**CENTRAL ADMINISTRATIVE TRIBUNAL**
**JODHPUR BENCH; JODHPUR**

**O.A.No. 150/2007 & O.A.No.102/2010**
**With MA 68/2010 in OA 102/2010**

**Reserved on: 16.7.2012** **Date of decision: 20.07.2012.**

**CORAM:**

**HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER**
**HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER**

OA 150/2007:

L.R.Gehlot S/o Shri Chimna Ram,
Resident of Parmanand Colony Deedwana,
Dist. Nagaur (Raj), at present employed
On the post of Asst.Post Master, Head
Post Office Deedwana, Distt. Nagaur. ....Applicant

(By Advocate Mr. JK Mishra)

Vs.

1. Union of India, through Secretary to the Government of India, Ministry of Communication& Technology, Department of Posts, Dak Bhawan, Sansad Marg,New Delhi.

2. Chief Postmaster General, Rajasthan Circle, Jaipur.

3. Post master General, Rajasthan Western Region, Jodhpur.

4. Superintendent of Post offices, Nagaur Division, Dist. Nagaur(Raj).

5. Pukhraj Sharma, Postmaster, Nagaur HO, Distt.Nagaur(Raj).

....Respondents

(By Advocate Mr. Vinit Mathur, ASGI through Advocates Mr.MS Godara and Ankur Mathur) (for R1.to 4)
None for R.5

OA 102/2010

Birma Ram Son of Shri Mani Ram,
Resident of Deep Colony, Mundwa Choraha,
Near Saini Bear Bar, Chenar, Nagaur-341001
Last employed on the post of HSG-II at
Merta-341510.

...Applicant

(By advocates Mr. JK Mishra & A.K.Kaushik)

Vs.

1. Union of India, through Secretary to the Government of India, Ministry of Communication& Information Technology, Department of Posts, Dak Bhawan, Sansad Marg,New Delhi.

2. Chief Postmaster General, Rajasthan Circle, Jaipur.

3. Post master General, Rajasthan Western Region, Jodhpur.

4. Superintendent of Post offices, Nagaur Division, Dist. Nagaur(Raj).

5. Pukhraj Sharma, Postmaster, Nagaur HO, Distt.Nagaur(Raj).

....Respondents

(By Advocate Mr. Vinit Mathur, ASGI through Advocates Mr.MS Godara and Ankur Mathur) (for R1.to 4)
None for R.5

**ORDER**

***Per: Dr.KBS Rajan, Judicial Member***

As the legal issue involved in the two cases is one and the same, the two O.As are dealt with by this common order. For the purpose of references, OA No. 150 of 2007 has been taken as the pilot case.

2. The applicant in OA 150 of 2007 joined the Department in June 1971. On completion of 16 and 26 years of service the

applicants had been conferred respectively with One Time Bound Promotion and HSG Gr. II under the Biennial Cadre Review. He had thus been placed on a scale of Rs.5000-8000 vide order dated 11/17-12-1997. From 2002, revised Recruitment Rules were framed for filling the post of LSG and HSG II. It was laid down that 33.34% of the vacancies were by promotion from Postal Assisstants who have put in not less than 16 years of service and the rest of 66.66% by way of Limited Departmental Competitive Examination from Postal Assistants who have put in not less than 10 years of service. The respondents have clarified that vacancies prior to the promulgation of the revised rules would be filled up by the then extant rules, while those which came into existence posterior to the promulgation of the Revised Recruitment Rules, would be filled up on the basis of the revised Recruitment Rules. The applicant was functioning in the Nagaur Division. It is the case of the applicant that Respondent No. 5 Shri Pukhraj Sharma, a junior to the applicant, but belonging to the Barmer Division, was afforded the norm based LSG and HSG II w.e.f. 01-10-1991 and 14-01-2007 respectively and when the applicant made representation for such a benefit, his claim had been rejected. Hence, he had filed this OA seeking the following reliefs:-

(i) That impugned orders dated 18.5.2007 and 1.5.2007 Annexure.A.1 and Annexure.A2 respectively may be declared ilegal and the same may b quahsed. The respondents may be directed to consider the case of applicant for norm-based promotion to the post of LSG/HSG-II on notional basis as per clarification mentioned in para 4(5) above and the relevant recruitment rules/instructions and also to the post of HSG-I and allow all consequential benefits at par with his next junior.

(ii) That any other direction, o· orders may be passed in

favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the cost of this applicaion may be awarded.

3. Respondents have contested the O.A. According to them, the main reason for Shri Pukh Raj Sharma having been promoted earlier to the applicant under the Norm Based Promotion was due to the fact that such a promotion had been Division based and vacancy existed in Barmer Division, where the said Pukh Raj Sharma was working. In regard to Nagaur Division, where the applicant was serving, as many as nine vacancies of LSG were filled up under the Norm Based Promotion Scheme and all those who were promoted were senior to the applicant. The turn of the applicant for promotion under the norm based scheme did not come by then. The comparison of the seniority by the applicant qua the fifth respondent has been on the basis of circle seniority, which was not the basis for working out the promotions to the post of LSG and HSG II.

4. The applicant has filed his rejoinder in which he has claimed that in so far as vacancies prior to the promulgation of revised Recruitment Rules were concerned, the respondents ought to have filled them up in accordance with the old rules but the Department had not undertaken such an exercise in so far as Nagaur Division is concerned. Year wise details of vacancies of norm based posts would clarify the issue. As regards promotion to the junior (Respondent No. 5), the applicant contended that as per Annexure A-6, nine individuals were promoted as LSG w.e.f. 01-10-1991 of whom six had retired during 2002 to 2005 and the said Private Respondent had been

promoted only in 2006. The applicant had been granted the norm based promotion only in 2007.

5. In so far as OA No. 102 of 2010, the applicant is identically situated as the applicant in OA No. 150 of 2007 and he has also drawn a comparison with Shri Pukh Raj Sharma, Respondent No. 5.

6. Counsel for the applicant argued that admittedly, the applicant had been senior to the fifth respondent, albeit both of them were working in two different Divisions. The seniority is circle based and not Division based. The error committed was that the vacancies prior to 2002 had not been filled up on the basis of the erstwhile Rules and vacancies for various years have been clubbed which is also illegal.

7. Counsel for the respondents, on the other hand contended that when the promotion to LSG under the norm-based scheme is on the basis of Division Seniority and when the applicant did not belong to go Barmer Division to which the private respondent belonged, there is no question of comparison of his case with the said Pukh Raj Sharma (R-5).

8. Arguments were heard and documents perused. To trace out the history, due to lack of promotional avenue, in 1983, One Time Bound Promotion Scheme was introduced and those P.A.s who had put in 16 years of service were granted one such promotion. Likewise, those who had put in 26 years of service were granted what is called Biennial Promotion Scheme, introduced in October, 1991. The applicants in both the O.As are beneficieries of the two schemes. In addition the normal promotion channel on the basis of seniority for a

certain percentage of vacancies and by Limited Departmental Competitive Examination (for the balance) was available. In 2002, the same had been revised in that the percentage of promotion by way of seniority and competitive examination underwent reverse change. Again, earlier the promotion was stated to be circle based upto **30-11-1983** – as could be seen from order dated 28 November, 2008 in OA No. 777 of 2007 of the Ernakulam Bench, while later on it was changed to Division based. When in some Division certain individuals due to certain fortuitous circumstances got promotion to LSG etc., they could be so permitted, even though they might be junior in the Circle Gradation list. However, later on, the circle seniority was restored w.e.f. **18-05-2006**. (It is presumed that the aforesaid dates 30-11-1983 and 18-05-2006 have been uniformly followed in all Circles). Thus, where initially and finally the circle seniority has been maintained and at the intermediate stage, it is the Divisional Seniority that ruled the fort, any benefit available to the junior during the time Divisional Seniority was in vogue would remain intact but after the circle seniority is restored, the position will have to be reviewed. This is the legal position as held by the Apex Court in the case of **Om Prakash Sharma vs Union of India (1985) Supp SCC 218**. where the facts are as under:-

> That was a case where, under the Divisional Electrical Engineer, there were three separate departments under his administrative control. Members of the staff of the three departments were borne on a common seniority list (comparable to Circle seniority in the instant case). In other words they were deemed to belong to one office in the matter of seniority and promotion. The three appellants in the aforesaid case since their entry into service were senior to Respondents 3 to 6 therin. For administrative convenience the Railway Administration

trifurcated the cadres . In other words, three units were separated from each other which resulted in each unit having its own seniority list (as has been done here, divisionwise) and the common seniority list (comparable to circule seniority here) became irrelevant from the date of the trifurcation. Respondents 3 to 6 belonged to the administrative staff in the department styled as the workshop. The result of the trifurcation was that the workshop staff including Respondents 3 to 6 on account of availability of vacancies in their office got some accelerated promotions in the cadre of head clerks. After a span of 23 years, Railway Administration reconsidered its earlier decision and the three former departments were amalgamated. In other words situation ante as on August 31, 1956 was restored, and members of the staff were brought on common seniority list cadre-wise. Consequent upon amalgamation in 1979 a fresh common seniority list was drawn up in which cadre-wise Respondent 3 was shown senior to Appellants 1 and 2 and Respondents 5, 6 and 9 were shown senior to Appellant 3. Obviously when the amalgamation took place, Respondents 3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed some accelerated promotion when workshop staff was amalgamated with the Bombay office. But when they were repatriated and re-amalgamated with original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This is not a case where appellants were passed over at the time of selection or denied promotion on the ground of unsuitability. In such a situation status quo ante has to be restored. Obviously Respondents 3 to 6 will be below the appellants and any other view to the contrary would be violative of Article 16 as it would constitute denial of equality in the matter of promotion. Therefore, the seniority list drawn up on a principle contrary to what is discussed herein was held by the Apex Court as bad in law and quashed.

9. In the instant case, Shri Pukh Raj Sharma, admittedly junior to the applicants in the two O.As, is stated to have been afforded two promotion – one in the level of LSG on 01-10-1991 and the other in the grade of HSG II on 14-01-2007. Thus, promotion to LSG is Division based while at the time when HSG II promotion was granted, the same is after the Circle based seniority was restored. If so, the

promotion granted to Pukh Raj Sharma on the basis of his date of promotion to the LSG post, cannot be sustained in view of Om Prakash Sharma's case (supra). This is the legal position as held by the Apex Court in the case of Om Prakash Sharma (supra).

10. In view of the above, interest of justice would be met with, if the applications are disposed of with a direction to the Chief Post Master General to undertake the exercise of considering the case of the applicants in the light of the above and if the junior had been promoted as HSG II ignoring the senior, on the basis of circle seniority, the senior i.e. the applicants in the two O.As should be considered for promotion at par with the junior, and promotion granted. In case, the applicants had already got the benefit of BCR w.e.f. a prior date than the date of promotion to HSG II of the junior, there would be no need for any exercise since the applicants' monetary benefit had already been availed of by them.

11. On thorough verification of the records in the light of the above, the applicants be informed of the decision of the respondents by a reasoned order. This order shall be complied with, within a period of six months from the date of receipt of a copy of this order.

12. In view of the reasons stated as aforesaid, MA for condonation of delay stands disposed of.

No costs.

COMPARED & CHECKED

(B K SINHA)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

CERTIFIED TRUE COPY
Dated 25.7.2012

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