

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

Date of order : 28.10.1999. (12)

O.A.No. 8/1995

Raghunath Makana S/o Shri Phoola, aged about 47 years, R/o Ward No. 16, Nokha District, Bikaner, at present employed on the post of Inspector, R.M.S.J.-II, Chittorgarh.

.....Applicant.

Mr.J.K.Kaushik, for the Applicant.

VS.

1. Union of India through Secretary to Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Post Master General, Eastern Region, Ajmer.
4. Shri Birbal Meena, Superintendent of Rail Mail Service, Gujarat.

.....Respondents.

Mr.Vineet Mathur, for Respondents No. 1 to 3.
None present for the Respondent No. 4.

CORAM

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

In this application made under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays for issuing directions to the respondents to consider promotion of the applicant to the post of A.S.R.M., HSG-I and S.R.M. (PPS Group 'B') at par with his next junior Shri Birbal Meena and allow him all consequential benefits.

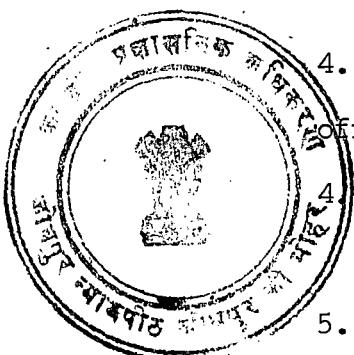
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2. The applicant's case is that he belongs to Scheduled Caste community. He was selected for the post of Inspector, R.M.S. in the year 1976. He came in the merit and was eligible for promotion to the post of Inspector w.e.f. 18.2.1977 but the SC point was wrongly filled-up by promoting respondent No. 4 ^{applicant} Shri Birbal Meena. Since he had occupied a senior position in the merit list as compared to 4th respondent and was entitled to be appointed against the reserved vacancy, he had challenged the action of the respondents before the Civil Judge, Bikaner and the case having been transferred to the Tribunal, the Tribunal vide its order dated 4.11.1992 directed the respondents to prepare a correct roster to which un-filled reservation point should be carried over and the applicant should be promoted against the point to be filled-up by Scheduled Caste candidates. He was accordingly promoted to the post of Inspector w.e.f. 6.6.1977. The applicant was however not considered for promotion to the next higher posts at par with his next junior i.e. respondent No. 4, who has in the mean time, as per information of the applicant, been promoted to the post of in A.S.R.M. 1986, HSG-I in 1990 and S.R.M.(PPS Group 'B') in 1993. The applicant represented against ignoring of his candidature against SC points and on his filing a Contempt Petition on account of in-action by respondents, the Tribunal while being satisfied with the reply of contemnors, observed that in case any mistake is found, the petitioner can seek fresh relief from ^{is} the Tribunal and he accordingly seeking the relief prayed, on being aggrieved that the junior has been promoted long back and he has suffered because of the fact that his promotion to the post of I.R.M. itself was not released, when due.

3. Notice of the application was sent to the respondents. The Official respondents have filed their reply according to



which, order dated 4.11.1992 of the Tribunal has been fully complied with and the applicant has not only been promoted but has also been paid the arrears of the pay and allowances on 20.4.1994. It has also been mentioned that the applicant has been given notional promotion to the Inspector cadre vide O.M. dated 4.3.1994 and has been put on probation for a period of two years and he will be considered for further promotion only thereafter when he successfully completes the period of probation. It has also been stated that the applicant has no right to be considered for promotion to the next higher post at par with respondent No. 4 and his case for promotion will be considered only after 4.7.1995 when he completes the probation period of two years.



4. We have heard the counsel for applicant and for the official respondents. None appeared on behalf of respondent No.

4. We have also gone through the record of the case.

5. Before we proceed to decide the rival contentions of the parties, it would be useful to quote the operative part of order dated 4.11.1992 passed by the Tribunal in T.A. No. 1702/1986 - Raghunath Vs. U.O.I. and Ors. :-

"5. In view of the above we allow this T.A. and direct that the respondents shall prepare a correct roster in accordance with the instructions of the Ministry of Home Affairs dated 22.4.70 (reproduced in para 4 of the rejoinder) according to which unfilled reservation in the old roster should be carried over and the applicant who belongs to scheduled caste should be promoted to the post of Inspector R.M.S. against the point to be filled by scheduled caste in this new roster. This exercise should be completed within a period of three months and the applicant shall be given the promotion from the date on which the vacancy reserved for the scheduled caste fell vacant with all consequential benefits. Parties to bear their own costs."

6. By the order dated 4.11.1992 (Annex.A/1), it was held

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that the roster point was wrongly filled-in and the respondent No. 4 has wrongly been promoted and in view of this conclusion the operative part as cited above, came to be passed. By wrongly promoting the respondent No. 4 by the respondents, the applicant was deprived of his timely promotion at that time and thereafter was deprived of his regular promotions of next higher posts. In view of this respondents were ordered to promote the applicant on and from the date the vacancy for the scheduled caste candidate fell vacant with all consequential benefits (emphasis added). In view of this the applicant was not only to be promoted w.e.f. the date the vacancy for the reserved point for scheduled caste fell vacant but was to be promoted as and when subsequent promotions became due to the applicant. By promoting the applicant in the year 1993 w.e.f. ~~earlier~~ date without giving the applicant further promotions, renders the earlier decision in favour of the applicant meaningless. It was the fault of the respondents in not promoting the applicant by correctly identifying reserved roster point for scheduled caste and, therefore, the applicant cannot be deprived of his lawful rights for no fault of his.

7. The respondents have stated that the applicant would be completing his probation in the year 1995 and would be due for consideration for next promotion thereafter but in our opinion this approach of the respondents is not correct. When the applicant was required to be promoted from a back date no condition relating to completion of probation period, can be attached thereto. Consequential benefits would include arrears of pay of the promotional post and subsequent promotions, fixation of pay accordingly and payment of the dues

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respectively. The respondents cannot avoid carrying-out the order in entirety on the plea of promoting the applicant on the roster point only. Had the applicant been promoted timely and correctly on the roster point, reserved vacancy for scheduled caste in his turn he would have been in eligibility zone for all subsequent promotions from time to time. The respondents have not said that on completion of probation of two years, the respondents would consider the case of the applicant for next promotion from the back date as and when it became due on promotion to the applicant's junior and more particularly the respondent No.4. There is nothing on record to show ~~as to~~ what the respondents have done after the applicant has completed his term of probation on 4.7.1995. ^{as per term} ~~as per term~~ ⁰⁶ the back dated promotion, which the respondents had ordered while promoting the applicant on the post of Inspector.

8. The respondent No. 4, who is admittedly applicant's junior, was subsequently promoted on the post of ASRM in 1986, HSG Grade I in 1990 and SRM (PSS Group B) pay scale Rs. 2000-3200 in 1993. The earlier O.A. was decided on 4.11.1992. In view of the relief "with all consequential benefits", granted to the applicant, the applicant should have been considered for all these promotional posts without waiting for completion of probation period of two years. By attaching this condition to the back dated promotion order the applicant was deprived of consideration of his candidature even in the year 1993 for all the promotional posts on which the applicant had a right to be considered. The applicant has been agitating his grievance by making representations to the departmental authorities which were ignored as per their convenience. As a matter of fact, the

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applicant had an order dated 4.11.1998 in his hand. In view of this order the applicant was not required to represent for redressal of his grievance. It was for the respondents to comply the orders in its entirety. Therefore, even if, the respondents have not received the representation (Annex.A/3) of the applicant as mentioned in paragraph 4.5 of the O.A., it makes no difference in the instant case. Even the applicant's allegation in this paragraph that he submitted his representation to the respondents, has not been denied rather the respondents reply is quite evasive on this point. Therefore, it can safely be concluded that respondents ignored the representation of the applicant and did not consider the case for promotion on successive promotional posts.



9. In our opinion, the applicant is entitled not only to the back dated promoted on the post of Inspector but to all the promotional posts as and when his junior respondent No. 4 was promoted from time to time as mentioned in para 4.5 of the O.A. The O.A., therefore, deserves to be accepted and the applicant is held entitled to the relief prayed for.

10. The O.A. is, therefore, accepted. The respondents are directed to consider the promotion of the applicant to the posts of ASRM, HSC Grade I and SRM (PSS Group 'B') at par with his next junior Shri Birbal Meena (Respondent No.4) and allow him all consequential benefits i.e. arrears of pay and allowances as per the entitlement of the promotional posts. The orders be complied with within four months from the date of this order. The parties are, however, directed to bear their own costs.

Chanchal
(N.P. NAVANI)
Adm. Member

AKM
(A.K. MISRA)
Judl. Member