

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A No. 230/2009

Dated this the 9th day of May, 2011

CORAM

HON'BLE MR. DR. K.B.SURESH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Prakash Chandra Bothra,
S/o Shri Chintamani Dass,
b/c Oswal R/o 208 Dhani Bazar,
District Barmer, Office address
HO Churu (Postal Dept)
Dist. Churu employed on the post of Postal Assistant.

(By Advocate Mr. S.P.Singh)

Vs.

1. Union of India through the
Secretary, Government of India,
Ministry of Communications
Department of Posts, Dak Tar Bhawan,
New Delhi.

2. The Chief Post Master General,
Rajasthan Circle, Jaipur.302007.

3. Post Master General,
Western Region, Jodhpur.

4. The Director, Postal Services,
O/o Post Master General,
Western Region, Jodhpur.

5. Assistant Director General (SPN)
Dak Bhawan, Sansad Marg,
New Delhi-110 001.

6. Superintendent of Post Offices,
Barmer Division, Barmer-344001.

..Respondents

(By Advocate Mr.M.Godara, proxy counsel for Ad.Vinit Mathur, ASI)

ORDER

Hon'ble Dr. K.B.Suresh, Judicial Member

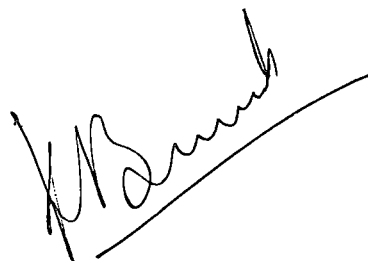
A man who had worked for 32 years was compulsorily retired prematurely for the reason of ineffectiveness of performance. But it appears that before 5 years of this he was granted a promotion at BCR quota. Therefore, even though he was temporarily retired the Member (Personnel) considered the case of the applicant for premature retirement apparently held in paragraph 2 of the order dated 26.7.2004 that it is not a fit case for premature retirement as per criteria in the rules.

2. It is trite that the rules provide that intervening period shall be treated as period spent on duty for all purposes including pay and allowances if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified. It is noted in Annexure.A9 that the Committee had perused the CR Dossiers of Shri Bothra and found that his performance had

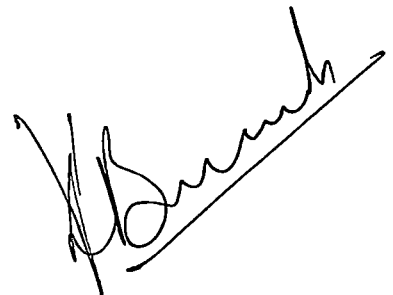


not been satisfactory. Adverse entries have been made in the CR which have not been communicated to him. He was given promotion under BCR Scheme in the year 2000 which fall within the last five years period. His integrity was not doubted. Therefore, according to the Committee has per instructions relating to premature retirement an official who had been promoted during the last five years are not ordinarily to be retired on the ground of ineffectiveness unless his/her integrity was found to be doubtful. Therefore, the Committee held that this is not a fit case for premature retirement and therefore, recommended that he be reinstated. Following this he was reinstated back in service. It was decided by the Committee to regularize the intervening period between the premature retirement and reinstatement in service by grant of leave due and admissible.

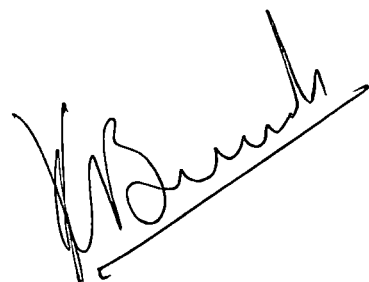
3. The respondents states that since it had not been specifically recommended by the committee that the period of intervention is spent on duty, it is not found him fit to grant the benefit. But on a rational analysis it would have been



correct if the committee had decided on grounds of mercy and exonerated the applicant and granted him a boon. But such is not the case in this matter. Since he was promoted within the intervening five years' period he should not have been retired prematurely for ineffectiveness. Some of the adverse remarks in the CR were not communicated to him. What is the nature of adverse remarks is not made available but the reply canvasses the view that the applicant is a man who is habitual to send representations/appeals to higher authorities. May be that he is a contentious man may be correct, but that does not mean that he is to be treated as an outcaste. Ineffectiveness in work after 32 years of service is improbable without such sufficient material the methodology of weeding out in government service must be done and exercised with great care and prudence. It cannot be made into a tool for harassment as well. As the applicant had been reinstated for grounds available intraneously for him and not because of any extraneous reasons like mercy or condoning of lapses etc. there cannot be any ground to hold that the respondents are eligible to deny him the normal



benefit of service as he was willing to work. If the respondents could not extract work during the period it is only because of the fault of the respondents. The rules postulate that six months prior to declaring a person to be prematurely retired an exercise of verification should be done and if such exercise was conducted within time and with proper focus this could have been avoided. It would have been revealed that a person who had been granted promotion within an intervening 5 years cannot be retired prematurely. Therefore for the lapse of the respondents the applicant need not be made to suffer. The fact that the committee had recommended that the intervening period may be kept as leave due and admissible is not proper as there is no element of mercy shown which will disentitle the applicant to receive further benefits but since reinstatement was ordered specifically for the reason that he could not have been prematurely retired then the benefits of reinstatement must flow back to him. Therefore, it is declared that the applicant is entitled to full benefits for the period from 14.2.2004 to 24.8.2004 as spent on duty for all



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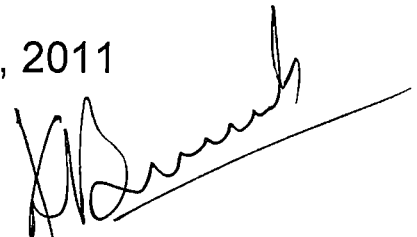
purposes and all consequential benefits will therefore flow towards him.

4. OA is therefore allowed and the respondents are directed to treat the period from 14.2.2004 to 24.8.2004 as spent on duty for all purposes and grant him all consequential benefits within three months next. No order as to costs.

Dated this the 9th day of May, 2011



SUDHIR KUMAR
ADMINISTRATIVE MEMBER



DR. K.B. SURESH
JUDICIAL MEMBER

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