केन्द्रीय प्रशासनिक अधिकरण (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत नियत प्रारूप में

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, Jodhpur

#12

Original Application Nos.162,163,164 & 230 /2004 - 19

Date of decision: 26.08.2008

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Nathu Lal Sanadhya , s/o shri Champa Lal aged 58 years. Assistant Sub Post Master, Shastri Circle Post Office, Udaipur, r/o 29 Laxmi Nagar, Udaipur

: applicant in O.A. No. 162/2004.

Vishnu Lal Tailor, s/o shri Kanhyalal aged 56 years, Assistant Post Master, Head Post Office, Udaipur, r/o 21 Pathon Ki Magari, Udaipur.

: Applicant in O.A. No. 163/2004

1. Smt. Vinay Sharma, W/o late Shri Vijay Kumar Sharma aged 56 years.
2. Varun Sharma S/o late Shri Vijay Kumar Sharma aged 21 years.
3. Anuradha , D/o late Shri Vijay Kumar Sharma aged 31 years.
4. Niharika, S/o late Shri Vijay Kumar Sharma aged 19 years.

Legal Representatives of late Shri Vijay Kumar Sharma (Applicant in O.A. No. 164/2004) substituted vide order dated 26.08.2008 passed in M.A. No 88/2008.

: applicants in O.A. No. 164/2004

Nawal Ram Meghwal, S/o Shri Jeewa Ji aged 49 years, sunb post Master, Phalasia Post Office, Phalasia, District, Udaipur, r/o Village Thobawada, Distt. Udaipur.

: applicant in O.A. No. 230/2004

Rep. By Mr. Vijay Mehta: Counsel for the applicants in all the four OAS

Versus

1. Union of India through the Secretary to the Government, Ministry of Communication (Department of Posts) Sanchar Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer.

COMPARED & CHECKED

20

3. Senior Superintendent of Post offices, Udaipur.

: Respondents.

Rep. By Mr. M. Godara proxy counsel for
Mr. Vinit Mathur, : Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member.

As the issue involved and the reliefs claimed in these four O.As are common, these OAs were heard together with the consent of the counsel and are being disposed of by this common order. The facts of the case have been taken from OA No.162/2004.

2. The applicants have filed these OAs under Sec. 19 of the Administrative Tribunals Act, 1985, and prayed for the following relief:-

"The applicant prays that the impugned order Ann.A/1 and order mentioned therein may kindly be partly quashed and the respondents be directed to give promotion on norm based LSG post with effect from 1/10/91 and at par with the employees mentioned therein as alsdo with all consequential benefits. Ann A/2 may kindly be quashed. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant.

3. The facts, as relevant to the case, are that the applicants were appointed as Postal Assistants during the period ranging from 1967 to 1975. They were promoted to LSG grade (under TBOP scheme) in the years 1983, 1984,1990 and HSG II (under BCR scheme) in the years 1993,1995 and 2002, respectively on the

basis of seniority cum fitness. Since all the applicants were eligible for norm based LSG posts, they were considered along with other candidates. The respondent no. 2 vide order dated 12.06.2003, granted promotion to five persons to the LSG norm based post with effect from 01.10.1991. The respondent no. 3 issued an office order dated 23.06.2003(annex. A/1) in pursuance of order dated 12.06.2003 passed by the second respondent. It is evident from annex.A/1 that the applicants have not been granted promotion whereas juniors to the applicants viz. O.P. Jai and Manzoor Ahmed have been granted promotion.

4. The respondents have issued a gradation list as on 01.07.2002,(Annex. A/3) wherein the applicants have been shown as LSG Supervisors, whereas S/shri O.P. Jai and Manzoor Ahmed were still shown as Postal Assistants. Thus it is not in dispute that the applicants were senior to S/Shri O.P. Jai and Manzoor Ahmed.

5. The applicants have submitted representations (Annex. A/4) to the Chief Post Master General, Rajasthan Circle, Jaipur. requesting him to with draw annex. A/1. Thereafter, respondent No. 3 vide his order dated 03.07.2003 (Annex. A/2) circulated a copy of letter dated 13.06.2003, issued by respondent No. 2 stating that the employees mentioned therein including the applicants, were not found fit for promotion to LSG norm based post, due to unsatisfactory record of service as well as failed to make the criteria laid down in letter dated 12.11.2002 and clarification dated 28.01.2003. The respondent No. 3 vide his

letter dated 13.08.2003 informed the applicants to submit representations to respondent No. 2. The applicants submitted representations to respondent No. 2, stating that their service record is 'good' and no adverse entry was ever communicated to them. The applicants again submitted reminders to respondent No.2 and despite the same, applicants have not received any reply.

6. The applicants have stated as their promotions were due from the year 1991 and the promotions under challenge were made with effect from 01.10.1991, and their service record upto the period 30.09.1991 were required to be taken into consideration. It is stated by the applicants that since they were given promotion to HSG Gr.II in 1993 by a duly constituted DPC, it is clear that the service record of the applicants were blemish less. Aggrieved by the above action of the respondents the applicants have filed these O.As and prayed for the relief mentioned in para 2 above.

7. The respondents are contesting the O.As by filing separate detailed replies, inter alia pleading that selection on LSG (Norms based) post is done in accordance with the instructions contained in the D.G. Posts New Delhi letter dated 26.07.1989 (Annex. R/1) 18.10.1989 (Annex. R/2) and the Chief Post Master General Rajasthan Circle Jaipur letter dated 11.02.2003 (Annex. R/3). It is further submitted that promotion on LSG (norms based) is a selection post and the cases of all the persons eligible for the post including the applicants were considered by the DPC consisting of

two Group A officers under the Chairmanship of Director, Postal Services. The DPC met for these promotions from 03.06.2003 to 05.06.2003, to consider the selection of PAs/SAs of the post offices/ RMS of the Southern Region. The cases of all the eligible persons were considered and the Bench Mark of 'Good' was applied on the basis of selection cum seniority. Since the applicants were graded 'average' during the years 1996-97 to 2000-2001, they could not be promoted. The representations submitted by the applicants were considered by the PMG, Rajasthan Southern Region and after having gone through the entire records and the contentions made in the representations, the same were rejected and the applicants were informed of the decisions accordingly. It is settled proposition of law that the applicants have only a right of consideration for promotion and not right of promotion, which in the present cases has been done. Therefore, when once the cases of the applicants have been considered and since the applicants were not able to meet the criteria laid down for promotion, they were not promoted. In view of the above the respondents have pleaded for the dismissal of the O.As with costs.

8. Rejoinders have been filed by the applicants. While reiterating the pleadings made in their O.As and they have generally refuted the averments made in the replies.

9. Learned counsel for the parties have been heard. They have generally reiterated the averments made in their respective pleadings. The learned counsel for the applicants invited our

attention to the guidelines issued for the DPCs, wherein it has been clearly stated that while making promotion, ACRs of preceding five years to the promotion are required to be considered. He also stated that year wise break up of vacancies are required to be calculated while making promotion.

Learned counsel for the respondents pleaded that DPC was held in the year 2003 and the same criteria had been followed for all the candidates. As the applicants have failed to make the Bench Mark while considering the ACRs, they were not given promotion on the LSG Norm based posts.

10. These cases have been carefully considered by us and the documents placed on record perused. It is seen that this is an agreed position that promotion to LSG Norm based posts were made with effect from 01.10.1991, whereas the DPC was held in June 2003 and ACRs for the period from 1996-97 to 2000-2001 have been considered. It has been stipulated in the 'DPC-Consolidated instructions' issued by the Government of India, Department of Personnel and Training OM No. 22011/5/86 dated 10.04.1989, (R.1) that DPCs (para3.1) should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. It has been further provided in the above orders of the DOPT at para 6.2.1 (b) as under:

> "The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for **5 preceding years.** However in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service(if more than one CR has been written for a particular

year, all the CRs for the relevant year shall be considered together as the C.R for one year) (emphasis supplied)

The above order further provide under para 6.4.1 that where for reasons beyond the control of the DPC could not be held in any year(s), even though the vacancies arose during that year (or years), the first DPC that meets, thereafter should follow the following procedures:-

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the filed of choice with reference to the vacancies of each year starting with the earlier year onwards.

11. Thus it is clear from the above order issued by the DOPT that vacancies should be counted for year wise and ACRs of five years preceding to the period of promotion should be taken into account for the purpose of preparing the panel. However, in this case, promotion has been given with effect from 01.10.1991 and the DPC was held in 2003 which considered the ACRs of the applicants for the period 1996-97 to 2000-2001. Thus the action of the respondents is not in tune with the above instructions.

The respondents have failed to explain as to why the DPC was held in 2003 whereas promotions were due from 01.10.1991.

12. In view of the above discussion the respondents are directed to convene the Review DPC and consider the cases of the applicants on the basis of ACRs for five years preceding

01.10.1991. If the Review DPC finds them fit for promotion to LSG (Norm based) posts, promotions may be given to them on notional basis and pay of the applicants be re-fixed accordingly.

13. In order to give promotion to the applicants, if any person (s) already holding the posts is/are to be reverted to lower posts they may be given show cause notice before reversion even though they were not arrayed as parties to these O.As. If any of the applicant is already retired his pension and other retrial benefits may be re-calculated on the basis of notional promotion. If the review DPC found late Shri Vijay Kumar Sharma (original applicant in O.A. No.164/2004) as fit for promotion, the death benefits may be calculated on the basis of notional promotion and on that basis the family pension of Smt.Vinay Sharma, W/o late Shri Vijay kumar Sharma may be revised. This exercise should be completed within a period of four months from the date of receipt of a copy of this order. The result of the review DPC may be communicated to the applicants.

14. The OAs are allowed in the above terms. No order as to costs.

Sd/—

[Tarsem Lal]
Administrative Member

Sd/—

[Justice M. Ramachandran]
Vice Chairman.

jsv

CERTIFIED TRUE COPY
Dated 29/8/2008

अनुभाग अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ जोधपुर
Jodhpur Bench, Jodhpur.