

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1045 1987
T.A. No.

DATE OF DECISION JANUARY 11, 1990

Shri Chokha Ram Applicant (s)

Shri Sant Lal Advocate for the Applicant (s)

Versus
Union of India & Ors Respondent (s)

Shri K.C. Mittal Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE AMITAV BANERJI, CHAIRMAN

The Hon'ble Mr. P.C. JAIN, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? no
4. To be circulated to all Benches of the Tribunal ? no

JUDGEMENT of the Bench delivered by Hon'ble
Shri P.C. Jain, Member (A).

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was appointed as a Sorter R.M.S. (now designated as Sorting Assistant) in D Division on 13.12.57 and was confirmed on 24.4.63, has prayed for direction to the respondents for fixation of his seniority on the basis of length of service; for grant of promotion to the Lower Selection Grade from the date it fell due according to the revised seniority; and grant of consequential reliefs of pay fixation and arrears arising out therefrom etc. The seniority of the applicant has since been revised. He has also been promoted to Lower Selection Grade notionally from 11.4.80 instead of 30.11.83. (Annexure R-5 to the counter reply). As such, in the rejoinder the applicant has reiterated only his grievance relating to the arrears of pay and allowances for the period

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11.4.80 to 29.11.83 which have been denied vide impugned order dated 21.10.87 (Annexure R-5 to the counter-reply) on the ground that he did not actually work in the said grade during this period. The learned counsel for the applicant stated at the Bar also that his grievance about the seniority and promotion have been redressed and question of payment of arrears may alone be now adjudicated upon.

2. We have perused the documents on record and have also heard the learned counsel for both the parties.

3. Admittedly, the applicant has been promoted to lower selection grade, though notionally from 11.4.80. Earlier he had been allowed this promotion from 30.11.83. In support of the claim for arrears for the period from 11.4.80 to 29.11.83, the applicant has pleaded that his promotion from 11.4.80 had been illegally and wrongly denied to him, he is entitled to the payment of arrears also from that date. He has further pleaded that on promotion to the lower selection grade there is no change in duties and responsibilities and as such it is immaterial whether he actually worked or not in the said grade during this period. Learned counsel for the applicant also cited a number of judgements* in support of his case.

4. The respondent's case is that the applicant is not entitled to arrears as he did not actually work in the lower selection grade from 11.4.80 to 29.11.83.

* 1. Shri Bakshi Ram Vs. Union of India & Ors
(O.A 142/86 decided by Division Bench of
CAT at Principal Bench on 28.5.87)
2. Shri Yog Dhian Piplani & Mohan Lal Mehta Vs. U.O.I. & Ors.
(O.A Nos. 671 & 759/86 decided by Division Bench
of the CAT at Principal Bench on 28.7.87.
3. Shri Madan Mohan Sharma & Ors Vs. Union of India & Ors
(O.A. no. 1019/87 decided by Hon'ble Shri B.C.Mathur,
Vice Chairman (A) on 11.1.1988).
4. State of Mysore Vs. C.R. Seshadri
AIR 1974-SC-461.
5. Charan Das Chandra Vs. State of Punjab & Another
1980(3)-SLR-702.

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5. The applicant had submitted a representation to the Post Master General, Ambala on 19.7.80 which was followed by several reminders. Another representation was submitted on 13.1.86. The representation was rejected by the Postmaster General Ambala, vide his order dated 3.9.86. This application was filed on 27.7.87 During the pendency of the application vide order dated 21.10.1987 (Annexure R-5 to the counter-reply), the applicant was given notional promotion from 11.4.80 instead of 30.11.1983. This fact would show that the delay in revision of the seniority and consequential promotion to the lower selection grade is totally attributable to respondent No. 2, viz., Postmaster General Haryana Circle, Ambala. The only question which now needs to be considered is whether it was necessary for the applicant to have actually worked in the lower selection grade during the period for which he was given notional promotion but pay and allowances of the lower selection grade were not allowed to him. The contention of the applicant is that there is no change in his duties and responsibilities on promotion to the lower selection grade. He has also pleaded in his rejoinder that his initial orders of promotion to lower selection grade were issued in 1984 but the promotion was given w.e.f. 30.11.83 and that he was also allowed arrears of pay and allowances for the intervening period. This fact has not been rebutted by the respondents, and thus it is clear that respondents did not consider it necessary at that point of time that it was necessary for the applicant to have worked in the lower selection grade before paying him pay and allowances for that grade. In their counter-reply they have, however, taken up a specific plea to the effect that promotion to LSG cadre involves higher duties and responsibilities as benefit of pay fixation under F.R. 22(C) is only given on promotion and that this benefit is available only if the post ~~to which~~ a person is promoted to which involves higher duties and responsibilities.

6. In the case of Shri Bakshi Ram Vs. Union of India & Ors, it was, inter-alia, mentioned that the promotion to the lower selection grade did not involve assumption of higher duties and responsibilities.

In the case of Shri Yog Dhian Piplani & Mohan Lal Mehta Vs. Union of India & Ors., the Division Bench of the Central Administrative Tribunal relied upon for the purpose of arrears on the judgement of another Division Bench in the case of Bakshi Ram. In the case of Shri Madan Mohan Sharma and three others, the question whether the applicant actually worked on the higher position in the L.S.G. was considered in some details and Hon'ble Shri B.C. Mathur, Vice Chairman (A), in view of the judgement of Delhi High Court in the case of Shri P.P.S. Gumbur Vs. Union of India & another (1984-(2)-SLJ-633) and two Tribunal cases - Bakshi Ram Vs. Union of India and others and Roshan Lal Vs. Union of India, allowed the benefit of promotion with all consequential benefits w.e.f. notional date of promotion. The Delhi High Court in the case of Shri P.P.S. Gumbur Vs. Union of India (supra) observed as below:-

" There is an 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".

This judgement quoted four other judgements in support of this proposition. In the case of Shri Bakshi Ram, the Division Bench of the Central Administrative Tribunal observed as below:-

" It is clear that the Lower Selection Grade is a non-functional grade without any change in responsibilities and duties. As such, the question of non payment of this grade for not working against higher duties and responsibilities does not arise. Even where such change in duties and responsibilities is involved and promotion is made from retrospective effect, the courts have held that the employee is entitled to arrears of pay also. 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

(See:-)

wrong or illegal order in not promoting him when promotion was due. Even in K.K. Jaggia Vs. State of Haryana & Others, 1972-SLT-578, the same High Court held that even 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."

7. It is true that benefit of fixation of pay under F.R.22(C) is allowed where assumption of higher duties and responsibilities is involved. It is not in dispute that the pay on promotion to Lower Selection Grade is fixed under F.R. 22(C). It is also however, true that, as earlier stated by us, the applicant was allowed arrears of pay etc. with retrospective effect when he was first promoted w.e.f. 30.11.83. In all the cases decided by the Central Administrative Tribunal, and referred to above by us pertained inter-alia to promotion of Sorters in the R.M.S. to Lower Selection Grade and in all these cases arrears of pay and allowances have been allowed even though the applicant had not actually worked in that grade from that date from which the arrears have been allowed. Further, in view of the three other judgements cited in the case of Shri Bakshi Ram, the applicant would appear to be entitled to the pay and allowances in the grade of Lower Selection Grade from the date he has been given promotion, even though it is stated by the respondents to be notional from that date.

8. In view of the above discussions, we quash the order by office of the dated 21.10.87 issued ~~to~~ Postmaster General, Haryana Circle, Ambala, to the Superintendent, RMS D-Division, New Delhi, to the extent it denies ~~to~~ to the applicant the pay and allowances of Lower Selection Grade for the period from 11.4.80 to 29.11.83, and direct that the applicant may be paid pay and allowances of the Lower Selection Grade for the period from 11.4.80 to 29.11.83 after

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adjustment of the pay etc. already drawn within a period of two months from the date of communication of this order.

9. We allow this application in terms of these directions. However, there will be no order as to costs.

Dec 11/1980
(P.C. JAIN)
MEMBER (A)

Abd
(AMITAV BANERJI)
CHAIRMAN

Decided in open court.

*Dec
11/11/90*
(P.C. Jain)
Member (A)