

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA. 971 of 96

Present : Hon'ble Mr. S.K.Ghosal, Administrative Member.

Hon'ble Mr.P.C. Kannan, Judicial Member.

Dilip Kumar Chowdhury, Son of late Phani Bhusan Chowdhury, working as Accountant office of Senior Superintendent of Post Office, Bankura Division, Bankura (Since retired on 30.11.95) resident of Shikaria Para Post & District - Bankura.

.... Applicant

-Versus-

- 1) Union of India Service through the Secretary Ministry of Communications, Department of Posts Dak Bhavan, New Delhi.
- 2) Chief Postmaster-General, West Bengal Circle, Yogayog Bhavan, Calcutta-12.
- 3) Senior Superintendent of Post Offices, Bankura Division, Bankura.

.... Respondents

For the applicant(s) : Mr. N. Bhattacharjee, counsel

For the respondents : Mr. S.P. Kar, counsel

Heard on : 8.5.2000

Order on: 8.5.2000

O R D E R

S.K. Ghosal, A.M.:-

The applicant has sought the following reliefs :-

- a) The observation of audit in Annexure A3 so far as the portion "overpayment from 1.10.91 may be assessed and recovered with noting in the Service book" be set aside and quashed and the respondents be directed to refund the amount of Rs.37539/- recovered from the DCR Gratuity of the applicant, on the strength of the above audit observation, to the applicant.
- b) The respondents be directed to give benefit of Time bound one promotion scheme (TBOP) and Biennial Cadre Review (BCR) to the applicant as clarified by

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G.I.Dept. of Post letter No.20-2/92-PE-1 dt. 1.12.95 (Annexure A6) that the above scheme is applicable to the S.B.Control Organisation Staff.

- c) The respondents be directed to refix the pay of the applicant in the defunct scale as shown in para 4.13.
- d) The respondents be directed to refix his pension and DCR gratuity accordingly and draw and disburse the arrears arising out of such refixation.
- e) Such other or further order or orders as to your Lordship may seem fit and proper."

His main grievance is that an amount of Rs.37,539/- has been recovered from his DCR Gratuity in the event of his superannuation and that he should have been given the benefit of the TBOP and then of the ECR as per the Scheme of Time Bound Promotion introduced by the Respondent Department.

2. The Respondents on the other hand have taken the position that since the applicant had not actually been promoted earlier under the TBOP Scheme on completion of 16 years of service in the Basic Cadre, the fixation of his pay made as a sequel to his promotion to BCR Gr.III taking into account ^{of his} his notional promotion under the TBOP was ordered erroneously and, therefore, resulted in overpayment. The ld. counsel for the Respondents has strongly argued that such an overpayment is always recovered from DCRG payable to a Govt. Servant in the event of his superannuation.

3. At the stage of arguments, in response to a query of the Bench ld. counsel for the ^{of respondents} ~~applicant~~ has drawn our attention to the provisions of the Executive Order passed on behalf of the first Respondent i.e. Ministry of Communications, Department of Posts, Govt. of India. This Order dated 11.10.1991, according to the ld. counsel for the respondents, sets out the condition that unless an employee is first granted promotion actually under the

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TBOP Scheme on completion of 16 years of service, his subsequent entitlement in the event of his promotion under the BCR Gr.III on completion of 26 years cannot take into account the benefit of any notional promotion under TBOP on completion of 16 years of service. In this context he has referred to the provisions of sub-para 2(ii) which he has argued supports the position taken by the Respondents. We consider it useful to quote the provisions of that paragraph:-

" Biennial Cadre Reviews will be applicable for only those cadre in Gp.'C' and 'D' for which scheme of One Time Bound Promotion on completion of 16 years of service in the basic grade is already in existence vide OM dated 17.12.83 referred to in para 1 above."

It is evident that the above provisions do not prohibit the grant of the benefits of promotion to BCR -III under the Biennial Cadre Review (BCR) Scheme to those who may not have been promoted under One Time Bound Promotion Scheme on completion of 16 years of service, as long as the Scheme for promotion under One Time Bound Promotion was available for those cadres and the One Time Bound Promotion Scheme was already in existence for those cadres. It has not been denied by the Respondents that for the Cadre relevant for the applicant, the Scheme for such promotion was already in existence and that the Scheme had been introduced with effect from 17.12.83. It is, therefore, difficult for us to appreciate the main defence made on behalf of the respondents in support of their action which has been challenged here. We observe that the Respondents have not taken any other grounds in their reply statement.

4. The ld. counsel for the applicant on the other hand has supported the case of the applicant further by referring to various Case Laws laid down by the Hon'ble Supreme Court which ~~are~~ ^{are preserved that} if an action is initiated and implemented to rectify a past error, the benefits of the earlier dispensation already granted in terms of Salaries and Emoluments, even if that earlier dispensation is the

result of the said error cannot be recovered from the concerned Govt. official. We do not consider it necessary to deal with those principles in the context of the present O.A.

5. We are of the considered view that the applicant was eligible for fixation of his pay under BCR Gr.III for the reason that for the Cadre to which the applicant belongs viz. the Basic Cadre ~~the~~ Time Scale Clerk, the benefit of One Time Bound Promotion and BCR were both in existence and were available. We further observe that the issue of grant of benefits under the TBOP and BCR Gr.III simultaneously had come up for consideration earlier before the Hon'ble Bangalore Bench. By their Order dated 31.3.98 in O.A. No.378/97 that Bench has held that it is perfectly permissible ^{to order} fixation of higher pay in succession, first under the TBOP Scheme on completion of 16 years and immediately thereafter on completion of 26 years at the BCR Gr.III level. ^{As the said order} was perfectly and legally valid and ^{As the Bench} upheld the contention of the applicant in that case which was based on such simultaneous pay fixation.

6. For the reasons that we have discussed above we find that the position taken by the respondents cannot be sustained, ^{while} ordering the recovery of Rs.37,539/- from the DCRG payable to the applicant. We, therefore, quash that order requiring the adjustment of that amount against the DCRG due to the applicant. We further direct that the Respondents shall refund the said amount of Rs.37,539/- to the applicant within a period of four weeks from the date of receipt of a copy of this Order. We want to make it clear that the fixation of pay of the applicant at a higher level consequent upon his promotion to the BCR Gr.III after taking into account his notional promotion ^{As under TBOP} will also entitle him to all ^{the} consequential benefits including Pension. No costs.


P.C.KANNAN
MEMBER (J)


S.K.GHOSAL
MEMBER (J)