

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.308/2004

Date of decision: 31st March, 2011.

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar, Administrative Member.

Govind Raj Mathur S/o Shri Jugraj Mathur, by caste Mathur, R/o Harihar Niwas Gaitri Shakti Peeth Ke Samne, Kuchi Basti, Old Housing Board, Pali-Marwar, District Pali.

: Applicant.

Rep. By: Mr. B.L. Swami, counsel for applicant.

Versus

1. Union of India, through the Secretary, Ministry of Communications, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Post Master General, Rajasthan Western Region, Jodhpur.
4. The Senior Superintendent, Post Offices, Jodhpur Division, (Rajasthan).
5. The Superintendent of Post Office, Pali Dn., Pali-Marwar.
6. Shri Habib Ali,
7. Shri L.K. Srivastava,
8. Shri S.L. Gehlot,
9. Shri I.D. Mishra,
10. Shri C.P. Gupta,
11. Shri M.S. Rajpurohit
12. Shri Ratan Mali,
13. Shri N.K. Arora,

All the private respondents are C/o Office of the Superintendent of Post Office, Pali Dn., Pali-Marwar.

: Respondents.

Rep. By: Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents 1 to 5.
None present for private respondents No.6 to 13.



ORDER**Per Mr. Sudhir Kumar, Administrative Member.**

The applicant in this case is before us aggrieved by not being considered for promotion to the Lower Selection Grade Supervisor Post under the Fast Track Promotion Scheme, 2002, even though he has claimed that he was already working in the same pay scale w.e.f. 1983, and had even been given the next higher pay scale equivalent to Higher Selection Grade (HSG-II) w.e.f. 1992 under the Biennial Cadre Review (BCR), while persons junior to the applicant had been promoted, resulting in the applicant having to work under the persons who were appointed by him when he was managing the Supervisory post. He has sought relief by challenging the impugned order dated 07.05.2003 (Annexure-A/1), and the rejection of his appeal through the impugned order dated 10.10.2003 (Annexure-A/2).

2. The case of the applicant is that he was appointed by the respondents as a Time Scale Postal Assistant Clerk on 30.03.1966 in the pay scale of Rs.110-240, through Annexure-A/3 dated 03.06.1966. After completion of one year, he was confirmed in the said cadre.

3. On completion of 16 years of service, the applicant became a beneficiary of the Time Bound One Promotion (TBOP) Scheme, since started by the department, and through Memo dated 12.04.1984 (Annexure-A/4), alongwith 27 others, he was granted the next higher pay scale of Rs.425-640 w.e.f. 30.11.1983. Later,



under the Biennial Cadre Review (BCR) Scheme of the respondent

department, on completion of 26 years of his service from 30.03.1966 to 30.03.1992, the applicant was granted the next higher pay scale of Rs.1600-2660 also, through the Memo dated 16.12.1992 (Annexure-A/5), w.e.f. 01.07.1992.

4. For the purpose of his substantive promotion, the respondents also deputed the applicant for attending a training course of S.B. Supervisor from 18.08.1997 to 23.08.1997 through O.M. dated 03.07.1997 (Annexure-A/6). The applicant has submitted that he was granted various appreciations etc., which he has produced as Annexure-A/7 and Annexure-A/8. The respondents had, in the meanwhile, introduced a different scheme for regular substantive promotions, called the Fast Track Promotion Scheme (FTPS) in the year 2002. Under this Scheme, the Director of Postal Services, Jodhpur, recommended and promoted eight persons to the pay scale of Rs.4500-7000. However, the applicant submitted that persons junior to him were promoted to the Lower Selection Grade supervisory post, and he could not find his name in the said Memo dated 07.05.2003 (Annexure-A/1) containing the names of the eight persons. Aggrieved by this promotion of eight persons stated by him to be junior to him, whom the applicant has named as private respondents R-6 to R-13, the applicant filed an appeal dated 20.06.2003 requesting for the Departmental Promotion Committee recommendations to be reconsidered, and for being allowed promotion to the Lower Selection Grade

Supervisory Post under the Fast Track Promotion Scheme.

5. The respondents replied to this appeal, through impugned Annexure-A/2 dated 10.10.2003, informing him that DPC had not found him upto the bench mark of selection for promotion under norms based promotion to LSG Supervisory grade, and his representation had, therefore, been rejected. The applicant has filed a copy of the order dated 19.03.2004 (Schedule-A) passed by the Madras Bench of this Tribunal in O.A. No.679/2003 K. Perumal & Anr. vs. Union of India & Ors., in which the Bench had failed to accept the contention of the respondent authorities that the TBOP Scheme introduced in the year 1983, and the BCR Scheme introduced in the year 1991, are merely financial upgradations and not promotions.

6. Therefore, the applicant has assailed the action of the respondents in not having considered him for promotion and further stated that the DPC had erroneously promoted the private respondents, who were junior to the applicant, though he had not been found upto the bench mark. The applicant has submitted that he was practically working on the Higher Selection Grade after grant of BCR benefit to him, and w.e.f. 1992 to 2003 he had worked as such, and had even been Unit In-charge for five years, practically working as Assistant Post Master. The applicant stated that when he was waiting for the next promotion as LSG Supervisor, before his superannuation dated 30.06.2004, he was reverted as Postal Assistant in the year 2003, and then his promotion has been denied to him. He assailed the action of the respondents in having reverted him to the pay scale of Postal



Assistant without any notice, and without giving any opportunity of being heard, because of which he had to work under his juniors, whom he had given appointment while working as Unit In-charge, and thereby the principle of natural justice had been violated, and on this count alone the impugned Memo AnnexureA/1 and Annexure-A/2 are liable to be set aside and quashed by this Tribunal.

7. The applicant further agitated the ground that he had been reverted to the cadre of his initial appointment, i.e. Postal Assistant, after rendering 39 years of service, and this action of the respondents is against the public policy. He had further taken the ground that after having worked on the post of Supervisor practically for five years, and on the post equivalent to Lower Selection Grade for nine years w.e.f. 1983 to 1992, and when he was practically holding the responsibility of Unit Incharge, he was entitled to the benefit of equal pay for equal work, as enshrined under Article 39 (d) of the Constitution of India. He had assailed his reversion to the Postal Assistant cadre in the year 2003 as being unjust, unlawful and violative of Article 14, 16 & 21 of the Constitution of India. He had in the result prayed for reliefs as follows:-

"8.1. The official respondents may kindly be directed to provide promotion to the applicant as HSG Supervisor w.e.f. his juniors promoted, with consequential benefits, before 30.06.2004.

8.2. The Annexure-A/1 may kindly declared illegal, wrong and be set aside to the extent that it may find the name of applicant alongwith private respondents in preference as if the applicant's name was never excluded from the list. Annexure-A/2 may kindly be

declared wrong, set aside and quashed with consequential relief.

- 8.3. The official respondents may kindly be directed to provide promotion to the applicant on priority basis, as the applicant retired on superannuation on 30.06.2004 with consequential relief.
- 8.4. The official respondents may kindly be directed to make the payment of salary to the applicant with consequential benefits on the basis of equal pay for equal work, at minimum of the pay scale admissible to H.S.G. supervisor in the respondent department as applicant has actually worked as supervisor.
- 8.5. Any other direction or order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.
- 8.6. The cost of the application."

8. The applicant also filed an additional affidavit on 28.10.2005, seeking to bring on record the Divisional Gradation List of Postal Assistants as corrected upto 01.07.2003 (Annexure-A/10), and the Divisional Gradation List of LSG Supervisors on norms based promotions as corrected upto 01.07.2003, through Annexure-A/11, and the O.M. dated 09.09.2004 (Annexure-A/12) promoting certain other officials under norm based promotion to LSG cadre.

9. The respondents filed their reply written statement on 08.03.2007. In this they accepted the contention of the applicant that he had been granted Time Bound One Promotion (TBOP) benefits w.e.f. 30.11.1983 on completion of 16 years of his service, and further the benefit of Biennial Cadre Review (BCR) w.e.f. 01.07.1992, on completion of 26 years of his service. They submitted that, thereafter, the applicant had filed an appeal dated 20.06.2003 praying for norm based promotion to LSG Supervisory posts, which was considered and rejected on 10/14.10.2003

(Annexure-A/2), and thereafter the applicant retired on

superannuation on 30.06.2004. The respondents submitted that this O.A. has been filed by the applicant on 18.10.2004, nearly 15 months after the date of rejection of his request for promotion, and hence the O.A. is grossly time barred and delayed.

10. The respondents further submitted that the cases of grant of financial upgradations under TBOP and BCR schemes after completion of 16 and 26 years of service respectively, are different than the cases of norms based promotion to LSG and HSG cadres, which can be granted only after consideration of the case of the candidates by the regular Departmental Promotion Committee constituted for this purpose. It was submitted that when the DPC met, it did not find the case of the applicant fit for promotion, and because of that, even the appeal of the applicant dated 20.06.2003 (Annexure-A/9) was rejected. In response to the case in O.A. No.679/2003 decided by the Madras Bench of this Tribunal on 19.03.2004, which was annexed by the applicant in this O.A. as Schedule-A, it was pointed out by the respondents that on the other hand, the Principal Bench of this Tribunal at New Delhi, had on 06.04.2005 in the case of Shri Shakeel Ahmed Bumey in OA No.3088/2004, rejected the contention of the Madras Bench of this Tribunal, and had clearly held that two classes of officials exist, one class consisting of the regularly promoted LSG and HSG, and second class consisting of those who have been granted the relevant grade only as part of the TBOP/BCR Schemes. It was submitted that the Principal Bench had recognized the difference between the regularly promoted LSG officials against norms based



posts, and the persons accorded TBOP/BCR benefits, in the form of a relief against stagnation. They had annexed a copy of the judgment of the Principal Bench of this Tribunal as Annexure-R/1. They have further submitted that the Principal Bench had clearly held that a LSG promoted official can only be posted against the sanctioned post, against which he had been accorded norms based substantive promotion, with lien, while the same was not true in the case of the officials, who are granted TBOP/BCR benefits, without any lien against any vacant sanctioned posts. u.

11. It was further submitted that while TBOP/BCR financial upgradations are allowed to the officials as a routine against stagnation, norms based promotion to LSG and HSG cadres are granted to only those officials, who are found fit, and are recommended by the Departmental Promotion Committee, subject to the limitation of availability of vacancies for such norms based promotions to LSG/HSG Supervisory posts. It was submitted that in the present case, the applicant, though enjoying the higher pay scale by virtue of TBOP/BCR upgradations of his pay scale, was not found fit by the DPC for norms based promotion, and hence the O.A. filed by the applicant has no legs to stand, and deserves to be dismissed.

12. It was further submitted that in the interregnum, the applicant was asked to work against a norm based post temporarily only because of non-availability of regularly promoted LSG officials, by way of an official arrangement to pull on work. It was submitted that the applicant can not on this basis become entitled

to hold that post substantively. It was submitted that since the DPC had not found the applicant to be fit for norms based promotion to LSG Cadre, his case had rightly been rejected as per the rules and provisions of the department, and that there has been no infringement of Article 21 and 300 (A) of the Constitution of India. It was, therefore, submitted that the contentions and grounds raised in the O.A. are not sustainable in the eyes of law, and the applicant does not have any prima facie case in his favour, and the O.A., therefore, deserves to be dismissed with costs.

13. The O.A. had been dismissed for non-prosecution on 11.01.2010. Thereafter, the applicant filed an MA No.36/2010, which was heard and decided on 03.11.2010. The M.A. was allowed in view of the circumstances mentioned therein, since the applicant could not have been allowed to suffer on account of the fault of the counsel of the applicant, and the case was restored to its original number.

14. It was further noticed that notices had been issued to the private respondents R-6 to R-13 on 13.09.2006 by speed post/registered post A.D., alongwith covering letter to the Superintendent of Post Offices, Pali, for service upon those respondents No.R/6 to R/13. Though, the A.D. had been received back, but the Superintendent of Post Offices, Pali, had not sent any information regarding the service upon the private respondents. No one ever appeared for the private respondents, and, therefore, while a presumption may lie that the Superintendent of Post Offices, Pali, would have taken the necessary action to serve the



relevant notices on the private respondents R/6 to R/13, the service has not been confirmed through a separate letter.

15. Heard. We have given our anxious consideration to the facts, and the submissions of both the learned counsels.

Sh. 16. The ^{learned} counsel for the applicant submitted that if the DPC had found the applicant to be below the bench mark, then it could only have been on the basis of adverse remarks in his ACR, but no such remarks in the ACR of the applicant had ever been communicated, and without such communication, and without Sh. giving an opportunity to the applicant of being heard in the case of such adverse remarks, the DPC could not have rejected the case of the applicant for his norm based promotion, as has happened in this case.

17. On the other hand, the learned counsel for the respondents submitted that the respondents had placed all the relevant facts before the DPC, and also the availability of posts for norm based promotions. The DPC had found the eight private respondents R-6 to R-13 to be eligible for promotion against the available promotional posts, and, therefore, they had been accorded promotion in the pay scale of Rs.4500-7000 w.e.f. 01.10.1991, through the impugned order Annexure-A/1.

18. In any case, the entire case of the applicant hinges around the status of TBOP/BCR scheme upgradation vis-à-vis regular norms based promotion to LSG and HSG cadres through Sh. consideration of individual merit of all the persons coming in the

zone of consideration for promotion by a regular Departmental Promotion Committee. It appears that as on today, the judgment/order dated 19.03.2004 passed by the Division Bench of Madras Bench of this Tribunal in OA.No.679/2003 K.Perumal and another vs. Union of India and others (supra), no longer remains valid law. While that judgment could not have been overruled by the Single Bench order/judgment dated 06.04.2005 passed by the Principal Bench of this Tribunal in OA No.3088/2004, which was cited by the respondents, a number of orders on this point have been passed in the Patna Bench of this Tribunal, and in Ranchi Circuit Bench, and in many other Benches, holding that the TBOP/BCR financial upgradations do not amount to regular promotion. Apparently, those orders were passed without the Madras Bench's order dated 19.03.2004 having been brought before them. But it is seen that the Madras Bench of this Tribunal had actually emphasized more upon the legal status of the Fast Track Promotion Scheme (FTPS), 2002, rather than a detailed examination of TBOP and BCR schemes. On the other hand, the judgment/order dated 06.04.2005 of the Single Bench of the Principal Bench in O.A. No.3088/2004 has dealt directly with the question of TBOP/BCR Scheme being only a financial upgradation and not a promotion, and has come to the definite conclusion that clearly two classes exist, first of those who have been regularly promoted under norms based promotion, and second of those who have only been provided the grade under the TBOP/BCR Scheme in the form of relief against stagnation. It has further gone ^{ahead} ~~and~~ to ru. state that a regularly promoted LSG/HSG official, promoted on the



basis of norms based promotion, can be posted against the cadre post, while this would not be true for a BCR official, and it was held that the applicant before the Principal Bench, therefore, cannot claim that he has been reduced in rank.

19. Therefore, it is held that the non-specific mention, without arriving at a definite conclusion in the order of the Madras Bench of this Tribunal dated 19.03.2004 in O.A. No.679/2003 in the case of K.Perumal & Anr. vs. Union of India & Ors. (supra), would not be applicable to the facts of this case, and that the specific order of the Principal Bench, and the Patna Bench of this Tribunal, that TBOP/BCR grant of pay scales are merely financial upgradations in the form of relief under stagnation, and not regular promotion, would apply in this case. The order dated 28.09.2010 in O.A. No.642/2007 of Patna Bench may be cited to explain the position in this regard:-

"25.....The effect of TBOP is to promote the incumbent to LSG after total service of sixteen years, and the effect of BCR is to further give second promotion after 26 years of total service of an incumbent from LSG to HSG. Lower Section Grade [LSG] may become available to an incumbent earlier than the total service of sixteen years in the regular course of promotion itself, but the requirement of giving such promotion to LSG pay scale under Time Bound One Promotion [TBOP] Scheme arises only when the incumbent does not so get promoted to LSG pay-scale even after 16 years of total service in the feeder grade. Similarly, the second promotion from LSG to HSG may also come to an incumbent in the normal course of promotion much before the time period of 26 years required for setting in motion the operation of the BCR Scheme. The operation of the BCR Scheme only ensures that when, even after completion of 26 years of service in the feeder cadre+LSG pay scale, the incumbent does not become so entitled



to HSG pay scale in the normal course by way of regular promotion. Thus, promotion to LSG can come in normal course before 16 years of continuous service in the lower timescale, or under the TBOP Scheme after completion of 16 years in the lower timescale. Second promotion to HSG may also come to an incumbent's way at any point of time in the normal course of promotion, but if it does not come his way even after completion of 26 years of service, when he would have completed around 10 years of service in LSG pay scale on the basis of his promotion to LSG pay scale under TBOP Scheme, the BCR Scheme would fetch him his second promotion to HSG pay scale."

20. It is not as if the applicant has not got the financial upgradations. He was provided the financial upgradations on completion of 16 years and 26 years of service under TBOP and BCR schemes, and enjoyed those pay scales before his superannuation on 30.06.2004. It was only that when the Departmental Promotion Committee was convened, and the case of the applicant was considered alongwith others, the DPC did not re. recommend his norm based promotion to the LSG post for grant of pay scale of Rs.4000-7000 in substantive capacity, like done in the case of the eight private respondents named by the applicant, through Annexure-A/1 dated 07.05.2003. The applicant represented against that on 20.06.2003, and got a reply rejection of his representation through letter dated 10/14.10.2003, which was dispatched from Pali, on 16.10.2003, and was received at the Office of Superintendent of Post Office, Pali, on 16.10.2003, before being received by the applicant.

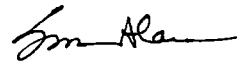
21. The applicant has filed the present OA on 18.10.2004, therefore, it cannot be said that the O.A. was time barred.

However, on merit, the case of the applicant cannot succeed as his case has been duly considered by the DPC, and he was not found fit for promotion, while eight other persons were found so fit for promotion.

22. In the result, the O.A. is dismissed. In the circumstances of the case, there shall be no order as to costs.



[Sudhir Kumar]
Administrative Member



[Justice S.M.M. Alam]
Judicial Member