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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 5th day of AUGUST 2005.

Original Application No. 266 of 2005.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Jairam S. Singh, S/o Late Shri Shriphal Singh,
R/o Village and post Kanakpur,
(Pindra Bazar)
VARANASI.

.....Applicant

By Adv: Sri Pavan Kishore

V E R S U S

1. Union of India, through Secretary,
   Ministry of Communication,
   NEW DELHI.
2. Chief Post Master General,
   U.P. Circle,
   LUCKNOW.
3. Post Master General,
   Gorakhpur Region,
   GORAKHPUR.
4. Assistant Director Postal Services,
   Office of Post Master Gorakhpur Region,
   GORAKHPUR.
5. Senior Accounts Officer,
   Office of Post Master Gorakhpur Region,
   GORAKHPUR.

.....Respondents

By Adv: Sri S. Singh

O R D E R

By K.B.S. Rajan, JM

MA 1565 of 2005 is for correction of the name from Jai Ram Singh to Jairam S. Singh. The same is allowed.

2. The facts of the case fall within a very narrow compass. The applicant, who joined the Postal Department as Postal Asst. in November, 1976 at

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Santa Cruz Post Office, Mumbai and later on got transferred to Gorakhpur 2001, was granted the benefit of One Time Bound Promotion (OTBP) after completion of 16 years of service but was not granted the benefit of biennial Cadre Review (BCR) to which he is entitled to after completion of 26 years of service. The precise reason for the same, according to the applicant was that he had come from Maharashtra. He has cited the example of one Shri Sukhari posted in Gorakhpur region (para 4.17 of the O.A). The applicant has preferred a representation dated 16th December, 2004 and 5th January, 2005 (Annexure 2 and 3 respectively) which remain unanswered. As such the applicant has prayed for a direction to the respondents to dispose of the representation for a direction to the respondents to afford him the benefit BCR scheme also in accordance with the provisions of order dated 4-06-2003.

3. No reply has been filed. Nevertheless, the case was argued. The reservation of the respondents in grant of the BCR benefit to the applicant is that the name of the applicant is not properly spelt out and that he was earlier in Maharashtra Region, while he had only now come to Gorakhpur Region. In so far as confusion in the name is concerned, in view of the order passed in M.A. No. 1565/05 as above, the same should not pose any problem. In respect of the fact that the applicant was earlier in Maharashtra and later on transferred to Gorakhpur, the same

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cannot non-suit him from claiming the benefit of BCR scheme, which is available after 26 years of service in the basic cadre. The applicant has completed 26 years by 2003. That he was earlier in another Region is immaterial. In fact, even in respect of a person who was in Ministry of Defence and later on shifted to the Postal Department, the Apex Court has held that the individual is entitled to the benefit. In this regard, the judgment in the case of *Union of India v. V.N. Bhat, (2003) 8 SCC 714*, as extracted below is relevant:-

> *"Even in a case where the promotion is to be made on selection basis, the employee concerned, even if he be placed at the bottom of the seniority list in terms of the order of transfer based in his favour, he cannot be deprived of being considered for promotion to the next higher post if he is eligible therefor. This aspect of the matter is clearly covered by the three decisions of this Court, namely, A.P. SEB v. R. Parthasarathi, Scientific Advisor to Raksha Mantri v. V.M. Joseph and Renu Mullick v. Union of India.*
>
> ***5**. The aforementioned decisions have been followed by this Court in Dwijen Chandra Sarkar v. Union of India[4] in the following paras: (SCC pp. 124-25, paras 14 & 17)*
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> *"14. The words 'except seniority' in the 1983 circular, in our view, mean that such a benefit of a higher grade given to the transferees will in no way affect the seniority of employees in the P&T Department when the turn of the P&T employees comes up for promotion to a higher category or post. The said words 'except seniority' are intended to see that the said persons who have come from another Department on transfer do not upset the seniority in the transferee Department. Granting them higher grade under the Scheme for time-bound promotion does not, therefore, offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service*

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both in the Rehabilitation Department and the P&T Department.

* * *

17. On the facts of the present case and especially in view of the aforesaid decisions, we are of the view that when the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those in the above rulings who have been transferred on request and who in those cases accepted that their names could appear at the bottom of the seniority list. Even in cases relating to request transfers, this Court has held, as seen above, that the past service will count for eligibility for certain purposes though it may not count for seniority."

4. In view of the dictum of the Apex Court, which is squarely applicable to the case in hand, this OA succeeds. The respondents are directed to keep in view the above judgment of the Apex Court and the observation of this Tribunal as contained above and dispose of the representation in the light of the same and subject to the applicant's completing 26 years of service including the service rendered in Maharashtra Region, and subject to his fulfilling the other attendant conditions for the benefit of the BCR Scheme, he be afforded the benefit of BCR scheme. This exercise may be completed within a period of four months from the date of communication of this order.

5. Under the circumstances, no orders as to cost.

Member (J) Member (A)

/pc/