

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.NO.430/2009**

*Tuesday* this, the 5<sup>th</sup> day of *January* 2010

**CORAM:**

**HON'BLE SRI GEORGE PARACKEN, MEMBER(J)**

**HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)**

K.Sasidharan Nair,  
Sorting Assistant (TBOP),  
HRO, Thiruvananthapuram(Retd.),  
Abhilash Sadanam,  
Perikavu, Peyad P.O.,  
Thiruvananthapuram.

.. Applicant

By Advocate :Sri Vishnu Chempazhanthiyil

vs.

1. The Senior Superintendent,  
RMS 'TV' Division,  
Thiruvananthapuram -36.

2. The Chief Postmaster General,  
Kerala Circle, Thiruvananthapuram.

3. Union of India, represented by the  
Director General,  
Department of Posts, New Delhi.

.. Respondents

By Advocate : Sri Rajesh for Mr. Sunil Jose, SCGSC

The application having been heard on 17.12.2009, the Tribunal on  
05.01.2010 delivered the following:-

**ORDER**

**HON'BLE MR.K.GEORGE JOSEPH, MEMBER(A):**

In this O.A. the applicant is aggrieved by the denial of benefits of Biennial Cadre Review (BCR- for short)scheme though he had completed 26 years of service and has sought a direction to the respondents to grant him the benefits of BCR on

completion of 26 years of service.

2. The applicant had joined the Postal Department on 4.11.1976. He was posted as Sorting Assistant with effect from 11.9.1981. He was given Time Bound One Promotion on completion of 16 years of service with effect from 12.10.1997. He retired from service on attaining the age of superannuation on 31.12.2007. Having completed 26 years of service on 10.9.07 the applicant became eligible for grant of pay scale equivalent to the pay scale of HSG-II as a benefit under the BCR Scheme, but he was not granted the same. Hence the O.A.

3. The issue whether the benefits under the BCR Scheme dated 11.9.1991 are to be granted from the date of completion of 26 years of satisfactory service or from the crucial dates of 1<sup>st</sup> January or 1<sup>st</sup> July, as the case may be, has been decided by the C.A.T., Lucknow Bench in A.L.Pal vs. U.O.I; 2002(1)ATJ 298 and by the C.A.T., Mumbai Bench in K.G.Patil vs. U.O.I; 2003(3) ATJ 594. It was held that the benefit of BCR Scheme is to be extended from the date the employee completes 26 years of service. Therefore the applicant argues that he is entitled to the benefits with effect from 10.9.2007 when he completed 26 years of service. His juniors have already been granted the benefits of the BCR.

4. The respondents contested the O.A. The conditions for BCR placement prescribe completion of 26 years of qualifying service which in the case of the applicant is 1.11.2007 after discarding the non-qualifying service. On the crucial date of review on 1.7.2007 the applicant had not completed 26 years of service. On the next date of review on 1.11.08 he had superannuated from service. Therefore the applicant was not granted the BCR placement. There was no willful negligence or omission on the part of the respondents in granting the said benefit to the applicant. However it was submitted that the applicant had completed 26 years of service in the cadre of Sorting Assistant on 10.9.07. The C.A.T., Lucknow Bench and Mumbai Bench have only ratified the stand of the respondents that BCR can be granted only on completion of 26 years of qualifying service. The averment of the applicant is that his juniors were granted BCR benefits overlooking his seniority. But only officials who have completed 26 years of service on the crucial dates of 1<sup>st</sup> July and 1<sup>st</sup> January and are in service

can be considered for the BCR placement. As such the applicant's prayers in the O.A. are devoid of any merit and the O.A. should be dismissed.

5. The applicant pointed out in the rejoinder that the term 'qualifying service' has never been used in the BCR Scheme at Annexure A7 which mentions only 26 years of satisfactory service as the criterion for being eligible. The judgment of the Hyderabad Bench of the C.A.T. covers the applicant.

6. Arguments were heard and documents perused.

7. The Biennial Cadre Review dated 11.10.91 extracted from Annexure A7 is as under:-

"No.22-1/89-PE.I

Dated 11.10.91

Sub: Biennial cadre reviews

For sometime past, the Staff Unions have been raising demand for granting two promotions to each employee during his service career. The Department had, in the first instance, considered the Time Bound one Promotion Scheme for basic operative Group 'C' and 'D' cadres after completion of 16 years of satisfactory service and implemented the same vide this office memo No.31-26/83-PE.I dt. 17.12.83. The Staff Unions have been pressing for acceptance of their demand for second Time Bound Promotion on completion of 26 years of service in the basic grade. After careful consideration, it has been decided that this concept is not acceptable.

2. However, with a view of providing relief to the employees, Government have accepted the need for Biennial cadre Reviews i.e.(once in two years) under which the incumbents of existing posts would be enabled to draw pay in higher scales on completion of 26 years of service, not only for providing promotional opportunities for the staff concerned but also on the basis of functional justification. While it is at the same time realized that in many case the officials concerned may continue to perform the same tasks even in the higher scale, efforts would be made to utilize them for providing better supervision and for dealing with work involving comparatively higher responsibilities and better skills. The following instructions are accordingly issued:-

(i) The Scheme will come into effect from 1.10.1991.

(ii) Biennial Cadre Reviews will be applicable for only those cadres in Gp.'C' and 'D' for which scheme of one Time Bound Promotion on completion of 16 years of service in the basic grade is already in existence vide OM dated 17.12.283 referred to in para 1 above.

(iii) Biennial cadre reviews will be conducted in respect of the eligible cadres at the level or authority who control these cadres.

(iv) The criterion for promotion will be eligibility of 26 years of satisfactory service.

(v) In the Biennial Cadre Reviews suitable number of posts will be created by upgradation by the Heads of Circles in consultation with their IFAs, subject to reduction by 1% in respect of operative posts and 5% in respect of Supervisory posts as mentioned in sub para (xi) below.

(vi) .....  
(vii) .....

(viii) The first Biennial Cadre Review for eligible officials may be conducted immediately and orders issued before 31<sup>st</sup> December, 91. Thereafter the Biennial Cadre Review for eligible officials covering the period from 1.1.92 to 31.12.93 who will be completing 26 years of service or more on the crucial dates viz. the date of the review 1.7.92, 1.1.93 and 1.7.93 may be conducted. The number of posts needed to be upgraded to provide for the promotions required immediately and on 1.7.92, 1.1.93 and 1.7.93 may also be worked out. With these posts it would be possible to provide promotion to those employees who have completed 26 years of service or more on the above crucial dates subject to their otherwise being found fit.

(ix) The 2<sup>nd</sup> Biennial Cadre Review, which will cover the period from 1.1.94 to 31.12.95 should be completed before 1.1.94. The required number of posts needed to be released in half yearly installments on 1.1.94, 1.7.94, 1.1.95 and 1.7.95 to provide promotion to those who would have completed 26 years of service on the four crucial dates will be ascertained and sanctions released in appropriate installments so that the promotions of eligible officials could be notified on due dates.

(x) Supervisory Special Pay/Special Allowance admissible to various cadres under one time bound promotion scheme will be abolished with the implementation of this scheme w.e.f. 1.10.1991. It is expected that those who are promoted to the HSG.II scale under this scheme on completion of 26 years service would take over the supervisory responsibilities hitherto performed by the LSG Supervisor. Further detailed instructions in this regard will follow.

(xi) Creation of posts by upgradation under the Biennial Cadre Review will be by matching savings to the extent of 1% cut on basic operative cadre and 5% cut on supervisory cadre. These cuts are in addition to the existing cuts of 5% on basic operative cadres and 15% in supervisory cadres under the First Time Bound Promotion Scheme.

(xii) Soon after implementation of the scheme by 31.12.91, the Circles

.5.

should furnish information regarding the number of posts of various categories that existed as on 1<sup>st</sup> October 91, the reductions that were effected on the strength of operative and supervisory posts in accordance with (xi) above, the number of officials who had completed 26 years of service in various categories for whom posts in higher scales were created and the net posts in the different scales that are in force as on 1.1.92. The information duly vetted by the IFA of the Circle may be furnished on or before 1<sup>st</sup> Feb. 1992.

3. The proposed scheme of promotion entails expenditures in excess of the savings offered by the Staff Side by way of increased productivity by reduction of 1% operative and 5% supervisory posts. In order to bridge the gap and also to improve productivity in the Department, the implementation of the scheme is subject to the condition that the Department introduces a phased programme of modernization through suitable technological inputs as also through simplification of procedures and review of existing work norms wherever considered appropriate. Therefore, the strength of Postal Assistants deployed at the post office counters as well as in behind the counter operations will be frozen at the existing level (less the reduction as now proposed) in all the post offices where multi-purpose counter machines or other technological inputs have been installed/ or are proposed to be installed. The implementation of the scheme is also subject to the condition that the operative strength of the Department would be kept frozen to the maximum extent possible by a judicious scheme of mechanization and computerization programme in other areas such as sorting in Sorting Offices, Savings Bank, P.L.T, Post Office Accounts and other operations.

4. The orders relating to reservation for SC/ST communities for promotion under this scheme, will be issued separately by the Staff Branch.

5. While the promotion in the first occasion will be in terms of the existing norms of seniority-cum-fitness subsequent promotions will be subject to some suitable evaluation procedure to be evolved in consultation with the Staff Side.

6. This issues with the concurrence of the Ministry of Finance and in consultation with Member(Finance), Postal vide his ID No.2739/91 dated 8.10.91.

7. Receipt of this letter may please be acknowledged.

8. Hindi version will follow.

Sd/-  
(M.L.Bhaskar)  
Asstt. Director General (PE.I)  
(emphasis supplied)

8. The scheme is formulated with a view to provide relief to the employees. Incumbents of the existing posts are enabled to draw higher pay scales on completion of 26 years of service, even though in many a case they may continue to perform the same task even in the higher scale. The criterion for promotion is 26 years of satisfactory service. Once in two years cadre review will be done by upgrading the posts to provide promotion to those who have completed 26 years of service or more subject to their otherwise being found fit. There will be a reduction of operative posts and supervisory posts and increase in the productivity through modernization, simplification of procedures and review of existing work norms wherever appropriate. Suitable evaluation procedure will be evolved in due course to replace the norm of seniority cum fitness for promotion. In short, the BCR is a benevolent scheme for providing a second promotion to the employees with 26 years of satisfactory service, to posts created by upgradation, with or without higher responsibilities, in required numbers, the expenditure for which is to be met by reduction of certain posts and by higher productivity through mechanization and streamlining of procedures and work norms.

9. Extreme rigidity in interpreting the terms of a beneficial scheme which suffers from lack of clarity can lead to denial of justice and destruction of the very purpose of the Scheme. It is not clear whether the date on which one completes 26 years is crucial or January 1<sup>st</sup>/ July 1<sup>st</sup> is crucial for the purpose of the Scheme. If the date of completion of 26 years is not more crucial than the other dates, the implementation of the Scheme as exemplified by this O.A. does injustice to those who complete 26 years of satisfactory service but superannuate between January 1<sup>st</sup> and June 30<sup>th</sup> and July 1<sup>st</sup> and December 31<sup>st</sup>. The applicant in this O.A. retired on 31<sup>st</sup> December and fell short by one day before the Administration could conveniently collect a number of cases for consideration as on 1<sup>st</sup> January. It will not be just and fair if his more than 26 years of satisfactory service counts for nothing in this beneficial Scheme.

10. It is contended by the respondents that officials who complete 26 years of qualifying service in the first half of the year will get upgradation with effect from the 1<sup>st</sup> July of the year and those who complete in the second half of the year will get with effect from 1<sup>st</sup> January of the following year. Although the applicant had completed 26

years of service in the second half of the year 2007 having superannuated on 31.12.07 he was not eligible for upgradation on 1.1.2008, but the concept of qualifying service is totally absent in the BCR scheme. The respondents are not justified in substituting 'satisfactory service' with 'qualifying service'. As contended by the applicant, qualifying service is completely different from satisfactory service. What is required for the benefits of the BCR scheme is 26 years satisfactory service, not qualifying service.

11. The Full Bench of the C.A.T., Chandigarh Bench in Piran Ditta & 25 Ors vs. U.O.1 & Ors.(O.A.No.7/JK/2003) has held that "The benefit under the Biennial Cadre Review scheme dated 11.10.91 is to be granted from the date one completes 26 years of satisfactory service". In doing so, the Full Bench relied on the decision of the Hon'ble High Court of Gujarat in Special Civil Application No. 5869/2001; Director and another vs. H.T.Tripathi and another, decided on 7.10.2002. The relevant extract from the judgment of the Hon'ble High Court of Gujarat approving the finding of the CAT, Ahmedabad Bench that employees were entitled to promotion under the BCR Scheme on completing 26 years of service, is reproduced below:-

" We have considered the contentions of the learned counsel for the petitioners carefully. The Tribunal found that it is the intention of the government to provide benefit of promotion under BCR Scheme with effect from the date the employee completes 26 years of service, provided he is otherwise found fit and the crucial date as prescribed in para-8 of the aforesaid Scheme is the only date on which the department is required to review the cases of such employees who would be completing or have completed 26 years of service on the crucial dates. The Tribunal has also found that if the contention of the petitioners is considered to be genuine, then it would amount to discrimination against the employee themselves as each one of them would be completing 26 years of service on different dates which would not be the intention of the Scheme. We have also found the intention in para 2 of the BCR Scheme relevant part of which is reproduced as under:

"However, with a view to providing relief to the employees, the Government have accepted the need for Biennial Cadre Review i.e. (once in two years) under which the incumbents of existing posts would be enabled to draw pay in higher scales on completion of 26 years of service, not only for providing promotional opportunities for the staff concerned but also on the basis of functional justification....."

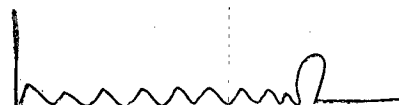
BCR Scheme does not provide the exact date from which the employees would be entitled for benefit either from the date on which they complete 26 years of service or from the date on which the review is held. One view has already been taken by the Tribunal and that view does not appear to be patently illegal or irrational to this Court. Hence, this Court does not think it proper to exercise its extraordinary discretionary jurisdiction under Article 226 of the Constitution. After going through the material on record and the submissions of the learned counsel for the parties, we find that the Tribunal has not committed any error and as such, we do not find any good reason for interference with the impugned order....."

12. We find that the O.A is fully covered by the above judgment of the Full Bench, Chandigarh and that the applicant is entitled to the benefits of the BCR on completion of 26 years of satisfactory service on 10.9.2007.

13. Accordingly the O.A is allowed. Annexure A7 order is set aside to the extent it denies the benefits of the BCR scheme to the applicant. The respondents are directed to include the name of the applicant in Annexure A5 list for grant of the BCR benefits with effect from 10.9.2007 and grant him all consequential benefits within three months from the date of receipt of a copy of this order. No order as to costs.



(K. GEORGE JOSEPH)  
MEMBER(A)



(GEORGE PARACKEN)  
MEMBER(J)