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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 14-9-1995

OA 330/93

Hari Prasad Joshi s/o Shri Budh Ram, aged 59 years, r/o 6/242, Diggi Mohalla, Beawar, retired Sub Post Master, Industrial Area, Beawar, District Ajmer.

... APPLICANT.

V E R S U S

1. Union of India through Secretary, Ministry of Postal and Communication, Govt. of India, New Delhi-110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director General, Posts (PE), New Delhi-110001.
4. Director Postal Services, Jaipur Region, o/o Chief PMG, Jaipur-302007.

... RESPONDENTS.

CORAM:

HON'BLE MR. O.P. SHARMA, MEMBER (A).

HON'BLE MR. RATTAN PRAKASH, MEMBER (J)

For the Applicant

... SHRI S.K. JAIN

For the Respondents

... SHRI U.D. SHARMA

O R D E R

PER HON'BLE MR. RATTAN PRAKASH, MEMBER (J)

The applicant, Hari Prasad Joshi, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, to claim the following reliefs :-

- i) That in the circular dated 11.10.81 the impugned condition of granting benefit to all those who have completed 26 years or more service on 1.7.92 be struck down and all persons who have completed 26 years of satisfactory service on or prior to 1.1.92 to 30.6.92 should be declared eligible for higher pay scales with all consequential benefits.
- ii) That in the said circular the condition of eligibility as on 1.7.92 be quashed being ultra vires to the Constitution and discriminatory and violative of Articles 14 and 16 of the Constitution of India.

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iii) The applicant be allowed the benefit of promotion in the next higher grade viz HSG-II (Scale Rs.1600-2660) w.e.f. 24.5.92 i.e. on completion of 26 years of service under the ECR Scheme with all consequential benefits including pay, pension, DCEG etc. by quashing Annexure A-1.

2. The facts leading to this application lie in a brief compass. The applicant was appointed under the respondents in the cadre of Postal Assistant (PA) w.e.f. 24.5.66 and was put in LSG cadre w.e.f. 30.11.93. He completed 26 years of service on 23.5.92 and retired from service on 30.6.92. It is the case of the applicant that due to stagnation and promotion for long time the Ministry of Postal and Telecommunication Department decided to give benefit of higher pay scales to those persons who had completed 26 years of service. In pursuance of this policy, orders vide letter dated 11.10.91 <sup>were</sup> issued from DG Posts (PE-1) New Delhi (Annexure A-2). According to the scheme propounded under the letter it was declared that cadre review shall take place once in two years in which the incumbents would be enabled to draw pay in higher scales on completion of 26 years of service. This scheme was to come into effect from 1.10.91 and was made applicable to those who had completed 26 years of satisfactory service as provided in clause 2.4 of the said scheme. Under the scheme it was further provided that the first Biennial Cadre Review (BCR) for eligible officials may be conducted immediately and orders issued before 31.12.91. Thereafter, the Biennial Cadre Review for eligible officials covering the period from 1.1.92 to 31.12.93 and who will be completing 26 years of service or more on the crucial dates viz the date of review i.e. 1.7.92, 1.1.93 and 1.7.93 be conducted.

3. It is the grievance of the applicant that although the applicant had completed 26 years of satisfactory service on 23.5.92 and was entitled to promotion in the next higher grade measuring HSG-II scale Rs.1600-2660, yet he was not considered by the Director Postal Services, Jaipur Region, Jaipur, (respondent No.4), on or before 23.5.92 and even upto this date and he was placed on retired list on completion of superannuation on 30.6.92. It is further averred by the applicant that the applicant's name should have been considered for giving the benefit under the above scheme after his

completion of 26 years of service on 23.5.92, yet in spite of his submitting representation to the Chief PMG, Rajasthan Circle, on 14.10.92 (Annexure A-5) and subsequent reminders dated 2.11.92 and 2.12.92 he has not been given the same benefit and the impugned order at Annexure A-1 has deprived the applicant of his legitimate right to get the relief available under the scheme. It has also been averred by the applicant that the impugned order Annexure A-1 is also illegal and liable to be quashed as it discriminates between similarly situated service personnel who had completed 26 years of satisfactory service as the respondents have granted the benefit of the higher pay scales to S/Shri Eoop Chand, who expired on 26.12.91, Gaya Prasad, who retired on 30.11.91 and Mangun Singh, who retired on 31.10.91 after completion of 26 years of service vide order dated 18.3.92 (Annexure A-8). The applicant having failed to get the relief has been constrained to file this petition to claim the aforesaid reliefs.

4. The respondents have contested the application by filing a written reply, to which the applicant has also filed a rejoinder. The stand of the respondents has been that although the applicant had completed 26 years of service on 23.5.92, yet, as he was not in service on the crucial date i.e. 1.7.92 and retired on superannuation on 30.6.92, his case could not be considered for promotion when the review under the scheme was undertaken on 1.7.92. It is contended that the applicant, therefore, was not eligible for being considered for promotion under the aforesaid scheme and that there is no illegality or irregularity in the issuance of the impugned order as at Annexure A-1 dated 18.1.93.

5. We have heard the learned counsel for the applicant as also the respondents and have examined the record in great detail.

6.. The only point for consideration in this application is whether the benefit under the BCP Scheme on completion of 26 years of service is available only to those officials who remained in service on the date of review specified under the scheme dated 15.10.91 (Annexure A-2) and not to those who have

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either retired or expired before the date of review ?

7. The arguments of the learned counsel for the applicant are two fold. Firstly, that the applicant has completed 26 years of satisfactory service on 23.5.92 and thus in pursuance of para-2 sub clause viii of the Scheme, he is entitled to be given the benefit under the ECP Scheme. Secondly, he cannot be discriminated in the implementation of this scheme when other three individuals, similarly situated, have been granted relief earlier vide Annexure A-8, which is not only discriminatory but also in violation of Articles 14 and 16 of the Constitution of India.

8. On the contrary, it has been argued on behalf of the respondents that the applicant having retired on 30.6.92 and not being in service on the crucial date i.e. 1.7.92, he could not be extended the benefit under the ECP Scheme. It has also been contended that by virtue of para 2(viii) of the Scheme, the first Biennial Cadre Review was required to be undertaken immediately and orders were required to be issued before 31.12.91 and that after discussions were held in the JCM meeting it was decided that the period in the first review would cover also those officials who would complete 26 years of service by 31.12.91. Accordingly, it has been stressed that all persons who had completed 26 years of service by 31.12.91 had been considered and since the scheme came into force w.e.f. 1.10.91 promotions to the selected officials were given from 1.10.91 which was the crucial date. It has also been contended that the three persons viz S/Shri Roop Chand, Gaya Prasad and Mangun Singh were in service on the said crucial date i.e. 1.10.91 and as such their cases were properly considered in the first Biennial Cadre Review held as per the decision contained in the letter dated 31.12.92 (Annexure A-4) and they were given promotion w.e.f. 1.10.91. It has been vehemently argued that the condition of being in service on the crucial date i.e. 1.7.92 is an essential and relevant condition as promotion can only be given when a person is in employment on that date and that the completion of 26 years of satisfactory service is not the sole criteria for giving promotion to higher pay scale. It has accordingly been urged that the application has no substance and

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it should be dismissed.

9. We have given anxious thought to the arguments advanced on behalf of both the learned counsel for the respective parties. There is no dispute between the parties that the applicant had completed 26 years of service on 23.5.92. The only question which remains to be answered is whether on the date of review i.e. 1.7.92, as in the instant case, the person eligible for grant of higher pay scale under the ECR Scheme should be in service on the said date. It would be beneficial to reproduce here the relevant portion of para No.2 and its sub paras of the Biennial Cadre Review Scheme (Annexure A-2), which spells out the object sought to be achieved under the scheme. The relevant paras of it reads as under :-

"2. However, with a view to providing relief to the employees, Government have accepted the need for Biennial Cadre Review i.e. (Once in two years) under which the incumbents of existing posts would be enabled to draw pay in higher scales on completion of 26 years of service, not only for providing promotional opportunities for the staff concerned but also on the basis of functional justification. While it is at the same time realised that in many cases the officials concerned may continue to perform the same tasks even in the higher scale, efforts would be made to utilise them for providing better supervision and for dealing with work involving comparatively higher responsibilities and better skills. The following instructions are accordingly issued :-

(i) The scheme will come into effect from 1.10.1991...

(iv) The criterion for promotion will be eligibility of 26 years of satisfactory service...

viii) The first Biennial Cadre Review for eligible officials may be conducted immediately and orders issued before 31st December, 91. Thereafter the

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Biennial Cadre Review for eligible officials covering the period from 1.1.92 to 31.12.93 who will be completing 26 years of service or more on the crucial dates viz. the date of the review 1.7.92, 1.1.93 and 1.7.93 may be conducted. The number of posts needed to be upgraded to provide for the promotions, required immediately and on 1.7.92, 1.1.93 and 1.7.93 may also be worked out. With these posts it would be possible to provide promotion to those employees who have completed 26 years of service or more on the above crucial dates subject to their otherwise being found fit."

10. A perusal of the contents of para-2 of the BCR Scheme shows that the sole criteria for the grant of benefit under this scheme has been laid down as completion of 26 years of satisfactory service. In sub para (viii) of para-2 of the aforesaid scheme it is for the convenience of the respondents that specified dates have been indicated for holding the review. Accordingly, the first Biennial Cadre Review for eligible officials was desired to be conducted immediately and orders were also required to be issued before 31.12.91. Thereafter, for eligible official covering the period from 1.1.92 to 31.12.93 the Biennial Cadre Review was desired to be held on 1.7.92, 1.1.93 and 1.7.93. The word 'may' has been used to give a guidance for holding the review and it is subject to variation as has been done by the respondents vide their letter dated 31.12.92 (Annexure A-4), where after discussion in the JCM meeting held on 9.12.91 it was decided to accept the proposal of the staff side that the review for the period pending 31.12.91 should also cover those officials who would complete 26 years by 31.12.91. This decision taken by the respondents shows that the dates specified under clause (viii) of para-2 of the BCR Scheme (Annexure A-2) are not mandatory and are directory. Moreover, the respondents have failed to give any satisfactory explanation of granting higher pay scale w.e.f. 1.10.91 under the BCR Scheme to S/Shri Roop Chand, who expired on 26.12.91; Gaya Prasad, who retired on 30.11.91 and Mangu Singh, who retired on 30.10.91, although the DPC was held after the date of the expiry of Shri Roop Chand and retirement of S/Shri Gaya

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Prasad and Mangu Singh. A perusal of the order dated 18.3.92 (Annexure A-8), by which the higher pay scale was granted to the aforesaid three individuals, exhibits that the grant of the higher pay scale was made subject to the terms and conditions contained in the Directorate's letter referred to in the beginning of this letter and as disclosed in para-3 of this order. A further perusal of column-3 of this order exhibits that in the case of these three individuals the dates of completion of 26 years of their service have not been indicated. Only the date of expiry/retirement has been indicated. This exhibits that it is for the competent authority while issuing order of granting higher pay scale under the BCF Scheme to see that the respective individual should have completed 26 years of service before he could be actually given the benefit under this scheme. In other words this order dated 18.3.92 (Annexure A-8) does not seem to be happily worded because it gives an impression that all the individuals indicated therein have been given the next higher scale of pay Rs.1600-2660 under the Biennial Cadre Review Scheme w.e.f. 1.10.91, Even though some of them completed 26 years of service after 1.10.91 as also after 11.10.91 i.e. the date of issue of orders at Annexure A-2. Read in this perspective; strictly speaking those persons who completed 26 years of service after 1.10.91 or 11.10.91 i.e. before 31.12.91; would not become entitled to get benefit under this scheme before actually completing the period of 26 years of service. Otherwise some officials who though have not completed 26 years of service as on 1.10.91, contrary to the instructions laid down under the BCF Scheme (Annexure A-2), would be getting the benefit of it. This does not seem to be the intention of the guidelines given under the BCF Scheme, detailed in Annexure A-2. This aspect seem to have escaped the notice of the respondents while implementing the aforesaid scheme vide Annexure A-8 dated 18.3.91, whereby besides other officials the three above referred officials i.e. S/Shri Roop Chand, Gaya Prasad and Mangu Singh were given the benefit.

11. Moreover, the Biennial Cadre Review Scheme laid down in Annexure A-2, nowhere specifies that on the date of review the official should be in service. Had it been the intention of the respondents to make it a mandatory condition, it should have

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found a specific mention under the scheme. It is settled principle of interpretation of documents/statutes that words and phrases not disclosed in the document cannot be presumed to exist to give a contrary meaning which is contrary to the substance of the text.

12. We are also unable to persuade ourselves to the arguments of the learned counsel for the respondents that on the date of review i.e. 1.7.92 the applicant should have been in service. If the argument of the learned counsel for the respondents is accepted, it would amount to a discrimination between the applicant vis-a-vis three individuals i.e. S/Shri Roop Chand, Gaya Prasad and Mangu Singh and it would be in violation of Articles 14 and 16 of the Constitution. The applicant has admittedly completed 26 years of service on 23.5.92 i.e. much before the review DPC was held on 1.7.92. Further also, this date i.e. 1.7.92 has been indicated under the aforesaid scheme as a date of convenience so that there may not be repeated meetings to implement the scheme but that does not mean that a person who has completed 26 years of service before the holding of the DPC for review should also be in service on the date of review. If it is insisted upon it would amount to a discrimination between similarly situated individuals as has been the case between the applicant and the three individuals viz. S/Shri Roop Chand, Gaya Prasad and Mangu Singh. This discrimination, the law does not permit.

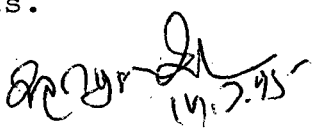
13. We are, therefore, of the considered opinion that the sole criteria for giving benefit under the ECF Scheme is that completion of 26 years of satisfactory service. The respondents having not denied that the applicant has completed 26 years of service on 23.5.92 i.e. before the review<sup>was</sup> done on 1.7.92, they now cannot take the plea that on the date of review itself the applicant should or has to be in service. The applicant is entitled to be considered for grant of benefit under the ECF Scheme as has been allowed in the cases of S/Shri Roop Chand, Gaya Prasad and Mangu Singh. Accordingly, the issue raised in this OA is answered in the negative.

14. Consequently, while quashing Annexure A-1 dated 25.1.93


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and Annexure A-1/1 dated 18.1.93 and allowing th OA, the respondents are directed to convene a review DPC and grant the higher pay scale under the ECP Scheme to the applicant as he has completed 26 years of service on 23.5.92 and the applicant be allowed the benefit of promotion in the next higher grade viz. HSG-II (scale Rs.1600-2660) w.e.f. 24.5.92 i.e. on the completion of 26 years of service under the said scheme, with all consequential benefits including pay, pension an DCRG. In the circumstances of this case, the parties shall bear their own costs.

  
(RATTAN PRAKASH)

MEMBER (J)

  
( O.P. SHARMA )

MEMBER (A)

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