

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

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Original Application No. 373 of 1992

this the 13th day of July, 1995

HON'BLE MR. V.K. SETH, ADMN. MEMBER

HON'BLE MR. D.C. VERMA, JUDICIAL MEMBER

Ausan, aged about 44 years, S/o Sri Gajodhar Prasad,
R/o A-907/7 Indira Nagar, Lucknow, working as
Asstt. Manager, R.L.O., Lucknow

Applicant

By Advocate : Shri Surendran P.

Versus

Union of India, through the Secretary, Ministry of
Communication, Department of Posts, New Delhi.

2. Chief Postmaster General, U.P. Circle, Lucknow.

3. Director Postal Services, Office of C.P.M.G., U.P.
Circle, Lucknow.

4. A.P.M.G. (Staff) Office of C.P.M.G. U.P. Circle,
Lucknow.

5. A.P.M.G. (Mails) Office of C.P.M.G. U.P. Circle,
Lucknow.

Respondents

By Advocate : Dr. D. Chandra

O R D E R

D.C. VERMA, MEMBER(J)

The applicant Ausan was initially appointed
as Postal Clerk in Returned Letters Office (in short
R.L.O.) and was subsequently selected to the post
(in short L.S.G.) vide letter dt. 13.11.81
of Lower Selection Grade in the 1/3rd quota in the
year 1979-80, after qualifying the examination vide
Annexure-1 to the O.A. Seniority of the applicant

was fixed as per Annexure^{A-} II to the O.A., wherein applicant has been placed above Bindra Prasad and Yogendra Choudhary. With a view to provide relief to the employees, the Government introduced One Time Bound Promotion Scheme (in short O.T.B.P Scheme) w.e.f. 30.11.1983. As per the scheme, the officials of Group 'C' and 'D' cadres after completion of 16 years of satisfactory service were to be promoted to the next higher grade i.e. L.S.G. Subsequently the Government issued Biennial Cadre Review Scheme (in short B.C.R. Scheme) (one in two years) under which the promotional opportunity was given to those staff who completed 26 years of service. ~~and were to be promoted to the next higher grade.~~ This scheme was given effect from 1.10.91. The grievance of the applicant is that he came to occupy higher post of L.S.G. after selection under 1/3rd quota and became senior^{tu} to the employees who could not be so selected. However, due to introduction of B.C.R. Scheme, junior persons who completed 26 years of service have been promoted to Higher Selection Grade-II (in short H.S.G-II) and the benefit of promotion has not been given to the applicant as he has not completed 26 years of service.

2. To appreciate the points raised by the learned counsel for the applicant, the brief facts are given below :

Posts and Telegraph (Selection Grade Post)
(in short Rules 1976)
Recruitment Rules 1976 were notified in exercise of powers conferred by proviso to Article 309 of the Constitution of India. Under these rules promotion to

the post of L.S.G. is by promotion upto 66 2/3% on the basis of seniority-cum-fitness and ⁷⁶for rest 33 1/3% by selection. ⁵and Official of lower selection grade in the respective R.L.O. with three years regular service in the grade is eligible for promotion to the post of H.S.G.-II ^{HSG-II} and with three years regular service is eligible for promotion to H.S.G.I. On the demand from Staff Union for grant for promotion to the employees, O.T.B.P. Scheme was introduced w.e.f. 30.11.1983 for basic operative Group 'C' and 'D' cadres after completion of 16 years of satisfactory service. A copy of the said scheme has not been filed however, it is an admitted case that a provision was made in the O.T.B.P. Scheme ^{that} the Officials promoted under the scheme were to rank junior to those who were promoted in the normal course on their turn and in view of their passing the prescribed examination against quota. Thus, the applicant who had been promoted on basis of selection was made senior to those who were allowed next grade of L.S.G. as a relief on completion of 16 years of service.

3. On a further demand from the Staff Union, B.C.R. Scheme was introduced w.e.f. 1.10.1991 to provide higher scale to the employees on completion of 26 years of service in the basic grade. The scheme issued for Postal employees is annexed as Annexure A-4. The relevant extract is as below :

1. -----

2. ----- The following instructions are accord-

ingly issued :-

(i) The scheme will come into effect from 1.10.91

(ii) Biennial Cadre Reviews will be applicable for only those cadres in Gp 'C' & '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 O.M. Dated 17.12.83 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) Creation of posts ^{by} upgradation will be in the scales as indicated below :

<u>Category</u>	<u>Basic scale of pay</u>	<u>Scale of pay on Time Bound Promotion after 16 years of service</u>	<u>Scale of pay after Biennial cadre Review (on completion 26 years of more service)</u>
1) Postal Asstt/ Sorting Asstt/ Postal Asstt.(SB) Office Asstt/PO & RMS Accountants/ RLO Clerks/MMS Clerks	975-1660	1400-2300	1600-2660

(vii) -----

(viii) The first Biennial Cadre Review for eligible officials may be conducted immediately and orders issued before 31st 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 promotion 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 2nd 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 instalments on 1.1.94, 1.7.94, to 1.1.95 and 1.7.95 to provide promotion/those who would have completed 26 years of service on the four crucial dated will be ascertained and sanctions released in appropriate instalments so that the promotions of eligible officials could be notified on due dates.

(x) -----

(xi) -----

(xii) -----

(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."

4. A clarification was issued from the Department of Posts vide letter dated 30.3.92 (Annexure^A 5 to the O.A.) para 5 of the said letter is as below :

"5. The seniority in ISG will be the basis for seniority in HSG-II grade, provided that the officials gets

his placement in the HSG-II grade in his turn. If his promotion to HSG-II grade is postponed for one reason or the other, his seniority in HSG-II would be alongwith those with whom he is promoted subsequently."

5. A list of employees found eligible for higher grade under B.C.R. Scheme was issued with letter dated 9.3.92 (Annexure^A-6 to the O.A.) one of the para of the letter is as below :

" The names of the officials approved for promotion to HSG-II cadre have not been arranged according to their seniority for which action will be taken separately on receipt of instruction from Directorate."

The name of the applicant is not included in this list, as he was not even considered for HSG II.

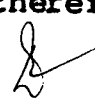
6. The applicant's case is that he has not been promoted to HSG-II because he has not completed the required 26 years of service under the B.C.R. Scheme. The employees junior to the applicant who could not be selected from the initial post to ISG posts have been given grade of HSG-II because they completed 26 years of service. In their reply the respondents have in para⁷at page 3 admitted the said fact. The relevant portion is as below :

"It may, however, be clarified that promotion under B.C.R. Scheme introduced by the department w.e.f. 1.10.91 cannot be equated with that of regular promotions as this has no link with availability of posts in the higher grade. Thus, this is an effect placement of the officials in a higher scale and for that the pre-requisite is that he should have put in 26 years of service both


in basic cadre and next higher cadre put together and he should have come to the next higher cadre as a result of the "Time Bound One Promotion Scheme" introduced in the department w.e.f. 30.11.83 i.e. on completion of 16 years of service in the cadre of recruitment. Thus, for this promotion to HSG-II seniority cannot be accepted as relevant factor as this is a promotion based on length of service & not on seniority. Regarding seniority it has been provided in the B.C.R. Scheme that "seniority in the LSG will be the basis for seniority in HSG-II grade provided the official gets his placement in the HSG-II in his turn. If his promotion to HSG-II is postponed for one reason or the other, his seniority in HSG-II would be alongwith those with whom he is promoted subsequently.

Since Shri Ausan had not completed 26 years of service in the basic cadre and the higher cadre (LSG) put together on 1.10.91 and he was therefore not placed in the higher grade of pay of Rs. 1600-2660 under B.C.R. Scheme while other persons who were junior to him in rank but were promoted under Time Bound One Promotion Scheme and had completed 26 years of service in the P.A. Cadre and the next higher grade put together."

7. The O.T.B.P. Scheme and B.C.R. Scheme have been introduced by an executive order to provide higher scale to the employees who could not get promotion even after 16 years and 26 years of service. This is, therefore, not a normal procedure



for promotion as provided under the statutory rules of 1976. Thus, the employees who got selected under 1/3 quota earlier in time, became senior to those who failed to be so selected. The seniority of such selected officials in the ISG grade was admittedly retained under OTBP scheme vis-a-vis of the employees who were given benefit of higher grade under O.T.B.P. scheme as the later were made junior to the employees who were already working in the ISG grade after selection. On introduction of B.C.R. Scheme, employees with 26 years of service were given HSG II grade. The B.C.R. Scheme provides nothing to safeguard the seniority of those employees who got selected under 1/3rd quota before introduction of O.T.B.P. Scheme. An anomaly has been, thus, created because some employees, like the applicant, who were already working under ISG grade could not be given the benefit of ISG-II grade as they have not completed 26 years of service. Its result is that the employees who were promoted under O.T.B.P. Scheme on completion of 16 years of service but remained junior to the employees already selected to ISG have been given the benefit of HSG II simply because they completed 26 years of service. The normal channel of promotion as provided under Rules 1976 is by promotion upto 66 2/3% and by selection upto 33 1/3%. The promotion given under B.C.R. Scheme is not covered by Rules 1976. In these circumstances the seniority of the employees who secured higher post on selection cannot be disturbed by employees who have been given higher



scale by an executive order which is not covered by statutory rules. An executive order cannot override the provision of statutory rules. Therefore, benefit of B.C.R. Scheme is also to be given to the ISG employees, like the applicant who could not complete 26 years of service but were senior to these promoted under B.C.R. Scheme. It is, however, subject to the other conditions laid-down under the B.C.R. Scheme for admissibility of the higher scale.

8. The learned counsel for the applicant has relied on the judgment of Smt. Leelamma Jacob & others Vs. Union of India & others reported in 1993 (3) A.I.S.L.J. page 514, wherein the Bangalore Bench of C.A.T. examined the provisions of B.C.R. Scheme in respect of Section Supervisors of Telecom. department. Therein, it has been held that "It is now well established that administrative instructions cannot modify the provisions made in the recruitment rules framed under proviso to Article 309 of the Constitution. In this case B.C.R. Scheme, introduced through an administrative circular, has substituted the provisions of the recruitment rules. Therefore, the recruitment rules will prevail." After discussing O.T.B.P. Scheme and B.C.R. Scheme, The Bangalore Bench has given the following directions :

"11. In the light of the above, we allow this application with the following directions to respondent 1 to 3.

(1) In implementing the B.C.R. Scheme, the case of the applicants who are senior in Grade-II, by virtue of their promotion against 1/3rd merit quota,

compared to the other officials like R-4 to 73 promoted to Grade-II under OTBP Scheme, should be considered for promotion to Grade-III in scale Rs. 1600-2660 in their turn as per their seniority, whenever their erstwhile juniors in Grade-II are considered for promotion to Grade-III by virtue of their having completed 26 years of service in the basic grade, without insisting on the applicants completing the minimum prescribed years of service in the basic grade. All other conditions of BCR Scheme except the length of service will however, be applicable while considering their promotion to Grade-III.

(ii) Consequently, in case the applicants are found suitable for such promotion, they shall be promoted to Grade-III with effect from the date their erstwhile juniors were promoted from Grade-II to Grade -III with all consequential benefits including seniority and arrears of pay and allowances from such dates. They should also be put on supervisory duties depending on their seniority.

(iii) The BCR Scheme should be modified suitably to protect the interest of the officials like the applicants for their promotion from Grade-II to Grade-III.

(iv) The above directions shall be complied within a period of 4 months from the date of receipt of a copy of this order.

(v) In the conspectus and circumstances of the case the request of the applicants for grant of interest on the arrears of payment as due and cost of application is rejected."

9. On behalf of the applicant a clarification letter dated 13.3.92 (Annexure A-12 to the O.A.) has been filed, which shows that for the department of Telecom, grades were allotted as below:

<u>" Stage of Entr.</u>	<u>Grade Allotted</u>
(i) Initial entry i.e. Basic Grade.	Grade -I
(ii) OTBP Scale	Grade II
(iii) BCR Scale	Grade III
(iv) 10% of Posts in BCR pay scale to be placed in the pay scale of Rs 2000-3200	Grade IV th

Thus, the Bangalore Bench of the Tribunal while giving the directions has referred to the promotion from Grade II to Grade III. In the Rules 1976 the posts mentioned are ISG, HSG-II and HSG-I. The intention of the decision of the Bangalore Bench is to protect the interest of the officials selected under 1/3rd quota to the post of ISG for their promotions from ISG grade of Rs 1400-2300 to HSG grade II of Rs 1600-2660.

10. The Principal Bench of the Tribunal in O.A. No. 1713/93 Rajendra Singh and others vs. Union of India and others decided on 7.6.94 has followed the reasoning and decision given by Bangalore Bench and has passed a similar order.

11. The Chandigarh Bench of the Tribunal in O.A. No. 1062/PB/92 Daljit Singh Dadwal vs. Union of India & others decided on 22.2.95 has also followed the decision of the Principal Bench (referred above) and has passed similar directions.

12. In our view, in the light of the decisions given by Bangalore Bench, Principal Bench and Chandigarh



Bench, benefit of BCR scheme should have been given to all the similarly placed persons. As per decision, it was not required for each and every affected employees to approach the Tribunal for its benefit. ~~Accordingly~~ We may quote the findings of Bangalore Bench which is as below :

" We are of the view that since the scheme is mainly meant to provide the relief of giving a second promotion after 26 years of service, the small number of staff who have already been officiating in Grade-II for a large number of years before the contesting respondents were promoted to that grade, can also be given the relief by considering their cases for promotion to Grade-III as per their seniority in Grade-II, irrespective of the fact whether they had completed 26 years of service in the basic grade. To this extent the BCR Scheme as envisaged without any amendment to the existing rules is arbitrary, illegal, and violative of Articles 14 and 16 of the Constitution. "

13. Similarly the Principal Bench in O.A. No. 1713/93 decided on 7.6.94 gave the following directions :

"Respectfully reiterating the afore-mentioned views & we allow the applications with the following directions :

(1) In implementing the BCR Schemes the case of the applicants who are in grade-II by virtue of their promotion against 1/3rd merit quota, compared to the other officials promoted to Grade-II should be considered for promotion to Grade-III in their turn as per their seniority whenever their erstwhile juniors in Grade-II are considered for promotion to Grade-III by virtue of their having completed 26 years of service in the basic grade, without insisting of the applicants completing the minimum

prescribed years of service in the basic grade. All other conditions of BCR schemes except the length of service will however be applicable while considering their promotion in Grade-III.

(ii) In case the applicants are found suitable for such promotion they shall be promoted to Grade-II to Grade-III with effect from the date their erstwhile juniors were promoted from Grade-II to Grade-III with all consequential benefit including seniority and arrears of pay and allowances from such dates. They should also be put on Supervisory duties depending on their seniority.

(iii) The BCR scheme should be modified suitably to protect the interest of the officials like the applicants for their promotions from Grade-II to Grade-III.

(iv) The above direction shall be complied within a period of 4 months from the date of receipt of a copy of this order.

The applications are disposed of accordingly with no order as to costs. "

14. The findings of Bangalore Bench as quoted above is to modify the BCR Scheme suitably within a period of 4 months to protect the interest of the officials like the applicants for their promotions from Grade-II to Grade-III. The judgment of the Bangalore Bench is dated 3.8.93 which was to be implemented within 4 months but it appears that the said judgment has not been implemented in the light of the decision of the Tribunal, with the result that some affected employees had to file O.A. before the Principal Bench ~~and also before the Chandigarh Bench~~. Even the Principal Bench gave the directions (quoted above) to modify the BCR Scheme suitably within a period of 4 months to

Protect the interest of the officials like the applicants
from Grade-II to Grade-III. It appears that the directions
given by the Bangalore Bench and the Principal Bench
has not been properly and fully complied, with the result
that one employee had to file O.A. No. 1062/PB/92 before
Chandigarh Bench.

15. We are aware that as a general rule, judgment
is binding to the parties of the case and it cannot be
ipso facto made applicable to all other employees. This
principle is, however, not applicable to the present case.
The basis of the directions given by the Bangalore Bench
is that B.C.R. Scheme is arbitrary, illegal & violative of
Articles 14 and 16 of the Constitution to the extent mention-
-ed in the order (already quoted). It is well established
principle that any benefit accruing out of judicial decision
has to be uniformly made applicable even to those employees
who have not chosen to approach the Tribunal. The directions
of the Bangalore Bench and also of Principal Bench (quoted
above) was to modify the B.C.R. Scheme suitably to protect
the interest of the officials, like the applicants, for
their promotions from Grade-II to Grade-III(i.e. LSG to HSG-
II). There is nothing on record nor it has been stated
at the Bar by any of the counsel appearing for the parties
that any Review Application or S.L.P. against the decision
of Bangalore Bench or Principal Bench was filed and is
pending for decision. Therefore, the judgment of Bangalore
Bench and also of the Principal Bench is taken as final.
The course open to the respondents was either to file
Review Application or S.L.P. before the Hon'ble Supreme
Court or to modify suitably B.C.R. Scheme as per directions

of the Tribunal. As no Review Application or S.L.P. has been filed, the only alternative available to the respondents was to suitably modify the B.C.R. Scheme, before implementing the same or to decide not to implement it at all. In effect the judgment of Bangalore Bench and Principal Bench is judgment in rem for the benefit of all the similarly situated officials, like the applicants of those O.As. Once the Tribunal gives a direction, the effect is that non-compliance of the same would amount to contempt. Executive authority has no power to neutralise the binding effect of a decision of the Tribunal either by issuing an order not in conformity with the Tribunal's decision or by not issuing an order in compliance of the Tribunal's direction.

16. Besides the above, the effect of the decision of the Bangalore Bench of the Tribunal is that the existing B.C.R. Scheme without modification, as directed by the Tribunal, is violative of Articles 14 and 16 of the Constitution. Once a scheme is held to be in violation of provisions of the Constitution, it becomes ^{void} ~~non-existent~~, and it cannot be implemented unless modified as per directions.

17. The decision of the Bench of two members is binding on any subsequent Bench comprising the same ^{number} of members unless of course the subsequent Bench differs in opinion and refers the case for decision by a larger Bench. The decision of the Bangalore Bench has been consistently followed by the Principal Bench, and Chandigarh ^{Bench} of the Tribunal.

18. We are, therefore, of the view that the applicant and similarly situated officials are also entitled to and should have been given the benefit of

H.S.G. II, if otherwise found suitable, with effect from the date juniors ⁱⁿ ~~to~~ ISG were given the benefit of HSG-II scale under B.C.R. Scheme, irrespective of the fact whether the applicant and similarly situated officials completed 26 years of service or not.

19. We are also of the view that in the circumstances discussed above as required number of posts can be created under para 2(v) of the B.C.R. scheme (Annexure ^{A-}4) (quoted above), it is not necessary to quash the order dated 9.3.92 (Annexure A-6). The names of the applicant and similarly situated other officials who are senior to their erstwhile juniors in ISG and found suitable for HSG II can be well included in the relevant enclosures of the order dated 9.3.92.

20. We are further of the view that part B of the order dated 28.7.92 (Annexure A-11), ^{to} so it is in respect of the applicant Ausan, is liable to be quashed.

21. In view of our discussions, we allow this application with the following directions:

(1) In implementing the B.C.R. Scheme the case of the applicant and similarly situated officials who are senior in ISG by virtue of their promotion against 33 1/3% selection quota, compared to other employees promoted to ISG under O.T.B.P. Scheme, should be considered for promotion to HSG-II in the scale of Rs 1600-2660- in their turn as per their seniority whenever their erstwhile juniors in ISG are considered for promotion to HSG-II by virtue of their having



completed 26 years of service in the basic grade, even if the applicant and similarly situated officials have not completed the minimum prescribed 26 years of service in the basic grade. All other conditions of B.C.R. Scheme except the length of service will however, be applicable while considering their promotion to HSG-II.

(ii) Consequently, in case the applicant and similarly situated officials are found eligible for such promotion, they shall be promoted to HSG-II with effect from the date their erstwhile juniors in ISG were promoted from ISG to HSG II with all consequential benefits including seniority and arrears of pay and allowances from such dates.

(iii) The order dated 9.3.92 (Annexure A-6) shall be modified to include the names of the applicants and similarly situated other officials who were senior to erstwhile juniors in ISG and found suitable for HSG-II.

(iv) Part B of the order dated 28.7.92 (Annexure ⁵A-11), so far it is in respect of applicant Ausan, is quashed.

(v) The above directions shall be complied within a period of 4 months from the date of receipt of a copy of this order. In case of non-compliance within the said period, the aggrieved persons shall be entitled to interest at the rate of 12% per annum.

(vi) In the conspectus and circumstances of the case, the applicant is entitled to costs of Rs 1000/-

The application is disposed of accordingly.


MEMBER (J)


MEMBER (A)

Lucknow; Dated: 13th July 1995
Girish/-