

In The Central Administrative Tribunal
Calcutta Bench

DA 1290 of 1996 .

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Manasa Kinkar Rajak ... Applicant

- VS -

- 1) Union of India, through the
Secretary, D/o Posts, New Delhi.
- 2) The Director General, D/o posts,
New Delhi.
- 3) The Chief Post Master General, West
Bengal Circle, Calcutta.
- 4) The Superintendent of Post Offices,
Birbhum Division, Suri, Birbhum.

..... Respondents

For the Applicant : Mr. G.S. Sarkar, Advocate

For the Respondents: Ms. B. Ray, Advocate

Heard on : 3-3-2000

Date of Order : 15/3/2000

ORDER

G. S. MAINGI, AM

This applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985. The applicant has claimed the following relief in this application :

- i) To direct the respondents to proceed in accordance with the prayer for fixation of seniority as per gradation list of postal official on the time scale of pay in Mufassil unit of West Bengal Circle for stepping up his pay since due date and also to direct to given all retirement benefits as accrued in his pay.

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- 2) To direct the Chief Post Master General to proceed in accordance with the memo issued by the Superintendent of Post Offices, vide his letters dated 15.2.93, 16.3.93 and 8-7-93.

2. The brief fact of this case is that the applicant retired as Deputy Post Master, Suri and he made representation to the Chief Post Master General, West Bengal Circle stating therein that he was promoted in B.C.R. Scheme since 1.10.1991. But his junior officials had already got higher promotion and therefore, he prayed for fixation of seniority after fixation of his pay on stepping up in the grade. He has mentioned in para 4 of the application which shows that as per the gradation list corrected upto 1.1.82 and the gradation list corrected up to 1.1.87 he was senior to Sri Gopal Chandra Sarker and Sri Gour Gopal Das.

3. Respondents submitted a reply to the application through Shri Ambujaksha Mukherjee, Superintendent of Post Offices, Birbhum Division, Suri. The reply on behalf of the respondents by the officer shows lack of interest in the case and utter carelessness in dealing with the case of a retired employee. It is found that the representation dated 26-3-96 of the applicant was sent to the Circle Office, Calcutta-12 vide D.O. letter No.E1/Rlg/pay/pt-I dated 29.3.96 and it is mentioned therein that there was no disciplinary/vigilance case pending against the applicant since 1991 till 31.10.93 i.e. the date of the retirement of the applicant. The respondents have stated that the application of the applicant is hopelessly barred by time and is not sustainable. The respondents in paragraph 9 of the reply have stated that no record is found in the office. Therefore, there is no comment for the representation. This shows apathy of the respondents and highhandedness.

4. Applicant has filed rejoinder wherein he refuted the charge of limitation period. He has also drawn our attention to the time-barred effect in paragraph 5 of the rejoinder.

He has further clarified the position about time barred effect at paragraph 7 of this rejoinder to the reply. It has been mentioned therein that even after his retirement he has submitted

applications dated 17.11.93, 7.6.94 and 26.3.96 and the advocate also served notice on the respondents on 5.1.96. He had further explained in paragraph 8 of the rejoinder that he has claimed his legitimate right in support of his documents and/or gradation list and which cannot be refused by the said respondent by the said pretended technical plea of limitation, when the said respondents repeatedly made recommendation in his person and the consideration in the person, particularly when they raised plea of vigilance as referred to on at the time of filing their reply.

The applicant has subsequently filed a supplementary application in connection with the rejoinder to the application No.1290/96. The applicant has also filed a supplementary affidavit in connection with rejoinder already file in OA.1290/96.

5. The application came up for hearing before us in the Tribunal on 3.3.2000 when Mr. G.S. Sarker, Ld. Counsel appeared on behalf of the applicant and Ms. B. Ray, Ld. Counsel appeared on behalf of the respondents. Both of them strongly argued the case in favour of the applicant as well as in favour of the respondents. It is observed in the application that the applicant was shown senior to two other persons, namely, Sri G.C. Sarker and Sri G.G. Das, in the gradation list as corrected upto 1.1.82 and 1.1.87. It is not clear as to ^{before} what stage these two persons junior to him had been listed above the applicant. Keeping of the facts in view we hold that the application is not barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

All the excuses advanced by the respondents in paragraph 9 of their reply as stated that 'no record is found' is absolutely unbelievable and shirking of responsibility. It is noticed from the application that the Superintendent of Post Offices, Birbhum, Suri has written a letter addressed to the A.P.M.G.(Staff), C/o The Chief P.M.G., W.B. Circle, Calcutta-12 dated 16.3.93 in which he has stated that the statement of Shri Manasa Kinkar Rajak dated 24.11.92

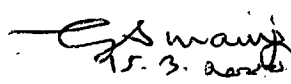
will be taken as fact. He has also explained in his letter that Sri G.C. Sarkar and Sri G.G. Das who had been promoted on 25.1.91 are junior to the applicant. He has also drawn our attention to his report sent to the Post Master General vide his letter No.B-9/SG/Com/Ch-III dated 4.12.89 in respect to C.U.No.SFA/P-55/Select/HSG.II/8 dated 28.11.89. The representation dated 24.11.92 of the applicant was also enclosed and was also sent to the Chief Post Master General. The same officer had also informed the applicant vide his letter dated No.B-11/M-35 dated 15.2.93 that the representation dated 24.11.92 of the applicant had been forwarded to the Post Master General, Siliguri Region but it was further sent to the Chief Post Master General, West Bengal Circle, Calcutta. The Superintendent of Post Offices, Birbhum Region, Suri had again written ^{to} the A.P.M.G., (applicant) West Bengal Circle, Calcutta on 8.7.93. He also wrote to the Chief Post Master General, W.B. Circle on 7.6.94. The applicant's advocate wrote to the Chief Post Master General, W.B. Circle on 3.1.1996. The applicant himself wrote to the Chief Post Master General, W.B. Circle on 26.3.96. But all these representations remained unattended and he got no response from the respondents. During the course of hearing a xerox copy of the order dated 21.8.98 under Memo No.SFA/Z-18/96 was produced wherein it is stated that the applicant, formerly HSG-II (BCR) official of Birbhum Division is promoted to HSG-I in the scale of pay of Rs.2000-3200/- (pre-revised) w.e.f. 1.8.93 on national basis i.e. from the date of his junior Sri G.C. Sarkar was ~~was~~ promoted to HSG-I vide Memo No.PMG(C)/Staff/P-6/HSG/pt.II dated 10.3.93. It is not understood even after issuance of the order of promotion of the applicant, he was shown junior to Sri G.C. Sarkar. The Superintendent of Post Offices, Birbhum Region, Suri vide his letter dated 15.10.98 addressed to Ms. B.Ray, standing Counsel stated that the fact of promotion should be brought to the notice of Tribunal, if it is thought proper. It is not understood when Sri G.C. Sarkar was promoted to HSG-I vide Memo No.PMG(C)/Staff/P-6/HSG/pt.II dated 10.3.93, it cannot be said that the applicant has been placed above Sri Sarkar. This

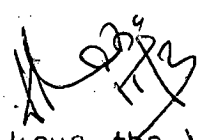

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requires not only clarification but also absolute illustration.

6. The Principal Bench of the Administrative Tribunal, New Delhi in a case of Swarnsingh Singh Ratra - Vs - Union of India & Ors. (reported in 1991 (16) ATC 880) held that the records produced by the applicant should be accepted if the same record is not available in the office of the respondents. In another case (E. Gopal & Ors. - Vs - UOI & Ors.) reported in 1992(22) ATC 309 the Madras Bench held that because ~~of~~ records were destroyed the point at issue should be decided on the basis of available records.

7. Applicant had made representation to the respondent authorities and the Superintendent of Post Offices, Birbhum Region, Suri had also made reference to the Chief Post Master General. But still no action was taken. ^{either} Rather whether the respondents are ^{reconstructing} ~~restructuring~~ the records or ^{they can} collect the same from the applicant or from the Superintendent of Post Offices, Birbhum Region, Suri or ^{either} make any attempts to procure the various representations for deciding the matter without causing any more mental tension and harassment to a retired government employee. In view of the matter, we give three months time to the Chief Post Master General, West Bengal Circle (Respondent No.3) to dispose of the matter by taking a fair and equitable view by passing a speaking order. Respondents are directed to apply their mind while taking decision on the point at issue or alternatively it can be done by an officer immediately under him who is conversant with the case. Accordingly, the application is disposed of. No cost is awarded in this application.


(G. S. Misingi)
Member (A)


(D. Purkayastha)
Member (J)