

19
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.318, 384, 385 386 & 387 2015

Cuttack this the 18th day of August, 2016

CORAM:

HON'BLE SHRI R.C.MISRA, MEMBER(A)

HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)

IN O.A.No.318 of 2015

Sri Niranjana Nayak,
Aged about 60 years,
S/O-Late Ghanei Nayak,
At-Nagpur,
P.O.-Balikuda,
Dist-Jagatsinghpur.

...Applicant

By the Advocate(s)-M/s. D.P. Dhalasamant
N.M. Rout.

-Versus-

Union of India, represented through:

1. Director General, Department of Post,
Ministry of Communication,
Government of India,
Dak Bhawan,
Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist-Khurda-751001.
3. Director Postal Services,
O/O-Chief Post Master General,
Odisha Circle,
Bhubaneswar,
Dist-Khurda-751001.
4. Superintendent of Post Offices,
Cuttack South Division,
At/PO/Dist-Cuttack-753001
5. Secretary,
Department of personnel & Training,

Ministry of Public Grievance and Pension,
Govt. of India,
New Delhi-110001.

...Respondents

By the Advocate(s)- S. Behera

IN O.A.Nos. 384 of 2015

Sri Kanhu Charan Das,
Aged about 62 years,
S/O-Late Pranakrushna Das,
Vill-Bhatapada,
P.O.-Debidol,
Dist-Jagatsinghpur.

(Retired BCR Officials under Respondent No. 4)

...Applicant

By the Advocate(s)-M/s. D.P. Dhalasamant,
N.M. Rout
Arindam

-Versus-

Union of India, represented through :

1. Director General, Department of Post,
Ministry of Communication,
Government of India,
Dak Bhawan,
Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist-Khurda-751001.
3. Director Postal Services,
O/O-Chief Post Master General,
Odisha Circle,
Bhubaneswar,
Dist-Khurda-751001.
4. Superintendent of Post Offices,
Cuttack South Division,
At/PO/Dist-Cuttack-753001
5. Secretary,
Department of personnel & Training,
Ministry of Public Grievance and Pension,

21
Govt. of India,
New Delhi-110001.

...Respondents

By the Advocate(s)- Mr. M.R. Mohanty

In O.A.No.385 of 2015

Sri Keshab Chandra Padhi,
Aged about 63 years,
S/O-Late Prahallad Chandra Padhi,
At/P.O.-Debidol,
Dist-Jagatsinghpur, 754109.

(Retired BCR Officials under Respondent No. 4)

...Applicant

By the Advocate(s)-M/s. D.P. Dhalasamant
N.M. Rout,
Arindam.

-Versus-

Union of India, represented through :

1. Director General, Department of Post,
Ministry of Communication,
Government of India,
Dak Bhawan,
Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist-Khurda-751001.
3. Director Postal Services,
O/O-Chief Post Master General,
Odisha Circle,
Bhubaneswar,
Dist-Khurda-751001.
4. Superintendent of Post Offices,
Cuttack South Division,
At/PO/Dist-Cuttack-753001
5. Secretary,
Department of personnel & Training,
Ministry of Public Grievance and Pension,
Govt. of India,

New Delhi-110001.

...Respondents

By the Advocate(s)- Mr. A.C. Deo

IN O.A.No.386 of 2015

Sri Nrusingha Charan Sahoo,
Aged about 62 years,
S/O-Late Radha Krishna Sahoo,
At/P.O.-Sompur,
Dist-Cuttack.

(Retired BCR Officials under Respondent No. 4)

...Applicant

By the Advocate(s)-M/s. D.P. Dhalasamant,
N.M. Rout
Arindam.

-Versus-

Union of India, represented through :

1. Director General, Department of Post,
Ministry of Communication,
Government of India,
Dak Bhawan,
Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist-Khurda-751001.
3. Director Postal Services,
O/O-Chief Post Master General,
Odisha Circle,
Bhubaneswar,
Dist-Khurda-751001.
4. Superintendent of Post Offices,
Cuttack South Division,
At/PO/Dist-Cuttack-753001
5. Secretary,
Department of personnel & Training,
Ministry of Public Grievance and Pension,
Govt. of India,
New Delhi-110001.

...Respondents

23

By the Advocate(s)- Mr. A.K. Mohapatra.

IN O.A.Nos. 387 of 2015

Sri Kabir Charan Mallick,
Aged about 66 years,
S/O-Late Panu Mallick,
At/P.O.-Naindipur,
Via-Gardapur,
Dist-Kendrapara.

(Retired BCR Officials under Respondent No. 4)

...Applicant

By the Advocate(s)-M/s. D.P. Dhalasamant
N.M. Rout
Arindam.

-Versus-

Union of India, represented through :

1. Director General, Department of Post,
Ministry of Communication,
Government of India,
Dak Bhawan,
Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist-Khurda-751001.
3. Director Postal Services,
O/O-Chief Post Master General,
Odisha Circle,
Bhubaneswar,
Dist-Khurda-751001.
4. Superintendent of Post Offices,
Cuttack South Division,
At/PO/Dist-Cuttack-753001
5. Secretary,
Department of personnel & Training,
Ministry of Public Grievance and Pension,
Govt. of India,
New Delhi-110001.

...Respondents

By the Advocate(s)- Mr. B. Swain.

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24

ORDER

R.C.MISRA, MEMBER(A):

O.A.No.318 of 2015

The applicant who is a retired employee of the Department of Posts has approached the Tribunal by filing this O.A. with a prayer that the Memo dated 18/23.3.2015 and dated 30.4.2015/1.5.2015 of the respondents may be quashed and direction may be issued to the respondents to promote the applicant to HSG-II grade with effect from 31.7.2005 and to HSG-I grade w.e.f. 31.7.2008 and confer all consequential benefits.

2. The short facts of the case are that applicant joined the Department of Posts as a Postman on 23.09.1976 and later joined as Postal Assistant on 31.7.1981 by passing the Departmental Examination. He was promoted under TBOP Scheme on 31.7.1997 on completion of 16 years of service, as Postal Assistant. Subsequently, he was promoted to BCR on 31.7.2008. The applicant claims that according to the Departmental circular, TBOP/BCR are promotions corresponding to LSG/HSG-II cadres. Applicant is entitled to promotion to HSG-II on completing 8 years' service in LSG cadre and promotion to HSG-I on completing 3 years' service in HSG-II. This amounts to the fact that he should have been promoted to HSG-II on 31.7.2005 and to the HSG-I on 31.7.2008. This is the crux of the grievance of the applicant.



25

3. The applicant further claims that similar matter was adjudicated in O.A.No.1196 of 2004 by this Tribunal. The decision of the Tribunal was upheld by the Hon'ble High Court of Orissa in WPC No.169269 of 2008. The judgment of Hon'ble High Court was confirmed by the Hon'ble Apex Court in SLP (CC) No.39630 of 2012. Based upon this decision, respondents promoted employees similarly situated as the applicant to LSG cadre from the date of promotion to TBOP, and after 8 years in LSG cadre to HSG-II. Thereafter, they were promoted to HSG-I after completion of 3 years in the HSG-II cadre. The applicant, therefore, made representation to respondents praying that he should be given similar benefits as the benefits given to similarly situated persons under the orders of the Court. In the meantime, applicant retired and filed O.A.No.171 of 2015 which was disposed of by the Tribunal by an order dated 9.4.2015 directing respondents to consider and dispose of the pending representation. Thereafter, the respondent no.2 complied with the orders of the Tribunal by letter dated 01.05.2015 in which it was intimated that applicant's representation was already disposed of and applicant's prayer was not acceded to, on the ground that orders of Tribunal in O.A.No.1196 of 2004 and 1213 to 1221 of 2004 as confirmed by the Hon'ble Apex Court vide their order on 9.1.2013 in SLP © No.22590 of 2012 are applicable only to applicants in O.A.No.1196 of 2004 and 1213 to 1221 of 2004. The respondents had earlier issued letter

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dated 18/23.3.2015 to the applicant conveying the rejection of the prayer on the ground mentioned above. Both these orders of rejection are under challenge in this O.A.

O.A.No.384, 385, 386 & 387 of 2015

4. The applicants in these OAs are all retired employees of the Postal Department, and having similar service profiles as the applicant of the O.A.No.318 of 2015. The difference is that in these OAs, only orders of the respondents rejecting the representations of the applicants are challenged. In the O.A.No.318 of 2015, there was also a speaking order passed by Respondent No.2 in compliance of the directions of the Tribunal in O.A.No.171 of 2015. However, in the speaking order nothing was added to the order of rejection of the representation, and it was only a reiteration of the previous order. Therefore, in all these OAs, the prayer is for issue of direction to respondents to promote the applicants to HSG-II and to HSG-I thereby extending same benefits as already given to applicants in O.A.No. 1196 of 2004, because, they are similarly situated.

5. The respondents in the counter - affidavit filed in these OAs submit that TBOP and BCR are financial upgradations and are not equivalent to LSG and HSG-II cadre. The other stand taken by the respondents is that the orders of the Tribunal in O.A.No.1196 of 2004 is not applicable to the applicants and is applicable only to the applicants in that O.A. only.

27

6. The issue to be addressed being identical in these OAs, and even though all the OAs were heard one after the other, yet we dispose of all these OAs through this common order.

7. O.A.No.1196 of 2004 and some other OAs were filed by similarly situated employees before the Tribunal and were disposed of by a common order dated 23.7.2008. Prayer was made to direct the respondents to treat the orders of promotion as regular promotion orders and to consider promotion to HSG-II after 8 years' service in LSG and to HSG-I after 3 years' experience ⁱⁿ to HSG-II. The Tribunal has taken into account the orders dated 19.3.2004 of the Madras Bench of the Tribunal in O.A.No.679 of 2003. In its order, the Madras Bench decided that OTBP/BCR are promotions and they correspond to LSG and HSG-II. There was a full Bench decision dated 3.1.2005 on the above issue, but the decision of Madras Bench was not placed before the full Bench. It was, however, decided by the Full Bench that the TBOP and BCR Schemes introduced by the Department of Post are not promotion schemes to the next higher grade. However, the fact remains that the decision of the Madras Bench of the Tribunal was that placement to LSG is not a financial upgradation; it is a promotion. This decision was upheld by the Hon'ble High Court of Madras.

8. Being bound by the decision of the Hon'ble High Court of Madras, the Tribunal by order dated 23.7.2008, directed respondents to consider the cases of applicants for grant of

consequential relief in the light of the decision of the Madras Bench of the Tribunal, as confirmed by the Hon'ble High Court of Madras.

9. It has also been brought to our notice that a contempt petition bearing No.16 of 2013 was filed alleging non-compliance of orders of the Tribunal in O.A.No.1196 of 2004. The Tribunal noted that by issuing order dated 6.2.2015, the Postal Department has granted the benefits as directed by the Tribunal in favour of the applicant, and therefore, dropped the contempt proceedings by an order dated 19.2.2015.

10. The respondents in the impugned orders under challenge in the OAs under consideration, have rejected the prayer of the applicants on the ground that the orders of the Tribunal in O.A.No.1196 of 2004 and 1213 to 1221 of 2004 are applicable to the officials who filed these OAs. There are no contested grounds, because the orders of the Tribunal have attained finality, since the decision of the Madras Bench of the Tribunal upheld by the Madras High Court has been confirmed by the Hon'ble Apex Court. This Bench while disposing of O.A.No.1196 of 2004 and other OAs had followed the decision of the Madras Bench as the precedent decision, and also noted that since that decision was upheld by the Hon'ble Madras High Court, the Bench was bound by that order. We have therefore, noted that the view in this matter has been finally settled.

29

11. Once a principle has been finally settled, and a Department has also implemented the orders in respect of the litigant officials by extending the benefits as directed, there should not be a further scope for similarly situated officials to approach the Tribunal. This has been occasioned by the view taken by the respondent-Department as conveyed in the impugned orders that the orders of the Tribunal are to be applied only to those officials who approached the Tribunal, and benefits are to be confined only to them. This is a narrow view that will lead to increased litigation. If certain benefits are extended to some officials, and some other officials are deprived of the benefits even if they are similarly situated, there will be different classes of employees within employees in identical situations. This will militate against good governance. In this connection, we would like to indicate that the Hon'ble Supreme Court in *Maharaj Krishan Bhatt and Another vs. State of J & K and Ors. (2008) 2 SCC (L&S) 783* has held that **"even though Article 14 and Article 16 of the Constitution cannot be invoked and pressed into service to perpetuate illegality, and in case one illegal action is taken a person whose case is similar cannot be demand similar relief, once a matter has reached finality under the orders of the competent court, the state authorities ought to gracefully accept the decision, by granting similar benefits to persons who are similarly situated"**. We are therefore, of the opinion

11

30

that rejection of the prayer of the applicants on the ground that orders in O.A.No.1196 of 2004 and O.A.Nos.1213 to 1221 of 2004 should be applicable only to the officials who had filed those OAs shall not be sustained by law, and are liable to be rejected. We, therefore, quash the impugned orders in O.A.Nos.318 of 2015, 384 of 2015, 385 of 2015, 386 of 2015 and 387 of 2015 and direct the respondents to consider the promotion of the applicants to HSG-II and HSG-I cadres in conformity with the decision of the Tribunal in O.A.No.1196 of 2004, and release the consequential benefits within a period of ninety days from the date of receipt of this order.

12. In the result, all the OAs are allowed as above, with no order as to costs.

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MEMBER(A)