

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Dated: 24, March, 1995

Hon. Mr. S. Das Gupta, Member (A)
Hon. Mr. T.L. Verma, Member (J)

O.A. No. 475 of 1992

1. Moti Lal, son of Shri Vansh Raj, R/o Village Marohiya, P.C. Gaghara Bazar.
2. Suresh Chandra son of Shri Ram Lagan Das, Resident of Village & Post Parewa, District Gorakhpur.
3. Asrar Hussain son of late Izhar Hussain, Resident of Village & Post Khalispur, Sagri, District Azamgarh.
4. Sant Prasad son of Shri Ram Jatan, R/o Barhani, Post Barhani Gopalpur, District Gorakhpur.
5. Ram Charitra Gupta, son of late Sri Ganga Ram, Resident of Kunrughat, Gorakhpur.
6. Kamta Prasad son of Sri Bikanu Ram, R/o Village & Post Basupur, Distt. Ghazipur.
7. Naveen Chand Singh, son of Shri Raj Banshi Singh, Resident of Village and Post Dughara, District Gorakhpur. ... Applicants.

Versus

1. Union of India, through Director General, Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Lucknow.
3. Post Master General, Gorakhpur. ... Respondents.

CONNECTED WITH

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4/ O.A. No. 733 of 1992

1. Paltoo Ram, son of Shri Dina Nath, Resident of village Badya Raja, Post Saitwalia, P.S. Dudhara, District Basti.
2. Ronak Hussain son of Shri Mohammad Hussain, Resident of Village Pokhar Bhinda, P.O. Lautan, P.S. Mohana, District Siddartha Nagar.
3. Shiv Narain Maurya, son of Shri Ram Payre, Resident of Village & Post Majhauababu, District Basti.
4. Hari Ram Yadav, son of Shri Jageshar Prasad, R/o Village Govindpur, PO. Bahadurpur, P.S. Kalwari, District Basti.
5. Babu Ram Chaudhary, son of late Shri Shri Ram Chaudhary, Resident of Village Manhandih, P.O. Purani Basti, District Basti.
6. Ikrām Hussain son of Shri Mohammad Hanif, R/o Village & Post Purena Mansoor, P.S. Dudhara, District Basti.
7. Ram Naresh Yadav, son of Shri Ram Bali Yadav, Resident of Village & Post Nukta, District Basti. ... Applicants.

Versus

1. Union of India, through Director General Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Lucknow.
3. Post Master General, Gorakhpur.
4. Superintendent of Post Offices, District Basti. ... Respondents.

AND

4/ O.A. No. 734 of 1992

1. K.N. Mishra, son of late Shri S.N. Mishra, Resident of Villate Mathila, P.O. Kakhniya, District Deoria.
2. Shri Shyama Charan Nath, Tiwari, son of Shri Ram Raj Nath Tiwari, R/o Village and Post Chhittakhal, District Siwan.
3. Gopal Singh, son of Shri Prayag Singhresident of Village Ganji Tikar, P.O. Sobang, District Deoria.
4. Ram Sewak Shukla, son of Shri Jhamman Shukla, Resident of Village Bhajauhi, P.O. Sarpatahi, District Deoria.
5. L.S. Mishra, son of late Shri Vishwanath Mishra, R/o Village and Post Narion, District Deoria.
6. Vidhya Dhar Mishra, son of Shri Shyam Deo Mishra, R/o Mohalla Domanpur, Maunath Bhanjan, District Mau.
7. Ram Narain, son of Shri Mukund, Resident of Villate Thuthi, P.O. Sukrauli, District Deoria. Applicants.

Versus

1. Union of India, through Director General Department of Post, 8 Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Lucknow.
3. Post Master General, Gorakhpur.
4. Senior Superintendent of Post Office, Deoria. Respondents.

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O R D E R

(By Hon. Mr. S. Das Gupta, Member (A))

In all, twenty one applicants have filed three

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sets of applicants, bearing O.A. No 475 of 1992, O.A. 733 of 1992, Under Sec. 19 of the Administrative Tribunals Act, 1985 praying that the scheme dated 9.3.1992 (Annexure- A 9) to O.A. No. 475 of 1992 for granting one-time time-bound promotion be quashed and that the respondents be directed to promote the applicants to the Higher Selection Grade-II (H.S.G. II) from a date prior to the date on which their juniors were promoted to that grade. As the points of law and facts are identical in all the three cases, these were taken up together for hearing and are being disposed of by a common order, with the consent of the respective counsel.

2. The facts in all the cases are identical and lie within a short compass. All the applicants were appointed as Clerk on different dates and were subsequently redesignated as Postal Assistant. Their promotions to the next higher grade i.e. Lower Selection Grade (L.S.G. for short) was to be made on the basis of departmental examination in respect of 1/3rd of the higher grade posts, the remaining 2/3rd posts being filled on the basis of seniority-cum-merit. The applicants passed the departmental examination and were all promoted on different dates to L.S.G.. Number of their seniors who did not pass the departmental examination were subsequently promoted to L.S.G. under one-time, time-bound promotion scheme w.e.f. 30.11.1983, After the applicant had already been promoted to the L.S.G.

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posts on the departmental examination. It was, however, stipulated that those who have been promoted to L.S.G. prior to 30.11.1983 will rank senior to the persons who have been so promoted under the scheme of one-time, time-bound promotion. The applicants, therefore, ranked senior in L.S.G. to their erstwhile seniors in the grade of postal assistant. However, these erstwhile, Senior Postal Assistants but presently junior L.S.G. officials have been given a further promotion to the H.S.G. -II on the basis of the scheme for one time time-bound promotion on completion of 26 years of service communicated by an order dated 11.10.1991 (Annexure- A 5) pursuant to which the impugned order dated 9.3.1992 (Annexure- A 9) was issued promoting a large number of L.S.G. officials to H.S.G. -II on completion of 26 years of service.

3. The grievance of the applicants is that while their juniors in L.S.G. have been promoted on the basis of the one-time, time-bound promotion scheme merely on completion of 26 years of service, they, though seniors, have not been so promoted. They have further alleged that they have also been deprived of special pay of Rs. 40/- which they were in receipt of on promotion to L.S.G. and have also been reverted from supervisory post on promotion of their juniors to H.S.G. II. They have annexed

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a copy of circular dated 23.10.1989 (Annexure- A 4) issued by Department of Personnel and Training in which various Ministries/Departments have been advised to insert a suitable 'Note' in the Recruitment Rules to the effect that the seniors who have been completed probation may also be considered for promotion when their juniors, who have been completed the requisite service, are being considered. The applicants alleged that the one-time, time-bound scheme for promotion to H.S.G.II on completion of 26 years of service has been formulated on the pressure of the staff union without paying any heed to the instructions issued by the Department of Personnel and Training regarding considerations of the seniors who have not completed the specified period of service.

4. The respondents have filed counter affidavits to all the three Original Applications in which it has been averred that the time-bound, one-time promotion scheme on completion of 26 years of service was formulated with a view to provide relief to the employees. This scheme not only provides promotional opportunities but is also based on functional justification. Based on this scheme, those who had completed 26 years of service and were found fit by the D.P.C. were allowed the H.S.G. II pay scale w.e.f. 1.10.1991. They have also been

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given supervisory responsibilities. It has further been averred that when the implementation of this scheme was made, the special allowance earlier granted to L.S.G. staff has been withdrawn. The benefit of the higher grade has been extended also to the L.S.G. officials who were promoted in the 1/3rd quota, on completion of 26 years of service.

The applicant's, however, could not be given this benefit as they had not completed 26 years of service on the crucial date. However, they have been allowed to continue on such posts which they were holding prior to the introduction of the promotion scheme and their seniority in L.S.G. remains an unaltered in pursuance of an interim order passed by this Tribunal.

5. The basic facts in this case are not in dispute. The only controversy in this case turns on the point of law as to whether a scheme can be evolved by the Government of India by which persons admittedly junior can be promoted to a higher grade on completion of a certain period of service ignoring their seniors who have ^{not} ~~been~~ completed such period of service. Substantially, similar point was considered by the Hon'ble Supreme Court in the case of R. Prabha Devi and others. Vs. Government of India and others, AIR 1988, SC 902. In this case ^{by} an amendment to the Central Secretariate Service Rules, 1962, and a condition was introduced to the effect that a directly recruited Section Officer must also render 8 years approved service in the

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grade of Section Officer before being eligible for consideration for promotion to Grade-I by this amendment. Those direct recruit Section Officers who had not completed 8 years of service were ignored while their juniors were considered for promotion to Grade-I having completed 8 years of service. When the vires of rule was challenged, their Lordships in the Supreme Court inter alia held;

" The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade-I post of G.S.S. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The plea that a senior Section Officer has a right to be considered for promotion to Grade-I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post. Grade-I, would be unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule making authority. This eligibility condition has to be fulfilled by the Section Officer including senior direct recruits in order to be eligible for being

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considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. The rule in question which prescribes a uniform period of qualified service cannot be said to be arbitrary or unjust, violative of Art. 14 or 16 of the Constitution."

6. The question which is posed before us also is whether a promotion scheme which lays down a minimum period of service as the eligibility criterian thereby effectively preventing consideration of the seniors for promotion to the higher grade while allowing juniors to be so considered on completion of the qualifying period of service is ^{bad} ~~separate~~ in the eyes of law. We can give¹ reply to this question in the negative based on the principle laid down in R. Prabha Devi's case. The scheme formulated by the respondents for giving one time bound promotion ~~Rules~~, the Postal Assistants who completed 26 years of service cannot be faulted on the ground that the eligibility criterian allowed the juniors to be promoted leaving behind their seniors.

7. During the course of arguments, Mr. Sadhna Srivastava, the learned counsel for the respondents submitted that the department has already taken care of the seniority of the applicant, by issuing a circular ~~enjoining~~ ^{enjoining} that the officials who were selected in the 1/3 rd quota of L.S.G. or otherwise and have not completed 26 years of service will retain their seniority, even if, ^{their} juniors have been placed in the higher grade on completion of 26 years of service and that the promotion of such officials to the next higher grade will be governed by their seniority so protected. We were shown a copy of the relevant circular dated 30.11.1992. We are of the view that this is a fair arrangement and should go along way for the redressal of the grievance of the applicant. So far as the withdrawal of special pay is concerned, since the same has been done by the competent authority by an order applicable to all L.S.G. officials without any discrimination, the applicants are not entitled to any relief in this regard.

8. In view of the foregoing, the applications lack merit and are, therefore, dismissed. There will be no order as to costs.

9. A copy of this common judgment will be placed in the file of each case separately. *JK*

Member (J)
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Member (A)