

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.755/2005

FRIDAY, THIS THE 14TH DAY OF JULY, 2006

HON'BLE MR. A.K. SINGH ... MEMBER (A)

HON'BLE MR. M. KANTHAIAH ... MEMBER (J)

Punnoo Lal,
S/o Late Sri Bachchu Lal,
Aged about 69 years,
Retired H.S.G. I, H.S.A.,
R.M.S. 'A' Divn,
Allahabad

Applicant

(In Person)

1. Union of India,
through its Secretary,
Ministry of Communication,
Department of Posts,
New Delhi - 1.
2. The Chief Post Master General,
U.P. Circle,
Lucknow.
3. The Director,
Postal Services, Head Quarters,
O/o the Chief P.M.G.,
U.P. Circle,
Lucknow.
4. The Senior Superintendent,
R.M.S., 'A', Division,
Allahabad.

Respondents

(By Advocate Shri Saumitra Singh,
Senior Central Government Standing Counsel)

ORDER

Hon'ble Mr. M. Kanthaiah, Member (J):

The applicant has filed the main application to issue directions to the respondents to pass a speaking order with his representations dated 4.4.2005, 7.6.1990, 30.4.1990, 1.3.1990 and 25.2.1991 and also in respect of his promotion of HSG-II cadre with effect from 18.11.1985 to 27.10.1987 where he worked continuously against a vacant post and also to give promotion to HSG-I Cadre prior to the date of his juniors S/Shri Suraj Prasad, ST, Shree Narain, ST, Har Dayal Prasad, ST and C.P. Shukla, A/c. and also to pay all

differences of pay allowances and pension arrears and other pensionary benefits.

2. The respondents have filed their counter opposing the claim of the applicant stating that they have considered all the representations of the applicant including the latest representation dated 4.4.2005 and gave speaking orders for not considering his promotion to the post of HSG-I Cadre prior to the date of his juniors Suraj Prasad and others.

3. Heard both sides.

4. The point for consideration is whether the applicant is entitled for the relief as prayed for.

5. The admitted facts of the case are that the applicant who entered into the service of the respondents on 16.7.1956 as a Sorter and subsequently promoted in Lower Selection Grade Cadre on 19.3.1980 by the 3rd respondent covered under Annexure-15. It is also not in dispute that the applicant worked in the cadre of HSG-II with effect from 18.11.1985 to 27.10.1986 against a vacant post. Subsequently, the promotion of S/Shri Suraj Prasad (ST), Shri Shree Narayan, ST and Shri Har Dayal Prasad (ST) were considered and promoted to HSG-I by the DPC held on 12.1.1988, 2.1.1990 and 2.1.1990 respectively. At that time, the promotion of the applicant for HSG-I Cadre was not considered by the Department. The applicant filed O.A. No.821/1989 before the Tribunal claiming his promotion in HSG-II/HSG-I Cadre with effect from 26.10.1988, i.e., HSG-II Cadre with effect from 26.10.1988, the date from which his juniors S/Shri Muneshwar Prasad, Devi Prasad Mishra and Yograj Bajaj, LSG SA were promoted to HSG-II Cadre and also claiming promotion to HSG-I Cadre with effect from 5.12.1991, the date from which Shri C.P. Shukla, HSG-II, junior to him was promoted to HSG-I Cadre. This Tribunal has finally disposed of the said O.A. No.821/1992 on 30.10.2002 with a direction to the 2nd respondent that he may decide the representation by a reasoned order within four months, which was further extended upto 4.6.2001 as per orders in CCA No.60/2001

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in O.A. No.821/1992, dated 08.06.2001. Annexures No.2, 3 and 5 reveals the same. Thereafter, after examining the case in depth, the respondents allowed the promotion of the applicant to HSG-II Cadre with effect from 26.10.1988 and HSG-I Cadre with effect from 5.12.1991 with consequential benefits from the date from which his juniors S/Shri Muneshwar Prasad, Devi Prasad Mishra and Yograj Bajaj were promoted to HSG-II Cadre and Shri C.P. Shukla was promoted to HSG-I Cadre respectively. When the applicant moved Contempt Petition in CCA No.60/2001 against the respondents on the ground that they have not implemented the directions in O.A. No.821/1992, after hearing both sides, the Tribunal opined that the representation of the applicant has been decided and benefits due to him have been granted and thus, the case of contempt is not made out and thus dismissed the said contempt petition with an observation that if the applicant is still dissatisfied, he can raise by filing a fresh O.A. Annexure No. 3 reveals the same. Thereafter, the applicant filed O.A. No.1163/2001 against the decision of the 2nd respondent fixing his promotion from LSG Cadre to HSG-II Cadre with effect from 27.10.1987 stating that his position is still unclear and also to give directions to the respondents to pass a speaking order with his representations dated 11.12.1987, 1.2.1988, 1.3.1990, 25.2.1991 and 29.5.2001, etc., and also fix his promotion in HSG-II Cadre prior to the date of his juniors who were ordered to be promoted with effect from 27.10.1987 and also claiming that he had worked with effect from 18.11.1985 to 26.11.1987 in officiating capacity in HSG-II Cadre and also for grant of all benefits to him. After hearing both parties, the said O.A. was disposed of on 3.3.2005 with a direction to the respondents to decide the representation so filed by the applicant by a reasoned and speaking order within a period of three months from the date of receipt of a copy of the order. Annexure No.1 is the true copy of the order in O.A. No.1163/2001, dated 3.3.2005 which reveals the same.

6. It is also not in dispute that in view of the said direction, the applicant made a fresh representation dated 4.4.2005 to the competent authority

claiming his promotion to HSG-II/HSG-I Cadre from the date of promotion of S/Shri Suraj Prasad (ST), Shri Shree Narayan, ST and Shri Har Dayal Prasad (ST). Thereafter, the 2nd respondent, after considering the fresh representation of the applicant dated 4.4.2005, passed orders on 3.6.2005 rejecting his claim stating that the said three officials S/Shri Suraj Prasad, Shri Shree Narayan, and Shri Har Dayal Prasad belonged to ST Community and they were promoted to the HSG-II/HSG-I Cadre against the vacancies of ST Community and also stated that the three (ST) were already promoted to HSG-II Cadre in the year 1984-1985, while the applicant (SC) was promoted to the cadre of HSG-II with effect from 26.10.1988 which was further modified with effect from 27.10.1987 and thus stated that the applicant in HSG-I Cadre is based on the seniority of officials in HSG-II Cadre and Annexure No.5 dated 3.6.2006 is the said order passed by the 2nd respondent.

7. Thereafter, the applicant has filed the present application for issuing a direction to the respondents to pass a speaking order with his representations dated 4.4.2005, 7.6.1990, 30.4.1990, 1.3.1990, 25.2.1991, etc., and also to give him promotion to HSG-I Cadre prior to the date of his juniors S/Shri Suraj Prasad (ST), Shri Shree Narayan, ST and Shri Har Dayal Prasad (ST) who were ordered to be promoted with effect from 12.1.198, 29.10.1988/ 2.1.1990 and 2.1.1990 instead of 5.2.1991 respectively and also for his promotion to HSG-II Cadre with effect from 18.11.1985 to 27.10.1997 during which period he was working in officiating post in HSG-II Cadre against vacant post and also for payment of differences of pay allowances and other pensionary benefits.

8. It is the main contention of the applicant that his promotion to the post of HSG-II Cadre is to be effected with effect from 18.11.1985, the date in which he has worked in a vacant post on officiating basis for the period from 18.11.1985 to 27.10.1987 also for his promotion to HSG-I Cadre prior to the date of promotion of his juniors S/Shri Suraj Prasad (ST), Shri Shree Narayan, ST and Shri Har Dayal Prasad (ST) and Shri C.P. Shukla, A/c. and

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also to consider all his representations right from 1992 to 2005, i.e, 4.4.2005, 7.6.1990, 30.4.1990, 1.3.1990, 25.2.1990, etc.

9. The respondents have opposed the claim of the applicant stating that they have considered all the representations of the applicant and there is nothing left for consideration.

10. In view of the above rival contentions, the following are the points left for consideration:

(1) Whether the claim of the applicant for his promotion to the post of HSG-II Cadre is to be effected from the date during which he was holding the post on officiating basis in a vacant post, i.e., from 18.11.1985 to 27.10.1987?

(2) Whether the applicant is entitled for his promotion to HSG-I Cadre prior to the date of his juniors S/Shri Suraj Prasad (ST), Shri Shree Narayan, ST and Shri Har Dayal Prasad (ST) and Shri C.P. Shukla, A/c. and to consider all his representations made to the department right from 1992 to 2005 in respect of his promotions; and

(3) To what relief?

Point No.1:-

From the records, it is clear that the applicant himself has filed O.A. No.821/1992 challenging the order dated 27.10.1987 under which allotment and posting to HSG-II Cadre was granted to certain persons and he was denied such opportunity and after hearing both the parties, this Tribunal passed orders on 30.10.2000 covered under Annexure-2 and thereafter, he filed C.C.A No.60/2001. There, the respondents have informed that they have complied with the orders of the Tribunal upon which it was closed on 8.6.2001 covered under Annexure-3. Thereafter, the applicant filed another O.A. No.1163/2001 seeking to fix his promotions in HSG-II Cadre prior to the date of his juniors who were ordered to be promoted with effect from 27.10.1987 and the same was also disposed of with a direction to the respondents to consider such a request. Annexure-1 dated 3.3.2005 is the

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order in O.A. No.1163/2001. From these documents, it is clear that the applicant never claimed his promotion to the post of HSG-II Cadre for the period when he was working on officiating basis in a vacant post and further he himself claimed such promotion prior to his juniors who were ordered to be promoted with effect from 27.10.1987. But, by way of this application, the applicant is making a fresh claim to fix his promotion even prior to 27.10.1987, i.e., from the period during which he was working on officiating basis in a vacant post. This claim of the applicant is belated and he is estopped from making such a claim at this belated stage without making such a claim or protest on earlier occasions during the course of his earlier applications and also while the respondents implemented the directions of the Tribunal and as such, the claim of the applicant to consider his promotion to HSG-II Cadre to be effective prior to 27.10.1987 for the period during which he worked in a vacant post on officiating basis is not maintainable. Hence, this point is decided against the applicant.

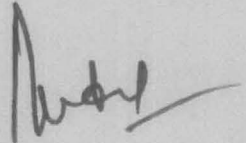
Point No.2:-

It is the case of the applicant that his promotion to HSG-I Cadre to be fixed prior to the date of promotion of his juniors S/Shri Suraj Prasad (ST), Shri Shree Narayan, ST and Shri Har Dayal Prasad (ST) and Shri C.P. Shukla, A/c. and to consider his representation dated 4.4.2005 made as per the directions of the Tribunal in O.A. No.1163/2001 and also his earlier representations dated 7.6.1990, 30.4.1990, 1.3.1990, 25.2.1990, which were the subject matters in O.A. No.821/1992 and O.A. No.1163/2001. As per the directions of the Tribunal in O.A. No.1163/2001, the applicant made a fresh representation dated 4.4.2005 claiming his promotion to the post of HSG-II and HSG-I Cadre reiterating his earlier representations dated 7.6.1990, 30.4.1990, 1.3.1990, 25.2.1990 upon which the second respondent passed orders on 3.6.2005 covered under Annexure-5 giving the reasons for not considering his promotion to the post of HSG-I Cadre prior to the date of promotion of his juniors S/Shri Suraj Prasad (ST), Shri Shree Narayan, ST and Shri Har Dayal Prasad (ST) stating that the said officials were promoted

to HSG-II/HSG-I Cadre against the vacancies reserved for ST Community and also they were seniors to the applicant, whereas, Shri C.P. Shukla was promoted against the A/c. quota and not under the General office line. From this order (Annexure-5), the 2nd respondent has passed speaking orders by giving reasons for not considering the representations of the applicant for promotion which is in compliance with the directions of the Tribunal in O.A. No.1163/2001. When the respondents have considered the representations of the applicant and passed orders by giving reasons, it is not open to the applicant to file the present application still claiming promotion prior to the date of his juniors on the ground that his representations were not considered which is not at all justified. If the applicant is aggrieved by the orders of the 2nd respondent covered under Annexure-5, dated 3.6.2005, he ought to have questioned the legality and validity of the promotions given to his juniors but not by way of filing the application for the same relief.

11. In the result, the application fails and is dismissed .


(M. KANTHAIA)
MEMBER (J)


(A.K. SINGH)
MEMBER (A)

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