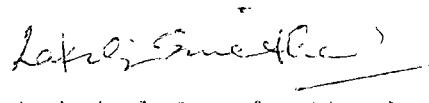
(Emphasis added)

9. Having regard to the facts in the present case and the judgements of the Supreme Court in K.V. Jankiraman's case and Dr. (Smt.) Sudha Salhan's case (supra), since on the dates when the DPCs met, the applicant was facing departmental proceedings, the procedure adopted by the respondents in placing his name in the sealed cover cannot be faulted. Therefore, even though on 1.10.1991 no disciplinary proceedings had been initiated or pending against the applicant, but at the time when the DPCs met, this was not the situation. In the facts and circumstances of the case, therefore, we find no justification to interfere in the matter. The case of Dr.(Smt.) Sudha Salhan (supra) relied upon by the applicant will not assist him in the facts of this case.

10. In the result, for the reasons given above, this application fails and it is accordingly dismissed. No order as to costs.

  
(K. Nithukumar)  
Member (A)

"GRD"

  
(Smt. Lakshmi Swaminathan)  
Member (J)