

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 28.01.2004

OA No. 03/2001

Sukh Ram Meena s/o Shri Jansi Lal Meena r/o Government quarter, Sub Post Master Phoota Kot Sub Post Office, Karauli and at present working as Sub Postmaster Phoota Kot Sub Post Office, Karauli.

.. Applicant

VERSUS

1. Union of India through its Secretary, Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Sawaimadhopur Postal Division, Sawaimadhopur.

.. Respondents

Mr. C.B.Sharma, Counsel for the applicant

Mr. S.K. Agarwal, proxy counsel for Mr. Sanjay Pareek, counsel for the respondents.

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Phandari, Member (Administrative)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant is aggrieved on account of unjustified action of respondent No.2 by which the applicant has not been promoted in Biennial Cadre Review (BCR, for short) cadre, though persons junior to the applicant were so promoted. Thus, the applicant has filed this OA thereby praying that the respondents may be

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directed to allow the applicant next higher grade under BCR scheme in the scale of Rs. 5000-8000 w.e.f. 1.7.96 by modifying memo dated 24.12.99 (Ann.A2).

2. Facts of the case are that the applicant was initially appointed as Postal Assistant on 7.10.1971 and thereafter he was allowed further promotion under one time bound promotion scheme on completion of 16 years of service in the year 1987. He belongs to Scheduled Caste (ST) community and was entitled for further promotion in BCR cadre on completion of 17 years of service instead of 26 years of service against the shortfall point of ST community as per the scheme/instructions of the respondent department. The applicant has also placed BCR scheme dated 11.10.91 and letter dated 6.1.93 as Ann.A3 and A4. It is further averred that one Shri Ram Karan Meena, who was senior to the applicant was promoted under BCR scheme in the scale Rs. 5000-8000 w.e.f. 1.1.1996 against the shortfall point of ST community vide memo dated 15.11.1996 and further one Shri Pal Ram Meena, junior to the applicant has been promoted w.e.f. 1.7.97 in the same pay scale under BCR scheme against shortfall point for ST community vide memo dated 13.11.97 ignoring the claim of the applicant, as the applicant was due for promotion under BCR scheme on 1.7.96 or 1.1.97 but the applicant was not promoted for the reasons best known to the respondents. However, the applicant has been promoted taking into consideration 26 years of satisfactory service under BCR scheme in the next higher scale i.e. Rs. 5000-8000 w.e.f. 1.7.99 vide memo dated 24.12.99 (Ann.A2). Thus, the applicant has filed this OA claiming next higher grade of Rs. 5000-8000 w.e.f. 1.7.96 or 1.1.97 against

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shortfall point for ST community on completion of 17 years of service.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that the applicant was promoted under OTBP scheme on completion of 16 years of service w.e.f. 7.10.1987 and has now been promoted to BCR cadre w.e.f. 1.7.99. The fact that Shri Ram Karan Meena, senior to the applicant was promoted under the BCR w.e.f. 1.1.96 against shortfall point of ST community has been admitted and it has been stated that the name of the applicant was not within the consideration zone for promotion against shortfall point. It is further stated that the case of the applicant was submitted to the Circle Office alongwith Shri Bal Ram Meena, junior to the applicant on 10.2.1997. Shri Bal Ram Meena was promoted in BCR cadre w.e.f. 1.7.97 and the applicant was considered but not found fit for promotion by the DPC as a disciplinary case under casemark No.L.6/9/96-97 against him was contemplated w.e.f. 20.8.1996 while working as SPM, Bonli. He was awarded penalty and his pay was reduced by one stage with immediate effect for a period of two years vide memo dated 16.6.97. The applicant's case for promotion was submitted from time to time to the Circle Office together with other officials, but he was not considered fit for promotion under BCR scheme due to contemplation of disciplianry case w.e.f. 20.8.1996 and currency of penalty against him of reduction of pay by one stage with immediate effect for a period of 2 years w.e.f. 16.6.1997. Thereafter his promotion case was again submitted to Circle Office with the recommendations that the overall record is

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satisfactory and his case was recommended by the SPO, Sawaimadhopur for promotion after 31.5.99 i.e. after expiry of penalty. As a result, he was promoted in the BCR w.e.f. 1.7.99 on being recommended by the DPC vide memo dated 3.12.1999. Thus, the applicant's case could not be approved for promotion due to disciplinary case and the penalty imposed prior to 1.7.99. It is further stated that the applicant's case for promotion under BCR scheme was also taken up by the DPCs held on 22.4.98, 29.6.98, 12.1.99 for promotion w.e.f. 1.1.98, 1.7.98 and 1.1.99 respectively but due to currency of punishment and overall service record, the DPC did not find him fit for promotion. In the next DPC dated 4/5.11.99 he was approved for promotion w.e.f. 1.7.99.

4. The matter was listed for hearing on 5.9.02, on which date this Tribunal directed the respondents to bring the relevant proceedings of the DPC whereby the applicant was denied promotion under the BCR scheme. Thereafter the matter was listed from time to time and ultimately on 3.2.2003, the minutes of the DPC proceedings produced by the respondents were perused. It was observed that the respondents have not produced the DPC minutes for the period 1.1.96 to 31.12.97. It was ordered that let the said DPC minutes be also produced and the learned counsel should also bring record to ascertain as to why the applicant was not considered during that period. It was further observed that during the period 1.1.97 to 31.12.97, the name of the applicant was not placed before the DPC. The respondents should also bring record to show the reasons as to why the applicant's name was not placed before the DPC. It was further observed from the DPC

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minutes for the period 1.1.97 to 31.12.97 that although the applicant was considered but he was not found fit. There is no reason or yearwise grading given in the DPC minutes. It was also averred by the respondents that during this period the applicant was undergoing a penalty. Though this facts was not mentioned in the minutes of the DFC. The respondents were also directed to bring the relevant ACR on the next date alongwith record being produced and the matter was adjourned to 18.3.2003. Thereafter the matter was adjourned from time to time and on 17.9.03 the Tribunal passed the following order:-

"Heard the learned counsel for the parties. The contention of the learned counsel for the applicant is that the applicant was entitled for BCR on 1.7.96 and 1.1.97, whereas the disciplinary proceedings were contemplated against him after that date. We have perused the reply and also the DPC proceedings made available for our perusal by the learned counsel for the respondents. From the DPC proceedings dated 28.8.97, held for the period w.e.f 1.1.97 to 30.6.97, it is clear that the case of the applicant was considered but he was not found fit for promotion to the next higher grade under PCR due to his unsatisfactory record of service. Regarding selection for promotion to the next higher grade, held for the period w.e.f. 1.7.96 to 31.12.96, the proceedings of the DPC held on 28.1.97 have been made available for our perusal. From the perusal of these proceedings, it is not clear as to why the name of the applicant was not considered. Reply is also silent on this aspect.

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The learned counsel for the respondents submits that in fact person senior to the applicant was considered and given financial upgradation under BCR and as such the applicant has no grievance in the matter. Since this point has not been dealt with in the reply, let the respondents file additional affidavit explaining as to why the case of the applicant for financial upgradation under BCR was not considered during the period between 1.7.96 to 31.12.96. The respondents may also clarify whether the case of the applicant was rejected solely on the ground of chargesheet dated 1.5.97 by the DPC in its meeting held on 28.8.97 for the purpose of granting financial upgradation for the period between 1.1.97 to 30.6.97."

4.1 Pursuant to the aforesaid order, the respondents have filed additional reply. In para 2 of the additional affidavit, the following averments have been made:

"(A) 01.07.1996 :- As described in C.O. letter No. Staff/43-9/2003 Dt. 12.03.2003, it revealed from the minutes of the DPC for the period 01.01.1996 to 30.06.1996 held on 30.08.1996 that one Shri P.D.Kanwat was selected by the DPC held on 30.8.1996 against the shortfall point of S.T. The date of appointment of Shri Kanwat is 12.04.1971 while the date of appointment of applicant is 07.10.1971. Thus Shri Kanwat being senior to applicant was selected by the DPC while applicant being a junior was not in the zone of consideration. A Photocopy of C.O. letter dt. 12.03.2003 is submitted herewith and marked as

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Annexure R-1.

(B) 01.01.1997 :- As regards the financial upgradation of the candidates who completed 26 years of service between 01.07.1996 to 31.12.1996, the DPC for this period was held on 28.01.1997 and one Shri Ram Nath Meena was selected against the short fall point of ST as the date of appointment of Shri Ram Nath Meena is 17.5.1971 while that of applicant is 7.10.1971. Thus being junior to Shri Ram Nath Meenna Shri Sukh Ram Meena (the Applicant) was not in the zone of consideration.

(C) It is certified that the applicant was considered for the promotion by the DPC on 28.08.1997 but not found fit for promotion by the DPC for the reason that there was a disciplinary case against the applicant vide memo No.L. 6/9/1996-97 dt. 20.08.1996 which was ended with the penalty of reduction of one stage of pay w.e.f. 16.06.1996 for two years vide memo No.L.6/9/1996-97 dt. 16.06.1997. Thus as a result of disciplinary case as on 01.01.1997 punishment was current on the date of DPC, besides the charge sheet dt. 01.05.1997. After expiry of penalty he was promoted w.e.f. 01.07.1999."

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 As can be seen from the facts as stated above, the case as set out by the applicant in this OA is that he should have been considered for promotion in BCR cadre w.e.f. 1.1.1996, 1.7.96 and 1.1.97 as at that time nothing

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was adverse against the applicant and he was due for next higher grade in PCR scheme against shortfall point of ST community after completion of 17 years of service as was allowed to senior and junior persons to the applicant. We have given due consideration to the submissions made by the learned counsel for the applicant and we are not agreeable to the submissions so made in view of the reasons given hereinunder:-

5.1.1 As can be seen from Ann.A3, promotion under BCR cadre can be given after completion of 16 years of service and second financial upgradation can be given after completion of 26 years service. It is further provided, as can be seen from letter dated 6.1.93 (Ann.A4), that general eligibility condition as per TBOF/BCR is 16 years and 26 years of service respectively and if sufficient number of SC/ST official having 26 years of service (in the basic scale and TBOF scale put together) are not available against the points reserved for them in the 40 point roster, SC/ST official with even less than 26 years of service will be given promotion to the extent of shortfall provided they have rendered a minimum of 17 years of service in the two grades put together. This letter was issued in supersession of the condition laid down in the circular letter dated October, 1991 and this order was put to take effect from the next BCR review cadre.

5.2 From the facts as stated above, it is clear that the case of the applicant was also sent to the Circle Office on 4.7.96 with Shri Ram Karan Meena, senior to the applicant but the applicant was not within consideration zone for promotion against shortfall point of ST community, as such he could not be promoted. Thus, the

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contention of the applicant that his case was considered after completion of 26 years of service in terms of Ann.A4 is without substance. Similarly, the applicant could not be promoted w.e.f. 1.7.96 and 1.1.97 as person senior to the applicant i.e. Shri P.D.Kanwat was selected by the DPC w.e.f. 1.7.96. While the applicant being a junior was not in the zone of consideration and Shri Ram Nath Meena, whose date of appointment is 17.5.71 while date of appointment of the applicant is 7.10.71, was promoted w.e.f. 1.1.97 in terms of relaxed standards against shortfall point of ST community in terms of Ann.A4. Thus, the contention of the learned counsel for the applicant that his candidature against shortfall point of ST community as allowed to senior and junior persons to the applicant was not considered on 1.1.96, 1.7.96 and 1.1.97 is without any substance. As already stated, no person junior to the applicant was granted next higher grade in the BCR scheme against shortfall point of ST community on 1.1.96, 1.7.96 and 1.1.97 when there was nothing ^{adverse} _{against} the applicant. However, one Shri Bal Ram Meena who was junior to the applicant and belongs to ST community has been promoted in BCR scheme earlier to the applicant w.e.f. 1.7.97 as by that time penalty of reduction to one stage for 2 years w.e.f. 16.6.96 as imposed vide memo dated 16.6.96 was in operation. Thus as on 1.7.97 the penalty was already in operation besides, the chargesheet dated 1.5.97 and the applicant was promoted w.e.f. 1.7.99 after expiry of the penalty. Thus, the contention of the applicant that his case was not considered in BCR cadre on completion of 17 years of service against shortfall point of ST community as per scheme/instructions of the respondent department is wholly misconceived. His case, as

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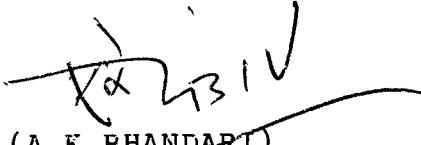
already stated above, was considered against shortfall vacancies of ST community and person senior to the applicant were promoted w.e.f. 1.1.96 and 1.7.96 and 1.1.97. Further, he could not be promoted under BCR scheme against shortfall point of ST community w.e.f. 1.7.97 on account of currency of penalty and as such his junior was promoted under BCR scheme against shortfall point even prior to completion of 26 years of service under relaxed standard as provided vide Ann.A4. The peanlty of reduction by one stage with immediate effect for a period of 2 years as awarded vide memo dated 16.6.97 was in force as such the applicant was not promoted from 1.7.97 to 31.12.97, 1.1.98 to 31.12.98 and later on after completion of punishment he has been promoted under the BCR scheme w.e.f. 1.7.99. As such, the action of the respondents cannot be faulted.

5.3 The learned counsel for the applicant has drawn our attention to the decision of the Central Administrative Tribunal, Mumbai Bench as reported in 2001 (3) ATJ 80, Daulat Marotrao Wuike vs. The Telecom District Manager, Jalgaon and ors., to contend that SC/ST candidates are entitled for promotion under BCR scheme after completion of 17 years of service and as such he was entitled for promotion under the BCR scheme. This authority is not applicable in the facts and circumstances of this case. In that case, the case of the applicant for grant of promotion under OTBP scheme was not considered as per original seniority list. For the purpose of grant of OTBP promotion, the respondent department was ignoring the service rendered by the applicant prior to joining the new unit. It was in that context, the Tribunal held that for the purpose of granting benefit under OTBP scheme his

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original seniority list should be taken into account as per the scheme "seniority at one station or in one unit may be different than the original seniority. Seniority and actual completion of service period in such a situation may be different one but by the said fact, the benefit which he is entitled as per OTBP cannot be denied." This is not the case here. The original seniority of the applicant is being taken into consideration while granting benefit under the OTBP/BCR scheme. In fact there was a shortfall against point reserved for ST candidates as per roster point and no official with 26 years of service were available. As such the respondents considered cases of persons who have rendered minimum 17 years of service in OTBP/BCR scheme put together and promotion under BCR scheme was given in accordance with the seniority subject to fitness. Thus, the action of the respondents is in conformity with the scheme/instructions governing promotion under BCR scheme and reservation made in favour of SC/ST employees, as such the action of the respondents is in accordance with the law.

6. In view of what has been stated above, the applicant has not made out any case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(A.F.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)