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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.279/95

Date of order: 9.8.1995

Indermal Jalutharia : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.K.L.Thawani : Counsel for applicant

Mr.M.Rafiq : Counsel for the respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985 Shri Indermal Jalutharia has prayed that order Anxx.Al dated 11.10.91 being the scheme for grant of promotion by way of Biennial Cadre Review (BCR) may be quashed and modified as directed by this Bench of the Tribunal in O.A.No. 350/94, the respondents may be directed not to promote officials on the basis of completion of 16 years of service under BCR scheme (Anxx.Al) ignoring the right of the applicant to Higher Selection Grade II (HSG II), the respondents may be directed to grant promotion to the applicant to HSG II w.e.f. 1.10.91 and thereby modify Anxx.A2 dated 2.11.92 by which promotion to HSG II was granted to the applicant w.e.f. 31.12.91 and they may be further directed to continue the applicant in the supervisory post according to his seniority in LSG cadre.

2. The applicant's case is that he joined the Postal Department as Sorting Assistant on 1.4.1966 and on the basis of passing the examination for promotion to Lower Selection Grade (LSG) was granted promotion to LSG against 1/3 quota vide order dated 30.9.'83. With effect from 30.11.83, the Postal Department introduced the time bound scheme for grant of one promotion to LSG on completion of 16 years of service. The respondents Nos.6 to 9 got promotion under this scheme. The Deptt. introduced

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another scheme of grant of second time bound promotion after completion of 26 years of service in the basic grade of Clerk vide letter dated 11.10.91. Under the Scheme, SC/ST candidates were however eligible for promotion on completion of 17 years of service in the basic grade of Clerk. Respondents Nos.6 to 9 were granted promotion to HSG II w.e.f. 1.10.91 by virtue of their completing 26 years of service being ~~anywhere~~ Order Annex.A2 dated 2.11.92 was passed promoting the applicant to HSG II w.e.f. 31.12.'91. The applicant's case is that he is entitled to promotion to HSG-II w.e.f. the same date from which his juniors in LSG, respondents Nos.6 to 9 were granted promotion namely dated 1.10.91. The applicant even after his promotion as HSG-II w.e.f. 31.12.91 has been shown as senior to respondents Nos.6 to 9 as per the gradation list Annex.A8. The basic prayer of the applicant is, therefore, two fold. One is that he should be granted promotion w.e.f. 1.10.90 and thereby order Annex.A2 by which he has been granted promotion w.e.f. 31.12.91 should be modified accordingly. The other is that since he is senior to respondents Nos.6 to 9 (out of whom respondent No.7 has since expired), he is entitled to hold a supervisory post in preference to these respondents.

3. The respondents in their reply have stated that this application is belated as it is basically against order dated 11.10.91, being the BCR Scheme. The applicant was not given promotion to HSG II as he had not completed 26 years of service till 1.10.91, therefore, he was granted promotion w.e.f. a date later than that granted to the private respondents and therefore, he became junior to them. The respondents are entitled to utilise the services of the applicant in the manner that they deemed fit and therefore, he cannot claim a Supervisory post as of his right.

5. During the arguments, the learned counsel for the applicant

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drew our attention to judgment of this Bench of the Tribunal passed in O.A.No.350/94 Madhuri Joshi Vs. Union of India & Ors. delivered on 28.11.94, wherein following the judgment of the Bangalore Bench of the Tribunal in the case of Smt. Leelamma Jacob & Ors. Vs. Union of India & Ors, 1992(3)SLJ(CAT) 514, <sup>the Tribunal</sup> held that while implementing the BCP Scheme, one who is senior in LSG by virtue of his promotion against 1/3 promotion quota compared to the other officials promoted to LSG under the one-time bound promotion scheme should be considered for promotion to HSG II scale Rs.1640-2600 in his turn as per his seniority, whenever his juniors in LSG are considered for promotion to HSG II by virtue of their having completed 26 years of service in the basic grade, without insisting on his completing the minimum prescribed 26 years of service in the basic grade. Therefore, the applicant was entitled to promotion with effect from the date from which his juniors in LSG, respondents Nos.6 to 9 were granted promotion i.e. 1.10.91. And since, the applicant is senior to respondents Nos.6 to 9 in HSG II, as per gradation list, Annx.A8, even though he has been shown as having been promoted w.e.f. 31.12.91, he is entitled to hold a supervisory post in preference to respondents Nos.6 to 9.

6. The learned counsel for the respondents reiterated that the application was barred by limitation and that since the applicant had been promoted w.e.f. 31.12.91 to HSG II, he was not entitled to be ranked senior to respondents Nos.6 to 9 and was, therefore, entitled to hold Supervisory post in preference to them.

7. We have heard the learned counsel for the parties and have gone through the record. This case is being disposed of at the stage of direction, in view of the prayer made by the counsel for the parties. The applicant has made an application for condonation of delay in filing the O.A. After considering the grounds raised therein and in the interest of justice, we condon

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the delay in filing the O.A. Hence, the O.A. is being disposed of on merits.

8. In view of the judgment of the Bangalore Bench of the Tribunal and of this Bench of the Tribunal referred to above, we hold that the applicant who was senior to respondents Nos.6 to 9 in LSG by virtue of merit promotion against 1/3 quota is entitled to promotion w.e.f. the same date to HSG II from which respondents Nos.6 to 9 were entitled to promotion to HSG II i.e. 1.10.1991. Although, the applicant was promoted to HSG II against short fall vacancy of SC community as stated by the respondents in their reply, the principle laid down in the judgment of the Bangalore Bench of the Tribunal and this Bench of the Tribunal would be squarely applicable to the applicant, inasmuch as he was senior to respondents Nos.6 to 9 in LSG and was entitled to promotion from the same date from which they were promoted on completion of 26 years of service. Therefore, order Annx.A2 dated 2.11.92 shall stand modified to the extent that the applicant shall be treated as having been promoted to HSG II w.e.f. 1.10.91. Since he is senior to respondents Nos.6 to 9, he is entitled to hold a Supervisory post in preference to those respondents, if the holding of the Supervisory post is based on seniority. It is not necessary for us to consider any other prayers of the applicant, in view of the relief granted to the applicant referred to above.

9. The O.A. is disposed of accordingly with no order as to costs.

O.P.Sharma  
(O.P.Sharma)

Member (Adm.)

G.Krishna  
(Gopal Krishna)

Vice Chairman.