

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 565/87. 198
T.A. No.

DATE OF DECISION 11.7.1988.

Shri P.P. Khurana

Petitioner Applicant

Shri Sant Lal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman.

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *W*
4. Whether to be circulated to all the Benches ? *M*

S.P. Mukerji
(S.P. Mukerji)
Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman.

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Shri P.P. Khurana ... Applicant
Vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. P.K. Kartha, Vice-Chairman.

Hon'ble Mr. S.P. Mukerji, Administrative Member.

For the applicant: Shri Sant Lal, Advocate.

For the respondents: Shri P.P. Khurana, Advocate.

JUDGMENT
(delivered by Hon'ble Shri SP Mukerji, AM).

The applicant, who has been working as Postal Clerk, moved this application dated 20th April, 1987, under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned orders dated 6.1.1986 and 2.1.1987, not counting his service as an Upper Division Clerk (UDC) for purposes of the promotion to the Lower Selection Grade (LSG) may be set aside and he should be given the next higher grade under the Time-Bound One Promotion Scheme (TBOPS) from due date with all consequential reliefs.

2. The facts of the case are simple and can be recounted as follows. The applicant joined as Postal Assistant on 1.6.1965 in the scale of

Rs. 260-480. In February, 1973, he was promoted as UDC in the scale of Rs. 330-560 in the Post Office Savings Bank Control Organisation against the 50 per cent quota. He continued as UDC till 14.12.1983 when due to family circumstances, he sought reversion to his substantive post of Postal Assistant on compassionate grounds. The applicant was allowed to be reverted as Postal Assistant on 31.12.1984. On 17.12.1983, the Scheme known as TBOPS was promulgated, according to which, if he had completed 16 years of service as Postal Assistant, he would have been entitled to automatic promotion as L.S.G. Postal Assistant in the scale of Rs. 425-640. His representations for such promotion made on 2.1.1985 and 14.2.1986 were rejected on the ground that he had not put in 16 years of service as Postal Assistant. The respondents did not count his 10 years of service as UDC as good enough for inclusion as qualifying service as Postal Assistant. According to the applicant, he sought reversion from UDC's grade to L.S.G. of Postal Assistant on compassionate grounds due to family circumstances even though his turn for/promotion next in the Savings Bank Control Organisation/would have itself materialised in February, 1984. He further states that even though he became eligible for promotion under the TBOPS, on his reversion to his parent Department in February, 1984 and his case was recommended by the Superintendent of Post Offices, his promotion was barred by the subsequent clarificatory order issued

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on 6.1.1986 by which the service rendered in the higher grade of UDC was excluded. He has argued that under F.R. 22 & F.R. 26, service in the higher grade of UDC should count in the lower grade of Postal Assistant. The respondents have not given any satisfactory explanation or reason for ignoring the higher grade service as reckoning UDC for purposes of qualifying service in the lower & grade of Postal Assistant. They have relied entirely on the clarificatory order of 6.1.1986 which, according to them, was issued & to dissuade U.D.Cs from reverting to their parent cadre of Postal Assistant mainly to avail themselves of the promotion as L.S.G. under the TBOPS.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are convinced that the clarificatory order issued on 6.1.1986 cannot be given retrospective effect to deprive the applicant of his claim to promotion under the TBOPS by excluding his service as UDC from being reckoned as service as Postal Assistant. If the order of 6.1.1986 was issued to discourage UDCs from seeking reversion as Postal Assistant to get accelerated promotion as LSG Postal Assistant, the order could apply prospectively and not retrospectively. It has been conceded by the respondents that on 14.12.1983 the applicant sought reversion to his parent cadre while the TBOPS was promulgated on 17.12.1983. Thus, it cannot be said that the applicant's request for reversion was

motivated. It is an established law that the administrative instructions cannot be given retrospective effect to deprive the employees of their vested rights. The right of promotion which had accrued to the applicant in 1984, cannot be taken away by the instructions of 6.1.1986.

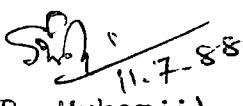
This is also an elementary principle of service jurisprudence that if an employee has a lien in his parent cadre and is promoted to a higher grade, his promotion and other prospects in the parent cadre should be fully protected. In that context, counting of the applicant's service in the higher grade of UDC for the purpose of 16 years of qualifying service in the lower grade of Postal Assistant is unexceptionable.

Further, if the applicant's service as UDC has been admittedly counted for the purposes of increments in his substantive grade of Postal Assistant, as conceded by the learned counsel for the respondents, there is no reason to exclude the service as UDC for the purposes of reckoning qualifying service for promotion as LSG Postal Assistant.

4. In the conspectus of facts and circumstances, we allow the application to the extent of directing the respondents that the applicant's service as UDC should be counted as qualifying service in the parent cadre of Postal Assistant and his case should be considered by a review DPC

for promotion to the LSG with effect from 31.12.1984.

There will be no order as to costs.


11.7-88
(S.P. Mukerji)
Administrative Member.


11/7/88
(P.K. Kartha)
Vice-Chairman.