

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 23.11.2001

OA No.287/1999

Devi Singh Rajora s/o late Shri Pritam Singh, Ex Group-D
r/o Plot No. 7/390, Malviya Nagar, Jaipur

..Applicant

Versus

1. Union of India through the Secretary, Govt. of India, Ministry of Communications, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur.
3. The Sr. Supdt. of Post Offices, Jaipur City Division, Jaipur
4. The Dy. Director of Accounts (Postal), Jaipur.

.. Respondents

Mr. P.P. Pareek, counsel for the applicant

Mr. B.N. Sandu, counsel for the respondents

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

Hon'ble Mr. A.P. Nagrath, Administrative Member

ORDER

For Hon'ble Mr. A.P. Nagrath, Administrative Member

The applicant was given promotion under the BCP scheme as applicable to Group-D employees of the Postal Department as per the scheme enunciated under Director General, Posts's letter dated 11.10.91 (Ann.A2) issued under the heading of "Biennial Cadre Review". This came into effect from 1.10.91. By the time, benefit of this scheme came to be granted to the applicant, he had already crossed the age of 58 years, since his date of birth is



5.1.1933. Thus he has completed 58 years of age on 4.1.1991. After granting this benefit, an order dated 24.11.1992 was issued retiring the applicant on 30.11.1992 and he was also advised by the same notice that the an employee in Group-C has to retire on completing the age of 58 years. This has been done on the ground that after he was placed in the scale of Rs. 950-1400 he has become a member of Group-C service for which retirement age is 58 years. The applicant represented against this action of the respondents, but his representation was rejected. After having retired him the respondents treated the period from 1.2.91 to 30.11.1992 as period of re-employment and consequently a sum of Rs.12,260/- was ordered to be recovered from his settlement dues. Being aggrieved with this action of the respondents, the applicant has filed this OA with the prayer that the respondents be directed to sanction his pension on the emoluments drawn on retirement i.e. as on 30.11.1992 and to refund the amount of Rs. 12,260/- with interest at the rate of 24% treating the applicant as having been promoted under BCR scheme.

2. We have heard the learned counsel for the parties and have also perused the records. The respondents have justified their action primarily on the ground that once the applicant was given the scale of Rs. 950-1400 under the BCR scheme, he no more remained a Group-D employee. They have referred to FP-56 to state that it is only the Group-D employees who, at the relevant time, were permitted to retire at the age of 60 years and since the applicant had become Group-C employee on 1.10.91, he could



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not have continued in service beyond the age of 58 years. In support of their action, the respondents referred to the letter dated 16.10.1992 (Ann.F1) and 16.3.1993 (Ann.E2) from Director General, Posts. We have perused these letters which are clarificatory in nature. As per letter dated 16.10.1992, it has been clarified that officials in Group-D who are eligible for promotion under the BCF scheme could refuse such promotion, if they wanted to serve beyond 58 years of age. It has also been mentioned in the same letter that the issue whether such Group-D staff, ~~were~~ promoted to scale Rs. 950-1400 could be continued upto the age of 60 years, is under consideration. This letter did not cover the cases of such of the employees who got the benefit of BCF scheme after completion of 26 years of service when they had already crossed the age of 58 years. This situation has been covered under letter dated 16.3.1993 by which all Heads of Postal Circles had been advised that this matter had been examined in consultation with the Department of Personnel and Training and it has been decided that the period in excess of 58 years of age should be treated as re-employment. If any such official (i.e. who had crossed the age of 58 years and has been extended the BCF scheme) should be retired immediately and the period from the date when they crossed the age of 58 years till the date of actual retirement be treated as re-employment.

3. We have examined the implications of these clarifications and the scheme vis-à-vis the applicant. Referring to the scheme which is available at Ann.A2, we find that Group-D employees who are already enjoying the



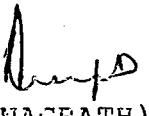
benefit of the grade Rs. 800-1150 after completion of 16 years of service were given another promotion under BCR scheme on completion of 26 years of service by placing them in the scale of Rs. 950-1400. This scale has been indicated in the scheme against Group-D. The scheme nowhere mentions that the Group-D employees who come to this scale shall be considered as Group-C employees. The lowest Group-C scale indicated in the scheme is Rs. 950-1500 and Group-D employees are only being placed in the scale of Rs. 950-1400. No rule has been shown to us or any order has been placed before us which supports the action of the respondents of treating the applicant and those similarly placed Group-D employees as Group-C employees, once they are in the scale of Rs. 950-1400. This apart, the fact remains that the orders giving the benefit of this BCR scheme to the applicant and others were issued only on 20.9.92 though they have been made effective from 1.10.1991. Till that date these employees had continued only in Group-D. In any event, it is not in dispute that from 1.2.91 to 1.10.91 the applicant was still in the grade of Rs. 800-1150. There was no question of retiring him at the age of 58 years. No rule has been shown to us which gives authority to the respondents to treat a person as having been retired on superannuation from a retrospective date. The plea of the respondents is that they had given option to the applicant to either accept or refuse the promotion vide letter dated 11.11.92 but this in itself does not make their action of retiring the applicant from a back date as legal. The clarification issued by the Director General, Posts cannot be said to have the force of rule framed under Article 309 of the

Constitution. If the retirement age had to be changed by giving the benefit under BCR scheme, this, in our considered view, should have been an integral part of the scheme itself. Any clarification issued later cannot negate the benefit which are proposed to be extended to the employee in the manner in which it has been done in the instant case. Treating the period from 1.2.91 to 30.11.92 as a period of re-employment is not sustainable legally and is liable to be rejected. The amount recovered from the applicant because of treating this period as period of re-employment needs to be refunded alongwith interest. The pensionary benefits of the applicant have to be worked out considering him as having retired in the scale of Rs. 950-1400 as on 30.11.1992. The applicant has stated that the recovery of Rs. 12,260/- had been commenced by the respondents by recovering an amount of Rs. 200 p.m. from his pension. By an interim order dated 30.6.99 the respondents were restrained from making this recovery and this interim order has been continued.

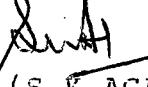
4. In view of the facts and circumstances as discussed above, we allow this OA and direct the respondents to consider the applicant as having been retired in the scale of Rs. 950-1400 on 30.11.92. His settlement dues shall be worked out accordingly and the applicant shall be entitled to all consequential benefits arising out of this order for payment of gratuity, leave encashment and pension. Correspondingly, his pension w.e.f. 1.1.96 shall also be fixed on this basis. The respondents are also directed to refund the amount which might have been recovered from the pension of the

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applicant alongwith interest at the rate of 12% from the date of recovery to the date of actual payment. The respondents shall comply with this order within 3 months from the date of this order. No order as to costs.


(A.P. MAGRATH)

Adm. Member


(S.R. AGARWAL)

Judl. Member