CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR

ORIGINAL APPLICATION NO. 48/2004
&
ORIGINAL APPLICATION NO. 49/2004

Date of order: 30.03.2010

CORAM:

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

OA NO. 48/2004

Banshi Lal Nai son of Shri Narain Lal, aged 49 years, R/o Pratap Nagar, Mitharamji Ka Khera, Chittorgarh - 312001 - Official Address Sorting Assistant, RMS 'J' Division, Chittorgarh.

...Applicant.

Mr. Kamal Dave, counsel for applicant.

VERSUS

1. The Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer (Raj.).
3. Director, Postal Services Southern Region, Ajmer.
4. Superintendent, RMS 'J' Division Ajmer.
5. Shri Govind Lal Jain, Sorting Assistant, RMS 'J' Division, Chittorgarh.

... Respondents.

COMPARED & CHECKED

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondent Nos. 1 to 4.
None present for respondent No. 5.

OA NO. 49/2004

O.P. Rajput son of Shri Moongaram, aged 53 years, R/o 1A/82 Sewga Housing Board, Chittorgarh - 312001 - Official Address Sorting Assistant, RMS 'J' Division, Chittorgarh.

...Applicant.

Mr. Kamal Dave, counsel for applicant.

VERSUS

1. The Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer (Raj.).
3. Director, Postal Services Southern Region, Ajmer.
4. Superintendent, RMS 'J' Division Ajmer.
5. Shri Govind Lal Jain, Sorting Assistant, RMS 'J' Division, Chittorgarh.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondent Nos. 1 to 4.
None present for respondent No. 5.

ORDER
Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The issue involved in both these Original Applications is identical; therefore, both the Original Applications are disposed of through a common order.

FACTS OF THE CASE:

O.A. No. 48/2004

2. The applicant in OA No. 48/2004 joined the respondent's organization as a Class IV employee in January 1975. He was promoted to the post of Sorting Assistant with effect from 02.10.1979 after passing a departmental examination. In the year 1983, the Department of Posts introduced the scheme of Time Bound One Promotion (TBOP) under which employees who completed 16 years of service were promoted to the next higher grade. In accordance with the TBOP Scheme the applicant was given the higher scale with effect from 07.10.1995 on completion of 16 years of service as Sorting Assistant. The

respondent No.5, Govind Lal Jain who was appointed as Sorting Assistant on 10.01.1980 was given the higher grade under TBOP with effect from 12.01.1996. With the implementation of the V Central Pay Commission recommendations, the respondent No.5 got the benefit of an extra increment as his date of increment was after 01.01.1996. As a result the pay of the respondent No.5 became higher. As the respondent No.5 was junior to the applicant, the Department issued an order dated 24.05.1999 by which the pay of the applicant was stepped up on par with that of the respondent No.5. However, four years later a show cause notice was issued to the applicant by letter dated 11.11.2003 for withdrawing the stepping up of the pay on the ground that it was erroneously given. Though the applicant replied to the show cause and stated that respondent No.5 was actually junior to him, the respondents issued an order on 23.01.2003 (Annex. A/1) withdrawing the stepping up of pay earlier granted to the applicant. The applicant has challenged the aforesaid order withdrawing the stepping up of his pay.

OA No. 49/2004

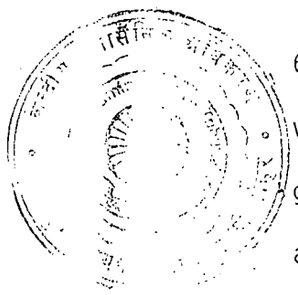
3. The applicant joined the Department as a class IV employee on 10.01.1975. He was promoted as a Sorting Assistant with effect from 02.10.1979 after passing a departmental examination. On completion of 16 years of service as Sorting Assistant, he was given a higher scale under the provisions of the TBOP Scheme with effect from 06.10.1995. The respondent No.5 who joined as a Sorting Assistant on 10.01.1980 was given the higher scale under TBOP with effect

from 12.01.1996. With the implementation of the V Central Pay Commission recommendations the pay of respondent No.5 became higher. The Department therefore allowed by order dated 24.05.1999 stepping up of the pay the applicant on par with respondent No.5 as the respondent No.5 was junior to the applicant. Four years later a show cause notice was issued to the applicant for withdrawing the stepping up granted earlier. Even though the applicant represented against withdrawing of the stepping up, the respondents by order dated 23.01.2003 (23.01.2004?) (Annexure A/1) ordered withdrawal of the stepping up. Aggrieved by the said action of the respondents, the applicant has filed this Original Application.

4. The respondents have filed reply in both the Original Applications. It is stated in the reply that the stepping up of pay was granted erroneously to the applicants. They are not senior to the respondent No.5 except in the gradation list of the year 1996. When the competent authority i.e. the Director of Postal Service Ajmer noticed the mistake, show cause notice was issued to the applicants. The grant of higher pay scale under the TBOP is based on the length of service and not on the criteria of seniority. The seniority position of the applicant in OA No. 48 of 2004 is 210 as against that, the position of respondent No.5 is at serial No.203 as per the gradation list corrected upto 01.07.1991. The seniority position of the applicant in OA No. 49/2004 is 207 as against that, the respondent No.5 is placed at serial No.203. Therefore the applicants are not senior to

respondent No.5. The seniority list is determined on the basis of the principle laid down by the letter of DG, Posts dated 26.02.1986 (Annex. R/2). As per the letter of DG, Posts dated 17.05.2000 (Annex. R/3) the granting of higher scale under TBOP is based on the length of service and not on the criteria of seniority.

5. We have heard the learned counsel for the applicants Shri Kamal Dave and the learned counsel for the respondent Nos. 1 to 4 Shri M. Godara for Shri Vinit Mathur. We have also perused the records carefully.



6. The issue for consideration in both Original Applications is whether the withdrawal of the benefit of stepping up of pay granted to the applicants suffers from any illegality or arbitrariness. It is not disputed that the applicants were appointed/promoted as Sorting Assistants with effect from 02.10.1979 whereas the respondent No.5 was appointed to the that grade on 08.01.1980. That position is clearly evident from the gradation list at Annex. A/2. It is also not disputed that the applicants were granted higher pay scale under TBOP Scheme with effect from 07.10.1995 and 06.10.1995 respectively whereas the respondent No.5 was granted the higher scale with effect from 12.01.1996 (Annex. A/3). The respondents granted the stepping up of pay to the applicants by order dated 24.05.1999 on the basis of a gradation list in which they were shown as senior to respondent No.5. The contention of the

respondents is that it was an error. It is argued by the respondents that in all the other gradation lists the applicants are junior to the respondent No.5. However the respondents have not been able to establish how the applicants got a lower seniority position in spite of their joining the cadre of Sorting Assistants on an earlier date in comparison to the respondent No.5. There is a mention in para 4.10 of the reply that where 50% of the vacancies are to be filled by promotion and 50% by direct recruitment, seniority is to be determined as per the principles contained in the DG Post letter dated 26.02.1986 by which the letter of DOPT dated 07.02.1986 has been reproduced. However no further explanation has been given to show that the applicants were earmarked against certain vacancy slot relating to a specific year/period, which is later than that of respondent No.5. It is nowhere stated in the gradation list at Annex. A/2 (where the respondent No.5 is shown as senior) that the respondent No.5 has been adjusted against a vacancy of a previous period. During the course of the hearing on 28.02.2010 the learned counsel for the applicant submitted that the respondents have since issued a revised gradation list in the year 2008 in which the applicants have been shown at a higher place compared to the respondent No.5. Copy of that seniority list was also produced on 23.03.2010. In that list, the seniority position of the applicants are at serial No.113 and 115 whereas the seniority position of the respondent No.5 is at serial No.153. It would therefore appear that the respondents have finally accepted that the applicants are senior to respondent No.5.

Though respondent No.5 was issued a notice and it was served upon him, he has chosen not to contest the matter as none appeared on his behalf.

7. In view of the above discussion, we are of the considered opinion that the applicants have made out a case to show that the withdrawal of the stepping up of pay was illegal and arbitrary.

8. For the reasons stated above, both the Original Applications are allowed. The impugned orders dated 23.01.2003 at Annexure A/1 are quashed and set aside. The interim orders are made absolute. No order as to costs.

Sd -

(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

Sd -

(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

nlk

CERTIFIED TRUE COPY
Dated 31.3.10

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

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