

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

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REGN.NO. OA 383/89

Date of decision: 17 JAN 1990

Shri Tribeni Ram

..... Applicant

Vs.

Union of India & Ors.

..... Respondents

CORAM: HON'BLE MR. D.K.CHAKRAVORTY, MEMBER(A)

For the Applicant

..... Shri Sant Lal, Counsel.

For the Respondents

..... Shri K.C.Mittal, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. D.K.Chakravorty, Member)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against Memo No.Staff/E-27/T/R.L.O dated 19.4.1988 and letter No.Staff/E-27/T/RLO dated 4.1.1989 issued by the office of the Postmaster General, Delhi Circle, New Delhi regarding the rejection of/applicant's claim for arrears of pay and allowances on account of promotion to the Lower Selection Grade(for short, hereinafter referred to as L.S.G.) with retrospective effect from 1.5.1983.

2. The brief facts of the case are that the applicant was appointed as Postal Assistant in the Delhi Circle in October, 1972. He belongs to the Scheduled Caste community. He was on deputation to the Army Postal Service from 23.2.1977 to 19.7.1985 in the same grade. His lien was kept in the Delhi Circle. A post of L.S.G.

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on a point reserved for the Scheduled Caste candidates fell vacant on 1.5.1983 on the retirement of one Shri Buta Singh, Deputy Manager, RLO Delhi. The L.S.G. is a non-functional selection grade to which promotions are made on the basis of seniority-cum-fitness subject to the reservation for Scheduled Caste and Scheduled Tribe candidates. The applicant being the seniormost Scheduled Caste candidate was eligible to be considered for promotion to the reserved vacancy in his parent circle but he was ignored. The applicant made representations to various authorities for his promotion with retrospective effect from 1.5.1983. His claim was accepted under the Postmaster Delhi Circle Office Memo. No.Staff/E-27/T/RLO dated 19.4.1988 but the promotion was made notional disallowing the claim of arrears of pay and allowances. His representation dated 19.8.1988 to the Member (Personnel), Postal Services Board, New Delhi for grant of arrears of pay and allowances from 1.5.83 to 19.4.88 was rejected under the letter dated 4.1.1989.

3. The applicant has challenged the impugned ^{same} orders on the ground that the/are arbitrary, illegal, discriminatory and violative of Articles 14 & 16 of the Constitution and the respondents having conceded the right and claim of promotion of the applicant with effect from 1.5.1983 and having ordered his actual promotion with effect from 19.4.1988, in the same unit and the very same post he is working at present, involving no

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functional change in duties and responsibilities, the applicant cannot be denied the arrears of pay and allowances on the plea of non-working in the L.S.G. Further, the impugned order dated 4.1.1989 violates the principles of natural justice inasmuch as the representation has been rejected by a non-speaking order.

4. In the counter-affidavit filed on behalf of the respondents, it has been stated that no arrears of pay and allowances are admissible for the period prior to 19.4.1988 as the applicant has not performed the duties in the L.S.G. post from 1.5.83 to 19.4.88.

5. I have heard the learned counsel of both parties and carefully perused the records of the case.

6. The learned counsel for the applicant has cited various judgements in support of his contention. In the case of P.P.S.Gumber Vs. Union of India & another decided on 31.3.84 (1984(2) SLJ-633), the Delhi High Court has observed as under:-

"... There are catena of authorities that where a Government officer is entitled to promotion and that is denied to him for no fault of his, he would be entitled to the arrears of salary and other benefits from the date the promotion was actually due to him....."

He also drew attention to similar cases where the Tribunal has ordered that arrears of pay and allowances should be allowed to the applicants

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from the date they had been promoted to the L.S.G.

7. The learned counsel for the respondents submitted that unless a Government employee has actually performed the duties and shouldered the responsibilities in the higher grade, he cannot be allowed the benefit of pay and allowances attached to that post.

8. It is clear that the L.S.G. is a non-functional grade without any change in responsibilities and duties. As such the question of denial of pay and allowances of this grade for not working against post carrying higher duties and responsibilities does not arise. Even in cases where promotion involves change in duties and assumption of higher responsibilities, the courts have held that the employee is entitled to arrears of pay if the promotion was wrongly denied to him.

9. In Charan Dass Chadha Vs. State of Punjab and another (1980(3) SLR 702) the High Court of Punjab and Haryana observed that once promotion is made with retrospective effect, one cannot be deprived of the benefit of pay and other benefits and Government cannot take advantage of its own wrong or illegal order in not promoting him when promotion was due. In K.K.Jaggia Vs. State of Haryana and others (1972 SLR 578), the same High Court held that where retrospective promotion is made after conclusion of departmental inquiry, one is entitled to arrears of pay even though he did not work in the higher posts for no fault of his. The Supreme Court in State of Mysore Vs. C.R.Seshadri (AIR 1974 SC 461) ordered that the retired employee should be considered for promotion with retrospective effect with all consequential monetary and other benefits.

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10. As stated supra, the instant case is much stronger than some of the cases cited as the applicant, on actual promotion to the L.S.G. with effect from 19.4.1988, has been ordered to continue to work in the same unit and the post in which he has already been working. The promotion to the L.S.G., therefore, did not involve assumption of any higher duties and responsibilities.

11. In the result, the application is allowed and the impugned order dated 4.1.1989 is quashed. The impugned order dated 19.4.1988 is set aside in so far as it relates to non-admissibility of arrears of pay and allowances. The respondents are directed to pay the applicant arrears of pay and allowances and all consequential benefits with effect from 1.5.1983. The payment should be made to the applicant within two months from the date of receipt of a copy of this order. There will, however, be no order as to costs.


(D. K. CHAKRAVORTY)
MEMBER

17 January, 1990