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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A.No. 178/2009

Dated this the 24th day of February, 2012

CORAM

Hon'ble Mr. Justice S.C. Sharma, Judicial Member
Hon'ble Mr. Sudhir Kumar, Administrative Member

Nawal Ram Meghwal
S/o Shri Jeewaji, aged 54 years
Sub Post Master, Post Office,
Heera Magri, Udaipur
R/o 4/988, Pahada, University Road,
Udaipur.Applicant

(By Advocate Mr. Vijay Mehta)

Vs.

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

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

3. Post Master General, Rajasthan
Southern Region, Ajmer.

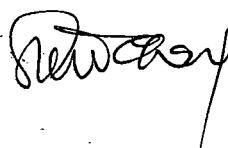
4. Senior Superintendent of Post Offices,
Udaipur.Respondents

(By Advocate Mr. Vinit Mathur, ASG)

ORDER

Per: Hon'ble Mr. Justice S.C. Sharma, Judicial Member

Instant OA has been instituted for the following
reliefs:



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"The applicant prays that the impugned order Annexure.A.1 and action of the respondents of not granting promotions to the applicant may kindly be quashed and the respondents may kindly be directed to give promotion on HSG-II w.e.f. 1.10.1994 and as HSG-I w.e.f. 1.10.1997. In alternative it is prayed that the respondents may kindly be directed to grant promotion as HSG-II and HSG-I w.e.f. 1.10.2001 and 1.10.2004. It is also prayed that the respondents may kindly be directed to promote the applicant as HSG-II and HSG-I at par with his junior employees with all consequential benefits. The respondents may kindly be directed to pay the due amount together with interest at the rate of 12%. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

2. Pleadings of the parties may be summarized as follows:

It has been alleged by the applicant that he was initially appointed as Postal Assistant on 26.8.1975, afterwards selected by the DPC for the post of LSG Grade (TBOP) and HSG II (BCR) on the basis of seniority -cum-fitness with effect from 16.6.1990 and 1.1.2002 vide order dated 28.6.1990 and 27.3.2002.

He belongs to SC category. Although the applicant was promoted to the post of HSG I in the scale of pay of Rs. 5000-8000 but applicant was yet to be considered for promotion to the post of LSG (norm based) post in the pay scale of Rs. 4500-7000 along with other candidates. But promotion was granted by the respondent No.2 to the five candidates on the norm based LSG vide order dated 12.6.2003 with effect from 1.10.1991. The applicant challenged the order in OA 230/04 dated 23.6.2003 and the OA was decided vide order dated 26.8.2008 and the



respondents were directed to promote the applicant as LSG (NB) with effect from 1.10.1991 and the respondents issued letter to this effect on 4.3.2009. The juniors to the applicant namely Shri S.L.Meena and R.L.Yadav were granted promotion to HSG-II vide order dated 27.2.2009. According to the seniority list the name of the applicant appeared at Sl.No.27 while S.L.Meena and R.L.Yadav's names appeared at Sl.No.28 and 33 respectively. Although vide order of this Tribunal in OA 230/04 the applicant was granted LSG (NB) promotion with effect from 1.10.1991 but consequential promotion to HSG-II and HSG -1 has not been granted whereas the juniors were given promotion and the applicant is entitled to get promotion on the basis of reservation also. Many times the applicant requested the respondents to promote him at par with his juniors in the post of HSG-II and HSG-I but this relief was not granted by the respondents. Legal notice was served and the respondents gave reply to the notice and it was stated by the respondents that the claim of the applicant was rejected on the ground that the entitlement of HSG- II and HSG-I are not time bound promotion and it depends upon the vacancies in these cadres and also depends on good service record. The applicant had already put in satisfactory service and availed promotion on another post. Another legal notice was also sent. Vide order dated 7.1.2005 provision has been made to promote to *Completion*, HSG I after ~~completion~~ of 2 years service in HS- II and vide

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order dated 15.4.2005 it was provided to fill up the post of HSG- I among from HSG- II without minimum service as HSG-II and the applicant was so entitled to be promoted as HSG-I without any requirement of minimum service in HSG-II as the minimum requirement and is entitled to be promoted and the vacancies are existing. That one OP Jai was promoted as HSG II on 13.12.2006 and further promoted on the post of HSG-I after expiry of three months on 5.3.2007 and the applicant is also entitled for promotion. As the applicant has not been granted promotion, hence the OA.

3. The respondents filed counter reply and denied the allegations in the OA. It has further been alleged that the applicant was allowed TBOP with effect from 16.6.1990 and BCR with effect from 1.1.2002 on completion of prescribed length of qualified service. His case for selection to LSG post was submitted to the Regional Office, Ajmer along with other officials of Udaipur Division. A DPC was constituted on 3.6.2003 to 5.6.2003 to consider the selection of PAs/SAs of Post Offices/RMS on Southern Region for LSG (NB) posts. As per direction of the DG (Posts) Bench Mark as 'good' grading applies in the case of promotion in respect of selection cum seniority. The Members of the DPC considered the case of the applicant along with other eligible officials in the light of the above instruction. But he was not found fit as he was graded

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‘average’ during the year 1996-97 to 2000-01. The result of the DPC was communicated to the applicant. A representation of the applicant was received against the decision of the DPC and the case of the applicant was considered and the representation was rejected and was communicated to the applicant. OA 230/04 was decided by the Tribunal on 26.8.2008 and direction was given that the case will be considered by the review DPC in the light of the decision of the CAT and accordingly as per direction the case of the applicant was considered by the DPC and he was found fit for LSG (NB) post with effect from 1.10.1991 on notional basis and the information was given on 2.2.2009. A notice was received from Shri Vijay Mehta Advocate to grant promotion on HSGII and HSG- I cadre on 23.3.2009 to the CPMG, Jaipur. The R.O. informed vide letter dated 30th Nov 2009 that the case was sent to CO to consider the case of HSG-II and HSG-I vide letter dated 29.4.2009 and Shri Vijay Mehta was informed vide letter dated 8.5.2009 that HS- II and HSG- I are not time bound promotion and that depends upon eligibility which is three years continuous service in LSG (NB) cadre, availability of vacancy and good record of service of preceding five years and the case of the applicant will be considered as per its turn and the applicant challenged the order dated 18.5.2009 by filing the OA. A preliminary objection has also been raised by the respondents that the OA is barred as the applicant has not availed all the

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departmental remedies available to him and the OA is liable to be dismissed on this ground also. Further it is alleged that the OA lacks merits and to be dismissed.

4. Rejoinder affidavit as well as one additional affidavit has also been filed by the applicant and respondents which shall be considered at the relevant place. The applicant in the rejoinder reiterated the facts which has been alleged in the OA.

5. We have heard Shri Vijay Mehta advocate for the applicant and Shri Ankur Mathur proxy counsel for Mr. Vinit Mathur, advocate for the respondents and perused the entire records of the case. We have perused the relief clause of the OA. A prayer has been made for giving direction to the respondents to promote the applicant on the post of HSG-II with effect from 1.10.1994 and HSG-I with effect from 1.10.1997 and in the alternative relief has also been claimed to grant promotion as HSG-II and HSG-I with effect from 1.10.2001 and 1.10.2004 on par with his juniors with all consequential benefits. Annexure.A.7 is relevant to be perused in order to ascertain that what are the norms for considering the employee for promotion to the post of HSG-II and HS- I. It has been provided in Annexure.A7 for HSG-II --10 years in LSG for promotion through selection cum seniority (through the DPC)- – 8 years for selection through aptitude test. Learned counsel for the applicant on the strength of this Annexure.A.7 argued that earlier it was provided that for promotion to the post of HSG-II ten years

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service was required as LSG but learned counsel further argued that the respondents issued another order Annexure.A.8 providing the norms for filling up the norm based HSG-II posts. It is relevant to reproduce the relevant portion:

“References have been received from different circles explaining the difficulties being faced by them in filling up the vacant HSG-II (Norm Based) posts as eligible employees with 10 years regular service in LSG cadre are not available for promotion to HSG-II cadre under the said quota. The matter has been examined and it has been decided that the length of regular service in LSG cadre for promotion to HSG-II cadre against the seniority quota, only as an adhoc one time measure, would be three years. You are requested to process the cases of eligible officials for promotion to HSG-II cadre accordingly”.

6. It was issued on 12.7.2005. Hence the condition of ten years was relaxed and modified for three years for giving adhoc promotion. In Annexure.A.11 it has also been provided that how adhoc promotion shall be given for the post of HSG II.

7. It has been alleged by the applicant that earlier promotion was not granted to the applicant on the post of LSG norm based and the applicant had to file OA 230/04 in order to challenge the order dated 23.6.2003 and the OA was decided on 26.8.2008 and the respondents were directed to conduct a review DPC in order to grant promotion to the applicant as LSG (NB) with effect from 1.10.91. Respondents in the counter affidavit has specifically admitted that as per direction of the Tribunal a review DPC was constituted by the respondents and the case of the applicant was

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reconsidered by the DPC and in the review DPC the applicant was found fit for LSG (NB) with effect from 1.10.1991 on notional basis. Hence admittedly the applicant was granted promotion as LSG (NB) with effect from 1.10.1991.

8. Now the dispute is for not giving promotion to the applicant to HSG-II and HSG-I cadre. It has been alleged by the respondents that the case of the applicant was referred to R.O vide letter dated 29.4.2009 and thereafter the case was sent to C.O for consideration of the case of the applicant for promotion to HSG-II and HSG- I, that as per norms for promotion to the post of HSG-II and HSG-I time bound promotion is not to be given and the promotion depends upon the eligibility which is three years continuous service in LSG Cadre, availability of vacancies and good record of services and that the case of the applicant will be considered on his turn. Annexure.A.1 is the order passed by the respondents on the legal notice issued through Sri Vijay Mehta, Advocate.

9. It has been alleged by the applicant that juniors to the applicant were promoted on the above post. As per the seniority list the name of the applicant appeared at Sl.No.27 whereas the name of SL Meena and R.L.Yadav appears at Sl.No.28 and 33 respectively and that the junior employees of the applicant were given promotion on the post of HSG-II vide order dated 27.2.2009. Annexure.A.3 is the copy of the order dated 27.2.2009

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relating to promotion of Shri SL Meena and R.L.Yadav and others. But the specific case of the applicant is that he was senior to both these employees and instead of giving promotion to the applicant, they have been promoted. The learned counsel of the respondents argued that as per the norms a person who has put in 10 years in LSG will be given promotion on the post of HSG-II and it will be through selection cum seniority through the DPC. Undisputedly only the DPC will consider the case for promotion on the basis of selection cum seniority. It has not been provided that for conducting selection some written examination is to be taken. It is only service records which is to be considered. Learned counsel for the respondents argued that as the applicant has not put in the requisite number of years on the post of LSG hence he was not given promotion. Undisputedly the applicant was given promotion as per the direction of the Tribunal in OA with effect from 1.10.1991 on the post of LSG (NB). Alternative relief has also been claimed by the applicant that either he may be considered for promotion on the post of HSG-II and HSG-I with effect from 1.10.94, with effect from 1.10.1997 respectively but in the alternative it has been prayed that the promotion may be given to the applicant as HSG-II and HSG-I with effect from 1.10.2001 and 1.10.2004. Undisputedly the requisite qualification was also relaxed for giving adhoc promotion on the post of HSG-II to the employees who has put in three years service as LSG cadre may



be given promotion to HSG-II on adhoc basis provided employee has put in three years qualifying service and the promotion had already been given to the junior to the applicant.

10. It has been alleged by the respondents that applicant has not put in three years continuous service in LSG (NB) cadre and moreover it depends upon availability of vacancies and good record of service. On behalf of the respondents certain documents have been filed and from perusal of the documents it is evident that on 20.2.2009 an order was passed by the respondents in order to punish the applicant and awarded the punishment of stoppage of one increment for a period of six months without cumulative effect. The minutes of the DPC dated 13.2.2009 has also been filed.

11. It has been alleged on behalf of the respondents that as the applicant was on punishment on dated 13.2.2009 when the DPC was convened in order to consider the case of the promotion to the post of HSG-II and hence he was not given promotion, whereas it has been argued by the learned counsel for the applicant that according to the own document of the respondents it is evident that order of punishment was passed against the applicant on 20.2.2009 whereas the DPC was convened on 13.2.2009 and it was mentioned in the minutes of the DPC in front of the applicant that he was not promoted as he is under punishment. It appears strange that when the order was passed for punishment on

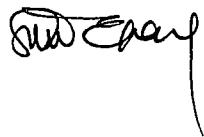
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20.2.2009 then how the applicant might have been superseded on 13.2.2009 by the DPC, prior to the passing the order of punishment and cognizance was taken by the DPC on 13.2.2009 it does not appeal to commonsense that prior to passing an order of punishment the order was communicated to the members of the DPC. Although it is a known proverb that sometimes "facts are more strange than fiction" but otherwise it appears unbelievable that prior to passing of punishment order on 20.2.2009, it was communicated to the DPC that punishment has been awarded against the applicant. Otherwise there was no reason in order to supersede the applicant on 13.2.2009. We have perused the comparative ACRs of the applicant and other employees above the applicant. The applicants name appeared at Sl.No.98 of the minutes of the DPC and according to this minutes of the DPC, 4 out of 5 good entries were recorded in the character roll of the applicant whereas for one year 2006-07 'average' entry has been awarded. Whereas in the case of Gopal Das appeared at Sl.No.97, there are three 'average' entries and two 'good' entries and in the year 2004-05 average as well as good entries were recorded in his character roll. But he was found fit for promotion whereas the applicant was not found fit for promotion irrespective of the fact that 4 entries were 'good' and one entry 'average'. The only reason for not giving promotion to the applicant was that he was under punishment. But on 13.2.2009 we are of the view that



there was no order of punishment existing against the applicant. We have considered the minutes of DPC regarding other entries and we are of the opinion that the entries of the applicant were not worse than the other candidates who were found fit. Hence in the DPC on 13.2.2009 the applicant ought to have been classified as fit. Moreover, it was only on 20.2.2009 when the punishment order was awarded whereas it was alleged by the applicant that he was fit for promotion on the post of HSG-II and HSG-I with effect from 1.10.1994 and 1.10.1997. But certainly the applicant is entitled promotion with effect from 1.10.2001 and 1.10.2004.

12. During arguments learned counsel of the respondents raised a preliminary objection. It has been argued that after the impugned order dated 18.5.2009 prior to approaching the Tribunal the applicant ought to have availed the alternative remedies available to him under the relevant serviced rules and as the applicant has not availed the alternative remedies, hence the OA is barred in view of the provisions of AT Act. It has been provided by Section 20 of the AT Act, 1985 that OA cannot be filed without availing the alternative remedies available as per service rules of the department concerned. But it has been provided that normally OA must not be entertained prior to availing the alternative remedies. In the present OA the order of punishment has not been challenged and only order passed on 18.5.2009 on the legal notice of the applicant has been challenged. Under these circumstances,



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we are of the opinion that it is not mandatory for the applicant to avail alternative remedies prior to approaching the Tribunal. It has not been provided in the AT Act that a person cannot approach the Tribunal without availing alternative remedies. Normally an employee must not approach the Tribunal prior to availing the remedies and in the present case it was not necessary for the applicant to approach the departmental authorities for redressal of his grievances.

13. Another preliminary objection has also been raised by learned advocate for respondents that applicant has alleged in the O.A that his juniors were given promotion superceding the applicant. Under these circumstances those juniors were necessary party to the O.A and the O.A is liable to be dismissed on the ground of non-joinder of necessary party. We have perused the contents of the O.A. From perusal of the contents of O.A, it is evident that no relief has been claimed against the juniors. Applicant only alleged that his juniors were given promotion, ignoring the claim of the applicant being senior to them. And this fact can be adjudicated even without impleading the juniors and without claiming relief. We are of the view that effective order can be passed without them. We disagree with the argument of learned advocate for respondents that O.A is bad due to non-joinder of necessary party.

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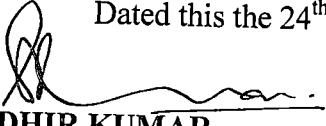
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14. For the reasons mentioned above, we arrived at a conclusion that there is discrimination in the case of the applicant in not giving promotion on the post of LSG, HSG-II and HSG-I. Promotion on the post of LSG (NB) was granted by the order passed in OA 230/2004 with effect from 1.10.1991 and thereafter the case of the applicant was not considered for promotion to the post of HSG -II. The DPC was convened on 13.2.2009 and on that date no order of punishment was existing against the applicant. The punishment order was passed on 20.2.2009 but surprisingly cognizance was taken by the DPC of the punishment order passed on 20.2.2009 in the meeting held on 13.2.2009. It does not appeal to commonsense and it appears that the respondents were prejudiced and biased from the applicant. Moreover as per the character roll entries, the applicant was fit to be considered for appointment to the post of HSG-II. OA deserves to be allowed.

15. OA is allowed. Respondents are directed to convene a review DPC in order to consider the case of the applicant for promotion on the post of HSG-II and HSG-I with effect from 1.10.2001 and 1.10.2004 or from the date when the juniors were promoted on the post. Applicant shall be promoted as per the existing rules. Respondents shall consider the case of the applicant for promotion by convening review DPC within a period



of three months in the light of observation made in the body of order. No order as to costs.


Dated this the 24th day of February, 2012
SUDHIR KUMAR
ADMINISTRATIVE MEMBER

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JUSTICE S.C. SHARMA
JUDICIAL MEMBER