

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 21.10.2003

OA No.136/98

Battulal Meena s/o Scrural r/o Q.No.8 Postal Colony,
Hindaun, District Sawai Madhopur and working as Incharge
Savings Bank Control Organisation, Head Post Office, Sawai
Madhopur.

.. Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Communications, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur

.. Respondents

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

Mr. N.C.Goyal, counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.PHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN:

The applicant has filed this OA thereby praying for the following reliefs:-

- "1. That the impugned order Ann.A1 (so far related to R-5 and R-6) and Ann.A10 be quashed being illegal, unconstitutional and capricious and violative of article 14 and 16 of the Constitution of India and principles of natural justice.
2. That the respondents be directed to promote the humble applicant in the higher grade of Rs. 1600-

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2660 under B.C.R. scheme with effect from 1.10.1991 the date his juniors R-5 and R-6 have been promoted with all consequential benefits.

3. Any other relief which this Tribunal think just and proper in favour of the humble applicant."

2. The facts of the case are that the applicant was initially appointed as LDC SBCO on 19.2.1972 and was promoted as UDC on officiating basis w.e.f. 1.3.1980. He was further appointed substantively as UDC SBCO and confirmed in the grade w.e.f. 1.3.80 in the grade of Rs. 1200-2040. As per the averments made by the applicant, further case of the applicant is that Time Bound One Promotion (TBOP) was introduced vide letter dated 26.7.91 (Ann.A3), Pursuant to the said scheme the applicant was given promotion to the Lower Selection Grade of Rs. 1400-2300 w.e.f. 1.6.1991 on completion of 16 years of satisfactory service. Further case of the applicant is that the Department issued another scheme of Biennial Cadre Review (BCR) i.e. Time Bound Second Promotion scheme in the grade of Rs. 1600-2660 w.e.f. 1.10.91 on completion of 26 years of satisfactory service vide letter dated 11.10.91. This scheme was further modified and the officials who lost their seniority by virtue of juniors getting promotions due to length of service of 26 years were allowed to be promoted to Higher Scale of Rs. 1600-2660 from the date of their juniors were promoted whether they had completed 26 years satisfactory service or not vide order dated 8.2.1996. The grievance of the applicant is that though persons junior to the applicant namely S/Shri M.L.Sen and S.D.Gupta have been promoted but no such benefit has been extended to the applicant. In this

behalf the applicant brought to our attention the gradation list dated 20.1.88 (Ann.A6) where the name of the applicant finds mention at Sl.No.31 and that of Shri M.L.Sen and Shri S.D.Gupta at Sl.No.32 and 33 respectively. It is further alleged that the applicant made repeated representations to the authorities (Ann.A7,A8 and A9) but the same has been decided vide order Ann.A12 revising the seniority of the applicant without any show-cause notice. It is on these facts that the applicant has filed the present OA thereby claiming the aforesaid reliefs.

3. The respondents have filed counter. It has been stated that the applicant was initially appointed as LDC (SBCO) on 11.1.74 (not on 19.2.72) in the Department of Posts. He was promoted as UDC vide order dated 9.5.80 (Ann.R1). After completion of probation period, the applicant was appointed as UDC substantively vide memo dated 30.7.1987 (Ann.A2). The date of confirmation in UDC cadre of the applicant was, however, erroneously indicated as 1.3.1980. It is further stated that ~~since~~ the name of the applicant was approved for promotion to the post of UDC vide memo dated 9.5.80 with his position between Shri Sarwan Kumar Verma and Deva Ram. Thus, according to the respondents in Memo Ann.A2, the name of the applicant should have been shown at Sl.No.23 i.e. after the name of Shri Sarwan Kumar Verma who has been confirmed w.e.f. 1.3.83. A bonafide mistake has been committed while issuing the memo dated 30.7.1987 (Ann.A2) as also the gradation list of UDC cadre issued on 28.1.88 (Ann.A6) corrected upto 1.7.1986. This mistake was rectified subsequently by issuing corrigendum to Ann.A2 vide Office

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Memo dated 13.1.2000 as also in Gradation list of 1992 vide memo dated 12.1.2000 (Ann.R2 and R3). As such the actual date of confirmation of the applicant in UDC cadre is 1.3.1983 and his name stands between Shri Sarwan Kumar Verma (Sl.No.22) and Shri Deva Ram (Sl.No.23) and not at Sl.No.5. Therefore, according to the respondents, the actual date of entry of the applicant in the Department as LDC is 11.1.74 and date of promotion in UDC is 9.5.1980 and confirmation in UDC is 1.3.1983. It is further pleaded that in the revised gradation list name of the applicant is indicated at appropriate position of the seniority i.e. SL.No. 53 between Shri Sarwan Kumar Verma (Sl.No.52) and Shri Deva Ram (Sl.No.54) (Ann.R3). The modification of TBOP/BCR scheme was issued vide Directorate letter dated 8.2.1996 (Ann.A5) is not of any help to the applicant ~~so far as~~ the facts remain that the applicant is not senior to respondent Nos. 5 and 6 viz. Shri M.L.Sen and S.D.Gupta. As such he is not entitled ^{to} ~~any~~ any benefit in terms of Ann.A5.

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

4.1 It is admitted case between the parties that the Time Bound Second Promotion Scheme in the grade of Rs. 1600-2660 was issued vide letter dated 11.10.91 and the scheme came into effect from 1.10.91 (Ann.A4). It is also not disputed that criteria for promotion pursuant to the said scheme was completion of 26 years satisfactory service rendered in the scale of pay on Time Bound Promotion after 16 years of service. Admittedly, the applicant has not completed 26 years service as on 1.10.91. The claim of the applicant is based on the

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modification issued by the Department vide letter dated 8.2.96 (Ann.A5) which stipulates that where the seniority of officials was adversely effected by implementation of BCR scheme placing their juniors in the next high scale of pay will now be considered for the next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. For this purpose the applicant has drawn our attention to the gradation list dated 20.1.88 (Ann.A6) wherein the name of the applicant is mentioned at Sl.No.31 whereas name of S/Shri Mohan Lal and S.D.Gupta who have been granted benefit of BCR scheme in the grade of Rs. 1600-2600 in terms of Ann.A5 w.e.f.

Q 1.1.91 vide order dated 18.6.96 are mentioned at Sl.No.32 and 33. The respondents in their reply have categorically stated that the date of confirmation as well as position in the gradation list dated 20.1.88 (Ann.A6) has wrongly been shown. In fact the date of confirmation of the applicant is 1.1.83 and his position in the seniority list has to be shown below Shri Sarvan Kumar Verma (SC) Sl.No.22 and above Shri Deva Ram (SC) Sl.No.23.

Corrigendum to this effect has been issued vide letter dated 13.1.2000 (Ann.R2). Thus, according to the respondents in view of this changed circumstances, the applicant cannot be said to be senior to S/Shri M.L.Sen and Shri S.D.Gupta. The applicant has not challenged his seniority position as well as date of confirmation as issued vide Ann.R2 and R3. The fact remains that he is junior to S/Shri M.L.Sen and S.D.Gupta and as such he cannot claim benefit of modified instructions as issued vide Ann.A5.

4.2 That apart from the scheme of BCR i.e. Time Bound Second Promotion scheme for the grade of Rs. 1600-2600 as

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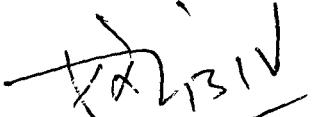
issued vide circular dated 11.10.91, it is manifest that an employee in order to be eligible to get the benefit of Time Bound Second Promotion has to complete 26 years of service and he is not to be given such scale of pay before he fulfills the said criteria. Therefore, no employee can claim benefit under this scheme before completing 26 years of service on any ground. Therefore, the claim of an employee for grant of benefit of BCR scheme has to be dealt with in accordance with the provisions contained in the said scheme. The applicant has not admittedly completed 26 years of service as on 1.10.91. Thus he is not entitled to any relief as per scheme. Further ground of challenge of the applicant in this OA that he is entitled to the benefit of BCR Scheme on the basis that he is senior to respondent Nos.5 and 6 in view of modified instructions (Ann.A/5) does not survive now in view of the letters dated 13.1.2000 and 12.1.2000 (Ann.R/2 and R/3), whereby the applicant has been shown much junior to respondent Nos.5 and 6 (whose names find mention at S.No.6 and 7 of gradation list (Ann.A/2) whereas the name of applicant has been inserted between S1.No.22 and 23 instead of S.No.5).

4.3 The learned counsel for the applicant submitted that the orders dated 12.1.2000 and 13.1.2000 (Ann.R/3 and R/2) have been issued during the pendency of this OA, as such liberty may be reserved to him to challenge these orders. We have noticed the contention made by the learned counsel for the applicant. It may be mentioned that the case of the applicant in the present proceedings was confined to the grant of higher grade of Rs.1600-2660 w.e.f. 1.10.91, as such the findings have been given only on this point. This order will, however, not come in the way of the applicant to institute further proceedings and avail appropriate remedy as is available to him

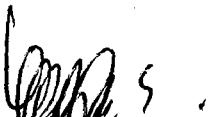
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according to law.

5. With these observations, this OA is disposed of with no order as to costs.


(A.K.BHANDARI)

MEMBER (A)


(M.L.CHAUHAN)

MEMBER (J)