

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No.387 of 2006

This the 13th day of July 2012

Hon'ble Mr. M. Kanthaiah, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Ved Prakash Pathak, aged about 59 years, S/o Sri Anand Vikram at present working as Post Master Balrampur, R/o Azad Nagar, Gonda.

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Postmaster General, U.P. Circle, Lucknow.
3. Superintendent of Post Offices, Gonda.

.....Respondents.

By Advocate :Sri S.P. Singh

ORDER

By Ms. Jayati Chandra, Member-A

The present O.A. has been filed under Section 19 of Administrative Tribunals Act, 1985 seeking directions to the respondents that the applicant be promoted to HSG Gr.II under BCR Scheme w.e.f. 1.11.1993 instead of 1.7.1995 and he be given all consequential benefits including promotion to HSG Gr. I cadre 20 months prior to the date on which it was granted.

J Chandra

2. The facts of the case as stated by the applicant are that he was initially appointed as Postal Assistant on 7.11.1966. He was promoted under 1/3rd promotion quota of PAs cadre to Lower Section Grade in 1978. He received his 1st financial upgradation under Time Bound one Promotion (TBOP) Scheme w.e.f. 30.11.1983. On completion of 26 years of service w.e.f. 1.11.1992 he was eligible for 2nd Financial upgradation under BCR scheme. However, a disciplinary matter was instituted against him in the year 1989. The disciplinary proceedings were finalized through process of appeal etc. by order dated 19.11.1991 by which one annual increment was stopped for a period of three years. Therefore, he should have been promoted to the next level i.e. HSG Gr.II under BCR scheme in 1993, but he was given promotion only w.e.f. 1.7.1995 through no fault on his part. There were no disciplinary or otherwise proceedings pending against him during 1993 to 1995. More-over one Sri C.L. Patirak and Sri D.R. Singh, who were his similarly situated were given Grade in the year 1992 itself. The relevant promotion order dated 30.3.1993 with respect to Sri D.R. Singh states that his promotion will be effective "on expiry of punishment or w.e.f. 1.7.1992 which ever is later". In the case of Sri C.L. Patirak, Office order dated 15.7.1993 also stated that the promotion would be effective after currency of punishment or w.e.f. 1.1.1993 which ever is later. Such omission in his case is tantamount to discrimination.

3. It is alleged that the said consideration should have been given to him as per DOP&T O.M. no. 22011/8/87/Estt. (D) dated 9.4.1991 which provides

J. Chandre

that unless there is an order to deny promotion as a result of disciplinary proceedings, mere stoppage of annual increment or any other minor punishment will not render his case unsuitable.

4. The counsel for the applicant has placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Union of India & Others Vs. K.V. Jankiraman etc reported in AIR 1991 SC 2010 and contending that the sealed cover procedure could have been adopted in DPC meeting held for other officials who were belonging to his batch

5. Further, even if a fresh consideration was made in 1993, there was nothing against him between 1993 and 1995. It is said that the representation for consideration for promotion to HSG-Gr.II if accepted would have affect of preponing his promotion to HSG-Gr.I.

6. The respondents have stated that although the applicant was due for financial up-gradation under BCR Scheme w.e.f. 1.1.1993 his case could not be considered in view of pendency of disciplinary proceedings, therefore, he was considered on various dates and he was declared unfit by orders dated 15.7.1993, 25.11.1993 and 8.3.1995 respectively on the basis of conduct of the applicant throughout his career particularly on the basis of 'Censure' given to him on 31.8.1994 and 28./4.1995 respectively. These 'Censure' entries were also communicated to the applicant and also kept in his personal records.

7. So far as the case of two named persons are concerned, they are distinct and circumstances

T. Chandra

different. The respondents have further clarified that as per departmental procedure one Time Bound Financial up-gradation under TBOP scheme was given to the applicant on expiry of 16 years of service.

8. The second financial up-gradation after 26 years is in accordance with BCR scheme involves promotion through DPC to HSG Gr. II cadre. Thereafter the persons from various feeder cadre are promoted to HSG Gr.I.

9. In the Rejoinder, the applicant has reiterated almost all the pleadings which he has taken in the O.A. It is said that the delaying up-gradation after 26 years to HSG Gr.II on the basis of 'Censure' entry is not correct as these 'Censure' entries do not amount to denial of promotion.

10. We have heard the learned counsel for the parties and also have perused the material available on record. There appears to be some lack of clarity in this case with regard to 'up-gradation' and 'promotion' as these two distinct conditions have almost been used interchangeably. This is a fact also recognized by the department as is evident through O.M. no. 137-18/2001-SPB-II dated 23.4.2001 there were two distinct schemes namely: (i) One Time up-gradation of pay (TBOP scheme 1983); and (ii) consideration under Biennial Cadre Review (BCR Scheme 1991). While TBOP scheme allows mere up-gradation of pay under BCR the settled practice of the department is using 26 years of complete service as Bench mark for consideration of promotion to the level of HSG.Gr.II. Various Office Memorandums viz. B-2/56-A/STBP

S. Chander

dated 15.7.1993, B-2/56-A/STBP dated 25.11.1993 and B-2/56-A/STBP dated 8.3.1995 state that officers under consideration are promoted to HSG-Gr.II are on probation for a period of two years. There is no probation period in any financial up-gradation. Therefore, the contention of the applicant that he is to be automatically given HSG-Gr II is not correct. This step-up involves consideration for promotion with 26 years of complete service as the cut off level of eligibility.

11. In so far as the parity with Sri C.L. Patirak and Sri D.R. Singh are concerned, the two named persons have not been impleaded and, therefore, full facts are not on record. Hence, no comments can be given. More-over on perusal of promotion order dated 7.3.1996 would reveal that in addition to the applicant, various other persons were also given HSG Gr.II w.e.f. the various dates including 1991. This promotion has not been challenged by the applicant on ground of discrimination.

12. In the case of Union of India & Another Vs. A.K. Narula reported in (2007) 11 SCC 10, it has been held that "...DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms, it is only when the process of assessment is vitiated either on ground of bias, malafide or arbitrariness that the selection calls for interference".

13. In terms of O.M. of DOP&T issued in the year 1991, the case of the applicant was considered for

J. Chandra

promotion in the years 1993, 1995 and 1995 respectively, therefore, there was no violation of any governing principle.

14. The decision of K.V. Jankiraman (supra) cited by the applicant's counsel does not fall into that category as it deals with the provision of sealed cover while a departmental proceeding is in progress. In this case, the decision to first impose the penalty of recovery later be changed to stoppage of increments for three years was already awarded in November, 1991.

15 In view of what has been stated above, O.A. fails and is liable to be dismissed and accordingly it is so ordered. Parties are directed to bear their own costs.

J. Chandra.

(Ms. Jayati Chandra)
M(A)

M. Kanthaiah

M(J) 13-07-12

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