

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 10 of 1996.

Dated this \_\_\_\_\_, the 25<sup>th</sup> day of July, 2000.

Madhukar Ganjpatrao Nandanwar, Applicant.

Shri S. P. Kulkarni, Advocate for the applicant.

VERSUS

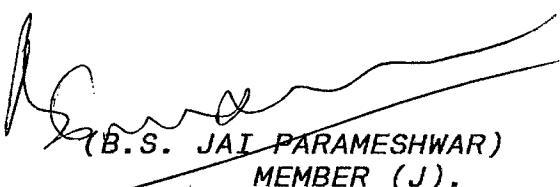
Union of India & Another, Respondents.

Shri S. S. Karkera for Advocate for  
Shri P. M. Pradhan, the respondents.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (J).

OS\*

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Hon'ble Shri B. N. Bahadur, Member (A).

Madhukar Ganpatrao Nandanwar,  
HSG-I - H.S.A.,  
A.P.S.O. (Inland),  
Bombay - 400 099.

Residing at - A-3/1,  
P & T Colony, Sahar Road,  
Andheri (East),  
Bombay - 400 099.

... Applicant.

(By Advocate Shri S. P. Kulkarni)

**VERSUS**

1. Union of India through  
The Chief Post Master General,  
Maharashtra Circle,  
Bombay - 400 001.

2. Senior Superintendent of  
R.M.M. Offices,  
Air Mail Sorting Division,  
Bombay - 400 093.

... Respondents.

(By Advocate Shri S. S. Karkera for  
Shri P. M. Pradhan).

**O R D E R**

PER : Shri B. S. Jai Parameshwar, Member (J).

Heard Shri S. P. Kulkarni, the Learned Counsel for the applicant and Shri S. S. Karkera for Shri P. M. Pradhan, the Learned Counsel for the respondents.

2. The applicant was initially appointed in the respondents' department as Sorter in the scale of pay of Rs. 975-1660 with effect from 16.11.1963. He was promoted to the post of

Supervisor in the scale of Rs. 1400-2300 (Sorting Supervisor) in the year 1977. He was further promoted to a norm based functional post in the scale of Rs. 1660-2600 with effect from 20.04.1988. This is known as Higher Selection Grade-II.

3. The applicant submits that as per the Recruitment Rules, he had put in three years of qualifying service and had become eligible for consideration for promotion to the post of H.S.G. Grade-I in the scale of pay of Rs. 2000-3200. He further submits that he could not become H.S.G. Grade-I due to limited number of posts in H.S.G. Grade-I.

4. While the applicant was working in H.S.G Grade-II, the department of posts upgraded 20% of the post of H.S.G. Grade-II to the grade of H.S.G. Grade-I in the scale of pay of Rs. 2000-3200. This was done by the Office Order dated 09.06.1992 (exhibit-I dated 16.11.1992).

5. These upgraded posts were called as 'Identified Posts'. The department, on the basis of the letter dated 16.11.1992, identified the post to be upgraded to H.S.G. Grade-I. Accordingly, the Chief Post Master General, Maharashtra, had upgraded ten posts, including Maharashtra and Goa.

6. The incumbents to the post of H.S.G. Grade-I were subjected to D.P.C. The applicant being the senior-most, was within the zone of consideration. He was empanelled by order dated 02.04.1993, exhibit-E, page 19 to the O.A. Further, by a letter of even number dated 17.08.1993 it was indicated that the said posting of the incumbent to H.S.G Grade-I was to take effect forthwith. That means to say, the applicant was posted to H.S.G.

*Grade-I in the scale of pay of Rs. 2000-3200 w.e.f. 02.04.1993.*

7. Between 09.06.1992 and 02.04.1993 some of the persons were working on the posts which were later identified for upgradation.

8. By order dated 13.10.1995, Annexure-D, page 18, the Senior Superintendent of R.M.S., Air Mail, Sorting Division, Bombay, regularised the officiating period of officials indicated therein, on the ground that they had worked in the upgraded H.S.G. Grade-I (as a Sorting Assistant) for a period beyond 14 days since 09.06.1992 and those who <sup>were</sup> ~~are~~ officiating in the grade of H.S.G. Grade-I in accordance with the letter dated 09.06.1992/16.11.1992.

9. That means, those officials who had worked beyond fourteen days in the upgraded post of H.S.G. Grade-I between 09.06.1992 and 02.04.1993 were given officiation in H.S.G. Grade-I right from 09.06.1992.

10. Being aggrieved, the applicant submitted representations dated 20.09.1995 and 28.07.1995, a copies of which are at Annexure F and G.

11. The applicant was not satisfied with the reply given by the respondents.

12. Hence, the applicant has filed this application for the following reliefs :

"(a) Hold and declare orders giving prospective effect to the promotion (In Situ) of applicant from 08.04.1993 instead of 09.06.1992 as H.S.G.-I H.S.A. vide orders dated 02.08.1986 (Exh. 'A')

17.08.1993 (Exh. 'B') 08.04.1993 (Exh. 'C') as arbitrary, discriminatory, autocratic and unjust. These orders which act to refuse antedating of promotion from 09.06.1992 be quashed and set aside.

- (b) Direct the respondents to give effect to promotion of applicant as H.S.G.-I, H.S.A. from 09.06.1992 fix pay accordingly and pay consequential arrears, etc. within three months.
- (c) Hold and declare act of giving promotion to Juniors such as there shown (Anne-Exh. 'D') in Memo dated 13.10.1995 and refusing same benefits to applicant as arbitrary orders dated 13.10.1995 (exhibit 'D') be held arbitrary and discriminatory and quashed and set aside; and
- (d) Direct the respondents to implement orders dated 16.11.1992 (exhibit 'I') in letter and spirit (pre-amble) by placement of applicant from date of upgradation i.e. 09.06.1992."

13. The respondents have filed a written statement. In the written statement they submit that the minimum requirement for being eligible for promotion to H.S.G. Grade-I is three years of approved service in H.S.G. Grade-II. The actual promotion depended on the relevant seniority of the official and also the zone of consideration and the recommendations by the D.P.C. Even though the Postal Directorate issued orders to upgrade 20% of the H.S.G. Grade-II post to that of H.S.G. Grade-I, no specific date for upgradation was notified by the Directorate. As per the order dated 09.06.1992, ten posts were identified for upgradation and as per the existent procedure, the said upgraded posts were to be filled by holding D.P.C. They submit that even though the posts were upgraded w.e.f. 09.06.1992, promotion could not be given to the eligible official in H.S.G. Grade-II as they were required to subject to D.P.C.

14. After completion of the formalities and empanelled by the D.P.C., the Postal Directorate issued order dated 02.08.1993 promoting certain incumbent, including the applicant, to that of H.S.G. Grade-I in the scale of pay of Rs. 2000-3200.



15. Between 09.06.1992 and 02.08.1993 certain officials were working in the upgraded post. They were given the benefit of officiating pay for having worked in the upgraded post beyond fourteen days continuously from 09.06.1992.

16. As the applicant had not worked in the upgraded post between 09.06.1992 and 02.0~~0~~<sup>08.04.1993</sup> 08.04.1993, he is not eligible for ante-dated promotion. Thus, the applicant is not eligible for ante-dating his promotion from 02.0~~0~~<sup>08.04.1993</sup> 08.04.1993 to 09.06.1992. His representations have been answered suitably. Hence, there are no grounds to grant the reliefs prayed for in the O.A.

17. It is an admitted fact that certain posts in H.S.G. Grade-II were upgraded w.e.f. 09.06.1992. The upgraded posts had to be filled up in accordance with the extant rules taking into consideration the zone of consideration, eligibility of the candidates and more so, the recommendations by the D.P.C. That means, the department had consumed certain time in filling up the upgraded post. In fact, on the basis of the letter dated 09.06.1992, they had identified ten posts, including Goa in Maharashtra Circle.

18. If really the respondent authority had intended to post only the senior most officials in the H.S.G. Grade-II on the upgraded post, then they should not have allowed any other person to man the upgraded post between 09.06.1992 and 02.0~~0~~<sup>08.04.1993</sup> 08.04.1993. Now from the tenor of the written statement it is clear that the senior most officials in the H.S.G. Grade-II were required to be filled up in the upgraded posts. When that was so, they should have allowed them to officiate in the upgraded posts subject to the condition of their records being clean and recommended by the



D.P.C. Instead of doing so, they allowed some other officials, who happened to be juniors to the empanelled list dated 02.04.1993 and thereafter, considered their working continuously for a period fourteen days beyond 09.06.1992 and conferred the officiating benefit of upgradation right from 09.06.1992. In our humble opinion, such a procedure has affected the seniority of those officials who were appointed after a regular process by order dated 02.04.1993. The order dated 13.10.1995 has given benefits to those persons who were by chance working in the upgraded post when the department was making an exercise to fill up the upgraded post.

19. It is the grievance of the applicant that by order dated 13.10.1995, some unintended benefits have been given to the juniors and thereby those juniors have been posted in the upgraded post without undergoing the process of D.P.C. and whereas the seniors who were posted in the upgraded post after completing the formalities required under the rules, were brought down by the impugned order dated 13.10.1995.

20. The respondents have not specifically stated that those officials who were working on the upgraded posts between 09.06.1992 and 02.04.1993 were seniors to the applicant. In case they had taken such a specific stand and had produced <sup>the</sup> seniority list to show that none of the juniors to the applicant was posted <sup>and 02.04.1993</sup> in the upgraded post between 09.06.1992, the applicant could have no case. But even at the time of addressing the argument, we requested the Learned Counsel for the respondents to produce the seniority list. He pleaded his inability to do so and further, he did not elaborate whether the incumbents of the upgraded posts between 09.06.1992 and 02.04.1993 were seniors or juniors to the applicant.

21. As against this, the applicant himself has given specific instances wherein certain juniors have been given upgraded post by the impugned order dated 13.10.1995. The respondents have not specifically transversed those particulars. Their main contention is that since the applicant was not working on the upgraded post beyond fourteen days continuously from 09.06.1992, he cannot be given an ante-dated promotion. The contention of the applicant is altogether <sup>different</sup> ~~defective~~. A junior cannot be treated in a different manner than a senior, who has by virtue of seniority and by virtue of selection and empanelment <sup>by</sup> ~~of~~ the D.P.C. was posted to an upgraded post. Even though the applicant stated that many of the juniors to him have been given officiation in the upgraded post of H.S.G. Grade-I by the impugned order dated 13.10.1995, he was not able to point out as to who was his immediate junior.

22. Since the respondents have failed to produce the seniority list and since the applicant failed to point out as to who was his immediate junior included in the impugned letter dated 13.10.1995, we will say that the applicant must be given the similar benefit on par with his junior. In view of the matter, we feel it proper to issue following directions :

(a) The applicant shall be given promotion to the H.S.G. Grade-I on par with his junior. In case a junior has been promoted right from 09.06.1992, the same benefit shall be extended to the applicant.

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(b) In case no junior to the applicant was promoted to the upgraded post by the impugned letter dated 13.09.1995 and that no one was promoted earlier to 02.04.1993, then the respondents shall verify the records with them and send a suitable reply to the applicant.

(c) In case the applicant is given retrospective promotion w.e.f. <sup>< 09.06.1992</sup> 02.06.1993, he shall be entitled to all consequential benefits.

(d) Time for compliance is four months from the date of receipt of a copy of this order.

(e) No order as to costs.

B. N. Bahadur

(B. N. BAHADUR)  
MEMBER (A).

OS\*

B. S. Jai Parameshwar

(B. S. JAI PARAMESHWAR)  
MEMBER (J).

25.7.96