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Central Administrative Tribunal,
Jodhpur Bench, Jodhpur

O.A. No. 223/2001

Date of Order: 18-09-2001

Nathu Lal Aswani s/o Shri Jethanand aged 53 years working
as Postal Assistant, Head Post Office, Kankroli District
Rajsamand r/o 1/61 Pratapnagar, Housing Board, Udaipur.

...APPLICANT.

V E R S U S

1. Union of India through the Secretary to the Government
Ministry of Communication (Dept. of Posts) Sanchar
Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Udaipur.
3. Director, Postal Services, Southern Region, Ajmer.

...RESPONDENTS.

Mr. Vijay Mehta, counsel for the applicant.

Mr. Vinit Mathur, counsel for the respondents.

CORAM:

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

O R D E R

Per Mr. J.K. Kaushik.

Shri Nathu Lal Aswani has filed this Original
Application under Section 19 of the Administrative Tribunals
Act, 1985 and has prayed for the following reliefs :-

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" That from the facts and grounds mentioned hereinabove, the applicant prays that the impugned order Annexure A-1 dated 4.7.2001 may kindly be quashed and set aside and the respondents directed to give benefits of TBOP, BCR and promotions to the post of LSG and HSG II from the date of entitlement with all consequential benefits. Any other appropriate order which this Hon'ble Court deems fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

2. The undisputed facts of this case are that the applicant was initially appointed to the post of Postal Assistant on 25.09.1967 in Postal Department. A criminal case was instituted against him in the year 1978. The applicant was convicted in the criminal case and as a result of his conviction, he was dismissed from service on 23.7.88. He filed a S.B. Criminal Revision No. 455/96 before Rajasthan High Court wherein he was acquitted vide judgement dated 30.09.1997. As a result of acquittal, applicant was reinstated in service vide order dated 23.07.1998 and simultaneously he was placed on deemed suspension with effect from 24.05.1988. He was also issued with a charge-sheet vide Memo dated 25.05.1999 which came to be challenged before this Tribunal. This Tribunal was pleased to quash the departmental proceedings as well as the order of suspension with all consequential benefits vide order dated 28.09.2000 (Annexure A/2).

3. The applicant was treated as continuous in service and the period of suspension was also treated as spent on duty for all purposes. However, the applicant was not

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extended the benefits of TBOP and BCR Schemes. He was also not given any promotion to the post of LSG or HSG II. He submitted representations in the matter to the higher authorities and his case has been turned down vide order dated 04.07.2001 (Annexure A/1) by which it has been communicated that he was found unfit for grant of TBOP due to unsatisfactory record of service. The Original Application has been filed on number of grounds in as much as it has been submitted that he has completed 16 years service on 25.9.83 and 26 years service on 25.9.93 and his service record ~~have~~ ~~was~~ been good. No adverse remarks were ever communicated to him.

4. We have heard the learned counsel for the parties and have carefully perused the records of this case.

5. The learned counsel for the applicant has submitted that the applicant has completed 16 years of service on 25.9.83 and as per the scheme in vogue dated 17.12.1983 (Annex. A/3) he was entitled for grant of promotion on completion of 16 years service. He has also submitted that he became entitled for grant of another promotion on completion of 26 years of service as per the scheme dated 11.10.1991 (Annex. A/3) He completed 26 years of service on 25.09.1993 and he ought to have been granted the due promotion under BCR Scheme. It has also been submitted that the condition for grant of benefits under the TBOP and BCR Scheme are that one must have completed the period of 16 years and 26 years service respectively and the norms of promotion would be seniority-cum-fitness. Our attention was also drawn to O.M. dated 23.04.2001 (Annexure A/5) wherein it has been prescribed

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that after grant of benefits under TBOP and BCR scheme, the designation of the employee will be PA/SA (TBOP) and PA/SA (BCR) respectively. In case of those persons who get their normal promotion, they will be designated as MSG, MSG-II and MSG-I. But the case of applicant was not at all considered as per the norms either under TBOP and BCR Scheme or in the normal course of promotion at par with his next junior. It has also been submitted that there has been absolutely nothing adverse against the applicant in as much as he has never been communicated any adverse enteries throughout his service career and this fact has been specifically mentioned in the Original Application which has not been controverted by the respondents in the reply.

6. On the other hand, the learned counsel for the respondents have drawn our attention to paras 3 and 11 of the Original Application wherein it has been submitted that DPC considered his case and not found him fit for promotion due to unsatisfactory record of service. TBOP promotion was duly considered by DPC ~~and rejected~~ on the basis of over-all assessment of service record of last for 5 years till he remained in service before dismissal. In para 11, it has been submitted that after due application of mind, the DPC did not find the applicant fit for promotion on the basis of service records which are confidential. He has submitted that once the case of applicant was rejected there was no need of passing any reasoned and speaking order and one has right only for consideration, thus, there is no infirmity in the action of the respondents.

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7. We have given our considerable thought to the rival contentions put forward on behalf of both the parties.

8. In the instant case, there is ex facie infirmity in the action of the respondents in as much as while considering the promotion of the applicant under TBOP Scheme which was due to him on 30.11.1983 on completion of 16 years of service, why the respondents have considered his service records for 5 years preceding the date of dismissal i.e. from 1983 to 1988. The 5 years period prior to 30.11.1983 ought to have been considered. Nextly, there has been specific averment in the Original Application regarding the factum that the applicant has never been communicated with any adverse enteries throughout his service career. This position has not been refuted by the respondents in the reply, however, the respondents have made specific averments that the applicant was found unfit for the promotion TBOP Scheme for the reason of unsatisfactory records of service.

9. Now the important question that arises for our consideration is that whether any adverse material, may be the adverse confidential report or any other material, as can be used against an employee to deny him the promotion without communicating such material and giving him an opportunity to represent against the same. The law is well settled by the Apex Court in catena of judgements that an uncommunicated adverse report should not found the foundation to deny benefits to a Govt. servant when similar benefits are extended to his juniors. We find support of this view from the verdict of Hon'ble Supreme Court in Vijay Kumar, I.A.S. vs. State of Maharashtra and Others,

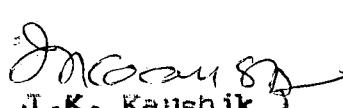
(AIR 1988 SC 2060 (Para 3)).

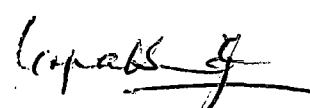
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10. In the instant case, it has been submitted that applicant was not found fit due to unsatisfactory service records and the records have been said to be confidential. Admittedly, these adverse records have never been communicated to the applicant and the question of giving any opportunity to make representation against them does not arise. The action of the respondents cannot be said to be rational, fair and reasonable in as much as certain extraneous material has been used to deny him due benefits of promotion under various schemes. We are of considered opinion that the applicant has not been given fair treatment and there is force in this Original Application.

11. In view of the foregoing discussions, the Original Application has much force and the same is hereby allowed. The impugned order dated 04.07.2001 (Annexure A/1) is hereby quashed. The respondents are directed to consider the case of applicant afresh for grant of benefits under TBOP and BCR Scheme and also for promotions to the post of LSG and HSG-II from the due dates, in accordance with law and keeping in view our observation regarding the fact of uncommunicated ACR/ material while considering the grant of benefits of promotion. ^{also} The applicant would be entitled to all consequential benefits. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(J.K. Kaushik)
Judl. Member


(Gopal Singh)
Adm. Member

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