

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 302 of 1993

Lallu Lal Gupta

..... Petitioner

Versus

Union of India and Ors

..... Respondents

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MISS. USHA SEN. MEMBER(A)

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985 the petitioner has made grievance against the order dated 1.11.91 (Annexure A-1 to the petition) passed by the Chief Post Master General, U.P. Lucknow, Respondent No.3 rejecting the representation of the petitioner for promotion from the post in Lower Selection Grade to that in Higher Selection Grade-II and has sought a direction to the respondents to promote the petitioner in Higher Selection Grade II cadre from the date when his juniors have been promoted i.e. 9.8.89 with all consequential benefits with retrospective effect.

2. The facts giving rise to this petition briefly stated are as follows:-

The petitioner was appointed as Class III Postal Assistant in time scale on 2.5.63 and he was confirmed as Postal Assistant in the Time scale w.e.f.

1.12.65. It is not disputed that the petitioner was promoted in the Lower Selection Grade Cadre by order dated 23.2.88 (Annexure A-2 to the petition) posting the petitioner as A.S.P.M (LSG), Naini Post office, Allahabad.

3. The petitioner's further promotion from Lower Selection Grade to Higher Selection Grade II was due upon fulfilment of the requisite condition as per Rule 272(b) (P & T Manual Vol-IV which lays down two conditions for consideration of promotion into the Higher Selection Grade Cadre as under:-

- (i) Seniority
- (ii) Fitness

4. Rule 32-E of P & T Manual Vol-IV pertains to seniority and the relevant clause (b) (ii) of the Rule 32-E, provides as under:-

- (b) In cadres to which recruitment is made by promotion,
 - (i)
 - (ii) if it is on the basis of seniority subject to the rejection of the unfit, seniority should be fixed according to the position of the official in the cadre from which promoted.

5. Sri R.B. Singh and Sri Mansoob Ahmed were much junior to the petitioner. While the petitioner was promoted in LSG Cadre on 23.2.82, his juniors Sri R.B. Singh and Sri Mansoob Ahmed were promoted to LSG Cadre on 1.8.83 and 2.1.88.

6. For promotion from LSG Cadre to HSG II Cadre the petitioner expected his promotion on the basis of Rule 272(b) of the Manual aforesaid on the consideration of seniority and fitness. But the grievance of the petitioner is that the respondents did not consider his case for promotion to HSG-II cadre, but promoted his juniors Sri R.B. Singh and Sri Mansoob Ahmed in H.S.G - II Cadre w.e.f. 9.8.89 and 9.3.90 respectively as Asstt. Post Masters Allahabad (Annexures A-5 and A-6 to the petition).

7. The petitioner has alleged that the Respondent No. 3, Chief Post Master General confirmed the Lower Selection Grade officials who were promoted after the petitioner in LSG cadre and the case of the petitioner for confirmation was not considered. It appears that because the juniors to the petitioner were confirmed in LSG Cadre and the petitioner was not confirmed in LSG Cadre, the juniors were given promotion in HSG-II Cadre earlier to the petitioner.

8. The petitioner has filed as (Annexure A-4 to the petition) a copy of a circular, ^{dated 5-1-89} addressed to all Heads of Postal Circles on the subject of Simplification of

Confirmation Procedure- de-linking of confirmation from the availability of permanent posts. In this circular it is stated that the case has been examined in consultation with the ~~Department~~ of Personnel and Training and it is clarified that since confirmation is to be done only at the entry grade and there will be no confirmation on promotion, the officials confirmed in the Lower grade are not required to be confirmed in the Higher grade even in the cases where permanent vacancies are available from a date prior to 1.4.88 and the confirmation was also due on a date prior to 1.4.88.

9. The D.C.P. No.18011/1/86-Estt(D) dated 28.3.88 at Para no. 4.1 relating to confirmation provides that confirmation will be made only once in the service of an official which will be in the entry grade.

10. From the aforesaid clarification and provision it is apparent that confirmation in the entry grade alone is relevant for the purposes of reckoning seniority. As such, Sri R.B. Singh and Sri Mansoob Ahmed who were junior to the petitioner in the entry grade and were promoted in LSG Cadre after the promotion of the petitioner, could not be treated senior to the petitioner by reason of being given confirmation in LSG Cadre, ignoring the case of the petitioner. Consequently, the earlier promotion of the aforesaid two juniors of the petitioner is not sustainable on the basis of according ^{them} confirmation in the LSG Cadre.

The defence of the respondents in their counter to justify earlier promotion of Sri R.B. Singh and Sri Mansoob Ahmed from L.S.G Cadre to H.S.G-II Cadre is their earlier confirmation in L.S.G. Cadre. But as discussed hereinabove, this defence cannot be of any avail to the respondents since the petitioner who was confirmed in the entry grade earlier to Sri R.B. Singh and Sri Mansoob Ahmed and was promoted to L.S.G Cadre earlier to them must be held to be senior to Sri R.B. Singh and Sri Mansoob Ahmed, inspite of orders of their confirmation in L.S.G Cadre which can have no bearing in changing the seniority of the petitioner in the L.S.G. Cadre.

A decision of the Supreme Court in 'Bal Kishan Vs Delhi Administration (1990(1) S.C.J 464 has been cited in support of the principle that in service there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of the senior. Any deviation from principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

In view of the discussion aforesaid, it must be held that the petitioner was senior to Sri R.B. Singh and Sri Mansoob Ahmed in the cadre of L.S.G and they could not have been promoted in supersession of the claim of the petitioner to be considered for promotion prior to the juniors.

The learned counsel for the respondents has stated that Sri R.B. Singh and Sri Mansoob Ahmed were although junior in the entry grade in general line, but after passing the accounts examination they had come in the account line and were in the cadre of L.S.G officials of Accounts line where they were confirmed.

But since Sri R.B. Singh and Sri Mansoob Ahmed were junior to the petitioner in L.S.G Cadre they could not be entitled for promotion against the post of General Line in H.S.G.-II Cadre in preference to the petitioner whose seniority in relation to other L.S.G officials including Sri R.B. Singh and Sri Mansoob Ahmed ought to have been reckoned for considering the promotion against the post of General Line and H.S.G.-II Cadre and the petitioner also ought to have been considered prior to consideration of his juniors for promotion against the post of general line in H.S.G.-II Cadre.

In view of the discussion aforesaid, we hold that the petitioner who is senior to Sri R.B. Singh and Sri Mansoob Ahmed in the L.S.G Cadre and the petitioner, was entitled to be considered for promotion prior to Sri R.B. Singh and Sri Mansoob Ahmed. For failure of the respondents to consider the petitioner for promotion from L.S.G. Cadre to H.S.G.-II Cadre prior to his juniors aforesaid, the promotion of the juniors to the petitioner cannot be held regular. In the circumstances, we hereby direct the respondents to consider the case of the

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petitioner for his promotion on the date when his juniors were promoted i.e. 9.8.89 and on his being otherwise found ^{inv.} fit for promotion, promote him to H.S.G-II Cadre from the date when his juniors have been promoted i.e. 9.8.89 with all consequential benefit with retrospective effect.

The petition is accordingly allowed with no order as to costs.

Usha Se
Member (A)

R.K. Vanna
Vice Chairman

Dated: April. 27th 1994

Uv/