

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.698/97.

Dt. of Decision : 04-01-99.

R.Muthu

..Applicant.

Vs.

1. The Union of India rep. by
the Director General,
Dept. of Posts and Ex-Officio
Secretary to the Govt. of India,
Dept. of Posts, New Delhi.
2. The Chief Postmaster General,
A.P. Postal Circle, Hyderabad-1.
3. The Manager,
Postal Mail Motor Service,
Koti, Hyderabad-500 195.

..Respondents.

Counsel for the applicant : Mr.K.S.R.Anjaneyulu

Counsel for the respondents : Mr.V.Vinod Kumar, Addl.CGSC.

CORAM:-

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

ORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.))

Heard Mr. Subramanyam for M.K.K.S.R. Anjaneyulu, learned counsel for the applicant and Mr. V. Vineed Kumar, learned counsel for the respondents.

2. The applicant in this CA is an SC candidate. He was appointed as a Motor Vehicle Mechanic in the P&T Mail Motor Service on 15-11-1967. He passed the promotional examination and became Time Scale Clerk w.e.f., 11-07-77. Apart from being an SC employee he was also an ex-serviceman.

3. The department had introduced one time bound promotion scheme in the operative offices of the Postal Department by the DG Posts letter No. 31-26/83-PE-I dated 17-12-1983. It is stated in that letter that for promotions under the time bound one promotion scheme the normal orders relating to reservations for SC/ST communities will not apply, unless any specific order in this regard is subsequently issued. The department did not issue any orders subsequently.

4. ^{to} ~~only~~ Non-provision of reservation for SC/ST candidate ⁱⁿ ~~against~~ the OTBP Scheme, some of the employees filed Writ Petitions (Civil) Nos. 1003-1005 of 1984 (Annexure-3) questioning the departmental instructions not to reserve the posts for SC/ST while promoting them ^{under} ~~against~~ OTBP Scheme. That case was disposed of by the Supreme Court with the following directions:-

"We therefore, issue a direction to the Government of India to issue an order under Clause 6 of the letter dated November-23, 1983 conferring some additional advantage on the employees belonging to the Scheduled Castes and the Scheduled Tribes in the Posts & Telegraphs Department commensurate with similar advantages which are being enjoyed by the employees

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belonging to the Scheduled Castes and the Scheduled Tribes in the other departments of the Government of India. The government shall issue such an order accordingly within four months from to-day. Any order that may be issued by the government shall operate prospectively. All promotions that have been made so far pursuant to the policy contained in the letter dated December 23, 1983 and that may be made hereafter till the date on which the direction to be issued by the government under Clause 6 comes into operation, shall however remain undisturbed."

5. In view of the above directions of the ^{Hon'ble} Supreme Court it is stated that the reservation rules ~~was~~ ^{were} introduced even for promotion under OTBP Scheme by letter dated 23-11-83 conferring some additional advantage on the employees belonging to the SC/ST in the Posts & Telegraphs Department commensurate with similar advantages which are being enjoyed by the employees belonging to the SC and ST in the other departments of the Government of India. The applicant submits that he had completed 10 years of service as required for promoting SC candidate under the OTBP Scheme to the higher LSG Grade. But he was not promoted. He was promoted only on 17-3-91 when an OC candidate who had completed 16 years of service was promoted. The applicant filed a representation to promote him from 3-8-89 when the circular dated 3-8-89 was issued introducing operation of 40 point roster for promotion under the OTBP Scheme.

6. His request was turned down by the impugned order No. ST/88/3 dated 31-12-96 (Annexure-1) on the ground that the promotion of the applicant w.e.f., 17-3-91 is in order as on the date from which the last person who has completed 16 years of service was promoted.

7. This OA is filed for setting aside the impugned letter No.ST/88/3 dated 31-12-86 by holding the same as illegal and for a consequential direction to the respondents to promote him w.e.f., 3-8-89 i.e., from the date of issue of the orders for maintaining 40 point roster, instead of from 17-3-91 as he had possessed the necessary eligible conditions for promoting him w.e.f., 3-8-89.

8. A reply has been filed in this OA. The reply only states that in view of the clarification given by the DG Posts by letter No.66/47/84-SFB-I dated 28-12-90 (though this letter was not enclosed to the reply a copy of which ^{was} handed over at the time of hearing) the impugned order was issued. We have perused the letter dated 28-12-90. Para-(i) of the letter is relevant. This para is reproduced below:-

"The SC/ST officials not completing 16 years of service but promoted under TBOP Scheme by application of reservation orders will rank junior to the last person elevated under TBOP Scheme after completion of 16 years of service. The date of effect of promotion of such SC/ST officials will be the same date on which the last person who has completed 16 years of service in that batch is promoted."

The reason given in the impugned letter is on the basis of the above extracted portion. Hence, the learned counsel for the respondents submits that the applicant's case was dealt with in accordance with the rules.

9. The applicant has produced the judgement of the Bangalore Bench of this Tribunal reported in (1994) 26 ATC 35 (M.Kulashekar Vs. Union of India and Others) wherein this point regarding reservation came up for consideration. It has been observed in the judgment that "In view of this we are unable to agree with the guidelines given by the department without considering the

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implication of the same in such cases. In such cases it will be only proper that the SC/ST^T candidate in his turn of seniority is considered for promotion against roster point reserved for him, provided he has completed 10 years of service irrespective of the fact that whether the next OC candidate has completed 16 years of service or not during the same year of promotion. In view of the above, we direct the respondents to issue suitable modifications to the clarifications given in this connection".

10. From the above extracted portion of the judgement of the Bangalore Bench of this Tribunal it is evident that the Bangalore Bench had held that ~~xxx~~ a reserved community candidate ~~xxx~~ should get his promotion under the OTBP Scheme soon after he had completed the required service eligibility condition without waiting for any OC candidate to complete 16 years of service and to consider the reserved community candidate along with those OC candidates as and when the promotion for OC candidates were considered. The learned counsel for the applicant also produced a further clarificatory letter issued by the DG Posts No.37.28/91 SPBI, dated 4-7-91. In this letter it is stated that as follows:--

"Since time-bound one promotion is based on the length of service, SC/ST officials having the longest service as PA but not less than 10 years may be promoted, if he is otherwise suitable even though there may be seniors to him in the division".

11. From the above extracted portion of the DG Posts letter it is evident that the respondents themselves agreed that the SC and ST candidate need not wait for promotion under the OTBP scheme till an OC candidate was considered along with him for promotion under that scheme. A reserved community candidate having the service as Postal Assistant to the extent of not less than 10 years of service may be promoted, if he is otherwise


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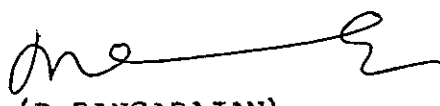
suitable even though there may be seniors to him in the division. From the above clarification of the RM DG Posts letter dated 4-7-91 it appears that the department has issued that clarification in view of the judgement of the Bangalore Bench of this Tribunal.

12. In view of what is stated above the application has to be allowed. Accordingly it is allowed and the following direction is given:-

The applicant should be considered for promotion under the OTBP Scheme w.e.f., the date of issue of the circular dated 3-8-89 by the respondents providing the reservation for reserved community candidate. The consequential benefits on that basis should be extended to the applicant in accordance with the law. His seniority should be decided as per the rule in force.


13. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 04th January, 1999.
(Dictated in the Open Court)

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1ST AND 2ND COURT

COPY TO:-

1. HDHN2
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

TYPED BY
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 24/1/99

ORDER/ JUDGMENT

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

In
O.A. NO. 698/97

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

3 copies

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
प्रेषण / DESPATCH
18 JAN 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH