

1/14

**Central Administrative Tribunal
Jodhpur Bench**

Original Application No. 177/2003

A.M.A. NO : 93/2003

Date of Decision: 28-7-2005

CORAM

Hon'ble Mr. J.K. Kaushik, Judicial Member.

Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Shri S.D. Paliwal son of Shri Buli Dan Ji Paliwal aged 57 years, at present working as Postal Assistant Jodhpur and resident of G-236 Shastri Nagar, Jodhpur-342 003.

.....Applicant.

(Mr. K.S. Chouhan, Counsel for applicant.)

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.

2. The Post Master General, Rajasthan, Western Region, Jodhpur.

3. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

.....Respondents.

(Mr. Vinit Mathur, Counsel for the respondents.)

ORDER

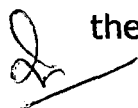
Mr. J.K.KAUSHIK, JUDICIAL MEMBER

Shri S.D. Paliwal has invoked the jurisdiction of this Bench of the Tribunal wherein, inter alia, he has prayed for a mandate to the respondents to grant the benefits of TBOP w.e.f 30.11.1983 and BCR upgradation w.e.f. 30.10.1991 along with all consequential benefits including grant of seniority etc. He has also prayed for quashing of Annexure A/1, A/2, A/10, A/12, A/13, A/14, A/16, A/18 and A/19.

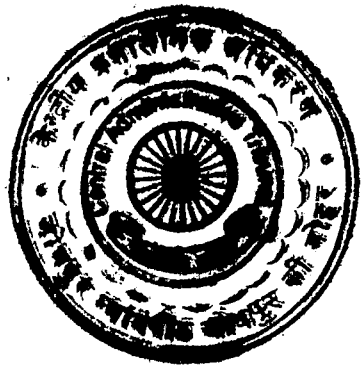
2. With the consent of the learned counsel for the parties, the case was taken up for final disposal at the admission stage. We have accordingly heard the elaborate arguments advanced by the learned counsel for both the parties and have carefully perused the records and pleadings of this case.

3. The abridged facts, which are considered necessary for resolving the controversy involved in the instant case, are that the applicant came to be initially appointed as Postal Assistant on dt. 31.11.1965 and he completed 16 years of regular service on dt. 30.11.1981. A criminal case was instituted against the applicant in court of Judicial Magistrate, Jaisalmer on 17.09.1982. He was also issued with a charge sheet under Rule 14 of CCS CCA Rules, 1965 vide Memo dated 02.11.1983. He was inflicted with penalty of reduction of his pay vide order dated 14.12.1987, which came to be modified in appeal vide order 11.10.1989. The same was challenged before this Bench of the Tribunal and was quashed vide order dated 08.11.1993 with liberty to the respondents to proceed in the matter afresh. Vide letter dated 08.11.1996, penalty of compulsory retirement was imposed and the same came to be reduced to that of reduction by five stages for a period of three years with further direction that he would not earn increment of pay during the said period and on expiry of the period, the reduction will not effect the postponing his future increments.





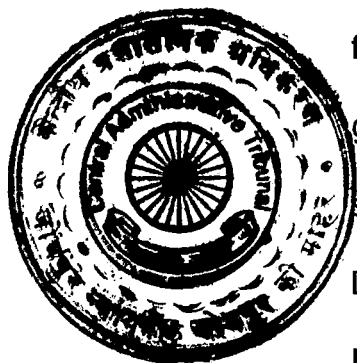
4. The further facts of the case are that a scheme popularly known as TBOP Scheme came into effect w.e.f. 30.11.1983 whereby the completion of 16 years of regular service, the benefits of promotion to higher scale of pay was to be given to the Group C and Group D employees where there is direct recruitment either from outside or by means of limited competitive examination from lower cadres. The scheme was given effect to from 30.11.1983. Subsequently another scheme known as BCR Scheme came into effect wherein it has been provided that on completion of 26 years of service, one would be given the benefit of promotion in next higher scale of pay. This BCR Scheme came into effect from 31.10.1991. The applicant made representation for release of his promotion to the post of TBOP and the same was rejected vide letter DT. 25.10.1991 at Annexure A/6. The reason for rejection is that a case was pending against him on the crucial date and he was charge sheeted whereby he has been imposed the penalty. The applicant preferred an appeal to the respondents for holding a review DPC. He was informed vide letter DT. 03.2.1998 that DPC did not consider him fit for promotion due to the unsatisfactory records of service. He again protested against in the matter whereby he was informed about the adverse remarks for the year 1997-98. The applicant submitted representation against the adverse remarks. A reference has been issued to certain clarifications regarding the grant of benefits under TBOP/BCR Schemes. He has been granted the benefit of TBOP w.e.f 30.10.2002 vide Annexure A/2 and he has not been



2

considered fit for grant of benefits under BCR Cadre vide communication dt. 24.07.2003 (Annexure A/1). Hence this application has been filed on numerous grounds mentioned in Para 5 and its sub paras.

5. The respondents have contested the case and have filed a detailed and exhaustive reply to the Original Application. It has been averred that grant of benefits on completion of 16 years of service under TBOP Scheme is not automatic and one only becomes eligible for consideration by the next DPC. The case of the applicant was duly considered but as service records of the applicant were not satisfactory, his case was not recommended for grant of said promotion. The benefit under TBOP/BCR is given on completion of 16/26 years of regular and satisfactory service. His case was considered every time and decision of the DPC was duly communicated to him. Review DPC was also held but the same did not find him fit for promotion. The grounds raised in the original Application are generally denied. The same is followed by rejoinder whereby the defence of the respondents as set out in the reply have been controverted.



6. A separate M.A No. 93/2003 has been filed for condonation of the delay for filing of the Original Application. The reason adduced in the Application are that the applicant was under the bona fide impression that sealed cover if any kept by DPC convened for misconceived promotion Scheme of TBOP/BCR would automatically opened and justice would be done to him.

The respondents realised their wrong impression and issued Annexure A/13 to consider the pending cases, which leads to the justification of condonation of delay as such. The applicant was defending the Rule 14 inquiry during the period from 1983 to 1996 after expiry of the punishment result of opening of sealed cover, if any, was never intimated to him although there was no need of keeping his case in sealed cover in view of upgradation scheme. Specific reply has been filed to the said M.A by the respondents wherein it has been submitted that the reasons adduced are absolutely an after thought exercise and the M.A has been filed without any just and proper cause.



7. Both the learned counsel for the parties have reiterated the facts and grounds mentioned in their respective pleadings as noticed above. The learned counsel for the applicant has strenuously submitted that the benefits under TBOP/BCR Scheme are not at par with promotion. The benefit is required to be extended on the same post and work on which he is employed involving no higher duties and responsibilities. The same was to be extended just on completion of the requisite number of years of service i.e. 16 years and 26 years respectively. These benefits are not to be equated with that of promotion and applying the sealed cover in his case is in contravention with the provision of very scheme. He has also contended that the benefit under this scheme cannot be denied or withheld on account of pendency of disciplinary proceedings.

2/ He has next contended that at least after conclusion of the

disciplinary proceedings the applicant ought to have been granted the benefits under these schemes from the date he has completed 16/26 years of service as per the schemes whereby he became entitled to the same w.e.f 30.11.1983 and 30.10.1991 for TBOP and BCR upgradation respectively. But on one pretext or the other he has been denied the same.

8. Per contra the learned counsel for the respondents has submitted that the applicant should thank ~~to~~ himself for the whole episode. He has submitted that the applicant has admittedly being held guilty and penalised for his misconducts. The benefits under these scheme soft TBOP/BCR have trapping of promotions inasmuch as they are granted the next higher pay scale with due fixation under Para 22 (1) (a). The completion of rendering 16/26 years of service is only the eligibility criteria and these benefits cannot be granted automatically but the same can be granted only on the recommendation of the DPC whereby one is considered fit only when he has satisfactory record of service. In the instant case the applicant was faced with the disciplinary proceedings and therefore, his service record was not found satisfactory. In this view of the matter, the action of the respondents cannot be said to be arbitrary or unusual.

9. We have considered the rival submissions put forth on behalf of both the parties. Before advertng the merits of the case, we would like to clear the peripheral issue of preliminary issue relating to the limitation. A separate M.A. for condonation

22



has been filed. The main reason adduced for filing the Original Application after a long delay is that the applicant was facing with a major penalty charge sheet and he was under impression that his case has been kept under sealed cover. We find that it is true that the applicant was not granted the benefits under TBOP/BCR Scheme on the ground that he was faced with the major penalty charge sheet. Whether the applicant waited for opening of the sealed cover or not is not very significant here. Applying the justice orientated approach and the beacon light as laid down by the Apex Court in case of **Collector Land Acquisition, Anant Nag Vs. Mst Katiji, AIR 1987 SC 1953, (1353)** we are of the considered opinion that there are good and sufficient reasons for condoning the delay in filing of the Original Application and by using our discretionary power we hereby condone the delay for doing substantial justice to the party by resolving the dispute on merits. The M.A No. 93/2003 stands accepted accordingly.



10. Now advertent to the crux of the controversy involved in this case, as far as factual aspect of the matter is concerned, there is hardly any dispute. The question of seminal significance that is required to be answered by us is that as to whether one could be denied the benefits under TBOP/BCR Scheme during the pendency of disciplinary proceedings. The other ancillary question equally significant is as to whether the benefit under these schemes is to be given on the basis of any norms or just for completion of 16/26 years of service respectively. As far as

22

first question is concerned, the same stands answered by one of the Co-ordinate Bench of Tribunal at Jaipur in case of **PC Bhatia Vs. Union of India and Ors.** reported in 2003 (1) ATJ Page 176 where one of us (J K Kaushik JM) was party to the order. In Para 10 of the said judgment, it has been held that the law laid down by the Apex Court in case of **Union of India Vs. K V Janki Raman AIR 1991 Page 2010** is required to be followed even in case of promotion under BCR Scheme. Therefore the issue does not remain res integra and it can safely be held that the benefit under TBOP/BCR cannot be released during the pendency of the disciplinary proceedings/case against the particular individual. This issue is decided against the applicant, accordingly.



11. As far as the next issue is concerned, we have no difficulty in answering the question that the benefit under TBOP/BCR Scheme cannot be extended mechanically on completion of 16/26 years of regular service. The first reason could be inferred from the answer of the first issue itself. Since the sealed cover is required to be adopted as per **Janki Raman's** case supra in such cases, the sealed cover is to be opened only in case when one is fully exonerated. If that were so, the benefits under these Schemes can be extended only when one is fully exonerated from the charge sheets against him. The issue may be examined from another angle. The perusal of the schemes in question reveals that the cases for grant of benefits under these schemes are required to be put up to DPC and on

22

1/22

1/17

whose recommendation the benefits are to be released. The service records are to be seen and the DPC would either consider an employee as fit or not fit for grant of such benefits. In this view of the matter, grant of benefits under these schemes cannot be said to be automatic exercise. Since admittedly the records of the applicant cannot be construed to the satisfactory for the reason of pendency of disciplinary proceedings and the penalty thereof, the rejection of his candidature and finding him unfit for grant of these benefits can hardly be faulted with. In this view of the matter the action of the respondents cannot be construed to be impeachable. If that were so, the O.A shall have to be construed as meritless and without any substance.



2. The upshot of the aforesaid discussion leads us to an inescapable conclusion that this Original Application sans merits and stands dismissed accordingly. Costs made easy.

→ Re
(G.R. Patwardhan)
Administrative Member

lalit

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

1804
Good
(significant)
L23

21 copy
1/8/05
P