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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1713/93 & OA-2597/93

New Delhi this the 7th Day of June, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

OA-1713/93

1. Sh. Rajender Singh,
S/o Sh. Ram Sarup,
R/o 327A/26, West Ram Nagar,
Sonapat(Haryana).
2. Sh. Jai Singh,
S/o Sh. Bhana Ram,
R/o Vill. Tilangpur Kotla,
Post Office Najafgarh.
3. Sh. Ram Daur,
S/o Sh. Feroo,
R/o E-344 Jagjeet Nagar,
Delhi-53.
4. Sh. Lekh Raj,
S/o Sh. Battan Singh,
R/o 808, Gautam Gali No.5,
Jawala Nagar Shahdara,
Delhi-32.

Applicants

(By advocate Sh. R.K. Khanna)

versus

1. Union of India,
through the Secretary,
Ministry of Communication,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-1.
2. Director General,
Post & Telegraph Department,
and the Chairman of Post & Telegraph
Department, Dak Bhavan,
New Delhi.

Respondents

(By advocate Sh. M.K. Gupta)

OA-2597/93

Shri P.K. Rohtagi,
S/o Sh. R.P. Rohtagi,
C/o Sh. Sant Lal, Advocate,
C-21(B) New Multan Nagar,
Delhi-56.

Applicant

(By advocate Sh. Sant Lal)

versus

1. Union of India,
through the Secretary,
Ministry of Communications,
Deptt. of Posts,
Dak Bhavan,
New Delhi-1.
2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi.
3. The Director,
Foreign Post,
I.P. Estate,
New Delhi-2.

Respondents

(By advocate Sh. M.K. Gupta)

ORDER

delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

As the issues raised in these O.As. are similar, they are being disposed of by a common order.

The admitted facts of these cases are; according to the P&T (Selection Grade Posts) Recruitment Rules, 1976, the promotion to the Lower Selection Grade Post was to be made 66 2/3% by seniority-cum-fitness and 33 1/3% by selection through departmental examination. Upon their qualifying in the written examination, the applicants were promoted to the post of Lower Selection Grade. The promotion of Sh. P.K. Rohtagi (applicant in OA-2597/93) was against the one of the vacancies of 1981 and that of the applicant in OA No.1713/93 against the vacancies of 1982. Subsequently all the applicants were put on the supervisory functional post and were also given special allowance of Rs.40 P.M.. The applicants have been working in these supervisory posts for over 10 years and in the seniority list of L.S.G. notified on 1.7.1987, they were shown senior to a number of colleagues who did not qualify in the departmental

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examination. Effective from 30.11.1983, the department introduced a scheme called 'Time Bound one promotion scheme'. Under this scheme, the postal assistants are placed in the next higher pay scale on completion of 16 years of service in the basic cadre with no change in their duties and responsibilities. The scheme safeguarded the interest of applicants by providing that the scheme will not affect the officials who have already been promoted on regular basis before 30.11.1983 under the existing rules and also that such officials will rank en-block senior to officials who are placed in the next higher scale in pursuance of the scheme. In accordance with the seniority, the applicants were granted special allowance with effect from 30.11.1983. Another scheme called Biennial cadre review was introduced with effect from 1.10.1991. Under this scheme, the next higher pay scale was to be given to the employees on completion of 26 years supervisory service. The introduction of this scheme was to the disadvantage of the applicants as it abolished the supervisory allowance and as it took away the advantage of their having been successful in the departmental examination as also promotion earlier than their colleagues. What happened after the introduction of the scheme, is that their juniors who had completed 26 years of service were promoted to the Higher Selection Grade-II. The applicants were transferred from the post of L.S.G. Supervisor to the lower post of Postal Assistants.

The main relief sought in these applications is for quashing the Government DG Posts, ^{Letter No} No. 22-1/89-PE-I dated 11.10.1991 which imposes restriction of 26 years of service on the applicants for promotion

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to Higher Selection Grade-II.

In the counters filed on behalf of the respondents, it has been contended that promotion under BCR scheme is not dependent on the availability of posts in higher grade and seniority of an official is not the criteria. The only pre-requisite is that the employee should have put in 26 years of satisfactory service both in the basic cadre and next higher cadre put together. In this respect, the scheme can not be called a regular promotional scheme. Since the applicants have not completed 26 years of service, they can not be promoted under this scheme. Moreover, the pay of the applicants remained intact. Under the new scheme, it is not necessary that every promoted official will be given higher responsibility. The scheme is in the interest of a large majority of officials who were stagnating in the lower grade.

Heard the learned counsel for the parties and perused the record.

The learned counsel for the respondents argued that the BCR scheme was introduced as a result of the agreement between the Department and the Joint Consultative Machinery of the Employees.

The learned counsel for the applicants has drawn our attention to the judgement of Bangalore Bench of this Tribunal dated 3.8.1993 in O.A.No.403/92 (Smt. Leelamma Jacob & Ors. Vs. U.O.I. & Ors.). In that case also the Biennial Cadre Scheme was challenged as the applicants were aggrieved that their juniors were promoted as Section Supervisors

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as a result of their completing 26 years of service in the basic grade and had also been given supervisory duties while withdrawing the supervisory duties from the applicants. It was held that "the administrative instructions can't modify the provisions made in the recruitment rules framed under proviso to Article 309 of the Constitution. The BCR scheme introduced through an administrative circular could not override the provisions of the recruitment rules. The Tribunal observed that the anomaly had arisen due to the fact that the BCR scheme had not provided for any relief to the officials like the applicants, who are seniors in Grade-II. We are of the view that since the scheme is mainly meant to provide the relief of giving a second promotion after 26 years of service, the small number of staff, who have already been officiating in Grade-II for a large number of years before the contesting respondents were promoted to that grade, can also be given relief by considering their cases for promotion to Grade-III as per their seniority in Grade-II, irrespective of the fact whether they had completed 26 years of service in the basic grade or not. To this extent the BCR scheme as envisaged without any amendment to the existing recruitment rules is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution."

Respectfully reiterating the afore-mentioned views, we allow the applications with the following directions :-

- (i) In implementing the BCR scheme, the case of the applicants who are senior in Grade-II, by virtue of their promotion against 1/3rd merit quota, compared to

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the other officials promoted to grade-II should be considered for promotion to Grade-III in their turn as per their seniority, whenever their erstwhile juniors in Grade-II are considered for promotion to Grade-III by virtue of their having completed 26 years of service in the basic grade, without insisting on the applicants completing the minimum prescribed years of service in the basic grade. All other conditions of BCR scheme except the length of service will however be applicable while considering their promotion to Grade-III.

- (ii) In case the applicants are found suitable for such promotion, they shall be promoted to Grade-III with effect from the date their erstwhile juniors were promoted from Grade-II to Grade-III with all consequential benefits including seniority and arrears of pay and allowances from such dates. They should also be put on supervisory duties depending on their seniority.
- (iii) The BCR scheme should be modified suitably to protect the interest of the officials like the applicants for their promotion from Grade-II to Grade-III.
- (iv) The above directions shall be complied within a period of 4 months from the date of receipt of a copy of this order.

The applications are disposed of accordingly with no order as to costs.

A copy of this order may be placed in both the files.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER(A)

S.K. Dhaoon
(S.K. DHAON)
VICE CHAIRMAN

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