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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1019 1987
T.A. No.

DATE OF DECISION 11.11.1988

Shri Madan Mohan Sharma & Others **Petitioner^s**

Shri Sant Lal **Advocate for the Petitioner(s)**

Versus

~~Shri P.P. Khurana~~ U.O.I. **Respondent**

Shri P.P. Khurana **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? YB
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓

Shanave

Central Administrative Tribunal
Principal Bench, Delhi.

5

REGN. NO. OA. 1019 of 1987 Date of decision 11.1.1988

1. Shri Madan Mohan Sharma
2. Shri Sat Pal Munjal
3. Shri Radhey Shyam Sharma
4. Shri Ramesh Chander Khurana

Applicants

Vs.

1. The Union of India,
through Secretary, Ministry of
Communication, New Delhi.
2. The Postmaster-General,
Delhi Circle, Mohan Singh Place,
New Delhi-110001.

Respondents

PRESENT

Shri Sant Lal ... Advocate for the applicants.
Shri P.P. Khurana ... Advocate for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is a case under Section 19 of the Administrative Tribunals Act, 1985, against the impugned orders dated 15.3.85 issued by the P.M.G., Delhi Circle, and letter dated 23.7.84 issued by the D.G.P.&T, New Delhi, pertaining to non-payment of arrears of pay and allowances in respect of arrears of pay and allowances on account of promotion with retrospective effect.

2. The brief facts of the case are that the applicants 1 to 4 were appointed as Sorters in the Railway Mail Service from Sept. 1958, 16.5.59, 16.11.61 and 1.2.62 respectively. During 1968, they were on deputation with the Army Postal Service while their liens were kept in the parent Units of Railway Mail Service in Delhi Circle. The Senior Superintendent, Delhi Sorting and Airmail Service, Delhi, issued orders on 30.9.68 for promotion of 19 officials (Time Scale Sorters) to the post of Lower Selection Grade Supervisors against newly created posts. Some of the officials promoted were

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junior to the applicants. The applicants who were on deputation to the Army Postal Service were not considered for such promotion in their parent Circle. One Shri Kulwant Singh, a deputationist to the Army Postal Service, filed a writ petition before Delhi High Court seeking his right of promotion from the date his juniors were promoted and for consequential reliefs of fixation of pay and grant of arrears. The High Court allowed the writ petition and directed the respondents to consider the case of Shri Kulwant Singh for promotion as on 30.9.68 and also allowed relief to him. In pursuance of the orders of the High Court, the respondents granted promotion to the petitioner in that case to the Lower Selection Grade with effect from 1.10.68, the date his junior was promoted and allowed him consequential benefits of fixation of pay and arrears of pay from that date. The applicants pursued their case for promotion with effect from 1.10.68 for several years. In the meanwhile, the applicants had been promoted to the next higher scale of Lower Selection Grade with effect from 30.11.83 under the Time Bound One Promotion Scheme. However, the Director-General, Posts & Telegraphs, considered the request of the applicants in the light of the High Court judgment in the case of Shri Kulwant Singh Vs. Union of India and decided that cases not only of deputationists to Army Postal Service but also of all others who did not participate in the strike and were not penalised for participation should be reviewed and they be given notional promotion from the date their immediate juniors stood promoted. As a result, the P.M.G., Delhi Circle, vide his memo dated 15.3.85 ordered that the applicants and a few others who were on deputation to APS during September 1968 strike should be deemed to have been notionally promoted to LSG Cadre with effect from 1.10.68. This memo further stated that the employees would not be entitled to any arrears on account of fixation of pay under the normal rules applicable but the arrears would be permissible when the officials had actually discharged the duties of the higher posts. The memo further said that the officials would continue to work in the same unit and post where they were working at that time. The prayer of the applicants is

7

that since their juniors had been promoted on 1.10.68 while they were on deputation to APS and had continued to have their right in the parent Department, they should not have been ignored and should have been given promotion from the same date with all consequential benefits and that it would be irrational and arbitrary if their juniors were allowed promotion from 1.10.68 and paid the arrears of salaries while they were denied the arrears of salary from 1.10.68.

3. The applicants have cited a number of cases in their favour. The Delhi High Court in the case of **Shri P.P.S. Gumber Vs. Union of India** and another decided on 31.3.84 (1984(2) SLJ, 633) observed:

"There is cotena 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."

This judgment quoted four other judgments and held that

"In view of the above authorities, the petitioner would be entitled to the pay and allowances of the post of Executive Engineer w.e.f. the date he was entitled to the said post."

In a similar case of **Bakshi Ram Vs. Union of India** (OA 142/86 decided by the Principal Bench of the Central Administrative Tribunal on 28.5.87), 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 Cadre.

4. The learned counsel for the respondents said that the cause of action for the applicants arose in 1968 and, therefore, it cannot be agitated at this stage. Shri P.P. Khurana said that the respondents had promoted some loyal employees during strike and merely because one of the deputationists, Shri Kulwant Singh,

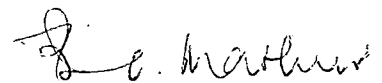
took action at the appropriate time and got relief from the Court, similar relief cannot be granted to others. He said that it is a well-settled law that persons who agitate their cases and are not sitting on the fence alone are entitled to relief. He said that Government had been very indulgent towards the applicants and on their own gave advantage of higher pay and accepted the representation of the applicants. In their representation, the applicants had asked for seniority and increments, but they never asked for anything more than what has already been given to them. No fresh cause of action has arisen and their past service has also been counted in fixing their salaries. Only no arrears have been allowed to them as they had actually not worked on a higher position or responsibility. He conceded that on merits the applicants had a case as while they were on deputation to the Army Postal Service, they could have been given a chance of promotion but arrears can be given only if they actually worked on a senior position.

5. The learned counsel for the applicants cited the Tribunal's case of Chandigarh Bench - Roshan Lal Vs. Union of India - ATR 1987 (1) C.A.T. 121 - wherein it has been 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 the higher post or not.

5. In such cases, both the views have some merit. As far as the applicants are concerned, they were entitled for promotion on the day their juniors were promoted. According to the Promotion Rules, promotion to LSG Cadre has to be done on the basis of seniority-cum-fitness and as there was no doubt about their seniority or fitness, they should have been promoted before any junior ~~should~~ ^{has} have been promoted. Since they were not promoted for no fault of theirs, they have a strong case not only for promotion but also for getting all the arrears of salary. The case on the other side is that the applicants have already been promoted and given benefit of salary from the same date their juniors were promoted but are not given arrears of salary for the period ^{as} they did not actually work on the higher position. According to the respondents, the

9

applicants worked on higher posts with effect from 30.11.83. The learned counsel for the applicants clarified that it was not a higher post as such, but the promotion was based on the One Time Promotion in the higher grade on the same post. In view of the judgments in the Delhi High Court case of Shri P.P.S. Gumber Vs. Union of India and the two Tribunal cases - Bakshi Ram Vs. Union of India and Roshan Lal Vs. Union of India, I feel that it would not be correct to deny the benefit of promotion with all the consequential benefits to the applicants with effect from 1.10.68. In view of the above, the application is allowed. The respondents are directed to make all payments of arrears of salary to the applicants with effect from the said date. The payment be made to the applicants within a period of three months from the receipt of these orders. There will be no order as to costs.



(B.C. Mathur)

Vice-Chairman