

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : 'GULESTAN' BUILDING
6, PRESCOT ROAD, MUMBAI - 400 001

ORIGINAL APPLICATION No.477/1994

TUESDAY, THIS THE 29TH DAY OF JUNE, 1999

SHRI JUSTICE S. VENKATARAMAN .. VICE CHAIRMAN

SHRI S.K. GHOSAL .. MEMBER (A)

Smt. Kisum Anant Bhawe,
Age : 49 years,
Sub-Postmaster,
Government Polytechnic
Post Office (Pune),
Pune - 411 016.
R/a P.O. Pune,
Dist : Pune - 411 016. .. Applicant

(By Advocate Shri S.P. Kulkarni)

Vs.

1. Union of India, through
Senior Postmaster, Pune,
At P.O. Pune H.P.O.,
Pune - 411 001.
2. Senior Superintendent of
Post Offices, Pune City and
West Division, Pune - 411 030.
3. Postmaster General,
Pune Region,
Pune - 411 001. .. Respondents

(By Standing Counsel Shri S.S. Kerkara)

O R D E R

Justice S. Venkataraman, Vice Chairman :

The applicant who was promoted to LSG Rs.1400-2300/- on 30.11.1993 was promoted to BCR Scale Rs.1600-2660/- after a D.P.C. was held at regional level (Pune) and she was posted as Sub-postmaster Polytechnic, Pune, with effect from 1.10.1991 as per Annexure-A7. The

applicant assumed charge in pursuance of that order and that when she was holding that post, a Circle level D.P.C. was again held and another memo dated 6.6.1992 (Annexure-A4) was issued again promoting the applicant to HSG -II and posting her as Assistant Postmaster, Chinchwadi. The applicant gave a representation ^{expressing her} unwilling ^{ness} to go to Chinchwadi to which she was posted. That letter was taken as her refusal to accept the promotion. The applicant again gave a representation stating that she gave her unwillingness to new posting by mistake and she was willing to accept the posting. But, the Respondents refused the request on the ground that promotion once declined became final. Subsequently, by order dated 16.6.1993 (Annexure-A2), she was been promoted to HSG-II and retained in the same post, vizz, Sub-Postmaster, Government Polytechnic. However, this promotion is indicated to be ^{effective} after finalisation of the disciplinary case.

2. The case of the applicant is that she having been once promoted to HSG -II and she also having assumed charge of the post in pursuance of that order, there was no justification for issuing another order of promotion, that the Respondents were not justified in treating her unwillingness to go to the place of posting as her unwillingness for promotion, that as per the promotion order Annexure-A4, the post held by her must have been deemed to have been upgraded from 1.10.1991 and that in the circumstances, she is entitled to the scale of Rs.1600-2660/- from 1.10.1991.

3. The fact that the applicant had been promoted after conducting D.P.C. at Regional level and that the applicant had also assumed charge of that post are not disputed. The Respondents have pleaded that as there was no clear order as to ^{at} what level the cadre review was to be taken ^{at} and in the absence of those clear orders preliminary selection under the D.P.C. was made at the Regional level and that subsequently after a clarification dated 30.3.1992 was received, the D.P.C. at the Circle level was conducted and the applicant was promoted and given a posting and that as the applicant declined the posting, she was debarred for consideration for promotion for one year and that after that period expired, she has been considered and promoted as HSG-II.

4. The question that arises for consideration is as to whether the promotion which had been given to the applicant as per Annexure-A7 can be said to be an invalid promotion and whether it was superseded by Annexure-A4. Admittedly, there were no clear instructions as to at what level the promotion to HSG-II had to be made. The **Postmaster General** Pune, on the basis of the Regional D.P.C. had given the promotion to the applicant by order dated 16.1.1992 (Annexure-A7). It is only much later, a clarification was issued on 30.3.1992 stating that the promotion to HSG -II would continue to be on Circle basis. In these circumstances, it cannot be said that the promotion given under Annexure-A7 was one without jurisdiction. It may be noted that even when Annexure-A4, dated 6.6.1992

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was issued, that order does not state that it is issued in supersession of the order dated 16.1.1992. Nowhere any order setting aside the promotion effected on 16.1.1992 has been passed. Further, in Annexure-A4, dated 6.6.1992, it is stipulated that the officials in section -I and section - II will be eligible to draw the higher scale of Rs.1600-2660 from 1.10.1991 in the posts they had actually held. The applicant's name is in Section - II. This means that they became entitled to draw the higher scale from 1.10.1991 itself in the posts which they had already held as on 6.6.1992. There is also a condition in the order which states that in respect of officials in Sections - I and II who held unidentified posts upto the time of implementation of that memo, the posts actually held by them will be deemed to be upgraded for the required period.

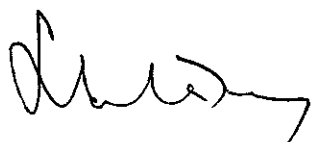
5. The next point to be considered is whether the applicant could be said to have declined the promotion to HSG -II. It is seen that the applicant who had already been promoted to that scale by Annexure-A7 and was holding a post was given another posting again purporting to promote her to HSG -II. It is under those circumstances, the applicant was not willing to accept the posting to Chinchwadi. Her declining to accept the posting could not have been treated as her unwillingness to accept the promotion itself, especially in the background of the earlier order which had been passed promoting her on 16.1.1992 itself.

6. The Respondents have been unreasonable to

her unwillingness to accept the posting
treat ~~that~~ as her refusal for promotion even after she
gave a representation that she was prepared to accept
the posting. It may be noted that when she was again
promoted in 1993, she has been posted to the same post
which she was holding in polytechnic. On the material
on record, we are convinced that the refusal of the
higher scale to the applicant from 1.10.1991 is unjusti-
fied and that she is entitled to that scale from that
date.

7. For the above reasons, we allow this applica-
tion holding that the applicant is entitled to the HSG-II
scale of Rs.1600-2660/- with effect from 1.10.1991 and
that she is also entitled to exercise her option under
F.R. 22(1)(a)(i) and that the Respondents shall give
her all consequential benefits. However, the arrears
shall be restricted to the period from one year prior
to the filing of this application, i.e., ^{from} 22.3.1993.
This shall be complied with within four months from
the date of receipt of a copy of this order.


(S. K. GHOSAL)
MEMBER (A)


(S. VENKATARAMAN)
VICE CHAIRMAN

psp.