

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 296/93

Wednesday, this the 19th day of January, 1994

**SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER(A)**

1. V.M.Sukumaran,
LSG Sorting Assistant,
HRO, RMS, Cochin-16.

2. C.K.Mammen, -do-

3. M.K.Gopi, -do-

4. C.R.Devaki, -do-

5. C.R.Sarojini, -do-

.. Applicants

By Advocate Shri M.Paul Varghese

V/s

1. Senior Supdt. of RMS,
RMS EK Division, Kochi-11.

2. Post Master General,
Central Region, Kochi-16.

3. Chief Post Master General,
Kerala Circle,
Trivandrum-33.

.. Respondens

By Advocate Shri S.Krishnamoorthy, ACGSC.

ORDER

N. DHARMADAN

Applicants are LSG Sorting Assistants in the Postal Department. All of them belong to ST community. They are aggrieved by the denial of next higher grade under BCR scheme and promotion on the basis of the orders relating to reservation for SC and ST.

2. The facts are as follows: Five applicants jointly filed this application. The first applicant joined the Department as Group 'D' on 30.11.68. He was promoted as Sorting Assistant on 1.5.73. Applicants 2, 3 and 4 joined directly as Sorting Assistants on 1.6.73, 1.8.73 and 5.10.73 respectively. All of them have continuous service

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and fully eligible for getting promotion under the TBOP Scheme and they were actually promoted w.e.f. 29.5.89, 5.6.89, 12.8.89 and 30.12.89 respectively. The Government evolved a further beneficial promotion scheme with the label BCR. It was brought into effect w.e.f. 1.10.91. The scheme is produced as Exhibit-R1. This scheme would be applicable to Group 'C' and 'D' cadres. The relevant provision of the scheme is as follows:-

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

In accordance with the provisions contained in Exhibit-R1 scheme, a further letter Annexure-I was issued on 5.12.91 stipulating the conditions for the grant of promotion to the reserved communities, SC & ST. The full text of the letter is extracted below:-

" I am directed to refer to this office letter dated 22-1/89 PE-1 dated 11.10.91 vide which Biennial Cadre Review was introduced and the incumbents of existing posts would be enabled to draw pay in higher scales on completion of 26 years of service in the time scale. In para 4 of the letter it has been mentioned that the orders relating to reservation for SC/ST communities for promotion under this scheme will be issued separately.

The matter has been examined. A special 40 point roster applicable to promotion should be maintained for promotion under the Biennial Cadre Reviews. If sufficient number of candidates belonging to SC/ST communities having 26 years of service do not become available for promotion against the points reserved for them in the 40 point roster, to the extent of shortfall SC/ST candidates will be given promotion even if they do not have 26 years of service subject to the condition that they have rendered minimum period of service laid down in the relevant recruitment rules which were operative before the introduction of the scheme."

(Emphasis is ours)

3. It is clearly stated in the scheme that the criteria for promotion will be completion of 26 years of service. So an eligible officer, who has in his credit 2 /satisfactory service, will normally get promotion. If sufficient numbers of SC/ST candidates with the requisite period of service are not available, the shortfall vacancies would be filled up with SC/ST candidates who have not completed the required period of service, subject to the condition that they have satisfied the minimum service

for promotion under the "relevant recruitment rules which were operative before the introduction of the scheme". Only emphasis is on the recruitment rules in force at the relevant time of introduction of this scheme, which came into force on 1.10.91. It does not make mention of any other condition for officers belonging to SC and ST communities are concerned for getting promotion under the scheme. So they need not satisfy any other condition other than the condition mentioned in the scheme. Forty point roster is to be applied to the extent of shortfall vacancies of SC and ST if they do not have 26 years of service which is prescribed as a minimum period for getting promotion. Under these circumstances, the provision in the scheme can only be supplemented by the relevant recruitment rules which are in force before the introduction of the above scheme.

4. After introduction of the scheme, respondents have issued Annexure-II order dated 8.6.92, by which 89 persons were promoted. But no ST candidate was included in the list applying the provisions of Annexure-I.

5. The first applicant filed Annexure-III representation before the 2nd respondent on 12.7.92. Similar representations were filed by other applicants as well. In the representations, they have stated that even though they have satisfied the requirements and rendered the minimum service required for getting the benefit of the scheme, they were not considered. The Department also issued subsequent promotion order, Annexure-IV, on 20.1.93. In that list also No ST candidate was included; Nor did the respondents consider the applicants for inclusion in that list even though they are fully qualified and eligible for promotion. In fact, ST candidates were ignored. It is under these circumstances that they have jointly filed this application with the following prayers:-

- " (i) Direct the respondents to promote the applicants to the next higher grade, in the pay scale Rs.1600-2660, with effect from 1.10.91, under the Biennial Cadre Review Scheme, relaxed as per Annexure-I, with all consequential benefits including arrears of pay.
- (ii) Issue such other reliefs as may be prayed and deem fit by this Hon'ble Tribunal.
- (iii) Grant the cost of this Original Application."

6. The case of the applicants is that if Annexure-I is read with Exhibit-R1 scheme, the applicants would be eligible for getting benefit of the promotion under the scheme. They have satisfied all the requirements under the scheme read with Annexure-I and the recruitment rules in force for getting promotion.

7. The respondents have relied on an earlier executive order, Exhibit-R2, dated 7.2.86 and imposed a restriction on the eligibility. According to the same, for getting promotion for the lower selection grade officers (LSG) to Higher Selection Grade-II (HSG-II), they should satisfy an additional requirement on completion of three years continuous service in the grade of LSG cadre for making them eligible for promotion. The relevant clause in Exhibit-R2 reads as follows:-

"11(1) In case of transfers they will rank below the promotees selected during that year of recruitment.

For the purpose of determining eligibility of a Lower Selection Grade official for promotion to HSG-II a LSG official will require to render 3 years continuous service in the grade. Immediate necessary action may kindly be taken for implementation of these orders."

Respondents have also relied of Annexure-R4, a subsequent order issued by the Director General dated 22.2.93 pertaining to promotion under the BCR scheme and reservation in favour of SC and ST employees. According to the respondents these two executive orders, Annexures-R2 and R4 would apply and the ST candidates, who got a promotion under the TBOP scheme and became LSG should complete three years continuous service in LSG cadre for getting further promotion under Annexure-R1 BCR Scheme.

8. The learned counsel for the applicant submitted that Annexure-R2 order has no application to promotion of ST officers under BCR Scheme. It was issued as a general executive ^{order,} in connection with the preparation of gradation list of LSG. The subject shown therein is "Divisionalisation of LSG Cadre - Preparation of Gradation list - Principles to be adopted". It cannot be read along with Annexure-R1 scheme as "a recruitment rule" so as to restrict the eligibility for promotion from the cadre of LSG to HSG.

9. There is considerable force in the submission. Annexure-R2 cannot be treated as Recruitment Rules as referred to in Annexure-I extracted above. The subject referred to therein makes it clear that it was issued for a limited purpose of meeting the contingency ^{of preparing a seniority list.} Para 2 of the said order makes it very clear that it would not apply to promotions. The relevant portion is extracted below:-

"2. As a result of the above instructions there will be more than one lower Section Grade Cadre in a Circle. Thus for promotion to HSG.II instead of one LSG cadre there will be more than one feeder LSG and, it would, therefore, be necessary to lay down certain principles of preparing a combined Circle Seniority list of Lower Selection Grade Officials for that purpose. In view of the above it has now been decided to adopt the following principles for the drawing up combined LSG seniority lists at the Circle level."

BCR scheme in Annexure-R1 can be supplemented with 40 point Roster and Recruitment Rules in force at the time of introduction of the scheme, Annexure-R2, is not at all Recruitment Rules. Relevant Recruitment Rule is included in P&T Manual, Vol. IV. Rule 272-B reads as follows:-

"272-B(3) Promotion to the Higher Selection Grade in the Railway Mail Service in the General line (i.e. excluding posts of Assistant Superintendents) is made from the Lower Selection Grade in order of seniority subject to the rejection of the unfit. Out of every five vacancies, the first four are filled from the Lower Selection (General Line) and the fifth from Lower Selection Grade Accountants. Short term vacancies of not more than one month's duration are filled in accordance with Rule 50 above, and short term vacancies of more than one month's duration but not more than four month's duration are filled by promotion of officials of the cadre to which the respective incumbents vacating the posts belong."

This rule will apply for promotion for it can be treated as Recruitment Rule in force at the time of introduction of BCR scheme. The respondents have no case that this is not Recruitment Rules and that the same would not apply to promotion under BCR Scheme.

10. The contention of the respondents that Annexure-R4 would apply for promotion cannot be accepted. The same reasons by which we rejected the contentions of the respondents that Annexure-R2 will apply for promotion under BCR scheme can be adopted for holding that Annexure-R4 would not apply. If at all for arguments sake it is conceded that Annexure-R4 applies to promotion under BCR scheme, we are of the view that it has only prospective operation and same cannot be applied to the applicants for their promotions under BCR Scheme.

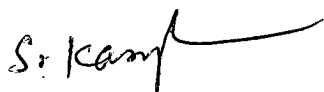
11. As indicated above, if Annexure-I is supplemented with the Recruitment Rules in P&T Manual as extracted above, a candidate in the feeder category for getting promotion to HSG under BCR Scheme need only satisfy the seniority and fitness. He can be considered for promotion under BCR Scheme on the basis of seniority subject to rejection of unfit. In this view of the matter, we are fully satisfied that the applicants are eligible for promotion under Annexure-R1 BCR Scheme, if they satisfy the above requirements. Under these circumstances, the denial of promotion to the applicants, according to us, after applying the provisions of Annexures-R2 and R4 would be illegal and unsustainable.

12. In the result, we are of the view that this O.A. is to be allowed. Accordingly, we declare the eligibility of the applicant for promotion and allow the application. We further direct the respondents to consider applicants for promotion in the next higher grade of HSG in the scale

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of Rs.1600-2600 w.e.f. 1.10.91 under the BCR Scheme (Annexure-R1) read with Annexure-I as interpreted above, with all consequential benefits, if necessary by holding a review DPC in this behalf. The above directions shall be implemented within a period of four months from the date of receipt of a copy of this order.

13. The O.A. is accordingly allowed to the above extent. There will be no order as to costs.



(S.KASIPANDIAN)
MEMBER(A)



(N.DHARMADAN)
MEMBER(J)

v/-