

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2208/89
T.A. No.

199

DATE OF DECISION 08.06.1990.

Shri Tota Ram Sharma Petitioner
 Ms. Nitya Ramakrishna Advocate for the Petitioner(s)
 Versus
 Union of India through the Respondent
 Secretary, Ministry of Communications & Others
 Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal?

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who has by now retired from Government service, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to treat him as having been promoted to the Lower Selection Grade with effect from 1968 and give him all the consequential benefits of such promotion.

2. The applicant started his career in the office of the respondents in 1951 as a Sorter. In September 1968, there was a postal strike in which some employees did not participate. The applicant is one among them. The respondents took a policy decision to reward those who had been loyal during the strike. By order dated 30.9.1968, they promoted 19 persons from the grade of Sorters to the Lower Selection Grade (Vide Annexure-B, at pages

18-19 of the Paper Book). No scrutiny was done by any DPC before the promotions were made. 13 of the persons so promoted were junior to the applicant.

3. The applicant made a representation to the Director General, Posts & Telegraphs on 16.7.1969. This was rejected by letter dated 17.9.1970.

4. One Kulwant Singh, a Sorter, who had remained on duty in the Army Postal Service during the strike, had not been promoted pursuant to the 1968 order. He challenged the same in a writ petition filed before the Delhi High Court. The High Court held that since the statutory rules prescribed seniority subject to rejection of the unfit as the basis of promotion, the applicant's claim could not be ignored. In view of this, Kulwant Singh's name was added to the list of 19 persons and a supernumerary post was created for him.

5. Kulwant Singh was also junior to the applicant. After his promotion, the applicant again made a representation on 14.3.1980. Though his case was recommended by the SSRM, Delhi Sorting Division, the Department of Posts took the decision that such cases may be reviewed and the persons concerned be given notional promotion from the date their immediate juniors stood promoted. It was, however, added that the employees concerned would not be entitled to any arrears on account of fixation of pay under the normal rules applicable but arrears would be permissible where the officials had actually discharged the duties of the higher posts.

6. On 15.3.1985, the respondents passed an order to the

effect that 14 employees mentioned therein, who were on deputation to APG during the 1968 strike, may be deemed to have been notionally promoted to LSG grade with effect from 1.10.1968. 10 out of the 14 ^Q promotees were junior to the applicant.

7. The applicant again represented to the respondents on 24.2.1985. This was followed by another representation dated 11.9.1985. The office of the Postmaster General, Delhi Circle informed the SSRM on 14.10.1985 that the matter concerning the applicant was under consideration in the Directorate.

8. On 24.4.1986, the Department of Posts decided that those who did not participate in the strike be given notional promotion from the date their juniors stood promoted.

9. The applicant believed that promotion would be given to him as a matter of course. No action was, however, taken in his case. His last representation is dated 2.3.1989.

10. The respondents have raised the preliminary objection that the application is not maintainable on the ground that it is barred by limitation. On the merits, they have contended that the judgment of the Delhi High Court in Kulwant Singh's case is a judgment in personam and not a judgment in rem.

11. We have heard the learned counsel of both parties and have gone through the records of the case carefully. We are not impressed by the contention of the respondents

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that the judgment of the Delhi High Court is only a judgment in personam and not a judgment in rem. A Full Bench of this Tribunal in John Lucas and Another Vs. Additional Chief Mechanical Engineer, S.C. Railway & Others, 1987(3) ATC 328 at 335 has observed as follows:-

" In "service matters" any judgment rendered, except perhaps in disciplinary proceedings, will affect someone or the other member of the service. The interpretation of Rules governing a service by the Tribunal, while it may benefit one class of employees, may adversely affect another class. So also upholding the claim of seniority or promotion of one may infringe or affect the right of another. The judgments of the Tribunal may not, in that sense be strictly judgments in personam affecting only the parties to that petition; they would be judgments in rem. Most judgments of the Tribunal would be judgments in rem and the same authorities impleaded as respondents both in the earlier and the later applications would have to implement the judgments".

12. We are of the opinion that the applicant before us is similarly situated like that of the petitioner before the Delhi High Court in Kulwant Singh's case and, therefore, the applicant is also entitled to the same relief.

13. As regards the plea of limitation, we are of the opinion that the same is not tenable in the facts and circumstances of the case. The respondents should not have raised the plea of limitation to defeat the just claims of the applicant who was clearly discriminated against in the matter of promotion, which was given to his juniors years ago. In the case of infringement of a fundamental right, we also feel that there is a continuing wrong so long as the applicant's grievance has not been redressed (Vide Gopal Anant Musalgaonkar Vs. Union of India, 1987(2) ATC 444 at 447). We feel that any claim

based on discrimination of pay and allowances can be viewed as a recurring cause of action every month (Vide Madhukar Marey Vs. Union of India, 1989(11) ATC 726 at 729). The respondents on their own ought to have extended the same treatment to the applicant as was meted out to his juniors (Vide Buzlul Mohi Ali Reza & Others Vs. State of West Bengal & Others, 1989 Lab. IC NOC 171 (CAL)).

14. In the instant case, the request of the applicant for promotion to Lower Selection Grade had been under the consideration of the respondents and had also been recommended by his immediate superiors. ~~We~~ ^{are} therefore, of the view that the application deserves to be considered on the merits overruling the objection raised by the respondents (Vide Ananta Kumar Mondal Vs. Union of India, 1989 Lab. IC 1878).

15. The learned counsel of the applicant also relied upon the decision of this Tribunal in Piare Lal Tiwari Vs. Union of India, 1988(6) ATC 148, in which the Tribunal considered the claim for promotion from the post of Sorter to Lower Selection Grade in respect of a postal employee who had participated in the 1968 strike. The Tribunal directed the respondents that the case of the applicant should be considered for promotion to Lower Selection Grade as on 1.10.1968 on the basis of seniority subject to the rejection of unfit. It was further directed that in case he was found suitable for such promotion, he should be promoted notionally with effect ~~of~~

from 1.10.1968 against a supernumerary post with all consequential benefits as given to respondents 4 to 7 in that case, in accordance with the relevant rules and instructions. The contention of the respondents is that the judgment of this Tribunal in Tiwari's case is also a judgment in personam and not a judgment in rem. We are unable to be persuaded to agree with the contention of the respondents. The case of the applicant, who was a loyal worker and who had not participate in the strike stands on a higher footing than that of Tiwari's case.

16. In the conspectus of the facts and circumstances of the case, we direct that the respondents shall consider the case of the applicant for promotion to Lower Selection Grade as on 1.10.1968 on the basis of seniority subject to rejection of unfit. While considering his case, the entries in the CRS upto 30.9.1968 only need be considered. In case he is found suitable for such promotion, he should be promoted notionally with effect from 1.10.1968. He would also be entitled to all consequential benefits including arrears of pay and allowances, re-fixation of his pension, gratuity and other retirement benefits on the basis of the pay so re-fixed. The respondents shall comply with the above directions within a period of 3 months from the date of communication of this order.

The parties will bear their own costs.

D. K. Chakravorty
(D. K. CHAKRAVORTY)
MEMBER (A)

8/6/90

P. K. KARTHA
8/6/90
(P. K. KARTHA)
VICE CHAIRMAN (J)