

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

Original Application No. 506 of 2006

Reserved on 6.1.2014

Pronounced on 13th January, 2014

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Mr. Shashi Prakash, Member-A

Ram Himanchal Verma, aged about 58 years, S/o late Bans Raj Verma, R/o Village Dararapur, Post Malipur, District Ambedkar Nagar, at present working as Officiating Dy Post Master, Raebarely HPO. Raebareli.

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director, Postal Services, Lucknow Region, Lucknow.
4. Superintendent of Post Offices, Raebareli.
5. Sri G.S. Verma, Post Master, HSG-I, Urai, U.P.

.....Respondents.

By Advocate : Sri S.P. Singh

ORDER

By Shashi Prakash, Member (A)

In this O.A., the applicant has sought the relief as below:-

“.....to issue a direction to the respondents to promote the applicant in HSG-I cadre with effect from 6.6.2005 with all consequential benefits as his junior Opposite party no.5 was promoted with effect from 6.6.2005.”

2. As per the applicant, facts, in brief, are that the applicant, who was appointed as Postal Assistant (P.A.) was extended the benefit of One Time Bound Promotion (OTBP) grade in the year 1989. Subsequently, by an order dated 21.10.1994, he was promoted as HSG Gr.II under Biennial Cadre Review (BCR) w.e.f. 1.7.1994. At the same time, the respondent no.5 was appointed as PA cadre on 20.4.1974. He was promoted to HSG Gr.II under BCR scheme w.e.f. 20.7.2000. He was given the benefit of OTBP in the year 1990. As the applicant was appointed in P.A. cadre on 6.2.1968 and OTBP in the year 1989 and BCR in the year 1994, he was senior to respondent no.5, whose date of appointment was

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20.4.1974 , providing of OTBP cadre in the year 1990 and BCR Gr. in the year 2000. In the seniority list prepared by respondent no.4, the name of the applicant had been shown at sl. No. 3; whereas the name of respondent no.5 had been shown at sl. No. 10 indicating that the applicant was senior to respondent no.5.

3. It has been averred that the criteria for promotion to non-based cadre is seniority subject to rejection of unfit and that seniority position as existing cannot be changed on non-based LSG promotion on account of the fact that upto HSG-II under BCR scheme seniority as figuring in P.A. cadre is relevant because of existence of only one cadre of PAs. Ignoring these facts, the official respondents placed the respondent no.5 based upon LSG non-based cadre w.e.f. 13.2.1996; whereas the applicant was placed in LSG non-based cadre w.e.f. 1.1.2000. The applicant being senior, his seniority was not taken into account for unknown reasons. Accordingly, another seniority list was prepared in which seniority of the applicant was placed at sl. No. 376 whereas the name of the respondent no.5 had been shown at sl. No. 181. This seniority list pertained to gradation list of LSG (non-based cadre) in U.P. Circle as on 1.7.2004. The next higher grade in this cadre is that of HSG Gr.I, the promotion to which is to be made based upon the seniority in HSG Gr.II cadre under BCR scheme, and the seniority of LSG (non-based cadre) is not to be reckoned. In view of this position, the applicant being senior was entitled to promotion in HSG Gr.I cadre, if not earlier, at-least alongwith respondent no.5. The representation dated 12.5.2005 filed by the applicant before respondent no.2 seeking redressal of his grievance in this regard has not been responded to and the respondent no.5 was promoted to HSG Gr.I cadre by an order dated 6.6.2005 in an illegal manner. Hence, this Original Application.

4. In the Counter Reply filed by the respondents, they have admitted that on account of earlier joining of the post of PA by the applicant (6.2.1968), he was senior to respondent no.5, who joined on 20.4.1974 in the cadre of PAs. However, subsequently the respondent no.5 passed Accountant Examination in the year 1980 and was posted as Accountant in Raebareli Division w.e.f.

26.2.1981. On the other hand, the applicant continued in PA cadre. The department by their communication dated 11.2.2002 introduced the scheme to fill-up 66.66% vacancies in LSG and HSG Gr.II (being supervisory posts) for the vacancies falling after 7.2.2002 by conducting Fast Track Promotion Examination from amongst PAs belonging to Group 'C' cadre and remaining 33.33% of LSG and HSG Gr.II (non-based cadre) based on seniority subject to fitness from amongst PAs belonging to Group 'C' cadre of vacant posts prior to 7.2.2002. The vacancies were to be filled up notionally w.e.f. the date of occurrence of the vacancy based on seniority-cum-fitness from amongst eligible candidates.

5. In Raebareli Division, there were 09 LSGs vacancies (non-based posts in supervisory cadre) on 7.2.2002. Out of these posts, one post was that of Assistant Post Master (Accounts) vacant since 13.6.1996 and the remaining post were of general line LSG supervisors. In a clarification issued by D.G. Posts vide letter dated 28.1.2003, the post of Assistant Post Master (APM) (Accounts) was to be filled up from PAs who had qualified in the Accountant Examination. In the DPC held for this purpose on 3.12.2004, the respondent no.5 who was senior most person having qualified the Accountant Examination was given notional promotion against the post of APM (Accounts) w.e.f. 13.6.1996 (the date when the vacancy occurred). The remaining 08 posts belonging to LSG non-based were filled up according to seniority-cum-fitness from amongst officials of PAs cadre from the date of occurrence of the vacancy. The filling up these eight vacancies was from amongst 08 officials who were senior to the applicant. The applicant was promoted in LSG (non-based cadre) w.e.f. 1.11.2002 in accordance with the seniority in PAs cadre. Because respondent no.5 obtained promotion in LSG (non-based cadre) w.e.f. 13.6.1996, he became senior to the applicant, was promoted in LSG cadre w.e.f. 1.11.2002. In the gradation list issued on 5.5.2005, this fact was taken into account and respondent no.5 got placed at sl. no. 181 and the name of the applicant had been shown at sl. No. 376. This demonstrates that in LSG (non-based cadre) the respondent no.5 was senior to the applicant. It is for this fact, the respondent no.5 got his promotion in HSG Gr.II (non-based cadre) w.e.f. 2.6.2005. The case of the applicant was

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considered by the DPC held on 2/3.1.2007, which did not find the applicant suitable for promotion based upon his service records and he was not promoted to HSG-Gr.II (non-based cadre). It is also stated that unless a person is promoted in HSG Gr.II (non-based cadre), he cannot be promoted in the cadre of HSG Gr.I. In view of the afore-stated facts and rules position, the claim of the applicant is not sustainable.

6. Sri Surendran P., learned counsel for the applicant contended that the action on the part of the respondents in the instant case is violative of provisions of Article 14 & 16 of Constitution of India as they have adopted pick and choose policy and acted in a discriminatory manner by favouring respondent no.5. He argued that in the department there is only cadre known as P.A. cadre upto the stage of HSG Gr.II under BCR Scheme and for further promotion to HSG Gr.I, the seniority position in HSG Gr.II (BCR) has to be taken into account. He stated that the submission made by the respondents that one should first be promoted to LSG (non-based cadre) to become eligible for promotion to HSG Gr.I is not correct as all departmental promotions had been abolished consequent upon introduction of OTBP and BCR scheme. Further, he stated that there is requirement to appear in Fast Track Examination of promotion in LSG Gr. and despite respondent no.5 never appeared in such examination, was given promotion in LSG Gr. w.e.f. 13.2.1996 by ignoring the claim of the applicant, who was admittedly senior to respondent no.5. In the circumstances, the applicant should have been given promotion earlier than the respondent no.5. The applicant's seniority has wrongly been fixed and the benefit of further promotion given to respondent no.5 in HSG Gr.II and Gr.I and denying the same to the applicant is highly discriminatory. The applicant emphatically argued that Annexure CA-1 is not applicable in the instant case and any action taken on its basis is not tenable. Keeping in view the facts and circumstances of the case, the applicant is fully entitled to the benefit granted to respondent no.5 earlier than the benefit of promotion granted to respondent no.5.



7. Sri S.P. Singh, learned counsel for the respondents submitted that the averments made in the O.A. as well as arguments advanced by the learned counsel for the applicant have been comprehensively dealt with in the Counter Reply. He stated that fixation of seniority of respondent no.5 on 13.6.1996 was strictly in accordance with the scheme contained in the letter of department dated 11.2.2002 and clarification given in letter dated 28.1.2003.. The seniority accrued to him on account of having passed Accountant Examination in the year 1980 as senior of the respondent no.5 was correctly fixed in accordance with the above mentioned scheme on 13.6.1996, he was legitimately entitled to all promotions as per his seniority and the applicant cannot have any cause of grievance on that account.

8. Heard the learned counsel for the parties and perused the pleadings on record.


9. The point for determination in this case is whether the seniority assigned to respondent no.5 w.e.f. 13.6.1996 in accordance with the scheme circulated by the department vide its letter dated 11.2.2002 was in accordance with the letter and spirit of the provision of that scheme. It was specifically mentioned in the scheme that the filling of 66.66% vacancies in LSG and HSG Gr.II (non-based) falling after 7.2.2002 was to be done by conducting a Fast Track Promotion Examination from amongst PAs belonging to Group 'C' cadre and remaining 33.33% of LSG and HSG Gr.II vacancies (non-based cadre) to be filled by seniority subject to fitness from amongst PAs belonging to Group 'C' cadre. These vacancies were to be filled up notionally w.e.f. the date of occurrence of the vacancy based on seniority-cum-fitness from amongst eligible candidates. It is observed that in Raebareli Division one post that of APM (Accounts) was lying vacant since 13.6.1996. Certain clarifications were provided by the department vide letter dated 28.1.2003 relating to the introduction of Fast Track Promotion to fill up LSG/HSG-II posts in PO & RMS offices. In the clarification offered in para 10 of the aforesaid letter, it has been specifically mentioned that the posts of APM (Accounts) are to be treated as norm based LSG Post and are to be filled up strictly from among PAs/SAs who have qualified in PO & RMS

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Accountant Examination. The clarification offered, as above, was plainly applicable in the case of the respondent no.5. It has been further clarified in para 17 of the afore-stated clarification that the question of fixation of inter-se seniority of those to be promoted to LSG Gr. under Fast Track scheme and OTBP officials will not arise as TBOP is only a financial up-gradation and does not constitute a separate cadre. In other words, while TBOP is not a cadre and that LSG (non based) constitutes part of a cadre. Accordingly, their inter-se seniority has to be separate and as promotion to HSG Gr.II and Gr.I is from LSG cadre, it only when the applicant was posted in the cadre of LSG (non-based), he could claim promotion to the aforesaid HSG grades. While the respondent no.5 based upon his seniority was placed in LSG cadre w.e.f. 13.6.1996, the applicant got promoted in LSG (non-based cadre) w.e.f. 1.11.2002, all the promotion, thereafter, was with reference to the date of seniority of both the applicant as well as respondent no.5 in LSG non based cadre. From the facts of the case, it is seen that the respondent no.5 was placed at sl. No. 181 in the LSG cadre because of his promotion in 1996, while the name of the applicant was placed at sl. No. 386. Accordingly, the applicant cannot claim parity with respondent no.5 for seeking promotion to HSG Gr.II and Gr.I cadre because of the fact that he was clearly junior to the respondent no.5 in the gradation list of LSG (non-based) cadre, from which promotion to HSG cadre was to be considered. It is important to note that the promotion of respondent no.5 to LSG Gr. was based upon recommendations made by the DPC held on 31.12.2004 which took into account the fact ~~that~~ respondent no.5 of having cleared the Accountant Examination. Para 10 of the clarification given in letter dated 28.1.2003 is an endorsement of the action taken by the applicant. Having regard to the fact that the action in the matter took place in the year 2004, the official respondents were duty bound to follow the clarification given in Department's letter dated 28.1.2003. Therefore, to say that the aforesaid letter is not relevant, is misplaced.

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10. For the foregoing reasons stated hereinbefore, we do not find any force in the claim of the applicant, and, therefore, O.A. is dismissed. No costs.


(Shashi Prakash)
Member-A


(Navneet Kumar)
Member-J

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