

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 176 of 1998.

Dated this Wednesday, the 21st day of June, 2000.

Vasant G. Mhabadi, \_\_\_\_\_ Applicant.

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

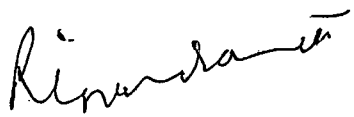
VERSUS

Union of India & 2 Others, \_\_\_\_\_ Respondents.

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

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.  
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 ? } us
- (iii) Library.

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

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Vasant G. Mhabadi,  
Postal Assistant,  
Dadar Head Post Office,  
Mumbai - 14.

... Applicant

(By Advocate Shri S.P. Kulkarni)

VERSUS

1. Union of India through  
The Sr. Superintendent of  
Post Offices, Mumbai City  
East Division, Dadar Head  
Post Office Building,  
3rd floor, Dadar,  
Mumbai - 400 014.

2. Director of Postal Services  
(City),  
Office of the Chief Postmaster  
General, Maharashtra Circle,  
G.P.O. Building, Fort,  
Mumbai - 400 001.

3. Senior Postmaster,  
Dadar Head Post Office,  
Dadar H.P.O. Building,  
Dadar, Mumbai - 400 014.

... Respondents.

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

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant claiming retrospective promotion under One Time Bound Promotion (in short O.T.B.P.) with effect from 02.05.1993. The respondents have

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filed reply opposing the application. We have heard Mr. S.P. Kulkarni, the Learned Counsel for the applicant and Shri S. S. Karkera on behalf of Shri P.M. Pradhan, the Learned Counsel for respondents.

2. In this case, most of the facts are admitted and undisputed. It is also admitted that applicant has since been promoted under the O.T.B.P. Scheme with effect from 01.05.1997. Now the only question is, whether the applicant is entitled to retrospective promotion with effect from 01.05.1993 when he completed sixteen years of service or not ?

3. The applicant is working as a Postal Assistant in the Department of Post Offices at Mumbai. He joined service on 02.05.1977. He completed 16 years by 01.05.1993. Under the O.T.B.P. Scheme, a postal official is entitled to promotion to a higher grade after the completion of sixteen years. But it appears that applicant was not promoted in 1994 when some of his juniors came to be promoted. He was again not promoted in 1995 and 1996. But subsequently, he has been promoted in 1997. The applicant's grievance is that his supersession during 1994, 1995 and 1996 was illegal and not sustainable in law.

4. The respondents have justified the action taken, presumably on the ground that disciplinary enquiry was contemplated against the applicant when the first D.P.C. was held on 08.07.1994. Subsequently, a charge-sheet was issued against the applicant, which ended in a minor penalty in 1995. The

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applicant was again not recommended for promotion in 1995 and 1996 and subsequently he has been promoted in 1997. The respondents have also taken a stand that the claim is barred by limitation.

5. The Learned Counsel for the applicant contended that no charge-sheet was pending when the first D.P.C. was held on 08.07.1994 and, therefore, the applicant's promotion could not be with-held in view of the law laid down by the Supreme Court in *K.V. Jankiraman's* case. It was, therefore, argued that applicant is entitled to promotion from 02.05.1993 when he completed sixteen years of service. On the other hand, the Learned Counsel for the respondents seriously contended that the claim is barred by limitation.

6. As far as merits are concerned, there is no dispute that applicant was superseded in the D.P.C. Meeting held on 08.07.1994. The Learned Counsel for the respondents has placed before us the original records. We find from the records that there was no adverse remarks against the applicant in the confidential reports. He was not recommended for promotion since disciplinary enquiry was contemplated. It is admitted that charge-sheet was issued on 21.04.1995. Therefore, as on the date of D.P.C. held on 08.07.1994, there was neither a departmental charge-sheet nor a criminal charge-sheet pending against the applicant. The notes in the D.P.C. proceedings shows that there was no adverse remarks against the applicant but there is a note that disciplinary enquiry is contemplated and that is how the

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applicant's case was not recommended for promotion. The Supreme Court had occasion to consider this question in the case of Union of India & Others V/s. K. V. Jankiraman reported in AIR 1991.SC 2010 where the Apex Court has ruled that unless charge-sheet was pending on the date of D.P.C., promotion cannot be with held. Since in this case the applicant had a good record of service, his promotion could not have been with-held merely on the ground of contemplated disciplinary enquiry. Therefore, we hold that denial of promotion to applicant in 1994 was illegal and arbitrary and contrary to the law declared by the Apex Court.

But the Learned Counsel for the respondents strongly ~~opposed~~ <sup>pressed</sup> the plea on limitation. It is true that the present application is filed in February, 1998 claiming retrospective promotion from 1993. It appears, some juniors of applicant came to be promoted in 1994. Therefore, the applicant should have challenged his supersession within one year from that date. The applicant did make a representation to the administration on 12.09.1994 claiming promotion. He made repeated representations in 1995 and 1997. The administration issued a reply only on 06.12.1997 rejecting the claim of the applicant and that is how the applicant has filed the present O.A. We may also take into consideration other material facts which are relevant for deciding the question of limitation.

The scheme of O.T.B.P. is in the nature of giving incentive to the postal employees after they complete particular period of service. On that basis, some incentive is given in the form of higher scale of pay, which help the officials to get higher pensionary benefits. Hence, in the facts and



circumstances of the case and having regard to the nature of O.T.B. promotion and its object of giving incentive on the expiry of certain period, we may conclude that it is in the nature of continuous cause of action. The relief was denied in 1994, 1995 and 1996 and it was given in 1997. If once we hold that getting an incentive in the form of O.T.B. promotion is one of the incentives and it is a continuous cause of action, then the applicant can approach this Tribunal at any time. We must ~~hasent~~<sup>hasten</sup> to add that though it is a continuous cause of action, if the applicant had approached this Tribunal after a lapse of time, he may not be entitled to claim arrears of monetary benefits but he can only get notional benefits. We may also notice that during 1995, charge-sheet was issued to the applicant. Therefore, when a charge-sheet is pending against him, he could not have rushed to this Tribunal seeking a direction for promotion retrospectively. The final order in revision came to be passed in December, 1996. If we take that as the cause of action, then one year will take us to December, 1997 and within two months the application is filed. Hence, taking all the facts and circumstances into consideration, we feel that this is a case of continuous cause of action and, therefore, the delay may come in the way of granting actual monetary benefit but there is no difficulty to grant notional benefit.

7. We have already held that denial of promotion to the applicant in the D.P.C. held on 08.07.1994 is not sustainable in view of the law declared by the Apex Court. Hence, the applicant is entitled to be considered for promotion from 02.05.1993. In view of our earlier reasonings, the applicant is entitled to get only notional promotion from 02.05.1993.

We feel that the matter should be remitted to the administration to hold a review D.P.C. as on 08.07.1994 and consider the claim of the applicant for promotion to O.T.B.P. If the applicant is found fit for promotion, after ignoring the departmental action initiated, but only on the basis of service records like confidential records, then applicant should be given retrospective benefit from 02.05.1993 notionally. On that basis, the applicant's salary should be fixed from time to time. Applicant will not be entitled to any arrears of monetary benefit but his pension and all other retirement benefits will have to be refixed on the basis of the notional benefit given. We are told that applicant attained superannuation on 31.05.2000. Therefore, his pension and retirement benefits should be fixed on the basis of the aforesaid notional benefit in case he is cleared by the D.P.C. for O.T.B. promotion. Actual monetary benefits<sup>to</sup> granted in the form of revised pension, arrears of pension and other retirement benefits.

8. In the result, the application is disposed of in the light of the observations made in para (7).. Respondents should comply with this order of this Tribunal within a period of four months from the date of receipt of a copy of this order. No order as to costs.



(B. N. BAHADUR)

MEMBER (A).



(R.G. VAIDYANATHA)

VICE-CHAIRMAN.