

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

O.A. No. 2345/1988.

Date of decision: August 28, 1990.

Shri Bawa-Ji Saluja & Ors. ... Applicants.

Vs.

The Union of India & Another. ... Respondents.

O.A. No. 1353/1989.

Shri Maya Dass & Others ... Applicants.

Vs.

The Union of India & Another ... Respondents.

O.A. No. 2190/1989.

Shri E.K. Kaushik & Ors. ... Applicants

Vs.

The Union of India & Ors. ... Respondents.

O.A. No. 2191/1989

Shri Gaja Nand Gupta & Ors. ... Applicants.

Vs.

The Union of India & Anr. ... Respondents.

O.A. No. 2353/1989.

Shri Mohinder Nath-II & Ors ... Applicants.

Vs.

The Union of India & Anr ... Respondents.

O.A. No. 2490/1989.

Shri Raghu Nath Singh-II & Ors ... Applicants.

Vs.

The Union of India & others ... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. I.K. Rasgotra, Member (A).

For the applicants ... Shri E.X. Joseph, counsel.

For the respondents ... Shri P.P. Khurana, Shri M.L. Verman  
and Shri K.C. Mittal, counsel.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman).

All these six O.As can be decided by a common  
order. In O.A. 2345/88, there are 68 applicants who have

permitted to file one O.A. In O.A. 1553/89, there are

14 applicants. In O.A. 2190/89, there are 4 applicants,

while in O.A. 2191/89, there are 10 applicants. In

O.A. 2353/89, there are 5 applicants while in the last

O.A. 2490/89 there are 3 applicants. In all, 104

applicants are aggrieved by the same order. All these

cases raise common questions of law. The matter pertains

to the promotion to the Lower Selection Grade from the

Grade of Sorters in the Railway Mail Service of the

Department of Post and Telegraphs, Ministry of Communicat-

ions. The Post and Telegraph (Selection Grade) Recruitment

Rules, 1976 framed in the exercise of power conferred

by Article 309 of the Constitution prescribe for seniority-

cum-merit as the criterion for promotion. There is a

provision for scrutiny by a Departmental Promotion Committee

as a pre-condition for promotion.

The allegation of the applicants is that the

respondents are discriminating among equals ignoring

senior claimants and were making piece-meal and haphazard

promotion to the Lower Selection Grade. They have

complained that on 30.9.1968, 19 persons from the Grade

of Sorters were promoted to the Lower Selection Grade.

Again on 15.3.1985 by another order, 14 persons were given

notional promotion to the Lower Selection Grade but the

applicants who were also from the Grade of Sorters have

been repeatedly ignored for consideration for such promotion

and persons junior to some or all the applicants have been

promoted.

7

In September, 1968 there was strike in the Post and Telegraphs Offices in the country in which several employees were marked dies-non and some others arrested for brief periods. The allegation runs that there was an attempt to award loyal employees and 19 sorters who came to work in the strike period were promoted to the Lower Selection Grade by the order dated 30.9.1968 (Annexure A-4 to the O.A. 2345/86).

Shri Kulwant Singh, a Sorter on deputation to the Army Postal Service, challenged this promotion in a Writ Petition before the Delhi High Court. His case was upheld and the respondents were directed that he be considered for promotion as per statutory rules. Shri Kulwant Singh was promoted to the Lower Selection Grade by creating a supernumerary post.

Again by an order dated 15.3.1985 (Annexure A-5 to the OA) 14 sorters were promoted to the Lower Selection Grade. One Shri P.L. Tiwari challenged the 1985 order before this Tribunal in OA No. 155/86. He claimed that there was violation of statutory rules and by-passing of the seniors. The Division Bench heard the matter and by its judgment dated 7.9.1987 in P.L. TIWARI Vs. U.O.I. (1988 (3) SLJ (CAT) 279) allowed the Application.

It was admitted before the Tribunal by the respondents that only those who had remained loyal during the 1968 Postal strike were being considered for promotion.

The applicants thereafter made several representations to the authorities but there has been no response. The

plea taken in the present O.As was that since the applicants have been repeatedly superseded by a number of persons and since this Application is against the continued arbitrariness in the policy of the respondents, the individuals who have superseded the applicants were not made parties. It was also stated that since the applicants have already been granted the Lower Selection Grade and justice demands that their promotion be made from 1968, the respondents be directed to give them pay and allowances as are given to their juniors who have been granted such promotion w.e.f. 1968.

On behalf of the respondents Shri M.L.Verma, counsellor took the plea that the Applications were not maintainable.

No specific order had been challenged, the Applications were premature as the applicants had not exhausted the other remedies available under the law; the Applications were barred by time and lastly, all those who have been superseded by 1968 and 1985 were not made parties.

We have heard Shri E.X.Joseph for the applicants and Shri M.L.Verma, Shri P.P.Khurana and Shri K.C.Mittal, for the respondents. We have already considered these

questions delivered today in our judgment/in the case of YASH PAL KUMAR

AND OTHERS Vs. U.O.I. & ORS. ( O.A. No.1746/88. & 4 connected O.As).

Shri E.X.Joseph referred to the decision of this Tribunal in the case of MADAN MOHAN & ORS VS. THE U.O.I.

& ANR (OA 1019/87) decided on 11.1.1988 by Hon'ble

V.C.(A), where the applicants were sorters in the Railway

9

Mail Service and were on deputation with the Army Postal service. The applicants who were on deputation in Army Postal Service were not considered for such promotion to the Lower Selection Grade. The case of Shri Kulwant Singh was referred and the plea was taken that "In the parent Department, they should not have been ignored and should have been promoted from the same date with all consequential benefits and that it would be irrational and arbitrary if their juniors were allowed promotion from 1.10.1968 and paid the arrears of salaries while they were denied the arrears of salary from 1.10.1968." In support to the above case, a reference was made to the case of SHRI P.P.S.

GUMBAR Vs. U.O.I. & ANR decided on 31.3.1984 (1984 (2)SLJ 633). Reference was made to the case of BAKSHI RAM Vs. UNION OF INDIA (OA 142/86) wherein it was decided that

the arrears of pay and allowances should be granted to the applicant from the date from which the applicant had been ordered to be given promotion to the Lower Selection Grade.

Reference was also made in that case to the decision of the

Chandigarh Bench in the case of ROSHAN LAL Vs. U.O.I.

(ATR 1987 (1)CAT 121) where it was held that the applicant

was entitled to emoluments of higher post from the date his

junior was promoted notwithstanding if he had actually worked

against that post or not. The learned Single Member held:-

"that it would not be correct to deny the benefit of promotion with all the consequential benefits to the applicants with effect from 1.10.1968."

Our attention was also drawn to a paper (Annexure A-10 on page 49 of the paper book) which was a letter written by the Secretary, Staff side of Joint Consultative Machinery, P&T Department Council, dated 3.10.1988 to Shri P.S. Raghavachari, Chairman, Postal Departmental Council, Dak Bhawan, New Delhi. After referring to the meeting held in Chairman's chamber on 22.9.1988, a request was made to direct the PMG Delhi Circle to implement the orders of the Directorate contained in letter No.6.32/80/SPB.II/Vol.II dated 3.3.1987 in respect of 117 officials of Delhi Circle involved in 1968 strike.

Our request was, however, turned down throwing to the winds

all principles of the J.C.M. The plea put forward that the

orders of the Directorate will not be implemented till the

Court cases filed by some officials are decided, is most

untenable. Although this is only a letter, but it

gives a clue as to why the orders have not been passed in

cases of other Sorters who were senior to those who

have been promoted under the orders dated 30.9.1968

and 15.3.1985. It seems that the Directorate thought

it fit to implement only those orders which are only passed

by a Court or Tribunal. The result is that all these

applicants have no alternative but to approach the Tribunal

to seek a relief which they ought to have been granted by

the Directorate after the order of the Tribunal in

P.L.TIWARI's case (supra)

We have heard learned counsel for the respondents

(11)

in this regard also. We are not satisfied that the respondents have an effective answer to the question viz. can a junior supersede a senior without there being a finding that the senior was unfit for promotion where the Rule of promotion was based on 'seniority subject to the rejection of the unfit'. We are of the view that a senior cannot be ousted without his name being considered by the D.P.C. nor can he be permanently debarred from being considered unless he has been debarred by some order. Since the Rule of Promotion was based on seniority subject to the rejection of the unfit, it was incumbent on the respondents to first reject the seniors before considering the juniors.

We find no merits in promoting the juniors for rewarding them for having attended the offices during the strike period. This has become counter-productive. There could be other ways of rewarding those who attended offices during the strike; they could have been given cash awards or they could have been given advance increments; but to promote them against the Rule of promotion ignoring the claims of seniors on the ground that they had participated in the strike was neither proper nor in accordance with law. Since the cases of seniors had not been considered at all, their promotion cannot be ignored.

We are told that all applicants in these O.As have now been given promotion after filing the O.As. Thus, the only question that remains for consideration is the date from which they are entitled to the benefits of their promotion.

On this aspect of the matter, there can be no two opinions. They have to be given promotion from the same date on which their juniors were given promotion. They are entitled for promotion with effect from 1.10.1968. They would also be entitled to the monetary benefits and the difference in pay and allowances. We cannot help but remark that the decision to award loyal workers by promoting them out of turn and without considering the seniors will cost the Government very heavy. They will have to pay the difference in pay and allowances to the present applicants from 1.10.1968.

We, therefore, allow the O.As and hold that the applicants are entitled to promotion from 1.10.1968 with all monetary benefits. Since the applicants have already been promoted, it is only the difference in pay and allowances that will be calculated from 1.10.1968 to the date of actual promotion and paid to them within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.

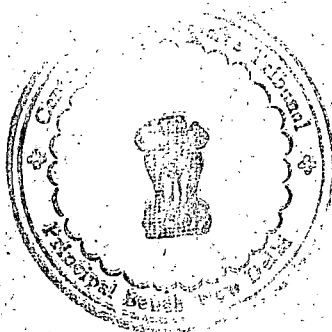
(I.K.RASGOTRA)  
MEMBER (A)

28/8/90

(AMITAV BANERJI)  
CHAIRMAN

28/8

SKS



CERTIFIED TRUE COPY  
D.....

Section Officer  
Central Administrative Tribunal  
Principal Bench, New Delhi