

178

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 20/2001
T/A. No.

199

DATE OF DECISION 22.2.2002

BAJRANG LAL AND ANOTHER Petitioner

MR. B. KHAN Advocate for the Petitioner (s)

Versus

UNION OF INDIA & ORS. Respondent

MR. VINIT MATHUR Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice O.P. Garg, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

Gopal Singh
(Gopal Singh)
Adm. Member

O.P. Garg
(Justice O.P. Garg)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of Order : 22.2.2002.

O.A.NO. 20/2001

1. Bajrang Lal S/o Shri Hukma Ram, aged about 55 years, Resident of Naya Bas, Near Post Office, Churu, At present employed on the post of LSG PA SBCO, in the office of Postmaster, Churu Head Post Office, Churu.
2. Nihal Dass S/o Shri Panjuma, aged about 40 years, Resident of C/o Sawai Singh, Bramino-Ki-Gali, Near Gangani Haveli, Umed Chowk, Jodhpur, at present employed on the post of LSG PA (SBCO), in the Head Post Office, Shastri Nagar, Jodhpur.

.....Applicants.

versus

1. Union of India through Secretary to Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur 302007.
3. Superintendent of Post Offices, Churu Division, Churu.

.....Respondents.

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Mr. B.Khan, counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

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CORAM :

Hon'ble Mr. Justice O.P.Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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ORDER

Per Hon'ble Mr. Gopal Singh :

In this application under section 19 of the Administrative Tribunals Act, 1985, applicants, Bajrang Lal and Nihal Dass, have

Gopal Singh

prayed for quashing the impugned orders dated 21.1.1998, 21/23.9.1999 and 21.1.2000, placed at Annexs. A/1, A/2 and A/3 respectively and for a direction to the respondents to pay actual arrears of difference of pay from the due date of their placement in the higher scale till the charge assumption date on the post under TBOP/BCR Scheme along with interest at market rate.

2. The Postal Department had introduced a Time Bound One Promotion Scheme (for short 'TBOP Scheme'), for Group 'C' and 'D' vide their O.M. dated 17.12.1983. In terms of this Scheme, employees were required to be placed in the next higher pay scale on completion of 16 years of satisfactory service. Two of the juniors to the applicants were given the benefit of higher pay scale under the TBOP Scheme w.e.f. 1.8.1991 and 17.10.1994 respectively. The applicants were not allowed this benefit since they did not fulfil the requirement of 16 years of service on the dates their juniors were allowed the benefit. Subsequently, the respondent-department, vide orders dated 8.2.1996 (Annex.A/4) modified the earlier TBOP Scheme to the extent that officials whose seniority was adversely affected by implementation of the TBOP Scheme by placing their juniors in the higher pay scale, were ordered to be considered for next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. Under orders dated 8.2.1996 (Annex.A/4), applicants were entitled for placement in the higher pay scale w.e.f. the dates their juniors were placed in that scale and accordingly, they represented the matter to the authorities. They have been allowed the higher pay scale w.e.f. 1.8.1991 and 17.10.1994, the dates from which their juniors were given the higher scale. However, the applicants have been denied the arrears of pay from the due date. They represented again for payment of arrears but to no avail. Hence, this application.

Compulsory

3. In the counter, it has been stated by the respondents that applicants became entitled to the higher scale of pay in terms of D.G., Posts, letter dated 21.1.1998 which, inter alia, provides that all the benefits of promotion should be granted w.e.f. the actual date of joining the promoted post. It is also pointed out by the respondents that the applicants can not be given the benefit of arrears for the notional date of promotion placing in the higher scale since they did not submit option for the same. It has, therefore, been submitted by the respondents that the applicants have no case and the O.A. is liable to be dismissed.

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

5. As a matter of fact, the controversy relating to the juniors drawing higher pay scale than their seniors, was resolved by respondents' order dated 8.2.1996 and we consider it appropriate to extract below the relevant portion of the said order dated 8.2.1996

:-

"Subject : Modification of TBOP/BCR Scheme - instructions regarding.

Time Bound One Promotion Scheme and Biennial Cadre Review Schemes were introduced vide this office letter No. 31-26/83-PE.I dated 17/12/83, No. 20-2/88-PE.I dated 26/7/91, No. 22-1/89-PE.I dated 11.10.91 and No. 4-12/88-PE.I (Pt.) dated 22/7/93 with a view to improve promotional prospects of employees of the Department of Post. As per these Schemes, officials who complete prescribed satisfactory length of service in the appropriate grades are placed in the next higher grade. Subsequently, it was noticed that some officials e.g. UDCs in the Circle and SBCO, LSG (both 1/3rd and 2/3rd), P.O. & R.M.S. Accountants, who were senior before implementation of the schemes were denied higher scales of pay admissible under the Schemes while some junior officials became eligible for higher scale of pay by virtue of their length of service. Some of the affected officials filed applications before various benches of the

C. P. Singh

Central Administrative Tribunal demanding higher scale of pay from the date their juniors were made eligible under these Schemes.

2. The case has been examined in consultation with the Ministry of Finance, Department of Expenditure. It has now been decided that all the officials, such as, UDCs in the Circle Office and SBCO, LSG (both 1/3rd and 2/3rd), P.O. & R.M.S. Accountants, whose seniority was adversely affected by implementation of BCR Scheme placing their juniors in the next higher scale of pay will now be considered for next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. This will, however, not be applicable to the officials who are senior to those officials, brought on transfer under Rule-38, P&T Vol. IV and are placed in the next higher scale of pay by virtue of length of service.

3. The inter-se-seniority of the officials in the lower grade will be kept intact for the purpose of eligibility for promotion to next higher grade."

It is clear that the benefit of placing in the higher pay scale was to be extended to the senior officials from the date their juniors have been paid higher pay scale in terms of the above orders. This also does not require submission of any option. The Department's letter dated 21.1.1998 deals with the case of employees, who did not submit any option and they were given another opportunity to opt for promotion under TBOP/BCR Scheme and in that Scheme, it was stipulated that they will be given promotion notionally from the date their juniors were promoted and actual benefits will be given to them only from the date they assumed the charge of the post of higher pay scale. It is, thus, clear that applicants' case is covered by respondents order dated 8.2.1996 (Annex.A/4) and not under order dated 21.1.1998 (Annex.A/1). We are, therefore, of the view that the applicants are entitled to higher pay scale on actual basis w.e.f. the date their juniors have been given the higher pay scale.

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6. The question of grant of payment of arrears of promotion under the TBOP/BCR Scheme, was also discussed in our order dated 30.11.2000 passed in O.A. No. 68 of 1997- Mohd. Idreas Ansari Vs. Union of India and Others and we consider it appropriate to extract below the relevant portion of our above mentioned order :-

4. Though the case of the applicant was rejected vide respondents' letter dated 30.9.1996 (Annexure A/2). However, he has now been given promotion to the scale of Rs. 1600-2660/5000-8000 w.e.f. 26.6.1993 at par with his junior vide respondents' letter dated 19.3.1998 (Annexure A/13). The only question now remains to be decided is with regard to payment of arrears for the period from 26.6.1993 till 19.3.'98 (date of issue of order). During the arguments, it has been pointed out by the learned Counsel for the respondents that arrears of pay fixation had not been allowed to the applicant since he did not submit option for TBOP/BCR scheme. Here, it is pointed out that when TBOP/BCR were introduced, the applicant was not eligible for consideration under those schemes as he had not completed 16 years of service. Therefore, there was no question of his submitting any option for the scheme. The scheme has been made applicable to him and similarly other situated persons vide modification dated 8.2.96 so as to remove the anomaly between seniors and juniors. It is also seen that in similar circumstances, other employees have been given the benefit of arrears of pay fixation from the initial date of placement in the higher scale under the BCR scheme as is clear from the respondents' letter dated 18.6.1996 (Annexure A/14). In the circumstances, we are of the view that arguments advanced by the respondents is not allowing the arrears of pay fixation to the applicant because of non-submission of option is not tenable. We, therefore, find much merit in this application and the same deserves to be allowed."

7. It may also be pointed out that order dated 8.2.1996 (Annex.A/4) does not give any dates of its effect and, therefore, the benefit flowing from this letter dated 8.2.1996, should relate to the dates when OTBP/BCR Schemes were implemented. It only clarifies that the seniors whose seniority was adversely affected by grant of OTBP Scheme would be given higher pay scale w.e.f. the date their juniors were extended the higher pay scale.

Co-pals

8. The learned counsel for the respondents has also brought to our notice Department of Posts letter dated 17.5.2000 (a copy of which is taken on record), dealing with the guidelines for considering placement under the TBOP/BCR Scheme. It is clarified in this letter that placement under TBOP/BCR Scheme are based on the length of service of the official concerned and not on the criteria of seniority, seniors in the gradation list, therefore, cannot claim higher scale of pay at par with their juniors, if, their juniors have got higher scale of pay by virtue of their completion of prescribed period of service i.e. 16/26 years respectively. It has also been stressed in this letter that the seniors in the gradation list will not be considered for next higher scale of pay from the date their immediate juniors become eligible for the next higher grade without completing the prescribed period of service. It is also provided that cases already settled will not be reopened. However, cases which have not been settled, may be settled as per these directions.

9. Undisputedly, in terms of this letter dated 17.5.2000 (supra), the seniors will not be entitled to placement in the higher pay scale under the TBOP Scheme at par with their immediate juniors who have been placed in the higher pay scale on completion of 16 years of service. In the instant case, the applicants have already been extended the benefit of placement in the higher pay scale w.e.f. the date their juniors have been placed in the higher pay scale. The present O.A. has been filed only to claim arrears of pay and allowances on account of pay fixation in the higher pay scale from the due date till the date of promotion orders. Since both the applicants have already been promoted to the next higher scale w.e.f. the dates their respective juniors have been placed in the higher pay scale, we, see no reason to deprive the applicants of arrears by fixing them in the higher pay scale. The Guidelines contained in the Circular dated 17.5.2000 would, however, be applicable to cases which are yet to be decided.

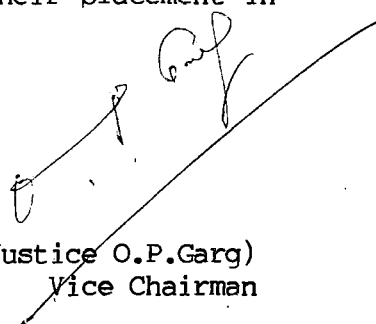
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10. In the light of above discussions, we are firmly of the view that the applicants would be entitled to placement in the higher pay scale under TBOP Scheme w.e.f. the date their juniors were placed in that higher scale along with arrears.

11. Accordingly, we pass the order as under :-

"The respondents order dated 21st January, 1998 at Annex.A/1 is not relevant to the case and, therefore, it does not require our consideration. Annexs. A/2 and A/3 dated 20/23.9.2000 and 21.1.2000, which allow the higher pay scale on notional basis, are quashed and set aside and both the applicants would be entitled to placement in the higher pay scale under the TBOP Scheme w.e.f. the date their juniors were placed in that higher scale and they would also be entitled to arrears of pay and allowances on actual basis from the date of their placement in the higher pay scale. No orders as to cost."


(Gopal Singh)
Adm. Member


(Justice O.P. Garg)
Vice Chairman

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Part II and III destroyed
in my presence on 3.7.07
under the supervision of
senior officer (I) as per
order dated 10.5.07

Section officer (Records)