

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No.O.A.280/1996

Date of order : 10/9/01

Present : Hon'ble Mr. D.C. Verma, Vice-Chairman  
Hon'ble Mr. M.K. Mishra, Administrative Member

Amrita Lal Mukherjee

VS.

1. Union of India through the  
Secretary, Ministry of  
Communication, Dak Bhavan,  
Sansad Marg, New Delhi-110001
2. Senior Superintendent of Post  
Offices, Howrah Division,  
P.O. and Dist. Howrah-711101

For the applicant : Mr. B. Mukherjee, counsel  
Mr. K.S. Dey, counsel

For the respondents : Mr. B.K. Chatterjee, counsel

ORDER

Per D.C. Verma, V.C.

By this O.A. the applicant has claimed benefit of Time Bound One Promotion with effect from 26.7.1989 like his juniors with all consequential benefits. A further prayer is made that the respondents be directed to reduce the pay of the applicant on the higher stage of pay instead of pay of the stage of pay of Rs.1540/- due to punishment of reduction of pay with effect from 29.11.1995. The applicant has also prayed for direction to the respondents to pay him higher rate of pay with effect from 29.11.1998 when the punishment of reduction of pay will be over.

2. The undisputed fact is that the applicant completed 16 years of service in the cadre of Postal Assistant in Howrah Division on 26.2.1989. It is also not disputed that vide office memo dated 17.12.1983 the scheme for Time Bound One Promotion (TBOP) Scheme after completion of 16 years of satisfactory service the applicant was to be considered for promotion. However as the 16 years' qualifying service of the applicant was under cloud on the date of meeting of the DPC, the name of the applicant was not placed before the DPC.



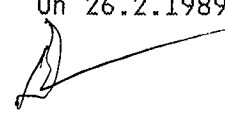
3. The submission of the ld. counsel for the applicant is that on certain allegations the applicant was suspended in August, 1989 and an FIR was also lodged against him in 1990. Departmental Chargesheet was issued against the applicant on 30.8.1991. Further submission of the ld. counsel for the applicant is that when the DPC meeting was held on 31.12.1990 there was neither any chargesheet nor he was under suspension, hence the applicant could not have been denied the benefit of TBOP.

4. Ld. counsel for the respondents has, on the other hand, submitted that since the applicant was involved in fraud case and misappropriation of money from June, 1987 onwards he was not eligible for promotion under TBOP Scheme. As per the reply in Para 8 the respondents' contention is as under:-

"Since the service career of the applicant before completing 16 years of qualifying service was under cloud particularly on the date of meeting of the DPC for considering the cases of eligible candidates under TBOP Scheme, applicant's case was not placed before the DPC."

5. Ld. counsel for the applicant has, on the other hand placed reliance on the decision in the case of Union of India Vs. K.V. Jankiraman decided on 27.8.1991 reported in 1991 SCSLJ-203. On its basis it has been submitted that the case of the applicant was required to be placed before the DPC and the benefit of TBOP Scheme could not have been denied in absence of any chargesheet or FIR on the date of DPC.

6. After the counsel for the parties have been heard we are of the view that the case of the applicant was wrongly not placed before the DPC which was held on 31.12.1990. The 16 years' qualifying service period of the applicant was completed on 26.2.1989. The suitability of the applicant was required to be examined only till 26.2.1989. Any subsequent event could not have been taken into consideration for denying the benefit of TBOP. On 26.2.1989 there was



no suspension order, there was no FIR nor there was any departmental chargesheet. Consequentially the respondents could not have denied consideration of the applicant's case for grant of benefit of TBOP. In this respect the principle laid down in case of K.V. Jankiraman's case can be well applied in the present case also. It is not the case of the respondents that on the date of DPC any disciplinary proceeding was pending against the applicant or any decision had been taken by the competent Disciplinary Authority to initiate disciplinary proceedings. It is also not the case that on the basis of ACRs the applicant's services were not found satisfactory. Consequently, the respondents committed mistake in denying the consideration of the applicant's name for grant of TBOP benefit. Submission of the ld. counsel for the respondents is that on the basis of departmental enquiry penalty was subsequently imposed upon the applicant for the misconduct which was committed by the applicant during the period covered under 16 years' qualifying service. This will not affect the applicant's consideration for grant of the benefit of TBOP Scheme. Penalty imposed on a date subsequent to 26.2.1989 may become a ground when benefit of BCR is to be granted, but that cannot be taken as a ground to deny the benefit under the TBOP scheme.

7. In view of the discussions made above, the O.A. is allowed to the extent that the respondents are directed to grant benefit of TBOP w.e.f. 26.2.1989 i.e. the date the applicant's junior was granted such benefit. The other consequential relief as may be admissible under the rules should be given to the applicant. The relief claimed for a direction to reduce the pay on the higher scale of pay because of punishment of reduction of pay cannot be considered or granted in this O.A. Similarly as the question of penalty order has not been considered in this case, its period and effect thereto has also not been examined and any relief thereto cannot be given.

