CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application Nos.473/2011 & 474/2011
With
Misc. Application Nos. 189/2011 & 190/2011

Jodhpur this the 20th day of November, 2014

CORAM
Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)

G.C. Tak S/o Shri late Shankar Lal Ji, aged about 62 years, R/o 1/13 PHED Colony, College Road, Nagour, last employed on the post of HSG-II (Officiating HSG-I) at H.O. Nagaur.

.....Applicant in OA No.473/2011

R.N. Jat S/o late Shri Luna Ram Ji, aged about 63 years, R/o village Dholeraw Kallan, Post Morra Via Merta City, District Nagaur, last employed on the post of Sub Post Master at Krishi Upaj Mandi, Merta City.

.....Applicant in OA No.474/2011

By Advocate: Mr. J.K. Mishra.

Versus

1. Union of India through Secretary to the Government of India, Ministry of Communication & Info Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Postmaster General, Rajasthan Western Region, Jodhpur.
4. Superintendent of Post Offices, Nagaur Division, Disrict Nagaur (Raj).
5. Pukhraj Sharma, Postmaster, Nagaur HO, District Nagaur.

.....Respondents

By Advocate : Smt. K.Parveen, for respondents No.1to4.
None for respondent No.5

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

We are intending to dispose of these two OAs i.e. bearing OA No.473/2011 & 474/2011 by a common order, as these two OAs have involved one and some point or legal issues.

2. The applicant in OA No.473/2011, Shri G.C. Tak, was initially appointed as Postal Assistant at Marwar Junction on dated 17.04.1969. He was transferred to Nagaur in the year 1971 and he enjoyed the due benefits under Time Bound One Promotion (TBOP) Scheme and got promotion as Lower Selection Grade (LSG) w.e.f. 01.12.1992 on completion of 16 years of satisfactory service. He was granted the TBOP delayed as he was in defunct pay scale in between. The applicant also got the benefits of promotion as HSG-II in the pay scale of Rs.5000-8000 w.e.f. 01.07.1995 on completion of 26 years satisfactory service under Biennial Cadre Review (BCR) Scheme. The TBOP scheme was made applicable to operative cadres of post and Telegraph Department vide order dated 17.12.1983 and the scheme was given effect to from 30.11.1983. The Post Assistant who completed 16 years of service in the grade was placed in the next higher grade i.e. of LSG. Similarly, BCR scheme was introduced by the Department of Post in the year 1991 whereby after completion of 26 years of service a person could get next higher pay scale. The applicant got the due benefits of both these schemes as narrated above. As per the normal recruitment rules in force at the relevant time 1/3rd posts of LSG

norms based, were to be filled in by subjecting the eligible candidates to a Limited Departmental Competitive Examination and the rest of the posts i.e. 2/3, on the basis of the seniority-cum-fitness. The respondent department kept the recruitment rules in cold storage for 19 years after the above TBOP scheme of 17.12.1983 was issued. Norms based promotions were dispensed with and the benefits of next pay scales given under the aforesaid scheme were confused with and considered as norms based promotions. In this context, the department extended the benefits that under these scheme, a senior would be entitled for the same benefits from the date his next junior has been given such benefits, in case his next juniors has been allowed the same, irrespective of the fact whether such senior fulfilled the length of service criterion or not and therefore certain disputes started arising regarding the fixation of seniority and deployment of the persons on the supervisory posts. Then, the department issued revised guidelines on 17.05.2000, pointing out that placement under TBOP/ BCR Schemes are based on length of service and not on the criterion of seniority and seniority would not be disturbed due to grant of such benefits. Finally, the department authorities took recourse to reconcile the matter and issued revised recruitment rules for filling up the post of LSG and HSG-II on 24.01.2002 and it was laid down that for 33.34% promotion from Postal Assistant who have put not less than 16 years of service and rest 66.66% through LDCE from Postal Assistant who have put in not less than 10 years of service were required to considered. Later on, vide letter dated 12.11.2002 certain instructions were issued and thereafter another

clarification vide letter dated 28.01.2003 was issued. The extract of Point No.2 & 3 of the said clarification are reproduced as under:-

> "Point No.2- Since LSG/HSG-II Posts were filled up by posting according to Divisional/ Regional seniority respectively, whether all the posts filled by posting can now be filled up by promotion by seniority cum-fitness basis.
>
> Clarification.- Vacancies in norm-based LSG and HSG-II posts which existed prior to the notification of revised Recruitment Rules may be filled up notionally in terms of the relevant Recruitment Rules as envisaged in the instructions contained in the Department's letter No.4/16/2002-SPB-II, dated 12.11.2002. Vacancies in LSG and HSG-II posts that arose after the notification of revised Recruitment Rules on 07.02.202 will be filled up in terms of the provisions of the revised Recruitment Rules.
>
> Point No.3.- Whether the vacancies in LSG/HSG-II available prior to the date of issue of the amendment of Recruitment Rules can be filled up now by seniority cum fitness without any apportioning of vacancies as 1/3 or 2/3.
>
> Clarification.- Clarification referred to Item 2 above may be referred to."

From bare perusal of the aforesaid clarification it is clear that the vacancies that existed prior to the notification of revised Recruitment Rules for the post of norm-based LSG/HSG-II were to be filled up notionally in terms of relevant Recruitment Rules. Further the post of norm-based LSG was to be filled on the basis of Divisional seniority and that of HSG-II on the basis of Regional seniority. One Shri Pukhraj Sharma, respondent No.5, who was junior to the applicant, has been promoted to the norm-based LSG and HSG-II. The Benefits are to be granted to the employees as per the above clarification, but the Naguar Division made exercise and have extended the due benefits only one time w.e.f. 01.10.1991 vide letter dated 30.04.2004 and therefore respondent No.5 Shri Pukhraj Sharma being junior has been promoted earlier to the applicant. The respondent No.5 belongs to Barmer Division and the Barmer Division carried out the due exercise to implement the orders for norm-based LSG/HSG-II promotions on notional basis. The respondent No.5 has been promoted to

the post of norm-based LSG and HSG-II w.e.f. 01.10.1991 and 14.01.2007 respectively. Further, he has been promoted to the higher post of HSG-I in the pay scale of Rs.6500-10500 vide order dated 08.03.2007. An amendment was made in the year 2006 by which now vacancies of all the posts, including the post of norm-based LSG and HSG-II, arising after that amendment, are to be filled up by at Circle level. The official respondents have camouflaged the claims of applicant in particular and others in general, against the norm-based vacancies, which existed prior to the notification of revised Recruitment Rules of 2002 itself. The applicant was not promoted as per the instructions but was given benefits from later dates. The applicant was promoted on officiating basis to the post of HSG-I w.e.f. 26.04.2000 to his retirement but no officiating allowances has been paid to him. It has been further averred that it is amazing that no norm-based vacancy for LSG/HSG-II existed prior to the date of notification of revised Recruitment Rules, 2002, in Nagaur Division during a long period of 8 years. But the number of his juniors have been promoted to the post of HSG-I and the applicant has been superseded by them. In this application filed under Therefore, the applicant by way of this OA sought the following reliefs:-

"(1). 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/ instruction and also to the post of HSG-I and allow all consequential benefits at par with his next junior. The impugned orders dated 23.08.2007, 23.12.2008 and 06.03.2009 Annexure-A/1 and A/2, respectively may directed to be modified accordingly.

(ii) The respondents may be directed to produce the relevant filed in original containing the details of year-wise vacancies position for norm-based promotion to the posts of LSG and HSG-II, during the period from 30.11.1983 to 07.02.2002, in Nagaur Division.

(iii) That any other direction, or 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.

(iv) That the costs of this application may be awarded."

3. In OA No.474/2011, the other facts are similar except the date of appointment of the applicant. The applicant, Shri R.N. Jat, was initially appointed on the post of Postal Assistant at Barmer HO on dated 15.04.1970 and was transferred to Kuchaman in Nagaur District in the year 1971. The applicant enjoyed the due benefits under Time Bound One Promotion (TBOP) Scheme and got promotion as Lower Selection Grade (LSG) in the year 1986 on completion of 16 years of satisfactory service. Like Shri G.C. Tak applicant in OA No.273/2011, the applicant, R.C. Jat in OA No.274/201 has also been superseded by his juniors and therefore he has also sought the same reliefs as sought by the applicant, G.C. Tak, in OA No.273/2011.

4. By way of reply, the respondent department contested the OA. 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 Shri Pukh Raj Sharma was working. In regard to Nagaur Division, where the applicant Shri G.C. Tak 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.

5. In both the OAs, the applicants are identically situated persons as they have claimed the seniority over Shri Pukh Raj Sharma, respondent No.5, and Pukh Raj Sharma after retirement/ superannuation did not appear in the Court, therefore, is not represented by any person.

6. Heard both the parties. Counsel for the applicant contended that admittedly the applicants had been senior to the respondent No.5, albeit both of them were working in different division and the seniority is circle based and not Division based. It has been further averred that the error committed was that the vacancies prior to the year 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 and the respondent department ought to have filled up the vacancies from 1983 to 1991 as per the relevant rules.

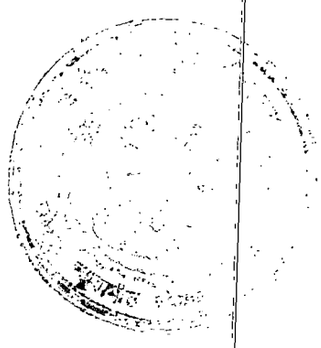
7. Per contra, counsel for the respondents contended that when the promotion to LSG under the norm-based scheme is on the basis of Division Seniority and when the applicant did not belong to go Barmer Division to

which the private respondent belonged, there is no question of comparison of his case with the said Pukh Raj Sharma, respondent No.5.

8. Arguments heard and documents perused. To trace out the history, due to lack of promotional avenues, in 1983, Time Bound One Promotion (TBOP) Scheme was introduced and those P.A.s who had put in 16 years of service were granted such promotions. Likewise, those who had put in 26 years of service were granted what is called Biennial Cadre Review BCR) Scheme which was introduced in October, 1991. The applicants in both the OAs are beneficiaries of the two schemes. In additional the normal promotion channel on the basis of seniority for a certain percentage of vacancies 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 promoted, 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. This is not only not disputed but the averment to that effect in para 6 of the petition has been admitted in the counter affidavit filed on behalf of the Railway Administration. It is again admitted that the three appellants since their entry into service were senior to respondents No. 3 to 6 therein. For the 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 seniority list (as has been done here, division wise) and the common seniority list (comparable to circle seniority here) became irrelevant from the date of the trifurcation. The unit No. 2 called the workshop was amalgamated with the office of the Chief Electrical Engineer, Bombay. That is not controverted. Respondent Nos. 3 to 6 belonged to the administrative staff in the department styled as the workshop. The result of the trifurcation and amalgamation of the workshop with the Bombay Office was that the workshop staff including respondent Nos. 3 to 6 were taken over on the seniority list maintained by the Bombay office. It is admitted that on account of availability of vacancies in the Bombay Office respondents No. 3 to 6 got some accelerated promotions in the cadre of head clerks. Surprisingly after a span of 23 years. Railway Administration reconsidered its earlier decision and detached the workshop staff from the office of the Chief Electrical Engineer, Bombay and brought it back to Jhansi and three former departments under Divisional Electrical Engineer 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. This factual averment is unambiguously admitted. Consequent upon amalgamation in 1979 a fresh common seniority list was drawn up in which cadre wise respondent No. 3 was shown senior to appellant No. 1&2 and respondents No. 5, 6 & 9 were shown senior to appellant No. 3. Obviously when the amalgamation took place, respondents No. 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 No. 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 would be bad in law and deserves to be quashed."



9. 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 above and if the junior had been promoted on the basis of circle seniority to LSG- I ignoring the seniors, the senior i.e. the applicants in the two OAs should be considered for promotion at par with the junior, and granted promotion. The respondents are further directed to review the promotion & seniority list from 1983 to 1991 of the Nagore Division in the light of the clarification dated 28.01.2003 and discussions made hereinabove. In case, if the applicants get any benefits for the period from 1983 to 2006 i.e. upto circle seniority coming into in force then their case be also considered though they have since superannuated. 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.

10. The directions shall be complied with, within a period of six months from the date of receipt of a copy of this order.

COMPARED & CHECKED

11. In view of the reasons stated as aforesaid, the MAs for condonation of delay stands disposed of. No order as to costs.

Sd

[Meenakshi Hooja]
Administrative Member

Sd

[Justice K.C.Joshi]
Judicial Member

CERTIFIED TRUE COPY
Dated 2/12/2014

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

3.12.14

8/12/14