

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 376 of 1998

Allahabad this the 11th day of April 2002

Hon'ble Mr.C.S. Chadha, Member (A)  
Hon'ble Mr.A.K. Bhatnagar, Member (J)

Suresh Singh, aged about 45 years son of Late Sri Puttoo Singh, R/o Plot No.14, Rana Pratap Nagar, Post Rawatpur, Kanpur at present working as LSC Accountant Head Post Office, Kanpur.

Applicant

By Advocate Shri K.P. Srivastava

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Director General, Department of Post, Dak Bhawan, New Delhi.
3. Post Master General Kanpur Region, Kanpur.
4. Director of Postal Service, Office of P.M.G. Kanpur Region, Kanpur.
5. Chief Post Master, Head Post Office, Kanpur.

Respondents

By Advocate Km. Sadhna Srivastava

ORDER

19.4.2002

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O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

This O.A. has been filed challenging the order dated 26.02.1998 reverting the applicant from L.S.G/<sup>Grade</sup> because his promotion granted on 08/01/91 w.e.f. 26.10.1990 under the T.B.O.P. Scheme was held to be irregular.

2. The brief undisputed facts of the case are that the applicant was appointed as a Postal Assistant on 27.10.1974 and confirmed on that post on 01.07.80. He was selected and promoted to the post of P.O. and R.M.S. Accountant w.e.f. 16.12.1981. Thereafter he was selected for the post of U.D.C.(S.B.C.O.) and after training of 7 days, he was promoted and posted as U.D.C. (S.B.C.O.) w.e.f. 15.03.1982. He sought reversion to his parent cadre on 21.09.84, but no action was taken on his request. He therefore filed a Writ Petition in the High Court, which was decided on 15.06.1986 whereby the High Court directed the department to decide the representation of the applicant within a period of 2 months. The representation was ultimately decided on 15.12.1986 and he was reverted to his parent cadre subject to the condition contained in the circular dated 06.01.1986. It transpires that while he was on deputation as U.D.C. (S.B.C.O.), a promotion scheme called T.B.O.P. Scheme was introduced in his parent cadre on 30.11.1983, which laid down that persons who worked as Postal Assistant for 16 years could be given time bound

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promotion to the L.S. Grade (Lower Selection Grade). The above mentioned circular of the department dated 06.01.1986, which was supposed to apply to the reversion of the applicant to his parent cadre laid down that services rendered as U.D.C. (S.B.C.O) shall not be counted for promotion under the T.B.O.P. Scheme. The applicant on learning of this, constrained to file a representation on 03.01.1987 and the same was rejected on 29.09.1987. He, therefore, filed an O.A. No. 1054 of 1988 against the rejection of his representation. However, during the pendency of his O.A., he was promoted on 08.01.1991 to the L.S.G from the due date i.e. the day he completed 16 years of service after being appointed as Postal Assistant (26.10.1990). Since he got his promotion to the L.S.G., the O.A. was not pressed and therefore, dismissed. Since he had drawn Rs. 90/- as personal pay, he got his pay fixed in the new L.S.G. correctly w.e.f. 28.12.1990. However, after being in the L.S. Grade for about 7 years, he ~~was~~ received an intimation dated 30/05/97 from the respondent no. 5 saying that an inquiry had to be instituted into wrong fixation of pay of the applicant and that he should present himself for discussion on the subject. Accordingly a meeting was held on 09.02.98 and the impugned order was passed on 26.02.98 in the shape of minutes of that meeting. It was mentioned therein that the pay fixation and the promotion under the T.B.O.P. Scheme of the applicant was irregular and therefore set aside. In fact when he received a communication

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dated 30/05/97 regarding the enquiry that ~~it~~ also for included a direction to the Accounts Officer to make recoveries from the pay of the applicant because of wrong pay fixation, without affording any opportunity to the applicant to explain whether his pay was fixed ~~or~~ the promotion given wrongly.

3. From the facts narrated above, it is clear that the T.B.O.P. Scheme for time bound promotion to the L.S.Grade was instituted on 30.11.1983, i.e., much after the applicant had gone from his parent cadre on promotion after selection as U.D.C.(S.B.C.O.). The circular of 06.01.86 which prohibited the counting of services rendered as U.D.C.(S.B.C.O.) was issued nearly 4 years after the applicant had already gone on deputation. If a particular order lays down that service on a particular post will not be counted towards promotion of the occupants of the posts, <sup>they</sup> must be immediately informed and asked for their option whether they would like to continue on deputation and forego promotion or would like to revert to the parent cadre. In other words when the T.B.O.P. Scheme was introduced on 30.11.1983 enabling promotion to L.S.Grade after 16 years of service as Postal Assistant, it should have been clarified right then to all Postal Assistants who had gone on promotion as U.D.C.(S.B.C.O.) that either they should revert to the parent cadre and take the benefit of the ~~T.B.O.P~~ Scheme or at their own option continue on deputation and loose their

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promotion. Even after this was not done on 30.11.83 when the T.B.O.P. Scheme was introduced, it should have been done on 06.01.86 when the circular was issued and every person on deputation should have been asked for the option with the further stipulation that services rendered as U.D.C.(S.B.C.O.) upto 06.01.86 and also till the exercise of the option for reversion to the parent cadre, would be counted for the T.B.O.P. Scheme promotion. Unless and until a person is informed and given the option about the dangers of continuing on deputation and loosing the promotion under the T.B.O.P. Scheme, how can such a person be aware of the likely loss of promotion if he continues on deputation. A person can be denied promotion for not rendering 16 years service after appointment as Postal Assistant only after he is told that services outside the cadre would not be counted either at the time of going out of the cadre or atleast when such a decision was taken. Since the applicant left his cadre on 15.03.82 without knowing that his going on deputation will stand in the way of his promotion under the T.B.O.P. Scheme, <sup>he can</sup> cannot be deprived of the benefit of the scheme with retrospective effect. Even after 06.01.86 when this condition was laid down, all persons going on deputation as U.D.C. (S.B.C.O.) should have been clearly informed that deputation would mean a loss of promotion under the T.B.O.P. Scheme.

4. We are therefore constrained to observe that the department cannot enforce this condition

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that the services rendered as U.D.C.(S.B.C.O.) shall not be counted for promotion with retrospective effect without having given an opportunity to exercise an option to the class of people similar to the applicant.

5. Further it is surprising to see that when the applicant filed O.A. No.1054/88, he was granted the relief w.e.f. 26.10.90 and after having served on the promoted post for 7 years and more, he was reverted on 26.02.1998. First of all the circular of 06.01.86 is held to be unjust and cannot be applied to the case of the applicant because he never got an opportunity to make up his mind, therefore, the pay fixation and promotion of the applicant was perfectly in order. For argument's sake even if it is considered that the promotion granted to the applicant w.e.f. 26.10.1990 was illegal, it cannot be withdrawn after 7 years of being granted.

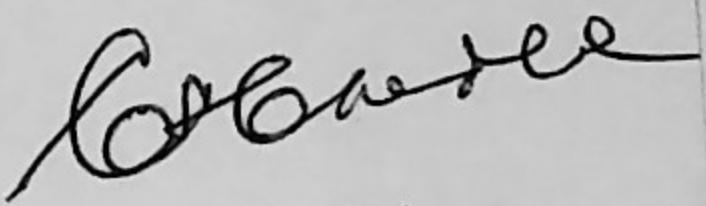
6. We, therefore, come to the conclusion that the circular dated 06.01.86 laying down that the services rendered as U.D.C.(S.B.C.O.) shall not be counted towards 16 years required for promotion under the T.B.O.P. Scheme, could not be justly applied to those people who had not been given such an option before they proceeded on deputation. For those already on deputation prior to that date, it could not be applied with retrospective effect.

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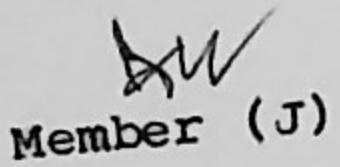
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Therefore, the promotion and pay fixation of the applicant was totally justified and the impugned order dated 26.02.1998 passed without giving any show-cause notice, merely after the so called meeting, is totally illegal and is, therefore, quashed. In effect the O.A. is allowed. The applicant shall have all the consequential benefits of pay, allowances etc. The arrears, if any, on this count shall be paid to the applicant within a period of 3 months from the date of communication of this order. There shall be no order as to costs.



Member (A)

  
Member (J)

|M.M. |