

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. No. 397 of 98

New Delhi dated this the day 13th of March, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN(A)
HON'BLE MR. S.L. JAIN, MEMBER(J)

Shri Virendrakumar Jekamsing
Jamanekar
S/o. Jakamsing Vesta Padvi
(B Grade), Sub-Postmaster,
Th Thalner S.O. (Dhule Division),
R/o. Thalner,
Tal. Shirpur, Dist. Dhule-4.
(By Advocate: Shri S.P. Kulkarni)

APPLICANT

Versus

Union of India

Through :

1. Chief Postmaster General,
Maharashtra Circle, Old G.P.O.
Building, Fort, Mumbai
Mumbai-400 001.
2. Postmaster General,
Aurangabad Region,
Aurangabad-413 002.
3. Senior Superintendent of Post
Offices, Dhule Division,
Dhule-424 001.

RESPONDENTS

(By Advocate: Shri P.M. Pradhan)

ORDER

S.L.JAIN, M(J)

Applicant had initially filed this OA seeking

1) a declaration that respondents order dated 22.9.1990 (Annexure A-3) which he asserts has not been implemented, is enforceable in law to and direct respondents to implement the same within three months.

2) Set aside letter dated 26.3.98 being based on wrong seniority as well

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as seniority position shown in CGL 1990
and 1996

3) direct respondents to carry out correction in all seniority lists maintained by them as per Exh.A-3 and constitute a review DPC for grant of promotion to applicant from the date his junior Shri T.L.Naik was promoted in LSG; HSG-II to con for the promotion to HSG-I which is due,

4) Quash and set aside order dated 4.2.94(Exh.A-43).

5) grant consequential benefits.

2. Applicant who belongs to S.T.Community began service as a Post office Clerk in Ahmednagar Division on 30.12.65. At that point of time his name was V.J. Padvi. His seniority position in the Circle gradation list of Postal Clerks (Mofussil Divisions) corrected upto 1.7.73 was at serial no.4714 (Exh.A-23). Later applicant changed his name to V.J. Jamaneker which was notified by gazette notification dated 7.1.78. In the Circle Gradation List of Postal Clerks as on 1.7.85 applicant appeared at two places, i.e. at Sl.No.2986 as V.J.Padvi and at Sl.No.3708 as V.J.Jamanekar). When this error was pointed out to respondents, they informed him on 22.2.90 (Ann.A-3) that his position at Sl.No.2986 was correct and his name at Sl.No.3708 had been deleted. Meanwhile applicant had got himself transferred at his own cost and request to Dhule Division, but respondents admit that as the transfer was within the same Circle the transfer did not affect his Circle seniority.

3. Meanwhile applicant had submitted a representation on 12.9.88 (Exh. A-11) for promotion to lower selection grade w.e.f. 15.4.79, i.e. the date his

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junior, Shri T.L. Naik who also belongs to S.T. Community, and whose seniority position was at Sl.No.3352 was promoted. Consequential promotion to higher grades was also sought.

4. Eventually, after several representations respondents has issued order dated 24.11.1998 (Ann. A-55) granting applicant notional promotion.

- i) to LSG w.e.f. 12.9.77 with reference to (his the then junior) Shri G.B. Bamble Sl.No.2989
- ii) to HSG-II w.e.f. 6.2.89 with reference to his junior Shri J.S. Nagbhidkar.
- iii) to HSG-I w.e.f. 23.2.93 with reference to his junior Shri Nagbhidkar subjct to his actually joining the post in that grade.

The order makes it clear that no arrears are payable for the period of notional promotion to LSG/HSG-II/HSG-I, and applicant would get the benefit of notional promotion in those grades only if he actually accepted his promotion in HSG-I and joined the post.

5. Meanwhile applicant was proceeded against departmentally under Rule 16 CCS(CCA) Rules on 15.4.98 and a penlty of withholding one increment for a period of 15 months was inflicted upon him by the disciplinary authority on 30.6.98. Respondents state that as the penalty was current the date of the aforesaid order of 24.11.98, and continued till the date of filing of their reply, applicant was not relieved to take his promotion in HSG grade. It is contended that the said promotion

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could have been given on actual basis only when the penalty ceased to be operative, in view of DOPT circular dated 14.9.92 (Exh.R-1).

6. Respondents also contended that the retrospectored promotion granted to the applicant vide order dated 24.11.98 has been restricted only to notional basis without the benefit of arrears because applicant had not actually taken charge of and worked on the promotional posts w.e.f. the dates he has been promoted, and under FR 17 payment of salary and allowances are admissible only w.e.f. the date of actual taking charge of that post.

7. After respondents had issued order dated 24.11.98 applicant sought for and was allowed permission to amend the OA and impugn the same.

8. We have heard both parties.

9. Although applicant had sought promotion to LSG w.e.f. the date Shri T.L.Naik (who applicant claims is his junior) was promoted i.e. w.e.f. on 15.4.79, we find that respondents by impugned order dated 24.11.98 have promoted him to LSG w.e.f. 12.9.77 itself i.e. a date nearly 1,1/2 years prior to the date applicant is himself seeking promotion. Under the circumstances, we propose to limit ourselves to adjudicating only as to whether respondents have acted rightly, while issuing impugned dated 24.11.98 in restricting applicant's promotions to notional basis and denying him the benefit of arrears on the promotional posts.

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10. In this connection we note that applicant was denied his promotion to LSG w.e.f. the date his junior Shri Bamble was promoted because of the confusion in applicants identity arising out of his name being shown at two places in the gradation seniority list corrected upto 1.7.85. This error was caused by respondents, which they themselves realised and subsequently corrected by order dated 22.2.90. In fact applicant had also represented on 12.9.88 against his wrongful exclusion from promotion w.e.f. the date of promotion of his junior.

11. As applicant's denial of promotion to LSG and to higher posts was entirely because of respondents own error in placing his name at two places in the seniority list as on 1.7.85, we hold that it would be clearly unfair and unjust to deny him the benefits of arrears of promotion atleast w.e.f. 12.9.88 when he represented against his non promotion. Applicant was both available and willing to be promoted and he was not promoted only because of the error caused by respondents in placing his name at two places in the G SL 1985 which they subsequently corrected.

12. When the reason why applicant was not promoted was on account of respondents themselves, they cannot take the shelter of FR 17 to contend that applicant is not entitled to the arrears of the promoted post as he did not actually work on that post, and neither can they take the plea of limitation because applicant is impugning their order dated 24.11.98, and reckoned from that date the OA is not at all hit by limitation.

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13. Furthermore when the chrgesheet issued to applicant is dated 15.4.98, it cannot b taken as a ground to deny applicant his promotion and/or arrears prior to that date.

14. In the result the OA succeeds and is allowed to the extent that respondents order dated 24.11.98 granting applicant promotion to LSG w.e.f 12.9.79 and HSG-II w.e.f. 6.2.89 and HSG-I w.e.f. 23.2.93 only on notional basis and further stating that he would get for the benefits of notional promotion in these grade only on the condition that he actually accepted his promotion in HSG-I and joined the post and later not permitting him to join because of the penalty order dated 30.6.98 is quashed and set aside Respondents shall fresh order within 3 months from the date of receipt of the order where by

i) applicant will stand promoted to LSG w.e.f. 12.9.77; HSG-II w.e.f. 6.2.89 and HSG I w.e.f. 23.2.93 without any condition

ii) He shall be entitled to arrear of pay and allowance was on those promoted posts w.e.f. the date of his first representation dated 12.9.88

15. Respondents shall also pay costs of Rs.1000/- to applicant.

SL Jain
(S.L. JAIN)

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