

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.399/2007

Reserved on 28.08.2014.

Pronounced on 15th September 2014.

**HON'BLE MR. NAVNEET KUMAR, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Nishakant Srivastava aged about 63 years S/o Sri Ganesh Prasad Srivastava R/o 123, Jail Road Pratapgarh (U.P.) Retired S.Pm. Lalganj (PTB).

...Applicant.

By Advocate: Sri R.S Gupta.

Versus.

1. Union of India, through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Chief Postmaster General, U.P., Lucknow.
3. Senior Superintendent of Post Offices, Pratapgarh.

...Respondents.

By Advocate: Sri K.K. Shukla.

O R D E R

Per Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“(a). That this Hon'ble Tribunal may kindly be pleased to quash the orders dated 29/9/1996 and 2/3/2007 as contained in Annexure No.1A and AB and direct opposite parties to promote the applicant to HSG I and HSG II cadre w.e.f. the date juniors to the

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applicant were promoted to HSG I/ HSG II cadre alongwith arrears of pay and allowances with effect from the same date with interest @ 18 % cumulative.

(b). Pay all arrears of retiral dues including pension alongwith cumulative interest @ 18% on such arrears.

(c). Any other relied deemed just may also be allowed in favour of applicant with heavy cost over the opposite parties.”

2. The facts of the case as averred by the applicant are that he joined as Postal Assistant (PA) on 28.06.1963 and was confirmed on 01.08.1967. He passed LSG (NB) higher grade examination under the 1/3 quota of the vacancies in the year 1977-78 and was promoted to LSG cadre vide order dated 27.11.1982. The applicant's name was omitted from the Circle Seniority /Gradation List of LSG cadre of 1985. The same was corrected vide CPMG, U.P. order dated 02.07.1992 but the same was communicated to the applicant by CPMG letter dated 02.03.2007 (Annexure-18). The seniority of P.As. who had joined after 22.12.1959 was to be fixed accordingly to the date of confirmation as P.As. and thereafter in the LSG cadre on the basis of seniority in the P.A. cadre. Moreover, financial up-gradation has no bearing over his seniority in LSG (NB) cadre. The name of the applicant has been wrongly fixed at Serial No.940-A below the name of Chandra Pati Upadhaya at Serial No.940 and above Sri Babadin at Serial No. 941 in the seniority list for LSG cadre. The name of the applicant should have been at Serial No.902-A below the name of Sri K.P. Sahu, confirmed as PA on 01.07.1965 and above the name of Sri Ram Ram-I at Serial No.903 in Circle Gradation List as the date of his confirmation as PA is 01.08.1967 (Annexure -2). This wrong fixation of seniority resulted in

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loss of seniority and denial of promotion to HSG-II NB and subsequently to HSG-I post.

3. By the order dated 05.03.2002 (Annexure-6) many persons who were juniors to the applicant even in the amended (although defective) LSG Gradation List of 1985 have been promoted, who joined on 16.11.1964. For example all persons from the serial no.39 (Yugal Kishore) to 87 (B.L. Kumar) even eligible for promotion to HSG-II BCR from 01.07.1992 and if juniors were promoted w.e.f. 01.07.1992 to HSG-II, they cannot rank senior to applicant promoted from the same date BCR Financial up-grading in the matter of seniority in the LSG (NB) cadre K.S. Pandey was promoted to HSG-II (NB) cadre w.e.f. 09.08.1989 and to HSG-I cadre w.e.f. 17.05.1996. He is entitled to HSG-II above Sri Pandey w.e.f. 09.08.1989 and to HSG-I cadre w.e.f. 17.05.1996. The applicant made number of representations to the respondents but could procure the impugned order dated 29.09.2006 and 02.03.2007 with lot of difficulty. The basic ground for challenging the impugned order is (a) applicant is senior to Sri Yugal Kishore at Serial No. 39 the Memo dated 05.03.2002 ordering their promotion to HSG-I cadre. (2) the applicant cannot rank junior to Sri K.P. Pandey as he joined as Postal Assistant on 07.10.1964 and confirmed on 10.04.1968.

3. The respondents have filed their reply denying the claim of the applicant stating therein that the applicant was confirmed as PA w.e.f. 01.08.1967. After qualifying examination of LSG, he was approved for promotion vide order dated 27.11.1982 but his name was inadvertently

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omitted in the Circle Gradation List of LSG cadre issued on 31.12.1985. Against the said omission the applicant had preferred a representation, which was duly considered and his name was inserted in the Circle Gradation List of 1985 at Serial No.940-A by the amendment letter dated 2.7.1992 (page-13 of the OA) and copy of this Memo was given to the applicant also as is clear from the endorsement made. The applicant completed 26 years of service on 27.02.1990. His case was submitted for consideration of promotion to HSG-II but he was not found fit for promotion under BCR scheme due to "Censure" entry given to him vide letter dated 15.5.1990, which has been finalized by Memo dated 27.10.1990. Subsequently, his case was again considered for promotion under BCR scheme in the year 1991 and he was finally cleared for promotion w.e.f 01.07.1992 for HSG-II cadre. He could not be considered for promotion to HSG-I cadre as he retired on 28.02.2004. He was placed at Serial No.872 in the Circle Gradation List of HSG-II/PA (BCR) cadre circulated vide letter dated 17.09.2002. In this list the applicant was junior to those who were promoted to HSG-II (BCR) w.e.f 01.10.1991 such are Yugal Kishore and B.L. Kumar prior to the applicant were placed at Serial No.141 to 270 respectively Sri K.S. Pandey having been promoted to HSG-I cadre earlier was placed at Serial No.161. It is admitted that the applicant was senior PA in LSG cadre but due to promotion in HSG (BCR) cadre ahead of the applicant he gain seniority in HSG-II cadre. Further, no person junior to him in HSG-II cadre was promoted to HSG-I cadre.

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4. The applicant has filed a Rejoinder reply more or less reiterating his contentions as raised in the OA.

5. During the course of hearing the learned counsel for the applicant cited the following cases:-

(i). In **O.A.No.327/1991 decided by Madres Bench of this Tribunal on 30.07.1993 in the case of V. Subbiah v. The Tamil Nadu Government and Union of India** wherein, it was held that when legitimate claim for promotion left out to be considered in time, same to be allowed from retrospective due date with revision of pensionary benefits, through only notionally.

(ii). In **O.A.No.1088/1988 decided by CAT, Principal Bench, New Delhi on 05.01.1993 in the case of Manga Ram Vs. Delhi Administration and Others** wherein, it has been held that when promotion is denied due to administrative lapse to include name in the seniority list, official entitled to same from the date his juniors is promoted with consequent pay fixation.

(iii). In **O.A.No.1410/1995 decided by CAT, Ernakulam Bench on 08.02.1996 in the case of S.M. Nazeur vs. Union of Indian and Others** wherein the respondents were directed to grant applicants" seniority with reference to their initially date of appointment.

(iv). In **O.A.No.1083/1988 decided by CAT, Alahabad Bench on 05.07.1989 in the case of K.S. Pande vs. Union of India & Others** wherein in a similar case HSG

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(NB) promotion as against BCR financial up-gradation the Tribunal had held the following:-

“Para-9.

We accordingly allow the petition and direct the Respondents to refix the seniority of the Applicant by absorbing hi in the vacancies of 1979 against 1/3rd selection quota with all consequential benefits in the light of the observations made above. The compliance of this order be made within 3 months from the date of its communication. The parties are directed to bear their own costs.”

(v). In **O.A.No.954/1996 decided by CAT, Allahabad Bench on 29.01.2002 in the case of K.S. Pandey vs. Union of India & Others** wherein in the Tribunal had held the following:-

“Para-3

The grievance of the applicant is that he has not yet been promoted and thus he was compelled to file this OA in 1996. The claim of the applicant has been resisted by the respondents by filing counter affidavit. In para-17 of the counter affidavit, it has been stated that Shri Laloo Lal Gupta was promoted to HSG-II cadre in compliance of the directions of the Tribunal in OA 302 of 1993, who is also senior to the petitioner in General line cadre. In that connection the representation of the petitioner was under consideration, but in the meantime he filed claim petition before the Tribunal and hence the matter has become sub-judice and no action could be taken by the respondents. From the averments made in para 17 of the counter affidavit it is clear that the respondents are considerate and want to promote the applicant for which he may be legally entitled under rules, which was also the direction of this Tribunal in OA 320 of 1990.

4. For the reason stated above, we dispose of this O.A. with the direction to respondent no.2 to consider the claim of the applicant for promotion in accordance with rules expeditiously, in any case within 4 months from the date copy of this order is filed.

5. There shall be no order as to costs.”

(vi). The **Hon’ble High Court of Lucknow Bench in the case of Brig. R.N. Srivastava vs. Survey of India and Others reported in [(1998) 3 UPLBEC1748]** in which

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the senior officer was denied his benefit and juniors were promoted such promotion would held discriminatory.

(vii). Union of India & Others vs. K.V. Jankiraman & Others reported in JT 1991 (3) S.C.-527.

6. We have heard the learned counsel for both the parties and perused the entire material available on record.

7. The applicant has claimed his promotion to HSG-II cadre w.e.f. his junior one K.P. Panddy, who had been given promotion on 09.08.1989 and to the level of HSG-I w.e.f. 17.05.1996 again on the analogy of date of promotion of K.P. Pandey.

8. The applicant has averred that omission to treat him at par with his immediate junior K.S. Pandey arrived from erroneous seniority list of LSG as was drawn-up in the year 1985. Initially, his name was missing from the Gradation list of LSG as on 11.12.1985. He made his representation and a corrected list dated 31.12.1985 had been issued placing him at Serial No.940-A below the name of Sri C.P. Upadhayay at Serial No. 940 and above Sri Babadeen at Serial NO.941. The applicant has averred that this seniority list was made available to him only in answer of his RTI application by an order dated 2.3.2007 and therefore, the question of any kind of limitation with regard to seeking condonation in this matter does not arise. The respondents have conceded that the fact that initially the name of the applicant was missing from the LSG cadre list but subsequent based on

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his representation of the applicant the same was corrected by an order dated 2.7.1992. The order reads as follows:-

"DEPARTMENT OF POSTS INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL, U.P.
CIRCLE, LUCKNOW.

Memo No.STA/39-RN/90/7 Dtd. at Lw-226001 the 02.07.1992.

Sub:-Representation of Shri N.K. Srivastava, LSG official of Pratapgarh Dn. for inclusion of his name in the CGL 1985 of LSG cadre.

Shri N.K. Srivastava, LSG official of Pratapgarh Dn. Was approved for promotion to LSG cadre under 1/3 quota of the vacancies for the year 1980 vide C.O. Memo No.STA/12-XA/LSG/1/3rd/79/80/7 dated 27.11.1982, but his name was omitted in CGL of LSG cadre issued on 31.12.1985. The official represented against this omission and his representation was duly considered it has been decided that the name of the official may be inserted in the CGL 1985 at serial no.940 A i.e. below the name of Shri C.P. Upadyay of Azamgarh Dn. at serial 940 and above the name of Shri Baba Deen of Faizabad Dn. at serial 941.

Necessary correction in eh CGL/DGL may be made accordingly.

(J.S. Tewari)
APMG (Staff)
For Chief Postmaster General, U.P.
Circle Lucknow-226001.

Copy to:-

1. Shri N.K. Srivastava, LSG official Prapatgarh Dn. (Through SSPs Pratapgarh Dn.).
- 2-4. SSPs Pratapgarh/Azamgarh/Faizabad Dns.
5. P.M. Pratagarh, S. Block of the official is also enclosed herewith.
6. DC-2 STA Section C.O. Lucknow.
7. Office Copy.
8. Spare."

9. The applicant by means of this OA stated that he has no prior knowledge till 2007 of the seniority list. Although, in his rejoinder reply, he has not made a specific denial on the contention of the respondents that this order was intimated to him. Moreover, the law of

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probability goes against him. Having made a representation against an erroneous seniority list as circulated in 1985-86, the applicant would be excepted to be vigilant with regard to the out-come of his representation made for making an appropriate correction in the seniority list. The applicant has challenged this seniority list as fixed above Sri Babadeen and below Sri C.P. Upadhayay at serial no. 940 and 941 respectively. **In S. Subramanian vs. The Joint Registrar of Co-operative Societies, Sivagangai Region, Madurai Road, Sivagangai, reported in 2007 (1) CTC 296 = 2007 (1) LLN 410**, a Division Bench of Hon'ble Madras High Court, considered a question of revision of seniority after a long time, after advertizing to the pleadings, at paragraph 10 of the judgment, the Division Bench has held as follows:- "..... When such seniority is fixed and the appellant having failed to question the same, till an order was issued, he cannot question the settled seniority after a long period." The Hon'ble Division Bench has further held that "it is well settled that in the matter of seniority and promotion, the settled position cannot be unsettled, after a lapse of long period. Once we come to the conclusion, the claim for seniority cannot be entertained after a lapse of 10 years. In that view of the matter, we are not inclined to go into the other questions."

10. In B.S. Yadav vs. State of Haryana, reported in 1980 (Supp) SCC 524, the Supreme Court considered the retrospective operation of the rule, which affected the seniority. While considering the said issue, that was the matter pertaining to Judicial Service and while

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addressing the retrospective effect of the rule, the Supreme Court, at paragraph 78, has observed as follows:- "We do hope that the State Government will apply their mind more closely to the need to amend the Service Rules of the Superior Judiciary and that the rules will not be tinkered with too often. It should also be realised that giving retrospective effect to the rules creates frustration and discontentment since the just expectations of the officers are falsified. Settled seniority is thereby unsettled, giving rise to long drawn-out litigation between the promotees and direct appointees. That breeds indiscipline and draws the High Court into the arena, which is to be deprecated."

11. In Bimlesh Tanwar vs. State of Haryana, reported in 2003 (5) SCC 604, the Supreme Court has observed that seniority is not a fundamental right. It is merely a civil right. Inter se seniority of the candidates who are appointed on the same day would be dependent on the rules governing the same. In the absence of rules governing seniority an executive order may be issued to fill up the gap. Only in the absence of a rule or executive instructions, the court may have to evolve a fair and just principle which could be applied in the facts and circumstances of the case.

12. In H.S. Vankani v. State of Gujarat, reported in (2010) 4 SCC 301, taking note of the legal principles reiterated by the Apex Court in **Union of India v. S.K. Goel, reported in 2007 (14) SCC 641 = 2009 (1) SCC (L&S) 873**, **T.R. Kapoor v. State of Haryana, reported in 1989 (4) SCC 71 = 1989 SCC (L&S) 636** and **Bimlesh Tanwar vs. State of Haryana, reported in**

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2003 (5) SCC 604, at paragraphs 38, and 39, the Supreme Court has held as follows:-

“38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum- seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action.”

13. Moreover such revision of seniority even in when the applicant has retired and any benefit so accruing will

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be notional the applicant would be required to impleadment all such persons, whose seniority likely to be over-set by inserting the name of the applicant in the seniority list. Therefore, this O.A. is liable to be dismissed on the ground of non-joinder of necessary parties also.

14. The applicant has claimed his promotion w.e.f. the date of his juniors. Section-21of the Administrative Tribunals Act, 1985, which reads as under:-

“21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or

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clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

15. The applicant has no explanation for seeking promotion w.e.f. 1989 when his alleged junior K.S. Pandey was promoted to HSG cadre and HSG-I cadre w.e.f. 17.6.1996. Even if for a moment it is held that the seniority list was not in his knowledge but being convinced of his seniority it was open to the applicant to seek promotion at par with his junior in 1986 itself. The applicant has filed this OA without any application for condonation of delay or any kind of explanation for the same. Apart from this he has made only routine statement in para-3 of the OA in which the applicant declared that application is within the limitation period prescribed in Section -21 of the Administrative Tribunal Act, 1985 and a general statement that he gave representation to the respondents. **The Hon'ble Supreme Court in the case of S.S.Rathore Vs. Union of India & Ors, AIR 1990 SC 10** has held that the repeated representation does not extend the period of representation.

16. In **Karnataka Power Corporation Ltd through its CMD and Another Vs. K.Thangappan and Another 2006 (4) SCC 322** also, the Hon'ble Supreme Court has held that mere making of representations cannot justify delay.

17. In the another case of **Shri Bhoop Singh Vs. Union of India & Others, (1992) (3) SCC 136) (Para 8)** decided by three Judges Bench it has been held that inordinate &

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unexplained delay or latches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief.

18. In Union of India & Ors Vs. M.K.Sarkar 2010(2)

SCC 58 (Para 14) after considering the judgment State of Bihar Vs. Kamleshwar Pd Singh, it has been clarified by the Hon'ble Supreme Court that the limitation has to be counted from the date of original cause of action and stale matters should not be entertained.

19. The case laws relied upon by the learned counsel for the applicant are of no help of the applicant as facts and circumstances of the cited cases are different form the case in hand. The copy of the cited case is also incomplete.

20. In view of the above discussions, the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.

J. Chanda
(Ms. Jayati Chandra)
Member (A)

VR. Agarwal
(Navneet Kumar)
Member (J)

Amit/-