Central Administrative Tribunal
Principal Bench, Delhi.

O.A. No. 1746/88 — Date of decision, August 28,199

Yash Pal Kumar & Ors .. Applicants
vs.
Union of India & Ors .. Respondents

O.A. No. 968/88

Brihaspati Prasad .. Applicant
vs.
Union of India & Ors .. Respondents

O.A. No. 2314/88

Karam Narain & Ors .. Applicants
vs.
Union of India & Ors .. Respondents

O.A. No. 1545/88

Raj Kumar Sharma & Ors .. Applicants
vs.
Union of India & Ors .. Respondents

O.A. No. 786/88

Chhote Lal & Ors .. Applicants
vs.
Union of India & Ors .. Respondents

Coram:

Hon'ble Mr Justice Amitav Banerji, Chairman
Hon'ble Mr I.K. Rasgotra, Member

For the Applicants .. Ms Nitya Ramakrishna, counsel with Ashok Aggarwal, counsel.

For the Respondents .. Mrs Raj Kumari Chopra, counsel.

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

All these five O.As. can be decided by a common order. In OA No. 1746/88, there are 18 applicants who have been permitted to file one O.A. In OA No. 968/88, there is only one applicant. In O.A. No.2314/88, there are 15 applicants. In O.A No.1545/88 there are 12 applicants and in O.A. No. 786/88, there are 27 applicants.

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 Communications. 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 criteron 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 15.3.85 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 juniors to some or all the applicants have been promoted.

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 (Annex 'A' to OA 1746/88).

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 (Annex 'B' 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 judgement dated 7 Sep.87 (reported in 1988 Vol.IV ATC 148) filed allowed the Application by Shri P.L. Tiwari. 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 OAs was that since the applicants have been repeatedly superseded and 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.

The respondents took the plea that the present O.As are not maintainable under the Administrative Tribunals Act as no specific order of the respondents has been challenged. Secondly, the Application was barred by time for it relates to a claim of promotion w.e.f. 1.10.1968 for which the applicants have never agitated. Thirdly, the Application was premature as the applicants had not exhausted the departmental remedies available to them before approaching the Tribunal and, Fourthly, the Application was not maintainable as all those officials who are alleged to have superseded the applicants have not been impleaded in the case. On the merits, it was stated that 19 officials were given the pay scale of the Lower Selection Grade w.e.f. 30.9.1968 on the ground that during the period of strike, by performing their duties, they had kept the offices working. They were allowed to continue in the Lower Selection Grade till they were regularly

absorbed in the Grade by virtue of their seniority in the Stg. Assistant Grade, i.e., till their regular absorption in the Selection Grade. The order dated 15.3.1985 was issued by the Office of the P.M.G., Delhi Circle giving the benefit of notional promotion to 14 officials who were on deputation to Army Postal Service on 30.9.1968. The decision in the case of P.L. TIWARI (supra) was sought to be distinguished on the ground that the applicants had not agitated before the department and, thereore, were precluded from agitating the matter before the Tribunal.

In the rejoinder, it was stated that the P.M.G. Delhi Circle, New Delhi turned down the representation on 5.3.1987 made by the applicants to the department. Secondly, no relief was sought which would per se affect the rights and the interests of the officials who had superseded the applicants. Consequently, it was not necessary to implead them. The applicants' case is that while the O.A. relates to the claim of promotion w.e.f. 1.10.1968, the specific challenge was to an order dated 15.3.1985. The challenge to the said order was within time and the reliance was placed on the decision of the Tribunal in OA 155/1986 -P.L. TIWARI Vs. UNION OF INDIA & ANOTHER (supra). Lastly, it was reiterated that the statutotry rules have been violated by giving promotion to persons, as mentioned above, on considerations other than what were provided in the Rules.

12

We have heard learned counsel for the parties and perused the material on the record and decision of the Tribunal in the case of P.L. TIWARI (supra)

Before we proceed to consider the contentions of the parties, it would be necessary to state one fact which has relevancy. All the applicants had since been promoted to the Lower Selection Grade but from different dates. The applicants are now aggrieved that they have not been given notional promotion from 1.10.1968, when 19 Sorters juniors to them were promoted and subsequently 14 other Sorters, all junior to the applicants, were promoted. All these Sorters, 19 on the first occasion, Shri Kulwant Singh, who filed a Writ Petition in the Delhi High Court and 14 others have been given notional promotion from 1.10.1968. The applicants are now claiming that they be treated as promoted with effect from 1.10.1968 and benefits of such promotion like their junior colleagues.

On the question of maintainability of the O.As four points have been raised which are mentioned earlier. We will take them up seriatim.

The plea that since there is no specific order of the respondents has been challenged by the applicants, the present O.As are not maintainable. This contention is incorrect. The applicants have challenged both the orders of 1968 and 1985. They are aggrieved by these orders.

The second point taken is that it is barred by

13

time. We are unable to agree with this contention either. The applicants have made representation which was turned down by the P.M.G., Delhi Circle, New Delhi on 5.3.1987. The O.As have been filed in 1988 and 1989. Further, in the case of P.L. TIWARI (supra), the Division Bench of this Tribunal held:

> "Thus, the case of each superseding officer creates a fresh cause of action for the superseded senior. .. in the matter of promotion either by selection or on seniority the superseded officer being in competition with each one of them can raise fresh cause of action, and promotion of a junior over the superseded officer cannot give a licence and a right of similar supersession to all those who are senior to such a promoted junior but junior to the superseded officer. In the circumstances we feel that the applicant can raise a legitimate grievance by the impunged order of 15.3.85 by which respondents 4 to 7 who were junior to him but were on deputation in 1968 were promoted with retrospective effect from 1.10.1968."

The Division Bench held:

> "We therefore, find the application to be within time under Section 21 of the Administrative Tribunals Act, 1985."

In the present case, they are not only affected by the 1985 order by which 14 Sorters were promoted over their seniors. Moreover, as seen above, the rejection of the representation on 5.3.1987 also gave a cause of action to the applicants. We are, therefore, not inclined to accept the plea that these O.As are to be rejected on the ground of limitation.

14

The third point taken was that the applicants have not exhausted all the departmental remedies available to them. But as seen above, they have made representation which has been rejected by the P.M.G., Delhi Circle on 5.3.1987.

The fourth point was about the maintainability of the Applications as all those officials who are alleged to have superseded the applicants have not been impleaded as parties in the present O.As. This contention has also no substance. The applicants have not asked for any relief against those who have been promoted. The applicants have asked that they be treated likewise those who have superseded the applicants. They are not claiming any relief against the Sorters who have not been promoted from 1.10.1968 or from 15.3.1985.

Even on the merits, the argument of the respondents is weak and untenable. The argument was that all those Sorters who had worked during the strike period and kept the offices open and functioning were rewarded by giving them notional promotion with effect from 1.10.1[illegible]. A short question is: whether this could be done? In our opinion, this could not be done when the Rules for promotion specifically provided that the promotion would be based on seniority-cum-rejection/merit. It was, therefore, not open to the respondents to give promotion to some Sorters on

15

a ground or by a method which was contrary to the statutory Rules. There was a clear violation of the Rules in giving them promotion, even though notionally, from 1.10.1968. In the case of P.L. TIWARI (supra), the Division Bench held:

> "So long as he is not considered for promotion he continues to be deprived of his fundamental right. Even when the juniors were considered on 15.3.1985 for promotion with effect from 1.10.1968, the case of the applicant was not considered as he had taken part in the strike of 1968. He has been as it were, permanently disqualified for such considerations. Such disqualification without giving any opportunity to the applicant to defend himself whether he participated in the strike or not and whether there were any other reasons for not attending his office on the day of strike, is to our mind, ab initio void."

The Bench also observed:

> "We feel that the stand taken by the respondents that the applicant is permanently debarred from challenging the order of 15.3.1985 because he had not challenged the order of 30.9.1968 is not fair and just."

Subsequently, M.P.No.2088/88 was filed seeking certain clarifications in the order dated 7.9.1987 in OA No.155/86-P.L. TIWARI's case (supra). The Division Bench passed the following order:

> "Accordingly in the interest of justice and in clarification of our judgment dated 7.9.1987 in O.A. 155/86 we direct that the applicant should also be considered to have been promoted to L.S.G. with effect from 1.10.1968 on the basis of the recommendations of the D.P.C. which met in 1984 without subjecting him to another further D.P.C., with all such

consequential benefits of pay, allowances, seniority etc., as were given to respondents 4 to 7."

We have also considered the contention of the learned counsel for the applicants. Their plea proceeds on the footing that juniors to the present set of applicants in these five O.As have been promoted, even though notionally, from 1.10.1968, when the applicants were also entitled to be promoted like those who have superseded them. The reason was, that the applicants names had to be considered and the D.P.C. could have held that so and so was unfit. But since they were never taken into consideration, they cannot be superseded on any ground except on the ground of being unfit.

Neither any DPC considered their names nor found them unfit. Consequently, being seniors to those who have superseded them, they are entitled to promotion like those who have been promoted with effect from 1.10.1968.

However, as pointed out earlier, since the applicants have already been promoted, the only question is : what is the relevant date from which they are to be promoted. The Rules of promotion require that it has to go by seniority subject to the rejection of unfit. If none has been found to be unfit by the D.P.C. a presumption will arise that they are all fit and being seniors to those who have been promoted, the applicants are also entitled to be promoted from the same date viz. 1.10.1968. The principle is that a senior who has been overlooked and not considered for promotion and does not suffer from any bar is to be placed

ahead of his juniors in matters of promotion.

We find considerable force in the above argument and we are of the view that the applicants are also entitled to promotion from 1.10.1968 being seniors to those who have been given promotion by orders dated 30.9.1968 and 15.3.1985. Since the promotions have already been given, the only question is to be decided from which date they should get promotion. There is no doubt in our mind that they must get their promotion from the date, their juniors got promotion viz., 1.10.1968. We also notice that the juniors who have been promoted vide order dated 30.9.1968 were also given the benefit of pay and allowances. The applicants, being senior to those who have superseded them are also entitled to similar relief from 1.10.1968.

We, therefore, allow these O.As and direct the respondents to grant promotion from 1.10.1968 to the present applicants in these five O.As and they would also be entitled to monetary benefits arising out of difference of pay and allowances from 1.10.1968 to the actual date of their promotion. The above order may be complied 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)

(AMITAV BANERJI)
CHAIRMAN

SKS