

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 826/94

Date of Decision: 5.7.1999

Shri R.V. Suryakar _____ Applicant.

Shri A.G. Deshpande _____ Advocate for
Applicant.

Versus

Union of India and others. _____ Respondent(s)

Shri S.S. Karkera for
Shri P.M. Pradhan. _____ Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice S. Venkataraman, Vice Chairman

Hon'ble Shri. S.K. Ghosal, Member (A)

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

(S.K. Ghosal)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, FORT, MUMBAI-400001.

Original Application No.826/94

Monday the 5th day of July 1999.

CORAM : Hon'ble Shri Justice S. Venkataraman, Vice Chairman
Hon'ble Shri S.K. Ghosal, Member (A)

R.V. Suryakar
Retd. S.P.M. (HSG II)
Gokul Market,
Amravati. .. Applicant

By Advocate Shri A.G. Deshpande.

v/s.

1. Union of India, through
Secretary,
Ministry of Communications,
Delhi.
2. Director General,
Dept. of Posts,
New Delhi.
3. Chief Postmaster General,
Bombay.
4. Postmaster General,
Nagpur.
5. Senior Superintendent of
Posts,
Amravati. .. Respondents.

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

O R D E R (ORAL)

[Per Shri S.K. Ghosal, Member (A)]

The applicant had originally been appointed as a Postman and he was subsequently promoted with effect from 26.12.1958 as a Postal Assistant which is the relevant basic cadre. His grievance is that, though under the B.C.R. Scheme

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he was ~~eligible~~ for promotion to the up-graded post with effect from 1.10.1991 and the respondents had first promoted him under the order dated 24.6.1992 at Annexure A-5, along with others, and posted to the up-graded post of SPM Gokul Market Post Office with effect from 1.10.1991, he was later on denied that benefit. Under the order dated 30.7.1992 at Annexure A-4 we find that the applicant is shown as having retired as SPM Gokul Market at the level of HSG II i.e. BCR. The order dated 19.10.1993 of the 2nd respondent at Annexure A-2 finally rejected the representation made by the applicant in this behalf. That order has been impugned by the applicant. He has further claimed that he had actually worked at the said upgraded post with effect from 8.7.1992 till his superannuation on 31.7.1992.

2. The applicant has sought a number of reliefs, the principal among which are that his pay in the promotional scale of HSG II *(BCR Gr. III)* should be fixed with effect from 1.10.1991 and that arrears payable to him should be calculated and paid to him on that basis. The applicant has also prayed for commensurate retirement benefits.

3. The respondents have opposed the reliefs sought by the applicant and have pointed out that the applicant had been kept under suspension during the period from 13.9.1972 to 7.2.1977 and compulsorily retired from 8.2.1977 to 20.11.1981,

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and that he was awarded the punishment, while working as Postal Assistant, of being reduced to the lower grade of Postman with effect from 21.11.1981 for a period of four years. According to the respondents, thus he was not eligible for promotion to HSG Grade II i.e. B.C.R. Grade III in 1991 or in July, 1992 as he would not have completed 26 years of service in the basic grade of Postal Assistant after excluding those years.

4. It has been pointed out specifically on behalf of the respondents that the Appellate Authority, while dealing with that period, before he was reverted as a Postman, in response to the appeal filed by the applicant, in his order dated 17.10.1993 at Annexure A-7, had declared that the period, during which he was under suspension from 8.2.1977 till his reinstatement, should be treated as on duty only for the purpose of pension and that during the said period he would be paid only subsistence allowance, admissible to him had he been under suspension during the period in question. Earlier the Revisional Authority, while disposing of the petition filed by the applicant, in his order dated 18.7.1981, Annexure A-8, directed that as the penalty, in the departmental proceeding mentioned above, on purely humanitarian considerations the applicant should be reduced to the lower post of Postman for a period of four years. However the same Authority also ordered there that on restoration to the post of Postal Assistant the applicant would earn increments after the currency of the punishment. According to respondents, even those 4 years during which the applicant had actually worked only as a Postman, but not as a Postal Assistant could not be counted as service in the basic cadre of Postal Assistant.



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5. According to the respondents the applicant was restored to the cadre of Postal Assistant only with effect from 1985 and his promotion under BCR Gr.III with effect from 1991 was thus an act of error committed initially by the D.P.C. in 1992. Since the period of suspension mentioned above was treated as on duty only for the purpose of pension, but otherwise deemed to have been treated as under suspension entailing payment of subsistence allowance, which the applicant had accepted, that period could not be reckoned for the purpose of counting the years of service in the cadre of Postal Assistants which is the relevant basic cadre and where 26 years of service is required for promotion ^{also 49} ~~under the~~ BCR scheme.

6. The learned counsel for the applicant has relied strongly on the order of the Revisional Authority at Annexure A-8 and pleaded that since it was decided finally there that on restoration to the post of Postal Assistant the applicant would earn increments, the period during which the applicant had been so reverted to the lower post of Postman should by implication be automatically counted for all purposes as the period spent on duty as a Postal Assistant.

7. We are unable to accept this argument advanced on behalf of the applicant. We have already noted that under the order at Annexure A-7 during the period he was placed under suspension with effect from 8.2.1977 to the date of his

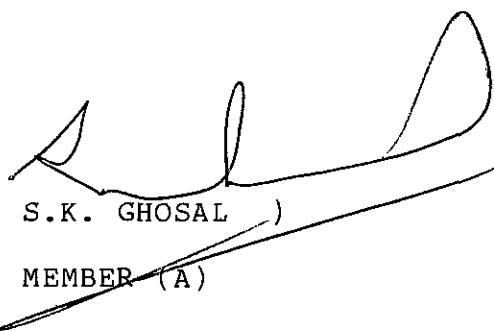
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reinstatement in Government Service in the lower post of a Postman, the applicant was considered to be on duty only for the purpose of pension and that he was permitted to draw only subsistence allowance, admissible to him had he been under suspension. ⁴⁹ Further, we observe that the order at Annexure A-8 is only for the purpose of drawing increments when he was restored to the higher cadre of Postal Assistants. In these circumstances we do not find that the action of the official respondents in 1993, treating ⁴⁹ him as not eligible for promotion to HSG II (BCR Gr.III) for his failure to complete 26 years of service as Postal Assistant can not be considered as illegal.

8. The official respondents have clearly admitted that though the actual promotion given to the applicant under the BCR Scheme from 8.7.1992 was done erroneously, the applicant had actually joined ⁴⁹ as ~~the upgraded post~~ ⁴⁹ SPM Gokul Market Post Office on 8.7.1992. In our considered opinion it is open to the administration to rectify the error within a reasonable time from ⁴⁹ when an error is so committed. In this case we observe that though the order promoting the applicant was passed in 1992 with retrospective effect, the mistake was identified within a short time and the respondents duly corrected the mistake. At the same time since the applicant had actually worked in the BCR Grade III, at the up-graded post of SPM Gokul Market Post Office with effect from 8.7.1992, it will be required legally of the respondents to give him the scale of ⁴⁹

pay attached to that post for the time he actually so worked.

9. For the reasons that we have discussed above we allow the O.A. only partly and declare that the applicant is eligible for the actual pay at the HSG II (BCR Gr.III) level for the period he actually worked as SPM Gokul Market till his superannuation. However, we cannot allow the main claim made on behalf of the applicant that he should be deemed to have been promoted with retrospective effect from 1.10.1991 in HSG Grade II. With these directions the O.A. is disposed of. The respondents shall carry out the above direction within three months of the date of receipt of a copy of this order. No costs.



(S.K. GHOSAL)
MEMBER (A)



(S. VENKATARAMAN)

VICE CHAIRMAN.

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