

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

ORIGINAL APPLICATION NO. 32/2004

Date of Order: 23-2-10

**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER
HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER**

Nathu Lal Aswani S/o Shri Jethanand, aged 55 years, Assistant Sub-Post Master, Shastri Circle Post Office, Udaipur, r/o 1/61, Pratap Nagar Housing Board, Udaipur.

....Applicant

Mr. Vijay Mehta, counsel for applicant.

VERSUS

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

....Respondents.

Mr. M. Godara with Mr. Vikas, proxy counsel for Mr. Vinit Mathur, Counsel for respondents.

**ORDER
(Per Hon'ble Mr. V.K. Kapoor, Administrative Member)**

Shri Nathu Lal Aswani has filed the present OA against the order of respondent no.2 dated 10.02.2003 (Ann.A-1). The applicant has sought the reliefs that are as follows:-

"The applicant prays that the impugned order Ann.A-1 may kindly be partly quashed and the respondents be directed to give benefits of BCR to the applicant with all consequential payment, fixation and benefits w.e.f. 25.9.1993. Interest at the rate of 12% may also be awarded to the applicant on the due amount. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

2(a). The factual matrix of case is that applicant was appointed as postal assistant on 25.9.1967, while working as SPM, Naya Sarafa NDTSO during April 1975, misappropriated Government money by using the used BRL stamps. A FIR was lodged against

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him u/s 262, 420, 409 and 469 IPC, the ACJM III Udaipur vide decision no.514/1987 decided the matter on 24.5.1988 in which he was convicted under aforesaid sections. He was dismissed from service on 09.8.1988; he filed an appeal to DPS which was rejected on 12.10.1988. He filed review petition to the Member Postal Service Board, New Delhi which was also rejected on 23.10.1989. Against the dismissal order, applicant filed an OA no.404/1991 before the CAT, Jodhpur Bench but the same was also rejected. Applicant filed an appeal in Appellate Court against the conviction by the order of ACJM-III Udaipur in which the appellate court decided appeal, matter was reverted back to lower court directing trial Court to re-examine the applicant u/s 313 Cr.P.C. During pendency of the matter before ACJM-III, applicant filed a criminal revision petition before the Rajasthan High Court, Jodhpur in which High Court set aside the order of trial & appellate courts, thereby acquitted him on 03.9.1997. On 23.7.1998, applicant was reinstated in service on earlier post, he was placed under deemed suspension under rule 10 (4) CCS (CCA) Rules, 1965 vide order dt 23.7.1998. His suspension was revoked, he was posted as PA, Kankroli HO vide memo dated 08.7.1999. The disciplinary proceedings were started against him, he challenged these proceedings before CAT Jodhpur Bench in OA no.230/1999. On 28.9.2000 decision was implemented, period was decided as spent on duty with all consequential benefits. Applicant filed another OA no.223/2001 before CAT Jodhpur Bench in which the impugned order dt 04.7.2001 (Ann.A-1) was challenged. In this OA, vide order dated 18.9.2002, the above order dt Ann.A-1 was



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quashed, the respondents were directed to consider his case afresh for grant of benefits etc. under TBOP or BCR scheme etc.

2(b). Applicant has stated that the employees who completed 16 years of satisfactory service as on 23.11.1983 were required to be given benefits under the Time Bound One Promotion (TBOP) and issued a Biennial Cadre Review (BCR) vide order dt 11.10.1991 so as to give pay in higher pay scale on competition of 26 years of satisfactory service. Applicant had completed 16 years and 26 years of service on 25.9.1983 and 25.9.1993 respectively. Applicant was granted benefits of TBOP w.e.f 30.11.1983 vide order dated 10.01.2003 (Ann.A-4) after completion of 26 years of service, the BCR benefits were granted w.e.f. 01.7.2000 vide order dated 10.02.2003 (Ann.A-1). Applicant is denied the benefits of BCR from due date i.e. 25.9.1993. He prays that he should have been given a fair treatment in this matter. The DPC considered his case but did not find him fit for promotion. Applicant's case was considered for BCR in the light of directions given by the CAT, Jodhpur Bench. His case in lower selection grade (LSG), was considered by DPC, and he was not found fit for the LSG promotion for not fulfilling the required parameters. Applicant's version is that there is nothing adverse against him; he should be given TBOP & LSG on stipulated dates. He was granted TBOP promotion w.e.f. 30.11.1983 vide order dt 10.01.2003; BCR promotion w.e.f. 01.7.2000 vide order dt 10.02.2003. Applicant has requested to give him BCR promotion from the effective date i.e. 25.9.1993 itself.



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3(a). The respondents in reply have stated that applicant moved to CAT, Jodhpur Bench for grant of promotion on the post of LSG & HSG II etc. with all consequential benefits. The Tribunal directed respondents to consider his case for LSG & HSG afresh in accordance with prescribed norms. The applicant was not found fit/meritorious for promotion to the post of LSG as per his service record. As confidential reports were not up to the mark, he was not found fit for promotion to the post of LSG. Respondents further submitted in reply while narrating the facts in detail, has averred that DPC considered his case for TBOP & BCR both, TBOP was allowed to him 30 Nov, 1983; BCR promotion on completion of 26 years of service i.e. on 25.9.1993 could not be given, but on 01 July, 2000. The respondents' contention is that the applicant's service record was not available prior to July 1999 thus, as per instruction of Directorate letter dt 11.10.1991 (Ann.A-2), up-gradation on BCR cadre was given to him from 01 July, 2000.

3(b). In rejoinder, applicant has averred that he was falsely implicated in a criminal case in which he was acquitted vide order dt 03.9.1997 by Rajasthan High Court. Thereupon, his dismissal for service vide order dated 09.8.1988 was quashed and he was reinstated vide order dt 23.7.1998 but was put under suspension w.e.f. 24.5.1988 and was served with a chargesheet which was quashed by CAT Jodhpur Bench vide order dated 28.9.2000. The Tribunal directed respondents to consider applicant's case as per law and their observations regarding facts of non-communicated ACR/material etc. The applicant has denied that he was not found fit for promotion on LSG post, there is no adverse material on

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record against him; he was fulfilling required parameters for promotion. The respondents have not submitted documents in support of their contentions; there is no ground to draw an adverse inference. He was given TBOP promotion w.e.f. 30.11.1983 and BCR w.e.f. 01.7.2000. Applicant's further contention is that he completed 26 years of service on 25.9.1993, his service record prior to 25.9.1993 was required to be considered. The service records period in question was found to be good, and no down grading remark was conveyed to him.

4(a). Applicant's contention is that relief be given to him in the light of High Court and CAT verdicts. Applicant is badly harassed by his seniors, he is given TBOP and BCR, thus no ground is made out to stop him from promotion to LSG and HSG II posts. He should be given BCR promotion from effective date i.e. from 25.9.1993. His service record is by and large good; he be given promotion as per seniority/merit. Besides, his previous pay, allowances and consequential benefits should also be given.

4(b). Learned counsel for respondents in his arguments stated that applicant's ACRs upto 2001 were taken in consideration zone. The ACRs of the Year 1999-2000 and 2000-2001 were of average standard which is not an adverse entry; these were not communicated to the applicant. He was not considered for LSG post, he has already been given TBOP & BCR promotions earlier, financial benefits are extended to him. Applicant's suitability to the post is not found as per record, which is not meritorious. The service records prior to his dismissal/ suspension were also taken into

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consideration, they were found to be of average standard. He has been an average worker in his career; promotion could not be given to him on BCR from 25.9.1993. The respondents have clarified that applicant took voluntary retirement in 2005.

5. Applicant's case is widely discussed; he was basically a postal employee while working as sub-post master, in the month of April 1975, he misappropriated Government money by using the used BRL stamps. The department conducted preliminary investigation in the matter and registered FIR against him u/s 262, 420, 409 and 469 under IPC. The ACJM-III, Udaipur in case No.514/1987 convicted the applicant on 24.5.1988 with the result that he was dismissed from service by memo dated 9.8.1988. He moved before senior officers in appeal and review petition, they were also rejected on 12.10.1988 and 23.10.1989 respectively. In criminal case, appellate court directions were given to re-examine the applicant u/s 313 Cr.P.C. Subsequently criminal revision petition was filed before Rajasthan High Court that set aside the order of trial and appellate courts vide judgment dated 03.9.1997. As per High Court's decision, applicant was reinstated on service 23.7.1998 and placed under deemed suspension under rule 10 (4) CSS (CCA) Rules, 1965 w.e.f. 09.8.1988. Later, applicant's suspension was revoked and he was posted as postal assistant PA, Kankroli HO vide memo dated 08.7.1999. During this period, chargesheet was issued/served upon him, disciplinary proceedings were started. The applicant moved to CAT Jodhpur by filing OA no.230/1999 challenged this charge sheet. In this OA

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vide order dated 28.9.2000, the dismissal/suspension period was decided as spent on duty with all consequential benefits.

6. As per Tribunal's judgment dt 28.9.2000; applicant's case was placed before DPC for review for TBOP on 26.6.2001, which did not find him fit for promotion. It is worth mentioning that TBOP is given after completion of 16 years and BCR on completion of 26 years of service period. As TBOP was not given by the DPC, applicant was not found eligible for BCR promotion as per assessment. Applicant's case was to be considered for TBOP and BCR scheme and also promotions to the post of LSG and HSG II, in view of observations regarding un-communicated ACRs while considering grant of benefits of promotions. Subsequently, DPC meeting was convened and TBOP promotion was given to him w.e.f. 30.11.1983 vide memo of SSPO Udaipur dt 10.01.2003 from effective implementation of TBOP scheme. The BCR promotion was allowed to him vide order dt 10.02.2003 w.e.f. 01.7.2000, in view of the directions of CAT, Jodhpur dated 18.9.2002 in OA no.223/2001. As regards LSG cadre, applicant's record was not upto the mark, he was found to be an average worker throughout. The ACRs prior to his dismissal/suspension were also considered, they were also of average standard. These ACRs were not adverse in nature; so no need to communicate the average reports. Accordingly, applicant was not found meritorious /fit for promotion to the LSG grade. The respondents' version finds support from CAT Jaipur decision in OA No.621/2001 (Chandmal Jain vs. UOI) and Apex Court decision in case of State of Madhya Pradesh vs. Srikan Chapekkar JT 1992 (s) SC

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(638). As per perusal of record, applicant's ACRs were not found up to the mark, they were of average standard whereas requirement for promotional post is of good grade of performance as per criteria laid down by the Directorate and clarifications given on 11.02.2003. The respondents' version is that as ACRs for the years 1999-2000 and 2000-2001 were of average standard which was not an adverse entry, these were not communicated to him. He was not considered for LSG cadre, he has already been given TBOP and BCR promotions, thus not much of financial loss incurred to him. It is worthwhile to mention here that the applicant has taken voluntary retirement from service in 2005.

 The applicant has been given benefit of TBOP after completion of 16 years i.e. from 30.11.1983/25.9.1983 but BCR after completion of 26 years is not given on due date i.e. 25.9.1993. The reasons put forth by the respondents is that the applicant was not found fit for this promotion and limited service record was available BCR promotion was allowed by DPC w.e.f. 01 July, 2000 on this basis. This BCR promotion was said to be done in the light of CAT's decision and the Directorate letter dated 11 Oct, 1991. The ACR of applicant for the year 1997-1998 was not maintained, it was maintained from 15th July, 1999. Thus, from 01 July, 2000, BCR promotion was accorded to him. It is hereby stated that High Court of Rajasthan quashed the orders of lower courts in criminal case proceedings against applicant were over, due to non-maintenance and non-availability of ACRs, the promotion to be BCR could not be given to applicant. It is none of his fault, his service records were maintained by

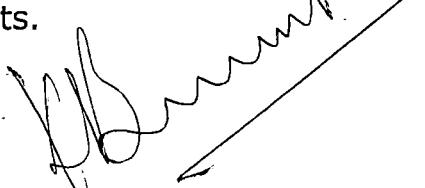


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respondents from 15th July 1999 onwards and subsequent period was taken into consideration. But in case of his dismissal/suspension from service prior to 1988, the service record should be taken into consideration and the over all assessment should be made in his case from due date i.e. completion of 26 years of service alongwith directions of DOPT and Directorate of Postal Service also kept into mind while making over all assessment for BCR promotion in applicant's case.

8. In the light of deliberations made above, the OA is partly allowed. The respondents are directed to look into applicant's previous service record prior to dismissal/deemed suspension dated 09.8.1988 and should also make over all assessment while coming to the conclusion in regard to BCR promotion from the effective date i.e. 25.9.1993. No order as to costs.


Upadhyay
(V.K. KAPOOR)
ADMINISTRATIVE MEMBER


(Dr. K.B. SURESH)
JUDICIAL MEMBER

दिनांक 17/11/15 के आदेशानुसार
भेदी ज्यातिशति में दिनांक 11/11/16
को भाग-II में III नम्बर मिले गए।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायालय, जोधपुर

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