

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 144 of 2003
Cuttack, this the 2nd day of March 2005

Gopal Charan Sethi

..... Applicant

-VERSUS-

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

Seal
02/03/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Signature
(B.N. SOM)
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK

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Cuttack, this the 3rd day of March 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

Gopal Charan Sethi, aged about 59 years, S/o.Ganesh Sethi, At-Nuapada, P.O.-Nayabazar, Dist.Cuttack-4, at present working as LSG, PA, Chandnichowk H.O., Cuttack.

..... Applicant

Advocates for the applicant

..... M/s. K.P.Mishra,
J.K.Khandayat
Roy &
S.Dash.

Versus-

1. Union of India, represented through its Director General of Posts, Government of India, New Delhi.
2. Chief Post Master General, Orissa, Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Cuttack City Division, Cuttack, At/P.O./Dist. Cuttack.

..... Respondents

Advocates for the Respondents

..... Mr. B.Dash

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN: This O.A. has been filed by Shri Gopal Charan Sethi, Postal Assistant (PA in short) assailing the Memo No.B/G-140/Chapter-I, dated 8.1.03 passed by Res.No.3 regarding granting the benefit of Biennial Cadre Review (BCR in short) Scheme to the applicant w.e.f. 1.1.02

instead of granting the same benefit from an earlier date when he completed 26 years of service. He has, therefore, sought for the following reliefs:

" (A) direct/order the Respondents to give promotion to the applicant under 1/3 rd quota as per the result published as at Annexure-1 with effect from the date, the applicant is eligible to get such promotion in accordance with the aforesaid 1/3 rd quota provision read with reservation quota meant for the Schedule Caste and Scheduled Tribe candidates.

(B) direct/order the Respondents to grant time-bound promotion(26 years) to the applicant with effect from 31.5.1996, i.e., the date the applicant completed 26 years of services in the post of Postal Clerk/Assistant.

(C) pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.

(D) direct/order the Respondents to give promotion to the applicant to the post of Lower Selection Grade/Higher Selection Grade-II/Higher Selection Grade-I Cadre as per the Circular dated 28.1.03 as at Annexure-6 with consequential service benefits within a stipulated period as may think fit and proper by this Non'ble Tribunal for the bonafide interest of justice."

2. The facts of the case in brief are that the applicant who belongs to SC Community claim to have been selected/qualified in the examination for promotion to Lower Selection Grade (LSG in short)/Higher Selection Grade (HSG in short) under 1/3 quota. Thereafter the Respondents Department had introduced a Time Bound Promotion Scheme (TBOP in short) and BCR Scheme for career progression of employees facing stagnation. The applicant got the benefit of TBOP Scheme w.e.f. 31.5.86 and was entitled to the benefit of BCR Scheme, when he completed 26 years of service on 31.5.96. But the Respondents, without considering the length of service rendered by him, granted him BCR benefit only from 1.1.2002. His

allegation is also that he was never considered for promotion to LSG/HSG under 1/3 quota. Further, that the Director of Postal Service, Headquarters, Bhubaneswar had circulated the Director General of Posts letter dated 28.1.93 in which it was disclosed that the Department had introduced the Fast Track Promotion Scheme from a prospective date to fill-up the post of LSG/HSG-II in Postoffices and RMS Offices as per the amended Recruitment Rules and that the vacancies in the grade of LSG/HSG, would be filled up notionally from among the eligible departmental candidates on the basis of the earlier rules. In terms of the aforesaid circular, the Respondents have given promotion to a number of departmental candidates including some of the juniors to the applicant, namely, Sri F.C.Sethi and Sri Sukomal Bag to the HSG-II cadre vide their letter dated 21.8.93 and subsequently promoted them to HSG-I vide letter dated 24.11.93. Thus being aggrieved by the non-consideration of his case for promotion to the higher grades of service, he has filed this O.A. alleging malafide, capricious and colourful exercise of power by the Respondents.

3. The Respondents have contested the O.A. by filing a detailed counter. They have admitted that the applicant had qualified in LSG examination held on 15.2.81. However, he could not be offered appointment to LSG cadre on the ground that by amending the recruitment rules from 1.1.81, the concerned examination for promotion to LSG cadre was made competitive whereas by the earlier system which existed when the applicant appeared for the examination

it was only qualifying. Candidates who had qualified in earlier examination held during the years 1975, 76, 78 and Feb., 81 but could not be absorbed in LSG, were required to appear again in the examination which was made competitive w.e.f. 1.1.1981. As the applicant did not appear in any of the examinations held for promotion to LSG after 1.1.81, he could not be considered for promotion to LSG. It has been further disclosed by the Respondents that the applicant was under suspension from 30.6.92 to 6.10.92 followed by issue of a charge sheet under Rule 14, served on him on 22.2.96. The disciplinary proceedings resulted in imposition of the punishment of deduction of pay for a period of one year. The currency of the punishment expired only on 31.12.01. It is under these circumstances that he could not be considered for up-gradation to BCR status when he became due for it on 31.10.96. However, as soon as the effect of punishment was over on 31.12.01, he was given financial upgradation under that scheme w.e.f. 1.1.02.

4. We have heard the Ld. Counsel for both the parties and have also perused the records placed before us.

5. The applicant's plea is that he was denied promotion to LSG under 1/3 quota on the basis of the result of the examination held in that regard in February, 1981 and that he could not have been denied financial upgradation on completion of 26 years of service. He has also claimed promotion to HSG-I in terms of the circular dated 28.1.03 (Annexure-6) issued by the Respondents.

6. Having gone through the counter affidavit and further

submissions made by the Respondents by their additional counter, the Respondents have given clear cut answers to the points raised by the applicant squarely meeting the grievances of the applicant. With regard to his grievance regarding non-consideration for promotion under 1/3 quota for LSG cadre, they have submitted that the Director General of Posts by amending the recruitment rules of LSG cadre vide his order dated 21.10.81 had made the departmental examination for promotion to LSG a competitive one and that qualified but unabsorbed candidates of the earlier examinations held in 1975, 76, 78 and Feb., 1981 would no more be in the list for promotion to LSG cadre unless they would try again under the revised system of examination. It was also stated that such officials (i.e. who do not compete afresh) would have to wait for their turn for promotion on the basis of seniority cum fitness against 2/3 quota vacancies. As the applicant did not appear in the competitive examination for promotion, he did not have a case for consideration.

7. We have perused the said letter of DG Posts dtd. 21.10.81 which was issued in supersession of all the policy instructions regarding avenues of promotion for the then Postal Clerks. This policy letter was issued to all concerned and none of the affected parties including the applicant seem to have raised any voice against the changes brought out in the mode of promotion to LSG cadre by that ^{letter} _{under} reference. The applicant having remained silent all these years, he is clearly precluded from raising the issue now

in this O.A. in the year 2003 as he is barred by the doctrine of acquiescence. Further, mere plea that the applicant was empanelled for promotion does not vest in him any indefeasible right to promotion. This principle has been enunciated by the Apex Court in the cases of Sankarsan Dass Vrs. Union of India, 1992(1) SLJ 7 (S.C.); Sabita Prasad Vrs. State of Bihar, 1993(1) SLJ 1 (SC); State of Bihar Vrs. Secretariat Assistant Successful Examinees Union, 1994(1) SCT 522 (SC), K.Jaya Mohan Vrs. State of Kerala, 1998(1) SLJ 19 (SC) and Vice-chancellor, University of Allahabad Vrs. Dr. Anand Prakash Mishra, 1997 (2) SLJ 97 (SC).

in context of judicial decisions

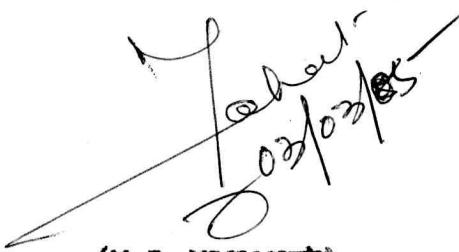
It has been held that the method of promotion or providing of career opportunity being policy matter and if such policies are changed/modified and made applicable to all concerned, the same cannot be challenged merely on the ground that it has diminished promotion opportunity to an official.

8. Regarding his grievance for upgradation to BCR, the Respondents have clearly submitted that it was because of a disciplinary case pending against him which could be resolved only on 31.12.01, he could not have been granted the benefit of the BCR Scheme from 1996. It is the settled law that an official under cloud is not entitled for upgradation.

9. Regarding his claim to HSG-I, the Respondents have clarified that according to the Recruitment Rules for the post of HSG-I, only HSG officials with 3 years of service in the grade are eligible for promotion. The admitted fact of the case being that the applicant was never promoted

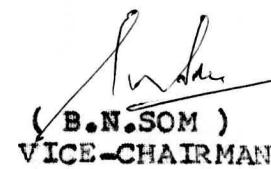
to LSG cadre, he was also, therefore, never in HSG-II cadre, that is the feeder grade to HSG-I, hence, the question of considering his case for promotion to HSG-I is clearly mis-conceived.

10. Having regard to these facts of the case, we see no merit in the O.A. which is accordingly dismissed being devoid of merit. No costs.



03/03/65

(M.R.MOHANTY)
MEMBER (JUDICIAL)



(B.N.SOM)
VICE-CHAIRMAN

SAN/