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O.A.No.342/2002 (U.K.Rao Vs. UOI etc.)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH
JODHPUR.**

O.A.No. 342/2002 with
Misc. Application No. 23/2004

DATE OF ORDER: 10.11.2006

CORAM

**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. R.R.BHANDARI, ADMINISTRATIVE MEMBER.**

U.K. Rao S/o Shri Kesar Singh Ji, aged about 52 years R/o Village and Post-Nandana Bhatan, District Pali presently serving as Sub Post Master in the Post Office, Nadol.

...Applicant.

V E R S U S

1. The Union of India through The Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, New Delhi.
3. The Superintendent of Post Offices, Pali Marwar.
4. Inspector, Postal Department, Mandir Road, Nathdwara.
5. Shri C.P.Gupta S/o Sh. Shri Murlidhar Varshnay, Sub Post Master, Pali.

...Respondents.

Mr. Kamal Dave, counsel for the applicant.

Mr. M. Godara, proxy counsel for

Mr. Vinit Mathur, counsel for the respondents.

**ORDER
Per Hon'ble Mr. J. K. Kaushik, Judicial Member**

Shri U.K.Rao has, inter-alia, assailed the seniority list dated 1.7.1999 (Annexure A-1) to the extent same relates to the private respondents and has sought a direction to the respondents to assign him his due seniority above the private respondents, amongst other reliefs.

2. We have heard learned counsel for both the parties at a considerable length and have anxiously perused the pleadings as well as record of this case. The abridged facts of this case are that the applicant was initially appointed to the post of postal clerk (presently known as Postal Assistant) on 29.9.1971. He completed 16 years of service on

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30.9.1987 and became eligible for grant of next higher scale w.e.f. 1.4.1994 and the same was granted to him. The applicant was also allowed to enjoy benefits under BCR Scheme vide orders dated 3.6.1998 w.e.f. 1.7.1998 on completion of 26 years of satisfactory service. There was some delay in grant of said benefit due to non holding the DPC in time. The applicant has always been senior to the respondent no.5. The respondent no.5 came to be initially appointed on 24.11.1971. He was allowed the benefit of TBOP and BCR w.e.f. 24.11.1987 and 1.1.1998 respectively. The seniority position was always reflected correctly but while issuing the the impugned seniority list dated 1.7.1998 the position was changed and the applicant's name was placed at Sr. No.34 and that of the respondent no.5 at Sr. No.33. Hence this application has been preferred on numerous grounds mentioned in para 5 and its sub paras.

3. The respondents have contested the case and filed a detailed reply and have averred that the promotions under TDOP and BCR Scheme are to be given on completion of 16/26 years of service after ascertaining the fitness of the employees concerned. The Respondent No.5 was given the benefit under the said scheme from an earlier date than that of the applicant as the applicant did not come up to the standard. The seniority list was circulated to all concerned, including the applicant. The original application is not maintainable since there is concealment of certain facts.
4. An application for condonation of delay has also been filed wherein it has been stated that the applicant came to know somewhere on 20.3.2001 regarding impugned seniority list and thereafter he took up the matter with the competent authority. O.A. has been filed on 26.12.2002 it has been further averred that no right has been accrued to any other person till filing of the original application and delay occasioned is bona fide and not attributable to any laches or

negligence on his part. A liberal approach should be adopted in this matter and the delay may be condoned. The M.A. has been replied to on behalf of the respondent submitting that the applicant was not vigilant in preferring his claim and he has not come with clean hands.

5. Both the learned counsel for the contesting parties have reiterated the facts and grounds narrated in their respective pleadings as noticed above. The learned counsel for the applicant has submitted that the benefits granted under TBOP or BCR scheme do not attract the promotion. They are infact only in the nature of fitment in the higher scale and have no relation to the seniority and in support of his contention he has referred to the judgment of the apex court in the case of Dwijen Chandra Sarkar & Another Vs. Union of India & Others, (1999) 2 SCC 119. On the other hand, learned counsel for the respondents has laid stress on the defence as set out in the reply and has submitted that the seniority list has been drawn on the basis of the benefits enjoyed under TBOP and BCR Scheme and since respondent no.5 has enjoyed those benefits from an earlier date, the applicant cannot have any scope of seniority over him.
6. We have considered the rival submissions put forth by both the parties. Before proceeding further in the matter, we would deal with the peripheral issue relating to the preliminary objection of limitation. In this case the seniority list came to be issued on 16.11.1999. In normal course the original application ought to have been filed by 15.11.2000 or 26.12.2002 but the applicant has filed this O.A. only on (26.12.2002). Thus, there is a delay of about 2 years. We find that neither the applicant nor the private respondents have changed their position and they still hold the post of Postal Assistant and remain in the same seniority list. The applicant has got a meritorious case which would be discussed in the later part of this order.
7. We find that there are good and sufficient reasons for condoning the delay. We find support from the judgment of the apex court in the case

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of Kuldeep Chand Vs. Union of India, 1996 (1) SLR, Page 113, wherein their Lordships were dealing with the seniority case and the petition was filed after a lapse of about 10 years. But the position of the parties remained unchanged, their Lordships of Supreme Court thus held that in such a situation, one can file a case whenever he is affected and the delay would not come in the way. In this view of the matter, Miscellaneous Application for condonation of delay is hereby accepted and the delay in filing of the O.A. is hereby condoned.

8. Now adverting to the merits of this case, it is not in dispute that the applicant came to be initially appointed on 30.9.1971, and that of Respondent No.5 on 24.11.1971, on the post of Postal Assistant. They have never been promoted and only enjoyed the benefit of TBOP and BCR Scheme. They still remain as Postal Assistants. We are basically required to examine the effect of benefits granted under TBOP and BCR Scheme and as to whether the same can have any effect on their seniority. Firstly the issue in a little different context was examined by the Apex Court in the case of Dwijen Chandra Sarkar (supra) and their Lordships of the Supreme Court have held as under :

“However, the position in regard to “time -bound” promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments – while retaining them in the same category. This is what is generally known as the time – bound promotion. Such a time – bound promotion does not affect the normal seniority of those higher up.”

The above said judgement clearly indicates that the time bound promotion does not affect the normal seniority of those higher up.

9. The identical issue was raised in the case of Shri D.C. Mishra and 23 Others Vs. Union of India & Others, 2005 (2) ATJ, Page 196, Full Bench, Cuttack. The following questions were referred to Larger Bench for consideration :

- "(1) Whether TBOP and BCR Scheme introduced by the Department of Posts are promotion schemes;
- (2) Whether TBOP and BCR Schemes are in conflict with the Schemes of norms based promotion to LSG and HSG-II as provided under the Recruitment Rules for selection grade posts notified in the Gazette of India on 30.9.1976 and are in effect supplementary to the schemes for promotion to norms based posts,;
- (3) Whether the principle of NBR is applicable in the case of senior official, while placing the eligible junior official in the higher pay scale under TBOP or BCR Scheme; and
- (4) Whether the decision in Sh. Rajender Singh's case (supra) of the Principal Bench and the decisions in P. Ranasingh's case (supra) and in Niranjan Mahali's case (supra) of Cuttack Bench in the matter of operation of the TBOP and BCR Schemes in the Department of Posts have set the law".

The Hon'ble Full Bench was pleased to answer the issues as under :

- a) The TBOP and BCR Schemes introduced by the Department of Posts are not promotion Schemes to the next higher posts.
- b) The said Schemes are not in conflict with the norms based promotion to LSG and HSG II as provided in the Recruitment Rules. They are supplementary to the rules.
- c) The principle of NBC will not be applicable in such Schemes.
- d) The decisions in the case of Rajender Singh (supra) of the Principal Bench and in the case of

P.Rana Singh (supra) and Niranjan Mahali (supra)

do not lay down the correct law".

Even the guidelines have been issued by the Department that the seniority would not be affected in such cases. This aspect is evident from the paras 39 and 40 of the above judgement, which are extracted as under :

"39. The guidelines were again revised on 17.5.2000. It was pointed out that placement under TBOP/BCR Schemes are based on length of service and not on the criterion of seniority. Seniors in the grading list, therefore, cannot claim higher scale of pay at par with juniors, if their juniors have got higher scale of pay by virtue of their completion of the prescribed period of service. It was made clear for the first time that :

"2... In other words, TBOP/BCR Scheme are not promotions against the norms based posts in LSG & HSG-II grades but only placements in the same scale of pay on completion of 16 and 26 years of service respectively.

Eligibility condition for placement in the higher scale of pay under the scheme is 16 and 26 years of service respectively. Clearly, seniors in gradation list will not be considered for next higher scale of pay from the date their immediate juniors become eligible for next higher grade without completing the prescribed period of service as per the eligibility condition of placements in the higher scale of pay."

40. Thereafter, it was made clear that seniority will not be disturbed".

10. A conjoint reading of the aforesaid would make it clear that the seniority has absolutely no relation to the benefits granted under TBOP and BCR Schemes and the seniority is required to be governed under

the normal rules and promotions are to be granted on the basis of the norms laid down in the recruitment rules. In this view of the matter we have no hesitation in holding that the applicant has been able to make out a good case in his favour and the claim is well founded.

11. Before parting with this case, we would like to point out that the respondent no.4 has been wrongly impleaded as party and no relief is claimed against him in the pleadings, inasmuch as his name is not even finds place in the seniority list.

12. The offshoot of the aforesaid discussion, leads us to the inevitable conclusion that there is ample force in the Original Application and the same is hereby allowed accordingly. The impugned seniority list dated 1.7.1999 (Annexure A-1) so far it relates to the applicant and the respondent no.5 stands quashed. Respondents are directed to assign the seniority to the applicant at Sr.33 and Shri C.P. Gupta, Respondent No.5 at Sr. No.34, in the impugned seniority list, with all the consequential benefits to follow. There shall be no order to costs.,

R.R.Bhandari
(R.R.BHANDARI)

ADMINISTRATIVE MEMBER

J.K.Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

HC*

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for Kamal Dave

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