

4/18
11/11

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No255/2003

Date of decision: 11th January, 2007

Hon'ble Mr. Kuldip Singh, Vice Chairman

Hon'ble Mr.R.R. Bhandari, Administrative Member.

Sada Ram Mei son of Shri Bhura Ram aged about 47 years, resident of Ambedkar Colony, Mahaveer Nagar, Barmer, at present employed on the post of Sub Divisional Inspector of Post Office, in the Marwar in sub division (Rajasthan)

: Applicant.

Rep. By Mr. Khan: Counsel for the applicant.

VERSUS



1. Union of India through Secretary to Government of India Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.

2. The Chief Post Master General, Rajasthan Circle, Jaipur (Rajasthan)

3. The Director General, Department of Post, Dak Bhawan New Delhi.

4. Shri Bishan Lal Regar, Assistant Superintendent of Post Offices, Ajmer (Raj.)

: Respondents.

Mr. Vinit Mathur & Mr. M. Godhara: Counsel for respondents
1 to 3

None present for the respondent No. 4

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant has assailed the order dated 25.06.2003 (Annex. A/1). vide which his representation dated

ku

28.02.1999 has been turned down after passing a speaking order thereupon as directed by this Tribunal vide its order dated 18.10.2002 in O.A. No. 271/2001, filed by the applicant.

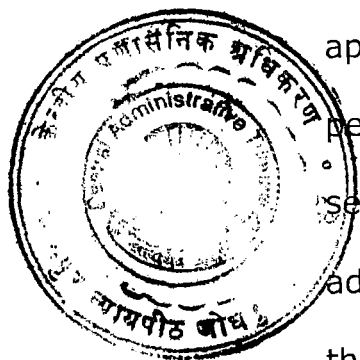
2. The facts in brief as alleged by the applicant are that he had initially joined the postal department as Postal Assistant at Sirohi and he belongs to S.C. community. In the year 1988, due to pendency of some disciplinary cases he was provisionally allowed to appear in the examination for promotion to the post of Inspector of Post offices (IPO for short). The applicant qualified the said examination and was declared as successful. The disciplinary case pending against him is stated to have culminated into minor penalty of withholding of increments for a few months without postponing his future increments. Hence the provisional permission for appearing in the examination was withdrawn. Challenging the said action of the respondents the applicant filed O.A. No. 490/1991. The said O.A was allowed by this Bench of the Tribunal with all consequential benefits vide order dated 04.11.93 (Annex. A/2). In implementation of the order of this Tribunal, the applicant was allowed notional promotion to the post of IPO with effect from 17.02.90 and he was actually promoted with effect from 07.10.94 and assigned seniority between Shri Bansilal Bhati and Shri Bishan Lal Regar (4th respondent herein) in the circle gradation list in August 1993. Subsequently another seniority list Annex. A/5 was also issued and it is stated that the 4th respondent was shown as junior to him. The 4th respondent also belongs to SC category. However, the said 4th respondent



ka

2/20
213

was considered for promotion to the post of Assistant Superintendent of Post Offices (ASPO for short) vide annex. A/6. But the case of the applicant could not be considered since his case for promotion to the post of IPO itself was under litigation and he was allowed due promotion of IPO vide Annex. A/4 dated 03.04.95. The applicant further submitted that the post of ASPO is a non-selection post and is to be filled on the basis of seniority-cum-fitness from the feeder post of IPO and the fitness is to be adjudged by the DPC as per rules.

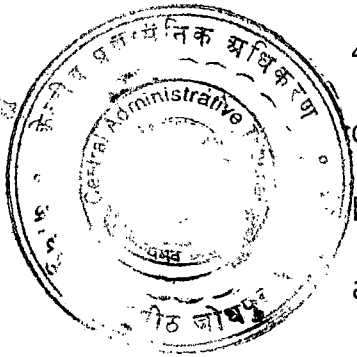


3. In the grounds raised in support of the application, the applicant submitted that since the illegal cancellation of permission to appear in the examination for the post of IPOs was set aside with all consequential benefits, there was nothing adverse against him which could obstruct his promotion and therefore he being senior to respondent No. 4 should have been promoted to the post of ASPO at par with his immediate junior. He made number of representations in this regard but there was no response from the respondents and hence he filed O.A. No. 271/2001. This Bench of the Tribunal vide its order dated 18.10.2002, directed the respondents to pass a speaking order on the representation of the applicant. It is on this direction; the present impugned order has been made vide which his representation has been turned down. The applicant submits that his representation has been wrongly turned down and he is entitled to promotion to the post of ASPO since his immediate junior had been promoted as ASPO. It is further submitted that

/ku

2/2
2/19

the delay in his promotion to the post of IPO (feeder grade) was also due to illegal cancellation of the provisional permission to appear in the examination for the post of IPO. However, the said cancellation was set aside with all consequential benefits and thereafter the applicant was given due seniority above Respondent No.4. Despite these facts the 4th respondent had been promoted as ASPO, but the applicant had been denied his legitimate promotion even though he fulfills all the eligibility conditions and there is no valid reason for denying him the promotion to the post of ASPO.



4. The official respondents are contesting the O.A by filing a detailed reply. Even though notice was served on respondent No.4 he has not chosen to appear either in person or through an advocate. No reply was filed on his behalf. The official respondents submitted that since the applicant had actually assumed the charge of the post of IPO with effect from April 1995, even though he was notionally promoted with effect from 17.02.90. But as per the rules for the post of IPO, one has to undergo two years probation and as the applicant had not completed the probation period, he could not be promoted to the post of ASPO at par with his junior in the year 1993. His case for promotion to the post of ASPO could be considered after he completed the probation in the IPO grade and the post based roster came into effect from 1997 and as there is sufficient number of SC candidates available the applicant could not be promoted as ASPO at par with his junior Respondent No.4

Kw

2/22
2/15

5. We have heard the learned counsel for the parties and carefully perused the pleadings and records of this case. The learned counsel for the applicant contended that the applicant being senior to Respondent No.4 is entitled to be promoted as ASPO at par with his junior. In support of his contention the learned counsel for the applicant had referred to Rule 156 (3) & 156 (6) of P & T Manual Vol. III. It reads as under:

" 156 (3)

The vacancy that could have gone to the officer but for his suspension or the departmental proceedings against him should be filled only on an officiating basis by the next person in the approved list. If the officer concerned is completely exonerated and it is held that the suspension was wholly unjustified, he should be promoted thereafter to the post filled on an officiating basis, the arrangement made previously being reversed. Where, however, the post which could have gone to the officer but for his suspension or the departmental proceedings against him ceased to exist before conclusion of the departmental proceedings, he can be promoted only to the first vacancy that may arise in future and if the officer concerned is found fit for promotion at that time.

156(6)

where a minimum limit is prescribed for promotion to the next higher grade, the period during which any officer junior to the suspended officer concerned was promoted to the higher grade should be reckoned towards the minimum period of service referred to above for the purpose of determining his eligibility for promotion to the higher grade.

If the officer concerned is not completely exonerated in the disciplinary proceedings, or if the suspension is not found to be wholly unjustified, his case should be reviewed by the Departmental promotion Committee etc for deciding his suitability for promotion or confirmation taking into consideration the orders passed in the disciplinary case."

Relying on the above, the learned counsel for the applicant contended that where a minimum limit is prescribed for promotion to the next higher grade, the period during which any officer junior to the suspended officer concerned was promoted to the higher grade should be reckoned towards the minimum period of service referred to above for the purpose of determining his eligibility for promotion to the higher grade. Thus he submits even if the applicant had not completed the eligibility period for

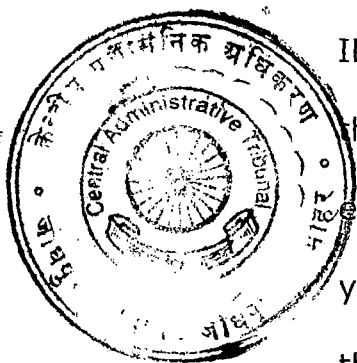


km

7/23
2/15

promotion to the post of ASPO, when once his junior is promoted he ought to have been promoted and the short fall in the minimum period should have been relaxed for this purpose.

6. On the contrary, the learned counsel appearing for the official respondents submitted that as per the Rules for recruitment to the post of Inspectors of Post Offices and Railway Mail Service and Uniforms, any person appointed to the post of Inspector of Post Offices, is required to undergo probation for a period of two years and the mode of recruitment to the post of IPO is also only by way of competitive examination. Hence though the applicant was promoted after he cleared the examination still he had to undergo probation for a period of two years. The learned counsel for the respondents further submitted that the probation in a service/post has been prescribed to assess the suitability of the individual for holding the post. Unless and until the suitability of an individual has been assessed in the lower post, he cannot be allowed promotion to the higher post merely on the ground that his immediate junior has been promoted to the next higher post. Hence until the applicant is assessed for his suitability on the post of IPO and found suitable he could not be allowed promotion to the higher post of ASPO merely on the ground that Respondent No.4, his junior has been given promotion to the post of ASPO. The respondents counsel also submitted that despite the fact the applicant had been given notional promotion and placed senior to Respondent No.4, he could not complete the probation of two years in the grade of IPO,



[Handwritten signature]

- 7 -

which is a feeder category post for ASPO, so he was not promoted as ASPO at par with his junior Respondent No.4. The learned counsel submitted that the applicant has been rightly denied the promotion to the post of ASPO and also his representation has been rightly turned down.

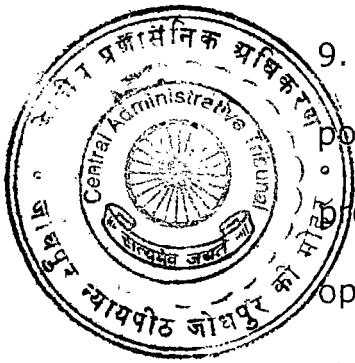
7. Relying on Rule 156 (3) of the P& T Manual Vol. III the learned counsel for the applicant contended that even if the senior has not completed the period of probation and even if he is under suspension, he has to be given promotion at par with his junior. In our view it is not case of simple suspension. As per the rules, a person who has been recruited as IPO has to complete the probation period of two years during which his suitability could be adjudged. As the IPO is the feeder post for promotion to the post of ASPO, the applicant's suitability on the post of IPO could not be adjudged as he was still on probation when Respondent No. 4 was promoted as ASPO and no relaxation to that effect is available in the rules.



8. Thus in our view also the contention of the learned counsel for the applicant has no merit because, the applicant was asking promotion to the post of ASPO. For promotion to the post of ASPO suitability on the feeder post of IPO has to be adjudged. As the applicant had actually joined the post of IPO in April 1995, though he was promoted as IPO notionally with effect from 17.02.90, it renders him ineligible to claim the post of ASPO even though his junior Respondent No.4 was promoted as ASPO on

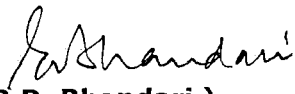
7/25
1118

05.05.93, since he had not completed the requirement of successfully completing the probation of two years as IPO. By not completing the period of probation, the applicant is not eligible to be considered for the post of ASPO. As per law, a person who fulfills the eligibility conditions only is considered for promotion and he only can ask promotion to the next higher grade. Admittedly, in this case, the applicant is not eligible to ask promotion to the post of ASPO, since had not completed the probation at the relevant point of time.



9. Even otherwise successful completion of probation on the post of IPO can be termed as an "essential qualification" for promotion to the post of ASPO. Because, after giving due opportunities, one could fail to complete the probation successfully then there are chances for his reversion to lower post. Thus completion of probation has to be treated as an essential qualification without which one cannot ask for promotion to next higher post of ASPO.

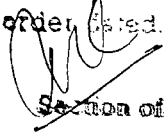
10. Accordingly, the O.A is bereft of any merit and it is dismissed. No costs.


(R.R. Bhandari)
Administrative member


(Kuldip Singh)
Vice chairman.

jsv

~~12/11/07~~
R/C copy
12/11

Part II and III destroyed
in my presence 2/6/14
under the supervision of
section officer as per
order dated 23/3/14

Section officer (Records)