

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.133 of 1994

New Delhi, this the 29th day of July, 1994.

Hon'ble Mr Justice S.K.Dhaon, Actg. Chairman.
Hon'ble Mr B.N.Dhoundiyal, Member(A)

Shri Ved Prakash Sharma Son of Shri Vasudev Sharma
employed as P.R.I.(P) Delhi, G.P.O.Delhi
(through Mr Sant Lal, Advocate)

... Applicant.

vs.

1. The Union of India, through the Secretary
Ministry of Communication, Department of Posts,
Dak Bhawan, New Delhi.

2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan, New Delhi.

3. The Chief Postmaster,
Delhi G.P.O.Delhi.

... Respondents.

(through Mr Jog Singh)

ORDER

(delivered by Hon'ble Mr B.N.Dhoundiyal Member(A))

The admitted facts of this case are these. Shri Ved Prakash Sharma was appointed as Postal Assistant in Delhi Circle w.e.f. 18.12.1967. According to the P & T (Selection Grade Posts) Recruitment Rules, 1976, the promotion to the lower Selection Grade post was to be made 66- 2/3% by seniority and 33-1/3% by selection through departmental examination. The applicant passed the departmental examination for promotion to LSG against 1/3rd quota of vacancies and was promoted vide order dated 27.7.1983. The department of posts introduced a Scheme called 'Time Bound one Promotion'. Under this Scheme, ~~the xxxxxxxx~~ ~~the xxxxxxxx~~ ~~the xxxxxxxx~~ ~~the xxxxxxxx~~ the postal employees were to be placed in the next higher scale of pay on completion

by

⑦

of 16 years of service in the basic grade . A provision was also made for payment of special allowance. The Scheme provided that those officials who have already been promoted on regular basis would rank en-block senior to the officials who were placed in the next higher pay scale in pursuance of the Scheme. The applicant by virtue of his seniority and posting on the norms based Supervisory post of LSG was granted special allowance of Rs.35/- p.m.w.e.f.1.3.1984. Yet another Scheme called 'Beinnial Cadre Review' was introduced vide order dated 11.10.1991. This Scheme provided that the next higher pay-scale has to be given on completion of 26 years of satisfactory service in the basic grade including higher grade. Supervisory allowance was abolished w.e.f.1.10.1991.

2. The applicant is aggrieved that several officials junior to him have been placed in the next higher pay scale of HSG-II. The applicant was never served with an order of reversion but this was incidently mentioned in another order dated 4.12.1993. He submitted his representation on 8.1.1994 to the Chief Post Master General Delhi Circle, which has not been replied to. The following reliefs have been claimed:

- "1.To set aside the impugned order dated 26.11.1993; relating to reversion;
- 2.To set aside the impugned orders dated 30.3.1992 and 11.10.1991 to the extent the same impose the restriction of 26 years of service on the applicant and other officials who were promoted to LSG Cadre before 30.11.1983, (i.e. before introduction of T.B.O. Scheme)

bn

against 1/3rd quota and who were declared as senior(en-block) to those promoted to LSG under TBOP Scheme w.e.f.30.11.83, for promotion to HSG-II;

3. To direct the respondents to consider the applicant for promotion to HSG-II according to his seniority in accordance with the recruitment rules 1976, w.e.f. the date from which his juniors are promoted;
4. To restrain the respondents from reverting/ transferring the applicant from the norms based supervisory post of LSG to the operative post of Postal Asstt.;
5. To grant all consequential benefits;
6. To award the costs of this application; and
7. To grant such other relief as this Hon'ble Tribunal deem fit in the interest of justice."

3. On 20.1.1994, this Tribunal passed an interim order restraining the respondents from ^{asking the} applicant to work on the post of Postal Assistant under officials junior to him. This order has been continuing till date.

4. While admitting the basic facts, as mentioned above, the respondents have in their counter-affidavit stated that the reversion orders were passed on 23.11.1993 but he proceeded on medical leave w.e.f. 26.11.1993. It has been contended that the B.C.R. Scheme introduced w.e.f.1.10.1991 is in fact a Scheme for placement of officials in a higher scale of pay and for that the pre-requisite is that the official should have put in 26 years of service in all. The so-called juniors promoted to HSG-II under B.C.R. Scheme were promoted as they had completed 26 years of service. It has also been contended that the introduction of TBOP Scheme is a policy of the government and cannot be challenged.

5. The issue raised in this application has

8

already been considered by the Bangalore Bench of this Tribunal in O.A.403 of 1992 decided on 3.8.1993 and this Bench of the Tribunal in O.A.Nos 1213/93 and 2597/93 decided on 7.6.1994. In similar cases, all the applicants, who had been regularly promoted before introduction of the one Time Bound Promotion Scheme and the B.C.R. Scheme it was held that their claim for promotion to SSG-III post based on their seniority, without considering length of service in the basic grade, were tenable. It was also held that administrative instructions cannot modify the provisions made in the recruitment rules framed under proviso to Article 309 of the Constitution. In this case, ^{the} B.C.R. Scheme, introduced through an administrative Circular, has substituted the provisions of the recruitment rules. Therefore, recruitment rules will prevail. A direction was issued that in the case, the applicants were found suitable for promotion to Grade-III, they would be so promoted with effect from the date their erstwhile juniors were promoted with all consequential benefits and that they should be put on supervisory duties depending on their seniority. A direction was also issued that the B.C.R. Scheme should be modified suitably to protect the interest of the officials like the applicants for their promotion from Grade-II to Grade-III.

6. Re-iterating the views already expressed in the afore-mentioned orders, we allow this application with the following directions:

- i) In implementing the BCR Scheme, the case of the applicant, who is senior in Grade-II, by virtue of his promotion

(19)

:-5:-

against 1/3rd quota, compared to other officials promoted to Grade-II under OTBP Scheme, should be considered for promotion to Grade-III in his turn as per his seniority, whenever his erstwhile juniors in Grade-II are considered for promotion to Grade-III by virtue of their having completed 26 years of service in the basic grade, without insisting on the applicant completing the minimum prescribed years of service in the basic grade. All other conditions of BCR scheme except the length of service will, however, be applicable while considering his promotion to Grade-III.

- ii) Consequently, in ~~the~~ case of the applicant, is found suitable for such promotion, he shall be promoted to Grade-III with effect from the date his erstwhile juniors were promoted from Grade-II to Grade-III with all consequential benefits including seniority and arrears of pay and allowances from such dates. He shall also be put on supervisory duty depending on his seniority.
- iii) The BCR scheme should be modified suitably to protect the interest of the officials like the applicant for their promotion from Grade-II to Grade-III.
- iv) The above directions shall be complied within a period of four months from the date of receipt of a copy of this order.
- v) In the conspectus and circumstances of the case the request of the applicant for

14

: - 6 - :

grant of cost of application is rejected.

7. The application is disposed of accordingly leaving the parties to bear their own costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member (A)

/sds/

S.K. Dhaon
(S.K. Dhaon)
Actg. Chairman.