

(44)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA. 22/95

dt. 6. 1998

Between

Mir Sabeer Ali

: Applicant

and

Sr. Subdt. of Post Offices
Hyderabad

: Respondent

Counsel for the applicant

: P. Rathaiyah
Advocate

Counsel for the respondents

: V. Rajeswara Rao
CGSC

Coram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl.)

Jai

OA.22/95

dt. _____

Order

Order (as Per Hon. Mr. B.S. Jai Parameshwar, Member(Judl.))

Heard Sri P. Rathaiah, learned counsel for the applicant and Sri V. Rajeswara Rao for the respondents.

1. The OA was set down to 22-1-1995. The learned counsel for the respondents. On that day the learned counsel for the respondents failed to produce the relevant orders to show that during 1969 there was classification of Group-D posts into Test Category and Non-Test Category in the Postal Division.

2. This is an application under Section 19 the Administrative Tribunals Act. The application was filed on 2-1-1995.

3. The facts giving rise to this OA, ^{as may be} in brief be stated thus :

a) The applicant was appointed on compassionate grounds on the demise of his father Sri Mir Ibrahim Ali, a Group-D official in the Postal Division.

Offices, South Division, Hyderabad, issued letter of appointment to the applicant on 4-11-1969 as per his memo No.PF/Mir Saber Ali/4-11-1969.

b) The applicant was allotted to South Sub Division, Hyderabad, and was posted as Chowkidar. The applicant had studied upto 4th class at the time of his appointment. He submits that though he was posted as Chowkidar his services were utilised as ^a regular Group-D employee for a period of 14 years. He submits that after his appointment as regular Group-D employee he was posted as Chowkidar. As such he continued upto 1983 in Begum Bazar Post Office.

c) It is submitted that OTBP Scheme was introduced to the Postal Department and from 30-11-1983 the applicant had completed 16 years of service. Thus, the Senior Superintendent of Post Offices vide memo No.B/111/TBP/85-86 promoted the applicant from the scale of Rs.750-940 to the scale of

Rs.840-1150 effective from 12-11-1985. He submits that he is presently drawing a sum of Rs.1010 in the said scale of pay.

d) However, Sr.SPO, South Division, Hyderabad, informed the applicant through his letter No.B/1/3/2(a) dt.2-11-1994 that he belonged to Group-D Non-Test Category and that such Non-Test Category Group-D employees are not entitled to the effect from 12-11-1985 under the scheme was irregular and erroneous. That it has been decided to revert the applicant to his original scale of pay and to recover a sum of Rs.7000, the excess emoluments paid to the applicant on account of promotion to the next scale of pay under the scheme.

e) On 24-12-1994 the applicant submitted a representation and against his proposed reversion/on the recovery of amount paid to him.

3. However, even before the applicant could submit his representation the respondent by his proceedings No.BI/3/2(a) dated 20-12-1994 reverted the applicant to grade of Rs.750-940 and ordered for recovery of Rs.8306 in monthly instalments of Rs.500/- per month commencing from December, 1994.

4. The applicant has filed this OA to set aside the impugned order of reversion dt.20-12-1994 as arbitrary and contrary to the Articles 14 and 16 of the Constitution of India. The applicant has challenged the impugned order on the grounds as under :

(a) There is nothing indicated in the letter of appointment that he was appointed to Group-D post under Non-Test Category. He submits that he was appointed to the post of Chowkidar, Begum Bazar Post Office, Hyderabad, which was clear vacancy in South Sub Division, Hyderabad.

(b) That his promotion under the scheme was made about nine years ago i.e. from 12-11-1985 onwards.

(c) Having worked as Regular Group-D employee in the office he was assisting the regular, ~~and~~ supervisory, and clerical staff for a period of 14 years.

(d) He was drawing a sum of Rs.1010 in the scale of Rs.800/- 1150 and was due for promotion on completion of 26 years of service under the BCR scheme to the next higher scale of Rs. 950-1400. He submits that he has ~~still 13 years~~ ~~13 years~~ to his credit.

(e) In case the applicant is reverted he would be fixed at Rs.968/- including two stagnated increments and he ~~is~~ ^{has} to remain in Rs.965 till his retirement.

(f) He has relied upon the decision of the Madras Bench of this Tribunal reported in 1990(12)ATC312 (P. Joseph Vs. Addl. Post Master General, Tamilnadu Circle, Madurai, and others) to say that right or privilege once offered on a person cannot be divested merely because a mistake has been committed by the Departmental authorities. He submits that he enjoyed the benefits of the promotion under the scheme for a period of 9 years.

(g) He submits that if his appointment as Group-D employee was under Non-Test Category, he should have been given option to come over to Test Category in the subsequent recruitment. That was not done by the Respondents for the last 25 years.

(h) He relies upon the order of the ~~Bombay~~ Bench of this Tribunal to say that promotion order once issued even though on account of mistake, that mistake is condoned by giving effect to the promotion for a sufficient period, reported in (ATR 1987(1)CAT 645) D.G. Mane Vs. Union of India represented by the Secretary, Ministry of Communications and others.

(i) The promoting authority is fully aware that the applicant was a chowkidar at the time of his promotion and a recovery of Rs.8386 ordered is sustainable in law.

5. The respondents have filed their counter mainly contending that the applicant has passed 4th class and that the minimum qualification for a Group-D post-Test Category is Middle-School pass as per the DG P&T Lr.No.166/11/59-SPB-I dt.20-10-1969. That the applicant is not having the minimum educational qualification for appointment as Group-D post-Test Category. That OTBP Scheme is not applicable to Non-Test Category Group-D officials. That at the time of implementation of the scheme, the cadre which will cover under the Scheme and against the Item-I it is clearly mentioned as Group-D Test Category officials. That the post of Chowkidar is a Non-Test Category Group-D post. That the applicant comes under Non-Test Category Group-D post. That the Classification of Chowkidar as a Non-Test Category has been made vide DG Lr.160/34/65/SPB-I, dt.9-6-1966. That accordingly, the applicant was informed of this position by letter dated 2-12-1994. That his contention that he was not selected under Non-Test Category Group-D but only as a regular Group-D employee is not correct. That the appointment order dated 12-11-1969 clearly shows that the applicant was appointed as Chowkidar, which post come under Non-Test Category Group-D post. That therefore, the applicant was reverted to his original grade in the pay scale of Rs.750-940 in view of the order issued by the Circle Office that the Department has to rectify the defect if any committed earlier and therefore

the respondent has properly reverted the applicant and ordered recovery. That the Department has a duty to rectify the mistake at any time as it causes loss to the State Exchequer. That the official who ~~were~~ ^{was} holding Non-Test Category Group-D post ~~do~~ ^{as} not have any channel for TBOP and BCR Scheme promotion. That only when they stagnate at the ~~maximum~~ ^{maximum} for a period of one year would be considered for in-situ promotion to the scale of pay of Rs.825-1200. Thus the impugned order does not call for interference by this Tribunal.

6. The OTBP Scheme in the Postal Department came into force from 30-11-1983.

7. It is not in dispute that the applicant was appointed as a Chowkidar in South Division, Hyderabad. His appointment was made during 1969. The learned counsel for the respondent submitted that the post of Chowkidar comes under Non-Test Category under Group-D.

8. Educational qualification of the applicant is also not in dispute. He has passed only primary 4th class. The minimum Educational qualification required for Group-D post Test Category is a pass in the Middle School standard.

9. The respondent earlier applied the scheme to the case of the applicant and promoted him to the next higher scale of pay with effect from 12-11-1985. However, they noticed that his promotion was erroneous and that therefore they passed the ~~Reverting~~ ^{on} order cancelling the promotion of the applicant under the Scheme, reverting him to the scale of pay of Rs.975-1040 and ordered recovery of Rs.8386/-.

10. The point for consideration is whether the respondent was justified in cancelling the promotion of the applicant

under the scheme and ordering recovery of Rs.8386/. However, by the interim order dated 8-1-1995 the recovery of the amount has been suspended.

11. In the case of B. Lalitha Vs. Post Master General reported in (1989(10)ATC 605), Madras Bench of this Tribunal has explained the salient features of the scheme in paras 2 and 6.

12. The respondent gave OTBP Promotion to the applicant effective from 17-11-1980. Now the submit that the applicant had only passed 4th class and that he was working as Group-D employee under Non-Test Category. Letter of appointment of the applicant does not indicate that he was appointed on compassionate grounds as Group-D employee under Non-Test category. They submit that Classification of Group-D post as Test-Category and Non-Test Category was in existence even in 1966. They have cited a letter of the Post Master General dated 9-6-1966. Even though they have stated to have produced, R-1 to Annexure to their counter, they have not enclosed ^{the} copy of the said letter. If such a classification was in existence as early as 1966, the respondent has failed to explain how the applicant was appointed as Group-D employee without mentioning whether the applicant was appointed either under Test Category or under Non-Test category. Even they have not scrutinised such things at the time of giving promotion under him/OTBP. The applicant in the OA has categorically stated even though he was appointed as Chowkidar his services were utilised as Group-D employee for a period of 14 years. The respondent has not disputed the said thing but submitted that mere working against a Group-D post does not make him eligible. We are not prepared to accept the said contention of the respondent.

OR

13. Even though the learned counsel for the respondent took time to produce documents in support of the contention that in 1969 when the applicant was appointed he was appointed under Non-Test Category, they have not produced any thing to substantiate the said version.

14. The reason for cancellation of OTBP promotion granted to the applicant is that he was working as Group-D employee employees are not eligible for the said scheme. The respondent has failed to place any convincing material on record that the applicant was working as Group-D employee under Non-Test Category since the date of his appointment. He was subjected to DPC when he was given OTBP. Further, the promotion was continued for nearly nine years. In our opinion, the respondents are now estopped from stating that the applicant is not eligible for OTBP promotion on the ground that he was appointed as a Group-D employee under Non-Test category.

15. No material has been placed by the respondent to show that the applicant was appointed as Group-D employee under Non-Test category during 1969. The rules framed in 1970 are applicable prospectively. Hence, the same ~~would~~ ^{cannot be} be made applicable to the applicant.

16. We feel it proper to reproduce herein the observations made by the Madras Bench of this Tribunal in the case of P. Joseph Vs. Addl. PMG, Madurai & others, Tamilnadu Circle, reported in 1990(12)ATC 312. In that case, the Madras Bench considered the Doctrine of Promissory Estoppel in paras 5 to 8 of the judgement. The Bench has been pleased to observe as follows :

"5. The main ground urged while seeking the relief in this case is that the respondents are barred by the principles

of promissory estoppel, from retracting their steps. The doctrine of promissory estoppel is now recognised as a rule of law and it has been accepted as constituting a cause of action because the principle of equity is involved. The primary objective of the promissory estoppel is the avoidance of injustice. It comes into play if a party makes a promise intending that it would be acted upon by the other and the promise is actually acted upon by the other party as a result of which, there is a change in his position. The reason for making the one who promises bound by that promise is that injustice would be caused to the other party by not enforcing the promise.

6. The applicant had been working in a small Mail Motor Service Unit under the administrative control of the third respondent. Para 2 of the circular dated January 16, 1987 group of 23 to 41 years, going officials between the age examination as the departmental candidates. A responsibility was cast according to that circular, on the sub-appointing authorities for scrutinising the applications carefully, before forwarding them to the third respondent. The applicant's application apparently was subjected to scrutiny before he was allowed to take the examination. Consequent on his being declared successful, the third respondent had given him training also for appointment as Postman. It was only thereafter that an order was passed on June 26, 1987 intimating him that he was not eligible for taking the examination. The respondents have stated in the reply that on February 10, 1988, the same third respondent on a reconsideration of the facts and circumstances of the applicant's case, had found him to be eligible for promotion and had accordingly ordered his promotion as Postman. The applicant was also informed to this effect. Thereafter, he was also actually appointed as Postman. By retracting the steps successively taken by the third respondent at a much later stage, the applicant would be very adversely affected, by having to revert to a Group 'D' post, which would be unjust. Since the doctrine of promissory estoppel is an equitable doctrine, it must yield when equity so requires. Unless the respondents are able to show that in view of the facts which might have transpired subsequent to the making of the promise, public interest would be prejudiced if the government servant in this case is allowed to continue as Postman, he would have to be accommodated as such. In *Vijaya Venkatesh Pai vs. Union of India*, it was held by the New Bombay Bench of the Central Administrative Tribunal:

In view of the fact that applicant was allowed to appear in the competitive examination and was also allowed to join duty after her application had been scrutinised, it was not permissible for the government to terminate her services on the ground of her being over age.

The aforesaid decision would support the applicant's case.

7. Besides, it is not a case of the applicant here having been admitted to the examination on the basis of any fraudulent

submission by him. The fact remains that he was a Group 'D' official working in a small Mail Motor Service Unit to the cadre of Postman under the administrative control of the third respondent and promotions are also made from such a category of officials to the cadre of Postman. There is no statutory recruitment rule excluding Group 'D' officials working in small Mail Motor Service Units, as a feeder category for being considered for promotion as Postman. By having specifically issued a communication to the applicant on February 10, 1988 after reconsideration, that he was eligible to be appointed as Postman on the basis of the examination already successfully taken by him, if he is subsequently denied the benefit of such a promotion, it would clear that injustice had been meted out to him. Having joined as Postman on the basis of a departmental examination, the applicant had been committed by the departmental authority. This was the view which had been held by the Central Administrative Tribunal in Jitten Kumar Swain Vs. Union of India and it was followed by this Tribunal in S. Kumar Vs. DG, P&T.

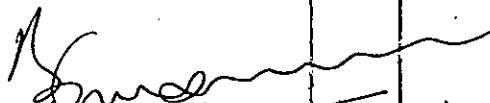
8. For the foregoing reasons, we hold that the respondents are estopped from cancelling the selection and appointment of the applicant as Postman on the basis of the result of a departmental examination held on April 26, 1987."

17. Since the respondent has failed to place convincing material on record, that the applicant was appointed in the year 1969 as a Group-D employee under Non-Test Category, we feel that the cancellation of his promotion in the year 1994 is irregular. Further we feel that the respondents' direction to the applicant to repay a sum of Rs.8386/- is not warranted.

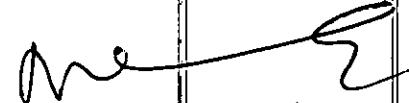
18. In the result, the OA succeeds. The applicant is entitled to the reliefs prayed for. Hence, we pass the following order :

The order of reversion passed by the respondent vide No.B.I/3/2(A) dated 20-12-1994 is hereby set aside. Even the order of recovery is also set aside.

19. In the circumstances of the case no order is to pass.


(B.S. Jai Parameshwar)
Member (Judl.)

6.1.98


(R. Rangarajan)
Member (Admn.)

Dated : 6-1-1998

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Copy to:

1. The Senior Superintendent of Post Offices,
Hyderabad South East Division, Hyderabad.
2. One copy to Mr.P.Rathaiah, Advocate, CAT, Hyderabad.
3. One copy to Mr.V.Rajeswara Rao, Addl.CGSC, CAT, Hyderabad.
4. One copy to HBSJP, M, (J), CAT, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

YLKR

21/1/98

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

MR. S. S. PARAMESHWAR :
M(J)

DATED: 6/1/98

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in

C.A.NO. 22/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

