

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1706 OF 1994
ALLAHABAD THIS THE 27th DAY OF August, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-A

Jagdish Narain Singh,
aged about 49 years,
S/o Late Shri Chandi Singh,
R/o Village and Post Ahirauli via Sikriganj,
Distt. Gorakhpur,
employed as H.S.G.-II,
Postmaster Kunraghan in the city of Gorakhpur.

.....Applicant

(By Advocate Shri A. Tripathi)

Versus

1. Union of India,
through Secretary,
Department of Posts, India,
Ministry of Communication,
Dak Bhawan,
New Delhi - 110001.
2. Post Master General,
Gorakhpur Region,
Mohaddipur, P.O. Kunraghan,
Gorakhpur - 273001.
3. Chief Post Master General,
U.P. Circle,
Lucknow - 226001.
4. Director Postal Services,
Office of the C.P.M.G.,
U.P. Circle,
Lucknow - 226001.
5. Shri B.B. Singh,
Post Master Baharich. Respondents
(By Advocate Shri G.R. Gupta)



O R D E R

HON'BLE MAJ. GEN. K. K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for the following reliefs:-

"(i) That this Tribunal be pleased to order that the seniority of the applicant in Annexure A-10 should be restored above Shri B.B. Singh, the next below junior officer promoted alongwith the applicant vide Annexure A-9 on 09.03.1990.

(ii) That as a consequence of the above relief, the applicant should be given pay in HSG-II cadre since the date of joining the cadre by Shri B.B. Singh under the provisions of next below rule.

(iii) That as a consequence of the first relief the applicant should be deemed promoted to HSG-I cadre since 29.9.1994, the date of joining the cadre by Shri B.B. Singh and allowed pay and allowances of the higher grade under the provisions of the next below rules.

(iv) That the Tribunal may be pleased to allow any other relief to which the applicant may be found entitled to but not claimed;

(v) That the Tribunal may be pleased to award cost of the litigation in favour of the applicant against the respondents."

2. The facts of the case, in short, are that the applicant passed the Departmental Examination for promotion to P.O. & R.M.S. Account cadre in 1972 and respondent no.5 passed the same promotion examination in 1973, therefore, respondent no.5 was junior to the applicant. The applicant was promoted as Lower Selection Grade (in short L.S.G.) and confirmed in the L.S.G. Cadre by order dated 29.03.1983 (Annexure A-2) w.e.f. 13.10.1983 and respondent no.5 Shri B.B. Singh was confirmed in the L.S.G. cadre w.e.f. 26.07.1984. The applicant as well as the respondent no.5 were ordered to be promoted as Higher Selection Grade (In short H.S.G.) II by order dated 17.05.1983 allotting the ^{applicant} Kanpur region and respondent no.5 Dehradun Region.

In the said memo the applicant's name at serial no.22 and that of respondent no.5 at serial no.42. Both, the applicant as well as respondent no.5 refused the promotion. Gradation list of HSG-II officials, as corrected upto 30.06.1992, was issued (Annexure 4-10) and in the gradation list the name of respondent no.5 has been shown at serial no.11. Thus, the applicant was superseded by respondent no.5 by 36 steps. The applicant filed a representation on 22.12.1992 followed by a reminder dated 29.01.1993. The A.P.M.G. (staff) office of Chief P.M.G. U.P. Lucknow gave a vague decision without applying his mind. In 1993 a list of officials to be considered for promotion to HSG-I grade on seniority-cum-fitness basis was circulated. This list included the name of respondent no.5 and the name of applicant was omitted. The applicant filed appeal on 09.07.1993 before respondent no3 i.e. Chief Post Master General U.P. through proper channel. Respondent no.2 i.e. P.M.G. Gorakhpur vide letter dated 16.10.1993 addressed to Chief PMG pointed out that there appeared to be a gross mistake in the seniority of the applicant which required to be rectified without any delay and without any further reference to region/division. The representations and appeals of the applicant were not considered by respondent no.3 and respondent no5 was promoted to HSG-I grade vide memo dated 15.04.1994. The applicant by memo dated 19.07.1994 was regularised as HSG-II on which he was promoted on adhoc basis w.e.f. 27.11.1990. The applicant again represented to Chief P.M.G. on 11.08.1994 with a request to consider his appeal dated 09.07.1973 and to decide it early. In response to the applicant's appeal once again the A.P.M.G. (Staff) ^{has} decided the issue and conveyed his decision vide impugned order dated 16.08.1994. Aggrieved by this the applicant has filed this O.A. which has been contested by the respondents by filing counter affidavit.

3. Shri A. Tripathi, learned counsel for the applicant submitted that respondent no.5 was always junior to the applicant. He i.e., Respondent No.5 was never promoted earlier than the applicant and he did not join HSG-II cadre on regular promotion basis earlier because of the refusal for promotion to H.S.G.-II cadre ordered vide memo dated 17.05.1988. Our attention was invited to (Annexure A-8) i.e. memo dated 09.03.1990. It was submitted by the applicant's counsel that by memo dated 09.03.1990 both the applicant and respondent no.5 were promoted to HSG-II cadre purely on temporary and adhoc basis. The applicant's name has been shown at serial no.1 and that of respondent no.2 at serial 2.

4. The learned counsel for the applicant further submitted that ^{as regards} ~~an issue of~~ ^{by} promotion order dated 17.05.1988 (Annexure A-3) the applicant refused the promotion on 23.05.1988 whereas the respondent no.5 refused the same on 05.07.1988. Therefore, as a consequence of that both the officials could have no claim for promotion to HSG-II cadre for one year from the date of refusal.

5. The learned counsel for the applicant submitted that the OPC met in 1989 and the penal for promotion in 1989 was issued on 05.07.1989 in which rightly neither the applicant nor respondent no.5 could find place. The applicant's counsel submitted that it is not understood as to how in the gradation list of HSG-II officials as corrected upto 30.06.1992, the name of respondent no.5 has been shown at serial 11 with remarks "Approved for promotion to HSG-II cadre vide C.O. Memo No. STA/181-XA/HSG-II/Sel/89/2 dated 5.7.1989". This is a clear cut case of manipulation by the lower authorities in the office of Chief PMG as in memo dated 05.07.1989, the name of respondent no.5 does not appear at all. Besides, when



the respondent no.5 was promoted to HSG-II cadre purely on temporary and adhoc basis vide memo dated 09.03.1990 (Annexure 4-10) alongwith the applicant how could respondent no.5 be shown as regularly selected HSG-II w.e.f. 05.07.1989.

6. The learned counsel for the applicant also submitted that the representations and appeals filed by the applicant before respondent no.3 i.e. Chief PMG U.P. were to be decided by the Chief PMG which has not been done. Thus, respondent no.3 omitted and evaded from his statutory functions. The ^hAPMG(staff) or the Director Postal Services, Headquarters Lucknow, had no power to decide the applicant's representations/ appeals.

7. The learned counsel for the applicant finally submitted that the action of the respondents suffers from manifest illegality and, therefore, the action of the respondents is to be set aside and applicant is entitled for reliefs prayed for.

8. Resisting the claim of the applicant the Respondent's counsel submitted that the applicant refused regular promotion on 26.09.1988 whereas respondent no.5 refused adhoc promotion. In case of adhoc promotion the bar of one year for consideration of promotion does not apply and, therefore, respondent no.5 was eligible to be considered by DPC of 1989 which due to administrative error was not done. On representation by the respondent no.5 the case of respondent no.5 was examined as per rules. Respondents no.5 was promoted to HSG-II cadre w.e.f. 05.07.1989 vide memo dated 03.01.1999, whereas the applicant was regularised in HSG-II cadre w.e.f. 27.11.1990 vide memo dated 19.07.1994. Therefore the claim of the applicant for seniority over Shri B.B. Singh, respondent no.5 is not justified. The decision was communicated to the

applicant by memo dated 16.08.1994 and since the position has been well explained to the applicant regarding his seniority vis-a-vis respondent no.5 there is no ground for interference and the O.A. deserves to be dismissed.

9. We have heard counsel for the parties, carefully considered their submissions and closely perused records.

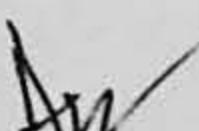
10. In this O.A. the applicant is claiming seniority over respondent no.5. It is an undisputed fact that the applicant was senior to Shri B.B. Singh in APM Accounts Cadre upto LSG cadre. It is also admitted by the applicant that he refused promotion to HSG-II cadre ordered vide memo dated 17.05.1988. The rule position is clear that when an employee refuses his promotion he is barred for consideration of promotion for a period of one year. The claim of the applicant is that he refused the promotion on 23.05.1988 while the respondents maintained that applicant refused his promotion on 26.09.1988. An averment to this effect has been made in para 7 of the CA. The respondents have annexed the letter of the applicant dated 26.09.1988 as Annexure-1 to the CA. Perusal of the same reveals that the applicant refused his promotion w.e.f. 26.09.1988. Therefore, he was barred for promotion as HSG-II till 26.9.1989. As regards respondent no.5 he was also ordered to be promoted to HSG-II cadre by order dated 17.05.1988. We have perused the order dated 17.05.1988 (Annexure A-3) and have no doubt that respondent no.5 was ordered to be promoted to HSG-II cadre on adhoc-basis, therefore, the refusal of accepting an adhoc promotion by respondent no.5 could not in any way adversely affect respondent no.5. He was eligible to be considered for promotion to HSG-II cadre by 1989 DPC.

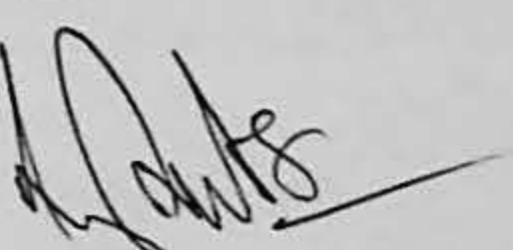
11. We have also seen the order dated 03.01.1991 (Annexure A-3 to the CA). The perusal of the same leaves no doubt that the applicant was promoted to HSG-II cadre w.e.f. 05.07.1989. It appears that there has been an error on the part of the office while giving the remarks against the name of respondent no.5 in the seniority list corrected upto 30.06.1992.

12. The applicant's counsel has also take the ground that his representations/appeals were to be decided by respondent no.3 i.e. Chief PMG and instead the same has been decided by a very junior officer i.e. APMG (Staff). In our opinion, no irregularity has been done in this regard as the representations/appeals of the applicant have been decided as per rules since there is no violation of rules, it is of no consequence that the representation was decided by a junior officer which to our mind would have been seen by Respondent no.3 and marked to APMG (Staff).

13. In the facts and circumstances and our aforesaid discussions, we do not find any good ground for interference. The O.A. is devoid of merits and is accordingly dismissed.

14. There shall be no order as to costs.


Member-J


Member-A

/Neelam/