

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 551/99
T.A. No.

199

DATE OF DECISION _____

L.K.Mathur and 9 others Petitioner

Mr. C.B.Sharma Advocate for the Petitioner (s)

Versus

UOI and another Respondent

Ms Shalini Sheron for Advocate for the Respondent (s)
Mr. Bhanwar Bagri.

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. H.O.Gupta, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

(H.O.Gupta)
Administrative Member

(G.L.Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

O.A. No. 551/99

Date of Decision: 19.02.03

1. L.K. Mathur
S/o Shri R.S. Mathur,
C-9, Saraswati Colony,
Tonk Phatak,
Jaipur.
2. S.L. Meena,
S/o Shri N.L. Meena,
Badia Basti Nahari Ka Naka
Shastri Nagar,
Jaipur.
3. Nitai Lal Sharma
S/o Shri R.P. Sharma
Plot No. 8, Bajrang Colony
Sodala,
Jaipur.
4. Ram Kishore Sharma
S/o Shri G.L. Sharma
D- 408, Goverdhanpuri Galia Gate
Jaipur.
5. P.D. Meena,
S/o Shri Jagannath Meena
Dhani Bhatawala
via Shahpura,
Jaipur.
6. Rajiv Kaul,
S/o Shri M.N. Kaul,
122/116, Mansarovar Colony
Jaipur.
7. S.S. Meena
S/o Shri B.R. Meena,
Plot No. 9-B,
Behind Gita Ashram
Sodala
Jaipur.
8. Mahadev Prasad Jat
S/o Sh. G.R. Jat
Plot No. 12, Param Hansh Colony,
Bandhu Nagar,
Sikar Road,
Jaipur.

: Applicants.

:2:

9. Rajendra Kumar Sharma
S/o Sh S.L. Sharma
D-31, Jamna Nagar,
Sodala
Jaipur.
10. M.O. Sharma
S/o Sh N.R. Sharma,
1226, Khati Bade Ki Gali,
Bandri Ka Nasik,
Jaipur.

: Applicants.

rep. by Mr. C.B. Sharma : Counsel for the applicants.

-versus-

1. Union of India through its
Secretary to the Government
of India, Department of Posts
Ministry of Communication,
Dak Bhawan,
New Delhi- 110 001
2. Chief Post Master General,
Rajasthan Circle,
Jaipur

: Respondents.

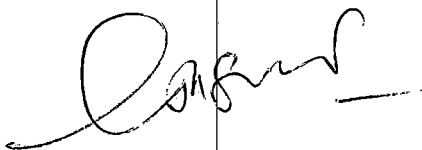
rep. by Ms Shalini Sheron for
Mr. Bhanwar Bagri : Counsel for the respondents.

CORAM : The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.
The Hon'ble Mr. H.O.Gupta, Administrative Member.

ORDER

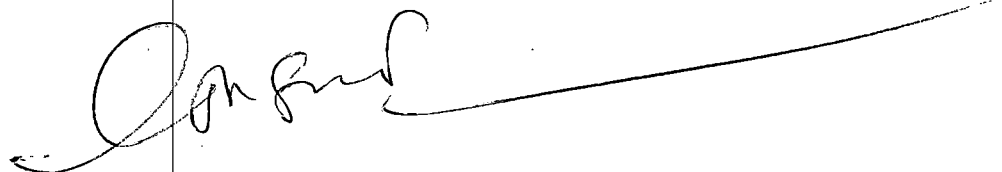
Per Mr. Justice G.L.Gupta:

The applicants herein are Postal Assistants.
They were appointed as LDCs between 27.12.83 and 19.5.87.
The respondents' department promulgated a Scheme, known
as Time Bound One Promotion Scheme (TBOP for short) and
Biennial Cadre Review Scheme (BCR for short), to Group 'C'



staff of the Administrative offices in the Department of Posts, vide communication dated 22.7.93. On the introduction of the Scheme of 1993, the applicants were redesignated as Postal Assistants vide memo dated 18.1.84. They were allowed the pay scale of Rs.4000-6000 with effect from 1.1.96 on the recommendations of the 5th Pay Commission. As per the Scheme dated 22.7.93, officials who complete 26 years service in the grade of Postal Assistants/UDCs/ LDCs are eligible for promotion to the next higher grade. In the year 1996, vide order dated 10.9.96, one Smt. Sudha Bhasin, who was junior to the applicants, was given promotion to the next higher scale of Rs.1400-2300(pre-revised); Rs.4500-7000(revised) with effect from 7.5.96.

2. The applicants' case is that they were senior to Smt. Sudha Bhasin and therefore they had a right of promotion to the higher scale of Rs.4500-7000, when Smt. Bhasin was allowed higher scale. They made representations to the respondents for the grant of higher pay scale but their representations were rejected vide communications dated 10.11.99 (Annex. A. 11 to A.22). Hence this O.A with the prayer that the respondents be directed to promote the applicants in the scale of pay of Rs.4500-7000 with effect from 7.5.96 with all consequential benefits. It is also prayed that the respondents be directed to delete the provision which deprived the applicants the higher scale of pay on the basis of junior brought on transfer under Rule 38 of the P & T Manual Vol. IV.



3. In the counter, the respondents' case is that under the BCR scheme, the applicants were not entitled to the higher scale of pay as they had not completed 26 years of service as on 7.5.96. It is stated that the applicants as well as Smt. Sudha Bhasin were in the same cadre of LDC prior to the introduction of the Scheme of 1993 and as the applicants were not in the higher cadre of UDC when Smt. Sudha Bhasin was transferred, they are not entitled to get higher scale of pay in terms of the order dated 8.2.96.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. Mr. C.B. Sharma, the learned counsel for the applicants contended that the applicants are senior to Smt. Sudha Bhasin, and therefore they ought to have been allowed higher scale of pay from the date Smt. Sudha Bhasin was granted the higher scale of pay under the Scheme of 1993. His contention was that the higher scale of pay should be granted to the applicants without insisting on the condition that they should complete the minimum prescribed 26 years of service. He relied on the case of Smt. Leelamma Jacob and others vs. Union of India and others (1993 (3) SLJ (CAT) 514).

6. On the other hand, Ms. Shaline Sheron appearing for the learned counsel for the respondents contended that the applicants have not fulfilled the eligibility condition of putting in 26 years of service



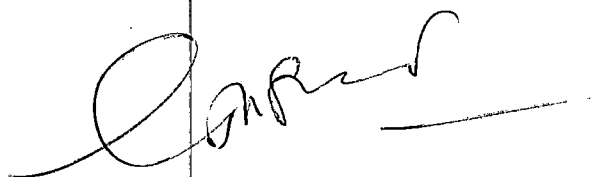
for the grant of higher scale of pay under the Scheme and hence they were not entitled to the higher scale of pay, even though Smt. Sudha Bhasin was junior to them. In this connection she pointed out that the letter dated 8.2.96, has been superseded by the Government of India, letter dated 17.5.2000 and now it is on the basis of length of service that higher scale of pay is granted and not on the criteria of seniority.

7. We have considered the above contentions. It is profitable to read () the relevant para 3.12 of the Scheme of 1993 hereunder:

3.12.

Under this Scheme, only such officials as have completed 16 and 26 years' service in the Postal Assistants/UDC/LDC Grade will be eligible for promotion to the next higher grades of Rs.1400-2300 and Rs.1600-2660 respectively if they otherwise eligible. In cases where a senior has not completed the prescribed period of service, whereas his/her junior has become eligible, then only the junior shall be considered eligible for promotion. However, when the senior completes the prescribed service and is adjudged suitable for promotion then his/her original seniority will be restored vis-a-vis his/her juniors in the lower grade. In such cases, Promotion under this Scheme will be subject to the condition that the senior employee shall not be able to claim benefit of higher pay fixation namely on the ground that officials who were junior to him in the lower grade are now drawing higher pay by virtue of early promotion.

8. A reading of the provision shows that only such official who put in 16/26 years of service are eligible for promotion to the next higher scale of pay. It is provided that if the seniors do not complete the prescribed years of service and the junior complete the prescribed years of service, junior alone shall be eligible for the higher scale of pay. However, the

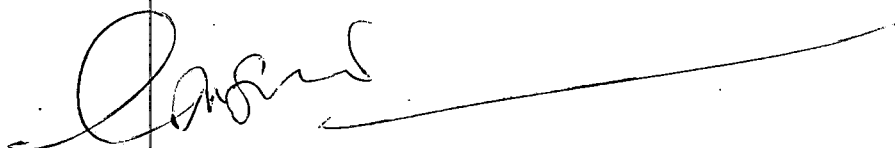


interest of the senior has been safeguarded by providing that when the senior completes the prescribed years of service and is adjudged suitable for promotion then his original seniority shall be restored vis-a-vis his/her junior in the lower grade.

9. The Scheme of 1993 was amended by the Government of India vide letter dated 8.2.96, which stated that ~~the~~ officials whose seniority was adversely affected by the implementation of the BCR Scheme on placement of juniors in the next higher scale of pay, the senior will also be considered for the grant of next higher scale of pay, from the date his immediate junior became eligible for next higher scale. It ^{was} ~~was~~ further stated therein that this rule did not apply to the officials who ~~were~~ senior to those officials who ~~were~~ brought on transfer under Rule 38 of the P & T Manual Vol. IV and ~~were~~ placed in the next higher scale of pay by virtue of length of service.

10. It may be pointed out that Smt. Sudha Bhasin was brought on transfer under Rule 38 of the P & T Manual Vol. IV. Hence the respondents took the stand that in view of the provisions contained in the letter dated 8.2.96, the applicants could not claim higher scale of pay.

11. It is noticed that ~~the~~ clarifications ~~was~~ issued in respect of persons who were brought on transfer under Rule 38 of the P & T Manual Vol. IV vide communication dated 5.8.97. Yet further clarifications ~~was~~ issued vide letter dated 1.1.98.



The import of the clarifications was that if on 26.6.93, the date on which the Scheme was introduced the persons who were brought on transfer under Rule 38 and were in a lower grade, the benefit of promotion would be given to the seniors if they were in the higher scale of pay and not otherwise. It is evident that the clarifications created more problems than solved.

12. The difficulty was realised and ultimately, the Government issued an order on 17.5.2000, whereby the instructions contained in the orders dated 8.2.96, 5.8.97 and 1.1.98 were superseded and the position as stated in the Scheme of 22.7.93 was restored. In other words, para 3.12 of the Scheme, reproduced above, would apply for the grant of higher pay scale, i.e. only such officials can get the benefit of higher scale of pay who complete 26 years of service and if the juniors become eligible for the grant of higher scale of pay earlier to their seniors because of completion of the prescribed years of service they will get the benefit of higher scale of pay and the seniors will not get the same. Of course, after the seniors complete 26 years of service and they are found suitable they will get the benefit of higher scale of pay and their seniority will be restored.

13. Admittedly, the applicants had not completed 26 years of service on the date when the Scheme of 1993 was introduced, and even on the date Smt. Sudha Bhasin completed 26 years of service. Therefore, they cannot claim the benefit of higher scale of pay. As. Smt. Sudha Bhasin had been appointed earlier she fulfilled the

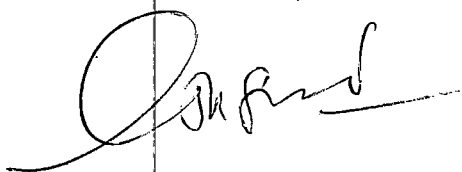


eligibility condition which the applicants did not.

14. It was brought to our notice that a decision was taken to repatriate Smt. Sudha Bhasin to her previous Division, as the transfer was not in accordance with Rule 38 of the P & T Manual Vol. IV, but now the respondents have regularised the transfer of Smt. Sudha Bhasin with effect from 9.4.97 vide communication dated 24.12.2002. Be that as it may, Smt. Sudha Bhasin is junior to the applicants.

15. As to the case of Smt. Leelamma Jacob (supra), it may be stated that, that case was decided on the assumption that the eligibility condition contained in the Scheme was not provided in the relevant recruitment rules. It was held that without amending the recruitment rules, such conditions could not be imposed. With respects, this ruling cannot be followed in view of the Apex Court's decision in the case of State of Punjab and another vs. Kuldeep Singh and another (2002 SCC (L&S) 314).

In that case, the two Government circulars issued for the grant of Selection Grade provided that an employee on completion of 15 years of service was eligible to get selection grade. It is evident that no amendment had been made in the relevant service rules in that case also. The High Court of Punjab and Haryana held that when persons junior have been granted the selection grade the seniors should also be granted the same. On appeal by the State Government, the Apex Court



held that in view of the eligibility criteria of 15 years service for the grant of selection grade, senior could not claim the benefit of higher scale on the ground that junior was granted the benefit of selection grade. It was noticed by the Apex Court, that the interest of the senior employee was safeguarded when it was provided in the circular that the inter se seniority between the two employees will remain undisturbed even if junior employee gets the selection grade earlier than the senior employee.

16. In the instant case also, it is provided in the Scheme of 1993, at para 3.12 (extracted above) that if the senior gets promotion on completion of 26 years of service his seniority will be restored vis-a-vis junior in the lower grade even if the junior was granted the higher scale of pay earlier. Thus the interest of the seniors is safeguarded in the Scheme of 1993. The ruling of the Apex Court in Kuldeep Singh's case (supra) applies on all fours to the instant case.

17. In the case of R. Prabhadevi vs. Government of India (AIR 1988 SC 902), also similar controversy was decided. There it was required that an employee should put in 8 years of service as Section Officer for promotion to the next higher grade. It was noticed that though the junior persons fulfilled the eligibility criteria of 8 years, but the senior persons had not fulfilled the said condition and therefore junior persons were considered for promotion to the next higher grade. The contention of the seniors, that they




being senior, ought to have been considered for promotion, even though they had not rendered 8 years service, was repelled and it was held that when they did not fulfil the eligibility criteria they did not have a right of consideration.

18. The result of the forgoing discussion is that the contention of the applicants they they are entitled to the benefit of higher scale of pay from the date Smt. Sudha Bhasin was granted the higher scale of pay, is not sustainable. The respondents have rightly rejected the claim of the applicants.

19. It is not necessary to consider the second prayer of the applicants as the Government itself has deleted the provision of deprivation on the ground of transfer under Rule 38 of the P & T Manual Vol. IV vide communication dated 17.5.2002 whereby the orders dated 8.2.96, 5.3.97 and 1.1.98 were superseded.

20. Consequently, the O.A., being devoid of merit, is dismissed.

21. No order as to costs.


(H.O. Gupta)
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.