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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

THIS THE 2nd DAY OF NOVEMBER, 2006

Original Application No. 1391 of 2005

CORAM:
HON.MR.JUSTICE KHEM KARAN,V.C.

Sulahuddin Siddiqui, aged about
57 years, son of Late Mohammed
Yasin, Resident of Millat Nagar
P.O. Gandhi Nagar, District Basti,
Presently posted as Sub-Post Master,
P.O. Purani Basti, District Basti.

.. Applicant.

(By Adv: Shri Ashish Srivastava)

Versus

1. Union of India through Secretary
Ministry of Communication, Department
of Posts, New Delhi.
2. Post Master General, Gorakhpur
Region, Gorakhpur.
3. Superintendent of Post Offices
Basti division, Basti.
4. Muniraj Gupta, presently posted as
Postal Assistant in PO Purani Basti
District Basti.

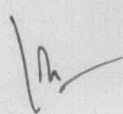
.. Respondents

(By Adv: Shri Saumitra Singh/Shri A.K. Dave)

ORDER

By Justice Khem Karan, V.C.

By means of this OA u/s 19 of Central Administrative Tribunal Act 1985, the applicant is challenging the validity of order dated 16.11.2005 (Annexure 3) by which he has been posted as Dak Sahayak (Postal Assistant) and respondent No.4 as Nayab Post Master (Sub-Post Master) at post office Purani Basti. He prays that the said order be quashed with direction to the respondents to post him as Sub Post Master Purani Basti and not to interfere with his working as such.



Admittedly, inducted as Postal Assistant on 10.8.1970, in other Division, the applicant was transferred to Basti division, under Rule 38 of Post & Telegraph Manual. He joined here as Postal Assistant, much after the respondent no.4. As provided under the Rules, he came at the bottom in the cadre of Postal Assistant. The Post and telegraph department launched schemes for Time Bound one Promotion (TBOP) and Biennial Cadre Review (BCR) to benefit the employees, not getting promotions even after completion of certain number of years, by allowing them next higher scale. There is no dispute that the applicants got both these benefits (TBOP and BCR), much earlier to respondent no.4. Vide orders dated 22.7.2005, the applicant was posted as Sub-Post Master and respondent No.4, as his Postal Assistant, at Post office Purani Basti. The respondent No.4, represented to the authorities, saying that he being senior to the applicant, could not be posted as Postal Assistant under him. It appears that the Authority concerned was convinced, so by the impugned order dated 16.11.2005, the respondent no.4 was posted as Sub Post Master and the applicant as his Postal Assistant at the same post office. The applicant is challenging this order mainly on the ground that as he was promoted to next grades, so he could not be reverted to the post of Postal Assistant, without notice or show cause and secondly since he ranks senior to respondent no.4, so cannot be posted under him.

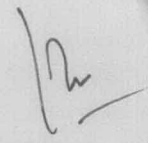
The respondents have contested the claim of the applicant, by saying that TBOP/BCR, are no promotions under the Recruitment Rules, but are simply financial upgradations with a view to relieve employee of stagnation and these have no relevance in the context of seniority. In order to substantiate the above, they have referred to and relied on O.M. dated 23.4.2001 (CA-4) which says such promotions are being wrongly construed as "promotions" and these are really financial upgradations. They have referred to gradation list of 2001 (SCA-1) where the respondent No.4 has been shown at No.28 and the applicant at No.68, in the cadre of Postal Assistants.

By filing the supplementary affidavit dated 5.7.06, the applicant has accepted the existence of gradation list dated 1.7.2001 but has said, several juniors to him

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figuring at 69, 73, 74, 77, 79, 87, 103, 107, 109, 119, 120, 128, 131, 134, 149 are posted as Sub-Post Masters at different post offices.

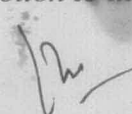
Relying on decision dated 18.4.2006 of Chandigarh bench of this Tribunal in O.A.No.715/2004, Shri Ashish Srivastava has argued that TBOP/BCR are not mere financial up gradations but are promotions, so the impugned order dated 16.11.2005, bringing down the applicant to the post of Postal Assistant from the post Sub-Post Master amounts to reversion and since it has been passed without giving the applicant an opportunity of hearing, so deserves to be quashed. The second limb of his argument is that since the applicant was given those TBOP/BCR, much earlier to respondent No.4, so he being senior to him, could not have been posted as Postal Assistant under him. On the other hand, Shri A.K. Dave and Shri Saumitra Singh, Senior Standing counsel for Govt. of India, have contended that TBOP/BCR are no promotions and are simply financial upgradations and have nothing to do with seniority. Among others, they have referred to Govt. of India Department of Posts letter No.44-60/96 SPB-11, dated 24.9.96, clarifying certain doubts expressed in the context of OTBP/BCR Schemes. They have made specific reference to point No.9, and the clarification thereto, which says OTBP/BCR promotions are not to give benefit in seniority. The learned counsels have also referred to letter dated 3.8.1997, and letter dated 1.1.1998 issued by the Govt, wherein it has been reiterated that OTBP/BCR promotions have no relevance in the context of seniority, as there are only financial up gradations. They have also referred to two Full bench decisions of this tribunal, one by Cuttack bench in OA No.329/2000 D.C.Mishra and 23 Others Vs. Union of India and Others 2005 (2) Administrative Total Judgments page 196 and Other by Hyderabad Bench, in OA No. 976/2003 and connected OA, S.K. Abdul Gaffar and Others Vs. Union of India and Others 2005 (2) Administrative Total judgments page 385, where it has been ruled that TBOP/BCR, are not promotions but are financial up gradations. According to them, the applicant as well as the respondent No.4, are both in the cadre of Postal Assistants, and according to gradation list dated 1.7.2001, (not challenged by the applicant) the respondent no.4 is senior to the applicant.



I think there is no need for entering into the controversy as to whether up gradations to higher grades on completion of 16 years and 26 years, under TBOP and BCR Schemes launched in 1983 and 1991 respectively by the Postal department, are "promotion" for legal and practical purposes, as the issue has been thoroughly examined by the Cuttack Bench in D.C. Mishra's case and the other by Hyderabad Bench in S.K. Abdul Gaffar's case (supra) and also by a Division Bench of Chandigarh Bench in its decision dated 18.4.2006 in OA No.715/04 referred to in preceding para. While the Full benches have ruled that these are not "promotions" within the meaning of Recruitment Rules, the Chandigarh bench has ruled otherwise, even after having notice of D.C. Mishra's case. According to Chandigarh Bench, in absence of the authoritative Judicial pronouncement of the Apex Court or of any other High court of the country, the Tribunal was bound, to follow the decision dated 24.9.04 rendered by Madras High Court in W.P. No.27062 of 2004 and W.P. No.32951 of 2004, in K.K. Purumal's case, in view of Full Bench decision of the Tribunal in A.K. Dawar Vs. Union of India (OA No 555/2001 decided on 16.4.2004. In the circumstances, I find no way but to go by what has been said by Chandigarh Bench. As stated in decision dated 18.4.06 of Chandigarh Bench, the matter is before the Apex Court. Only the decision of the Apex court can set the controversy at rest. So, I proceed to decide the matter before me, treating such up gradations under TBOP/BCR Schemes, as promotions to higher grades.

Now the next question is as to whether such promotions under the said schemes, have any relevance in that context of seniority. It needs no reiteration that seniority of the members of service is governed by the Service Rules. The learned counsel for the applicant, has not referred to any such rule, which provides that a person getting such promotion to higher grade on completion of certain number of years, will march over otherwise senior members in the cadre of Postal Assistants. The Full bench in D.C. Mishra's case has quoted relevant portion of these schemes in para 35 of its judgment. Para 3.12. of the Scheme is reproduced, below, which will help us in appreciating the point.

"3.12. Under this Scheme, only such officials as have completed 16 and 26 years service in the Postal Assts UDC/LDC Grade will be eligible for promotion to the



next higher grades of Rs.1400-23000 and Rs. 1600-2660 respectively, if they are otherwise eligible. In cases where a senior has not completed the prescribed period of service, whereas his/her junior has become eligible, then only the junior shall be considered eligible for promotion. However, when the senior completes the prescribed service and is adjudged suitable for promotion, then his/her original seniority will be restored vis-à-vis his/her juniors in the lower grade. In such cases, promotion under this scheme will be subject to the condition that the senior employee shall not be able to claim benefit of higher pay fixation merely on the ground that officials who were junior to him in the lower grade are now drawing higher pay by virtue of early promotion."

The learned counsels for the respondents, have also referred to several circulars/clarifications, to which reference has already been made in the preceding paras, which categorically state that seniority of the officials in the lower grade will be kept intact. On the date the impugned order dated 16.11.05 was passed, both the persons namely the applicant and respondent no.4, stood upgraded/promoted to the next higher grades, under the said Schemes. Perhaps keeping in view, the terms of the Schemes and subsequent circular and clarifications issued from time to time, the gradation list dated 1.7.2001(SCA-1) was issued, wherein the respondent was shown at 28 and the applicant at 68. It is never the case of the applicant that he raised any objection against the gradation list of 1.7.2001. Conversely, he himself has relied on it in his supplementary affidavit dated 5.7.2006. No relief has been sought against the seniority list dated 1.7.2001.

The learned counsel for the applicant has contended that since by the impugned order dated 16.11.2005, the applicant has been reverted to the post of Postal Assistant' from the post of Sub Post Master, without giving him any opportunity of hearing or notice,so it deserves to be quashed on that ground alone. The respondents counsel say that as both,(the applicant and the respondent no.4) are in the cadre of Postal Asstt., as is evident from gradation list of 2001 and also from CA-5 and so, the order dated 16.11.2005 cannot be characterized as reversion order. To make their point more clear, the learned counsel for the respondents have referred to G.I. Department of Posts, O.M. No.137-18/2001-SPBII dated 23.4.2001 which

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interalia provides that status of separate officials at various points of their career should be indicated by the following designations/nomenclature as applicable:-

- | | | |
|-------|--|----------------|
| (i) | <i>Upto 16 years</i> | - PA/SA |
| (ii) | <i>After 16 years service</i> | - PA/SA (TBOP) |
| (iii) | <i>Those who have got promotion to LSG</i> | - LSG |
| (iv) | <i>After 26 years, if the LSG official has not been Promoted to HSG-II</i> | - LSG (BCR) |
| (v) | <i>Those who are not LSG but have crossed 26 years of service</i> | - PA/SA (BCR) |
| (vi) | <i>Those who are promoted to HSG-II</i> | - HSG-II |
| (vii) | <i>Those who are promoted to HSG-I</i> | - HSG-I |

From the pleadings of the parties, it is clear that the applicant and respondent no.4, are in category (v) above, as none of them claims to have been promoted to LSG or HSG-I or HSG-II. So, it is difficult to say that by the impugned order, the applicant has been reduced in rank or grade. He is getting the same pay, which he used to draw earlier to that order. In other words, the grades to which the applicant was admitted under TBOP/BCR are intact and so the question of reversion does not arise.

But this much is not disputed that many juniors to the applicant as stated in para 5 of supplementary affidavit dated 5.7.06, are posted as Sub-Post Masters at various post offices. From functional point of view, Postal Assistants, posted at a particular post office, are supposed to work under control of Sub-Post Master concerned, so from that angle, the grievance of the applicant is genuine that while many junior to him are Sub-Post Masters at different post offices, and he is being posted as Postal Assistant. The respondents do not say that they have any material with them, not to post the applicant as Sub Post Master at any post office. There appears to be element of official discrimination, in posting juniors to the applicant as Sub-Post Master and the applicant as Postal Assistant only.

In view of what has been discussed above, while I do not quash the order dated 16.11.2005, but direct the respondent no.2 & 3, to post the applicant as Sub-

Post Master at any post office, within a period of one month from the date a certified copy of this order is produced before them. No order as to costs

(Signature)
02.11.06
VICE CHAIRMAN

Dated: Nov:06

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