

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1033/93

24.8.99
Date of Decision:

S.V.Bhide

Applicant.

Shri V.B.Madav

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.S.Karkera for Shri P.M.Pradhan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Bawaja, Member (A)

Hon'ble Shri. S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✕

(D.S. BAWAJA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1033/93

Dated this the *Tuesday* 24th day of *August* 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

S.V.Bhide,
11/5, Vrindavan
Coop-Hsg.Soc.Ltd.,
1st Carter Road, Borivali(E),
Bombay-66.

By Advocate Shri V.B.Madhav

... Applicant

V/S.

1. Union of India
Director General,
Deptt. of Post,
Dak Bhavan, Sansad Marg,
New Delhi.
2. Director General,
Department of Post,
Dak Bhavan, Sansad Marg,
New Delhi.
3. Chief Post Master General,
Maharashtra Circle,
Bombay G.P.O., Bombay.

... Respondents

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

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant joined service in the year 1953 and retired from service on 30.9.1991 from the North Bombay Sorting Office of the Department of Post and Telegraph. The applicant states that the Post and Telegraph Department had laid down

the scheme of Biennial Cadre Review (BCR) u.e.f. 1.10.1991. The applicant had retired on 30.9.1991 and therefore the benefits of the scheme have been denied to the applicant although the scheme was implemented actually in 1993. The applicant made a representation for grant of benefits of the BCR Scheme on 12.3.1993. For this representation, he got a reply dated 12.5.1993 from the respondents advising that since the applicant had retired on 30.9.1991, he is not covered by the scheme which was to be implemented from 1.10.1991. The applicant feeling aggrieved by this denial of promotion has filed this present OA. on 17.9.1993. The applicant has sought the following reliefs :- (a) to direct the respondents to consider the promotion of the applicant on merits or declare that the applicant is entitled to promotion as per the promotion policy of BCR which was to be implemented in the year 1987. (b) to direct the respondents to compensate the applicant for a minimum of Rs.14,000/- or maximum to Rs.59,000/- as consequential reliefs or any other amount the Tribunal may deem fit.

2. The applicant has advanced the following main grounds in support of his reliefs :- (a) The scheme of BCR promotion has been implemented by the Department of Telecommunication u.e.f. 1.12.1990 while the Department of Post has implemented the same scheme from 1.10.1991. The applicant therefore alleges

that there is a clear discrimination among the employees who belong to the same Ministry of Communication which ^{is} controlling both the Department of Telecommunication as well as Department of Posts.

(b) Respondents have allowed promotion to some employees who like the applicant had retired before the due date of implementation of the scheme and therefore the applicant has been discriminated.

3. The respondents have filed the written statement opposing the application. The respondents maintain that the applicant is not entitled for promotion under the BCR scheme which had been implemented from 1.10.1991 since the applicant retired before the introduction of the scheme. The respondents ^{have} denied that some employees who ^{been} had retired like the applicant have allowed the benefits of BCR scheme and therefore no discrimination has been caused to the applicant. As regards the cut off date for implementation of the scheme by the Department of Posts as compared ^{with} that of Department of Telecommunication, the respondents submit that these two departments though working under the same Ministry are working independently ^{for} and the policy matters and dates of implementation had been decided based on the circumstances prevailing in each department and the agreement arrived at with the concerned Unions. ^{therefore} The respondents strongly refuted any allegation of discrimination on account of different cut-off dates of implementation of the scheme in the two

departments. With these facts, the respondents plead that the applicant is not entitled for the relief ~~as~~ claimed for and therefore the application deserves to be dismissed.

4. The applicant has not filed any rejoinder reply for the written statement.

5. We have heard the arguments of Shri V.B. Madav, learned counsel for the applicant and Shri S.S.Karkera for Shri P.M.Pradhan, learned counsel for the respondents.

6. The applicant has sought the relief of promotion under the BCR scheme from 1987. We find that the grounds advanced seeking the relief are entirely different. The main ground of the applicant is based on the allegation of discrimination firstly with regard to cut-off date for implementation and secondly by allowing benefit to some of the employees who had also retired like the applicant but given the benefit of the scheme. The applicant is making a prayer for relief of promotion from 1987 stating in the OA, that an agreement had been reached in 1987 ^{with the Unions,} when the staff went on strike and the strike had been called off after the agreement was reached. The applicant has brought a copy of the terms of settlement on the charter of demands at page 19 of the OA. On going through this settlement, we find that though the department had accepted to consider the demand of

second time-bound promotion but no decision had been taken to implement the scheme. The Department of Posts has finally issued the orders for implementation of the scheme of promotion known as Biennial Cadre Review (BCR) as per order dated 11.10.1991 to be effected from 1.10.1991. Therefore, if at all the applicant is entitled for the benefit of the scheme, ^{it} can be from the date this order ^{is} issued and not ~~with~~ with reference to the terms of settlement arrived at in 1987. In view of these facts, the prayer for relief of benefit of promotion from 1987 is not supported by any extant orders of the Government and therefore no such prayer can be considered for granting relief.

7. As regards the promotion under the BCR scheme as per order dated 11.10.1991, the respondents have stated that he is not entitled for the benefits as he had retired on 30.9.1991 and the scheme came into effect from 1.10.1991. The applicant has challenged his non-promotion on two grounds. The first ground is in respect of cut-off date that there is a discrimination in implementing the scheme of BCR in respect of Department of Post when compared with that of Department of Telecommunication though both the departments are working under the Ministry of Communication. The applicant has submitted that in respect of Department of Telecommunication, the scheme of BCR had been made effective from 1.12.1990

(K)

while in respect of Department of Post, the ^{only} scheme has been made effective from 11.10.1991. The applicant has brought on record the copies of the scheme laid down by the Department of Telecommunication ^{as well as by} the Department of Post. The applicant submits that if the scheme in respect ^{the} of Department of Post had been ^{also} implemented from 1.10.1990, the applicant would have got the benefit. The respondents, however, have contested the contention of discrimination raised by the applicant. The respondents have submitted that though the Department of Posts and Department of Telecommunication are both under the control of Ministry of Communication, but both the departments after bifurcation are working independently in respect of policy matters. It is further submitted that the cut-off date has been fixed by the Department of Post taking into consideration the facts and circumstances prevailing in the Department of Posts and in consultation with the concerned Unions. We note from the reliefs prayed for that though the applicant has raised the issue of discrimination based on the cut off dates for implementation in the Department of Telecommunication and Department of Post, but we find that the applicant has not made any prayer for quashing the scheme laid down by the Department of Posts. In fact, the applicant has put in a claim for promotion from the year 1987. In view ^{necessary} of this, we do not ~~consider~~ to go into the merits of

of discrimination
this contention/raised by the applicant.

8. The second ground is that in respect of number of employees, the benefit of the scheme had been given to those like the applicant had retired before the introduction of the scheme. The applicant has relied upon the order dated 12.1.1993 at page 32 of the OA. to support his contention. The respondents have, however, contested this ground of the applicant stating that promotions covered under order dated 12.1.1993 are not as a result of implementation of BCR scheme and therefore the applicant cannot claim the relief based on this order. We have carefully gone through the order and note that in respect of some employees, the promotion has been granted for the period ^{earlier} ~~already~~ approved the cut off date of 1.10.1991 laid down in respect of implementation of BCR scheme. However, we further note that this order covers the promotions against the upgradation of the posts on national basis and it is nowhere mentioned that these promotions are ordered under the BCR scheme. In fact, these promotions cover entirely different category of staff. The applicant has brought the orders issued for promotion under the BCR scheme at page 27 of the OA. and we note that in this order it is clearly mentioned that the promotions are under the BCR scheme effective from 1.10.1991. In view of these observations, we are unable to appreciate as to how the applicant has contended discrimination relying upon the order dated 12.1.1993.

9. In the result of the above, we do not find any merit in the OA. and the same is dismissed accordingly. No order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

mrj.