

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH NEW BOMBAY

TRANSFERRED APPLICATION No. 349/86

Mr. Kashinath Narayan Sane
451 Budhwar Peth
Pune 411002

Applicant
(Original
Plaintiff)

v/s.

1. Post Master General
Bombay 400001
2. Senior Superintendent of Post
Offices, Pune City, West Divn.,
Pune 411030

Respondents
(Original
defendants)

Coram: Honourable Vice Chairman B C Gadgil
Honourable Member (A) J G Rajadhyaksha

Appearance:

1. The applicant
in person
2. Mr. S.R. Atre
(for Mr. P.M. Pradhan)
Counsel
for the Respondents

JUDGMENT

DATED: 14.7.1987

(PER: B.C. Gadgil, Vice Chairman)

Regular Civil Suit No.279/84 of the file of the Civil Judge, Senior Division, Pune is transferred to this Tribunal for decision. The grievance of the applicant is that from 1/2/1983 he should have been posted as Sub-Postmaster which post carried a special pay of Rs.45/- per month, and that on account of omission to make such posting he did not get that special pay. He retired on 30.9.1983. According to him refusal of that special pay of Rs. 45/- per month has also prejudicially affected his pensionary benefits.

2. To understand the dispute we would briefly state the relevant facts. Of course, in the plaint there are a number of allegations but all of them have not been

agitated and hence we do not intend to make a mention thereof. The applicant joined service as a Clerk in the Postal Department on 13.3.1945. One V.J. Kanade was junior to him in the said cadre. The next promotion is that of Lower Selection Grade Clerk (hereinafter referred to as LSG). It is primarily made on the basis of seniority cum fitness. Of course, an eligible clerk would not be considered for that promotion if he expresses his unwillingness to have it. In 1974 the LSG posts were increased to 20% of the posts of the Time Scale Clerks. 90% of these posts were to be filled in on the basis of seniority-cum-fitness while 10% were to be filled in on merits on the basis of examination. The concerned department decided to consider all eligible candidates. However, the applicant intimated his unwillingness to have the promotion. Hence when the promotion order was issued on 27.11.1974 his name was not included in that order though his junior V J Kanade was promoted. Later on the examination for selection for the 10% posts was done away with and these posts were also decided to be filled in on the basis of seniority-cum-fitness. At that time the applicant expressed his willingness to be considered and hence he along with other eligible candidates were considered and on 17.5.1973 the applicant along with others were promoted as LSG. All these posts were available from 1.6.1974 and hence the promotees of 1974 and 1975 have been given seniority from 1.6.1974.

3. The applicant's case in brief is that as he as well as his junior V J Kanade have been given seniority as LSG from 1.6.1974, it should be held that both of them have been promoted at one and the same time and that as per Rule 32(E)(b)(ii) he would continue to be senior to Shri V J Kanade in the LSG Grade. It is in this way he prays that when appointing a Sub-Postmaster on 1.2.1983 he was

senior to Kanade and it was necessary that he should have been offered that post. He contends that he has suffered a loss of Rs. 45/- per month (which was a special pay of that post) and he is entitled to have the same reimbursed from the Department. He further contends that his pensionary benefits should be calculated by taking into account the special pay of Rs. 45/- per month from 1.2.1983 till his date of retirement on 30.9.1983.

4. The respondents denied this claim of the applicant. Their contention is that though the applicant was senior to Kanade in the lower grade of Time Scale Clerk, still that seniority came to an end as Kanade was promoted as LSG earlier i.e., in 1974. It was submitted that the applicant himself has chosen that he should not be considered for the promotion in 1974. It is only in 1975 that he expressed his willingness for being considered for promotion and hence he was so promoted on 17.5.1975. As posts were vacant from 1.6.1974 the promotees in 1974 as well as in 1975 have all been given seniority from 1.6.1974. The respondents however contend that this would not affect the original seniority of the promotees. In fact the respondents want to say that Kanade continued to be senior in the grade of LSG as he has been promoted in 1974 while the applicant was promoted in 1975. During the course of the arguments Mr. Atre frankly stated before us that the post carrying special pay of Rs. 45/- per month is ordinarily granted to a senior LSG. However, he submits that the applicant could not claim it as he was junior to Kanade. As we stated earlier there are certain other averments in the plaint and also in the written statement. However, those averments are not agitated before us as they are really not much relevant.

5. Thus the only relevant point that is required to be decided by us is as to whether the applicant was senior to V J Kanade in the cadre of LSG. If the answer is in the affirmative the applicant was entitled to have the posting as ~~Special~~^{Sub} Post Master which carried a special pay of Rs. 45 per month. The applicant relied on two circumstances. Firstly, he drew our attention to the fact that all the promotees of 1974 batch and 1975 batch have been given seniority in the LSG from 1.6.1974. On this basis he contended that the fact that Kanade was promoted in 1974 loses all importance. All the promotees have been allowed to cross the Efficiency Bar with effect from the same date viz., 1.6.1979. At Annexure 3 to the plaint, there is an order dated 19.6.1979 stating that the Departmental Promotion Committee in its meeting on 16.6.1979 has allowed various promotees to cross Efficiency Bar. Thereafter there is a list of 43 persons, the name of the applicant stands at serial No. 24 while that of Kanade is at serial no. 28.

6. Granting seniority from 1.6.1974 to Kanade as well as to Sane would not be decisive as not only they but all the promotees in the 1974-75/ have been granted such seniority from that particular date. However, that does not mean that the inter-se seniority of the 1974 batch and 1975 batch has been done away with. It is an accepted principle for fixing seniority that promotees of the earlier batch would have a better seniority than the promotees of the later batch, though the earlier batch may include some junior persons. We have already observed that in 1974 the applicant refused to have a promotion and hence he has not been promoted in that year. It will

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be ~~safe~~ for the applicant now to contend that as he was promoted in 1975, he should be given seniority better than the promotee of the 1974 in spite of the fact that he has refused promotion in 1974. It would not, therefore, be possible to accept the contention of the applicant that his earlier seniority in the Lower Grade of Time Scale Clerk should be maintained in the cadre of LSG, even though he has refused promotion in 1974.

7. The next contention of the applicant is based upon the list of employees who have been allowed to cross the Efficiency Bar (vide Annexure A-3). We have already observed that in that list the applicant's name is typed earlier to that of Kanade. There is no indication that the list is arranged in order of seniority. However, it is material to note that though both along with 40 others have been allowed to cross the Efficiency Bar with effect from 1.6.79, the typing of the names in a particular order in the said list would not mean that the applicant was senior to Kanade. This is more so when it is not in dispute that Kanade has been confirmed earlier to the applicant.

8. In view of the above discussions we do not think that the applicant has any just and valid claim.

ORDER

The application is, therefore, dismissed.

There would, however, be no order as to costs.

B Chagil
(B C Gadgil)
Vice Chairman

J G Rajadhyaksha
(J G Rajadhyaksha)
Member (A)

Decided in open court today, i.e on
14.7.1987

B Chagil
14.7.1987