

4

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1839/89

New Delhi this the 2nd Day of May, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member(A)
Hon'ble ~~Ms~~ Lakshmi Swaminathan, Member(J)

Sh. Gulshan Lal Kumar,
S/o Shri Pindi Dass,
LSG Sorting Asstt. Supervisor,
R/o C 8-13, Yamuna Vihar,
Delhi-110053.

Applicant

(By advocate Shri G.D. Bhandari)

versus

1. Union of India,
through its Secretary,
Ministry of Communications,
Sanchar Bhawan,
New Delhi-110001.
2. The Director General,
Department of Posts,
Sanchar Bhawan,
New Delhi-110001.
3. The Post Master General,
Department of Posts,
Delhi Circle,
New Delhi.

Respondents

(By advocate Sh. Madhav Panikar)

ORDER(ORAL)

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

This application has been filed by Sh. Gulshan Lal Kumar, L.S.G. Sorting Asstt. Supervisor, R.M.S., Delhi, seeking for the following reliefs:-

- "(i) To fix and redetermine the seniority of the applicant from 1.7.1955, on the basis of the length of continuous officiation, with all consequential benefits of promotion, pay fixation, payment of arrears etc;

3/

- (ii) To treat the applicant as having been promoted with effect from 31.7.1979, the date when his next junior Sh. Laxmi Chand Verma was promoted in Grade Rs. 1400-2300 as LSG Supervisor with all consequential benefits.

In this O.A, a challenge has been made to the Ministry of Home Affairs O.M. dated 22.12.1959 superseding the earlier policy of fixing seniority on the basis of length of continuous service and laying down that seniority shall be fixed on the basis of the date of confirmation. The confirmation depended on passing the confirmation examination within a limited number of chances. This was challenged in the case of Dev Dutt Sharma Vs. Union of India filed in the High Court which was taken up as TA-783/85 by this Tribunal. The Tribunal allowed the petition vide their judgement dated 29.5.1986 and directed that seniority of the applicant in that case should be fixed in the grade of clerk on the basis of the length of continuous ^{by} officiation with consequential benefits in accordance with the law. According to the applicant, in partial implementation of this judgement, his seniority was revised and he was re-fixed from Sr.No. 365 Sr.No. ^{by} to 181A. However, he has not been considered for promotion to next higher scale to which one of his juniors, at serial No. 182 of the seniority list, namely, Sh. Laxmi Chand Verma was promoted on 31.1.1979. Hence his request for promotion with retrospective effect from 31.1.1979 and the stepping up of his pay from ^{as} Rs. 1760/- P.M. to Rs. 1900/- ^{as} drawn by his junior.

by

6

Heard the learned counsel for the parties. The learned counsel for the applicant has drawn our attention to the judgement of this Tribunal dated 12.9.1991 in O.A.No.708/88 in which residual consequential benefits due to revision of pay scale ^{BW} ~~were~~ considered. In that case, the Tribunal noted that the respondents had already taken action to delete the concerned paras in the letter dated 12.4.1978 and revised the seniority of the applicants. However, in that case even though promotion had ^{BW} ~~been~~ given vide order dated 11.4.1989, the applicant till 1989 had not been paid the arrears of pay and pension and other benefits had not been refixed. The Tribunal directed the respondents to refix the pay on higher pay scale from the date of promotion and pay the arrears of pay and allowances from the date of such promotion and refix his pensionary benefits accordingly.

It is clear that if the original instructions were allowed to continue and the seniority was fixed on the basis of continuous officiation, the applicant would also have been considered for promotion to the higher post alongwith his juniors with effect from 31.1.1979. It is not clear from the counter whether a review D.P.C. has already considered his case and a statement has been made that since the applicant had not worked in selection grade from 1.2.1979 to 20.7.1982 as such providing benefit of pay was not admissible to him and no order to this effect was issued.

We hold that the applicant was entitled to be considered for promotion on 31.1.1979 when his junior Sh. Laxmi Chand Verma was promoted. The application is, therefore, disposed of with the directions to the

BW

respondents to constitute a review D.P.C. to consider the case for promotion of the applicant as on 31.1.1979. If deemed fit, promotion shall be given with retrospective effect. He shall be given the advantage of notional fixation of pay on that basis giving him the benefit of the increments. His pay on the date of actual promotion will be stepped up accordingly. He will be entitled to the arrears of pay on the basis of such refixation from the date of actual promotion. These directions shall be implemented within a period of three months from the date of communication of this orders.

No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

B. N. Dhoundiyal
(B. N. DHOUNDIYAL)
MEMBER (A)

/vv/