

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 778 of 1996

this the 21<sup>st</sup> day of February, 2003

Hon'ble Mr. Justice R.R.K.Trivedi, V.C.  
Hon'ble Maj Gen K.K.Srivastava, A.M.

Kamlakar Chaubey,  
aged about 54 years,  
Postal Assistant Kabirchaura  
Post Office, Varanasi.

....Applicant.

(By Advocate : Shri Anand Kumar)

Versus

1. Union of India,  
through the Secretary,  
Government of India,  
Ministry of Communications,  
Depart of Posts, New Delhi.
2. The Chief Post Master General  
U.P.Circle Lucknow.
3. The Director Postal Services Office  
P.M.G., Allahabad.
4. The Senior Superintendent of Post Offices  
(East Division) Varanasi.

.... Respondents.

By Advocate : Km. Sadhna Srivastava)

O R D E R

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

In this OA under Section 19 of the Administrative Tribunal Act 1985, the applicant has sought for the following reliefs :-

- (a) That the Hon'ble Tribunal be pleased to declare that the petitioners<sup>12 u</sup> entitled to get the benefit

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of higher scale of pay in scale 1600-50-2660 with effect from 24.10.1990 or atleast from 1.10.1991 as other members of staff completed 26 years of service.

- (b) Also the petitioner is entitled to get higher scale of pay in scale 1400-40-2300 with effect from 30-11-1983 as other members of staff who completed 16 years of service on or before 30.11.1983. Medical Bills amounting to Rs.30898/70 p and arbitrarily rejected by the respondents as per their letter no.E 2/43/3 dated 13.3.1996 (Annexure-3)"

2. Second relief regarding medical bills is concerned, the same does not flow from relief No.1. As per Rule 10 of C.A.T. (Procedure) Rules, 1987 two different reliefs cannot be claimed in one OA. Realising the legal infirmity the second relief was not pressed by the applicant during arguments.

3. The facts of the case, in short, giving rise to this OA are that the applicant was <sup>in appointed in</sup> as Postal Assistant on 17 April 1962. He was placed under suspension from 10.1.1978 to 27.7.1981. Biennial Cadre Review (in short BCR) Promotion Scheme was introduced w.e.f. 1.10.1991. The first list of promotion was issued on 17.8.1992 which did not include the name of the applicant. A second list was issued by Chief Post Master General (in short CPMG) Lucknow on 10.1.1994 in which the name of the applicant appeared at <sup>in</sup> Serial No.56 and he was granted promotion w.e.f. 6.11.1991. <sup>Number</sup> No of juniors to the applicant were promoted vide order dated 17.8.1992. The applicant had filed OA No.965 of 1988 in which the direction was given to respondent No.4 to refix the pay of the applicant, pay arrears within three months and grant all the privileges accruing to him during suspension period from 10.1.1978 to 24.7.1981. The applicant, inspite of this direction of the Tribunal, was granted one time bound promotion which is to be given after completion of



16 years arbitrarily w.e.f. 18.12.1984 though the same was due to the applicant w.e.f. 30.11.1983. Not only this his medical bills were rejected vide respondent No.4 order dated 17.11.1995. However, these are not relevant to the present controversy. The applicant represented to higher authorities for grant of BCR promotion. Since respondents did not redress the grievance, the applicant has filed this OA which has been contested by the respondents by filing counter reply.

4. Sri Anand Kumar learned counsel for the applicant submitted that promotion under BCR has to be given on completion of 26 years. The applicant joined service on 17.4.1962 and therefore he completed 26 years on 16.4.1988 itself. The BCR scheme came into effect w.e.f. 1.10.1991 and therefore the applicant is entitled for the same. It is great injustice on the part of respondents that they have promoted juniors and have denied the due promotion to the applicant.

5. Opposing the claim of the applicant Miss Sashna Srivastava counsel for the respondents submitted that the period of suspension from 10.1.1978 to 27.7.1981 i.e. 03 years 06 months and 20 days was not to be counted for the purpose of promotion as it was dies non. Thus, the applicant completed 26 years service on 6.11.1991. Since the BCR promotion was to be considered six monthly the applicant's case for promotion under BCR scheme was to be considered w.e.f. 1.1.1992. The applicant accordingly by order of CPMG dated 15.6.1992 was approved for grant of BCR promotion w.e.f. 1.1.1992 with clear stipulation that no disciplinary proceedings were pending/contemplated against the official. However, <sup>in which</sup> two disciplinary

cases under Rule 16 were pending against the applicant  
*resulting into punishment of him*  
~~followed by recovery of Rs.17000/-~~ later on reduced to Rs.4000/-  
by order dated 12.1.1995, the applicant could not be given  
BCR promotion.

5. We have heard counsel for the parties, considered their submissions and perused records. The applicant has heavily relied upon the order of this Tribunal dated 11th August, 1995 passed in OA No.965 of 1988 filed by the applicant and has advanced mainly two arguments assailing the action of the respondents. Firstly that as per the order dated 11.8.1995 of this Tribunal, the respondents could not exclude the suspension period while working out the eligibility of the applicant for BCR promotion and secondly that the date of promotion of the applicant after completion of 26 years of service has to be 1.10.1991, when the BCR scheme was introduced since no disciplinary proceeding was either contemplated or pending. For convenience sake para 9 of the order dated 11.8.1995 passed in OA No.965 of 1988 is reproduced below :-

"9. In the result, this application is partly allowed. The entire period of suspension of the applicant shall be taken as wholly unjustified for the purpose of the provisions contained in F.R. 54-B and he shall be entitled to be given all benefits flowing there from including the arrears of salary, increments and consequential fixation of pay etc. Let this direction be complied with within a period of three months from the date of communication of this order. The applicant having already retired from service may also be entitled to certain enhancement in the retiral benefits as a consequence of re-fixation of pay. If so, the benefits thereof shall be granted to the applicant within a period of six months from the date of communication of this order. No order as to costs."

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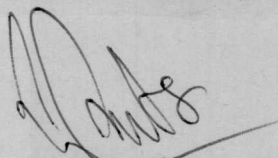
6. From the above, it is clear that the action of the respondents in not counting the period of suspension i.e. 03 years 06 months and 20 days for promotion, is incorrect. However, the Chief Post Master General, U.P. Circle, Lucknow approved the applicant for BCR promotion w.e.f. 1.1.1992 vide order dated 15.6.1992 (Annexure-CA-I). The date of promotion of the applicant was later on changed to 6.11.1991 by CPMG memo dated 10.1.1994 (Annexure-CA-2). Both the above orders have not been challenged by the applicant in this OA and therefore the applicant has accepted this position. Now another question which arises before us is whether the action of respondents in not granting the applicant BCR promotion is correct or not. In order to appreciate this question we go back to the first memo of Chief Post Master General, U.P. Circle dated 15.6.1992 by which the BCR promotion of the applicant has been approved. Para 3 of the said memo reads as under :-

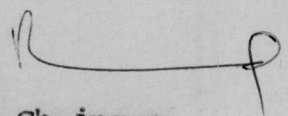
"The Divisional Heads/Unit Incharge should ensure that no vigilance/Disciplinary case of the type indicated in DGs Commn. No. 6/16/71-Dise-I dated 23.3.1972 read with letter No. 56/7/77-Dise-I dated 15.12.1977 is pending against any of the officials mentioned in Annexure-A and that the penalty of withholding of increment is not operative. In case there is any such involvement, the matter should immediately be reported to this office and pay in the scale of Rs.1600/2660 (HSG-II) should not be drawn untill receipt of further instructions from this office."

Therefore, any one against whom any vigilance/disciplinary case was pending was not to be promoted. The respondents in Paras 8 & 9 of the counter reply have averred that one case of payment of bogus money order was decided by memo dated 24.8.1992<sup>h m</sup> and the applicant was awarded punishment of recovery of Rs.17000/- in 34 instalments each of Rs.500/-. Later on the penalty of recovery of

Rs.17000/- was reduced to Rs.4000/- in 20 equal instalments, of Rs.200 each commencing from January 1995 vide respondent No.4 memo dated 12.1.1995. Besides another case of Rule 16 (i.e. minor penalty) relating to tempering of insured letter was pending. Applicant himself has averred in Para 14 of Rejoinder Affidavit that chargesheet resulting into the order of recovery of Rs.17000/- was dated somewhere in February,1992. Thus, we have no doubt in our mind that on the 15.6.1992 when the memo approving the BCR promotion of the applicant from retrospective effect was issued by Chief Post Master General, U.P.Circle, a disciplinary case was pending against the applicant. The submission of the applicant's counsel that on 1.1.1992 or 6.11.1992 there was no case pending against the applicant has no substance as this aspect had to be looked into on the date of promotion though <sup>in</sup>effective from back date. The applicant was not entitled for promotion till the currency of punishment. In our view no illegality has been committed by the respondents and we do not find any good ground for interference.

7. For the reasons recorded above, the OA has no merit and is liable to be dismissed. The OA is accordingly dismissed with no order as to costs.

  
Member-A

  
Vice Chairman

pc/