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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. 928/91

Dt. of Decision : 31.3.1994.

1. D. Koteswara Rao
2. P. Sita Rama Rao
3. Ch. Nageswara Rao
4. G. Brahmananda Rao
5. M.V.S. Samba Murthy
6. Ch. Rangaswamy
7. M.V. Subba Rao
8. D. Pushkara Rao

.. Applicants.

Vs

1. Government of India Rep.
by its Secretary,
Ministry of Communications,
New Delhi.
2. Director General,
Department of Posts,
Government of India,
New Delhi.
3. Chief Post Master General,
A.P. Circle,
Hyderabad.

.. Respondents.

Counsel for the Applicants : M.P.B. Vijaya Kumar

Counsel for the Respondents : Mr. N.V. Raghava Reddy, Adl. CGSC

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri P.B. Vijaya Kumar, learned counsel for the applicants and Sri N.V. Raghava Reddy, learned counsel for the respondents.

2. The applicant-1 is directly recruited as UDC in the Savings Bank Control and Internal Check Organisation (SBC/ICO). The applicants 2,3,5 and 7, as LDCs and as in service candidates, ~~they~~ appeared for the recruitment of UDCs and they were selected and appointed as UDCs. Applicants 4,6 and 8 were promoted as UDCs on the basis of their selection basing on their performance in the limited competitive examination.

3. The time-bound one promotion scheme was introduced to LDCs and UDCs working in the SBC/ICO with effect from 1-8-91. Para 1 (ii) to (vi) of the letter No.20-2/88-PE.I dated 26-7-91 which are relevant for consideration of this OA are as under :-

- 1.ii) The posts of LDC (Rs.950-1500) and UDC (Rs.1200-2040) in the Savings Bank Control Organisation and Internal Check Organisation except to the extent LDC/UDCs who remain under the existing scale will be abolished and equal number of time Scale Postal Assistants (Rs.975-1660) will be created. The remaining posts will, however, be converted as Postal Assistants (SBCO) as and when the concerned LDC/UDC ceases to hold that post. All the existing LDCs/UDCs will be required to furnish, within one month, their option under FR.23 according to which they may, it so like retain their old pay in the existing scale of pay which would be personal to such officials. The option once exercised will be final.
- iii) On replacement of the LDCs and UDCs by Time Scale Postal Assistants (SBCO), the existing duties of the LDC/UDC will be performed by the Time Scale Postal Assistants (SBCO) and the senior officials would be required to perform the duties at present entrusted to UDCs.
- iv) The officials who do not opt for their old scales, will be brought into the grade of Postal Assistants (SBCO) and their pay will be fixed under FR.22(a)(2) as substituted by Government of India, Department of Personnel and Training Notification No.1-10/89-Estt.

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(Pay-I) dated 30-8-1989 by treating the posts in the Time Scale as not involving assumption of higher duties and responsibilities.

- v) A reduction of 5% in the operative posts of Postal Assistants (SBCO) and 15% in the first line supervisory (LSG) posts sanctioned on the basis of norms and out of the norms respectively in SBCOs circle as a whole will be effected from the date, the conversion is implemented.
- vi) The existing officials who do not opt for old scales would be considered for grant of first promotion in the next higher scale of Rs.1400-2300 if they complete/have completed 16 years of service as LDC or as LDC and UDC or as Postal Assistant and UDC taken together. Their pay on grant of promotion will be fixed under FR-22(c) with reference to the pay fixed in the Time Scale.

4. It is evident from the above that with effect from ^{2. Dec} 1-8-1991 in this organisation ~~in~~ the pay scale of Rs.1200-2040 were brought down as Postal Assistants in the pay scale of Rs.975-1660 if they had not ~~opted~~ to continue as UDCs. The Postal Assistants were eligible for promotion on completion of 16 years of service as LDC or as LDC and UDC or as Postal Assistant and UDC taken together. In view of the said proviso the erstwhile LDCs who had ~~not~~ completed 16 years of service were promoted, while the UDCs who had not completed 16 years of service as referred in paragraph-1 (vi) of the letter referred to ~~dated 26-7-91~~ ^{not} were promoted. This OA was filed praying for declaring the executive instructions as per letter dated 26-7-91 as arbitrary and repugnant to the statutory rules framed under Article 309 of the Constitution and consequently ^{to} quash the same or in the alternative ^{to} direct the respondents to accord reasonable weightage on notional basis to the applicants to count the UDC service as continuous service with 16 years as Postal Assistants for the purpose of further promotion in terms of impugned instructions dated 26-7-1991.

5. It is manifest from paragraph-1 (vi) of letter dated 26-7-1991 that an LDC who completed 16 years of service got

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promotion to the cadre higher to that of Postal Assistants while the erstwhile UDCs who were designated as Postal Assistants from 1-8-1991 would continue as Postal Assistants if they had not completed 16 years of service either as UDC and Postal Assistants or as UDC, UDC and Postal Assistant. It is strongly urged that when as per recruitment rules formulated under Article 309 of the Constitution of India, an LDC cannot be considered for promotion to the post higher than that of UDC without considering the case of UDC, LDC cannot be promoted ahead of UDCs by executive fiat. The judgement of the Supreme Court reported in 1994 (1) SLR 824 (Mrs. Shakuntala Sharma Vs. High Court of Himachal Pradesh and another) was also relied upon for the applicants. The order of the, CAT, Bangalore Bench dated 2-9-1993 in OA. 203/92 is also referred to in this context, for the applicants.

6. The Supreme Court considered Rule 10 of the High Court of Himachal Pradesh Subordinate Staff Service Rules in 1994 (1) SLR 824. There were two categories of posts in the said High Court. One category consisted of Clerks, Translators and Revisers in that order, while the other category consisted of Senior Assistants and Deputy Superintendents in the said order. The post of Superintendent^{is} above revisors and Deputy Superintendents, and it is the common promotional post to both the categories. As per rules, Revisers/Dy. Superintendent with three years of service, and Translator/Senior Assistant with six years of service are eligible for promotion to the post of Superintendent. As the applicant therein, who was working as Reviser had not put in three years of service, she was held to be not eligible for promotion to the post of Superintendent, while the Sr. Assistant who is of a category lower to that of Dy. Superintendent which is on par as that of Reviser and who had put in six years of

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service was promoted as Superintendent. Then it was held that it is a case of giving unwarranted advantages to the incumbents of lower posts over the incumbents of higher posts and thus the said rule was said to be inequitable, unjust and violative of Article 14 of the Constitution. There is force in the contention of the applicants that this is also a case of giving unwarranted advantages to the erstwhile LDCs over the erstwhile UDCs as per the impugned letter dated 26-7-1991.

7. But Sri N.V. Raghava Reddy, learned counsel for the respondents contends that an option was given to the erstwhile UDCs to continue as UDCs and having chosen to come under the new scheme they cannot challenge the new scheme. But the said letter dated 26-7-1991 does not indicate that if the erstwhile UDC continued to be in the same cadre of UDC he would have got promotion earlier to the date of promotion of the erstwhile LDCs. Thus, the said option is merely illusory. So the contention for the applicant that the letter dated 26-7-1991, if read to the effect that LDCs who completed 16 years of service have to be promoted when the erstwhile UDCs who were seniors to the erstwhile LDCs were not eligible for promotion had to be held as violative of Articles 14 and 16 of the Constitution, has to be upheld.

8. But while considering the scheme of Biennial Cadre Review (BCR) introduced in the letter No.27-4/87-TE-II(i) dated 16-10-1990, the Bangalore Bench of CAT by order dated 2-9-1993 in OA.3/93 held that the said BCR Scheme has to be read down by giving promotion to the seniors from the respective dates on ^{while} ~~while~~ their juniors were eligible for promotion under the BCR Scheme whereby the BCR Scheme dated 16-10-1990 cannot be struck down as violative of Articles 14 and 16 of the Constitution. As the Time Bound One Promotion Scheme

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20/9/93

Copy to:-

1. Secretary, Ministry of Communications, New Delhi.
2. Director General, Department of Posts, Government of India, New Delhi.
3. Chief Post Master General, A.P.Circle, Hyderabad.
4. One copy to Sri. P.B.Vijaya kumar, advocate, CAI, Hyd.
5. One copy to Sri. N.V.Raghava Reddy, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Handwritten:
To send
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7.9.24
7.8

ob.

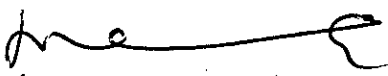
cc: 15


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Scheme was introduced with effect from 1-8-1991 in regard to the LDCs and UDCs of SBC/ICO, as ~~such~~ the scheme was already operative for Group-C and D staff of the basic operative cadres and if the said scheme as introduced by letter dated 26-7-1991 is struck down on being violative of Article 14 and 16 of the Constitution of India, the employees who got benefit in such scheme would be prejudicially affected. We feel that it is just and proper to read down Time Bound One Promotion scheme introduced by letter dated 26-7-1991 as it was done by the Bangalore Bench in regard to BCR scheme dated 16-10-1990 and as thereby no prejudice will be caused to any.

8. Hence, the applicants and the other similarly situated employees in SBC/ICO have to be given promotion from the date of their respective juniors were promoted as per the time bound one promotion Scheme introduced as per letter dated 26-7-1991. The applicants have to be given monetary benefits from the dates of their respective promotions as per this order. Time for implementing the order is three months from the date of receipt of this order.

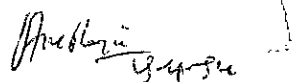
9. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated : March 31, 1994
Dictated in the Open Court

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Dy. Registrar (Judl.)

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