

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 128/2001

199

T.A. No.

DATE OF DECISION 31.12.02

MOHD. BASHIR AHMED Petitioner

IN PERSON Advocate for the Petitioner (s)

Versus

UNION OF INDIA & ANR. Respondent

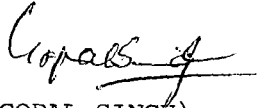
MR. N.C. GOYAL Advocate for the Respondent (s)


CORAM :

The Hon'ble Mr. JUSTICE G.L.GUPTA, VICE CHAIRMAN

The Hon'ble Mr. GOPAL SINGH, ADM.MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?


(GOPAL SINGH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN

* * *

Date of Decision: 31.10.02

OA 128/2001

Mohd. Bashir Ahmed s/o Late Shri Mohd. Abdul Jabbar r/o 1414/52, Nai Basti, Loha Khan, Ajmer.

... Applicant

Versus

1. Union of India through Secretary, Department of Post, Ministry of Communication, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.

... Respondents

CORAM:

HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN

HON'BLE MR. GOPAL SINGH, ADM. MEMBER

For the Applicant

... In person

For the Respondents

... Mr. N.C. Goyal

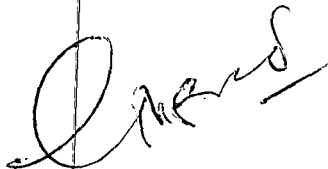
O R D E R

PER MR. JUSTICE G.L. GUPTA

Through this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs :

- "i) That the humble applicant submits that he does not challenge to earlier promotions of his juniors. The applicant humbly seeks the only relief is that he is entitled to step up his pay retrospectively from 31.5.91 in HSG-I or 23rd December, 1992 the date on which his junior Shri B.L. Bhambhi was promoted to HSG-I or Postal Supdt. Group-B Service.
- ii) That the humble applicant has produced his case with reference to the Rules which have not only been mentioned in his representation. But discussed the case with the Respondent No.2 in person on 5th June, 2000 & 6th June, 2000 at Jaipur and also produced the relevant rulings (Respondent No.1 as well). Even, inspite of all that applicant case has been neglected which has put him in great harassment. This Hon'ble Tribunal is requested to take suitable notice of it and if applicant contention is correct, the accountability of the appropriate authority may be fixed.
- iii) Since, for the last four years, applicant has been put in mental harassment by not taking his contention in the right perspective, it seems that applicant has been ignored deliberately and it has put applicant in mental torture. Applicant prays this Hon'ble Tribunal that applicant should be suitably compensated for this mental torture as also putting in a lot of efforts to prepare and present his case before the authorities time and again."

2. It is averred that the applicant was appointed as Inspector of Post Offices on 13.4.73 and was confirmed on the post on 11.2.77. H

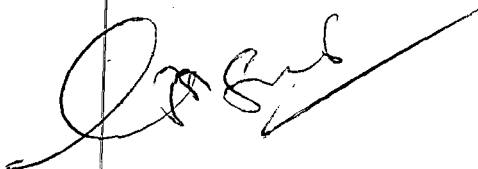


was promoted as Assistant Superintendent of Post Offices on 12.4.86, Superintendent of Post Offices on 13.4.92 and Senior Superintendent of Post Offices on 27.8.98. He retired from service on 31.8.2000 on attaining the age of superannuation. The case for the applicant is that he was entitled to be promoted to the post of HSG-I in May, 1991 when the Assistant Superintendents of Post Offices junior to him were given promotion. It is stated that the respondents committed an error when they ignoring the claim of the applicant, who is from general category, gave promotion to the members of SC & ST, who were junior to him, to the post of HSG-I. The applicant says that he had represented to respondent No.2 i.e. Chief Postmaster General, Rajasthan Circle, on 19.7.96 and made further representations on 19.9.96, 27.3.97, 20.5.97 and 6.4.98. He also made representations to respondent No.1 from 1999 to 2000. Respondent No.2 rejected his representation on 4.7.2000 stating that he was not entitled for promotion and stepping up of pay equal to his juniors. Respondent No.1 also rejected his representation vide communication dated 15.9.2000 (Ann.A/25).

3. In the counter, the respondents have come out with the case that on the basis of 40 Point Roster the members of SC and ST had been given promotion to the post of Assistant Superintendent of Post Offices. Giving details, it has been stated that Shri C.M.Verma was given promotion against the vacancy of the year 1981, Shri B.L.Bhambhi against the vacancy of the year 1983, Shri Bodan Lal Meena against the vacancy of the year 1983 and the applicant was given promotion against the vacancy which occurred in the year 1985, and thus, the applicant had become junior to the officials of the reserved community in the cadre of Assistant Superintendent of Post Offices. It is averred that the applicant was not given promotion to the post of HSG-I because his name did not come in the zone of consideration.

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

5. The contention of the applicant was that there was no basis for the respondents to have given promotion to the members of the reserved community against the vacancies of the years 1981 & 1983, and he ought to have been given promotion to the post of Assistant Superintendent of Post Offices against the vacancy of the year 1981 because he was of 1974 batch and the members of the reserved community were recruited in the year 1974. According to him, the members of the reserved community even could not come in the zone of consideration for promotion to the post of Assistant Superintendent of Post Offices in the year 1981 or 1983. H



invited our attention to the gradation list showing the position as on 16.10.76 (Ann.A/4), in which the name of the applicant stood at S.No.11 and that of the members of SC from S.No.40 onwards. It was pointed out that from the very beginning the members of SC were junior to him and hence they could not be given promotion to the post of HSG-I ignoring the claim of the applicant. In this connection, he also relied on the order dated 13.4.87 (Ann.A/9).

6. On the other hand, the learned counsel for the respondents pointing out that the applicant has raised the question of promotion which was granted to some persons in the year 1991, contended that the applicant ought to have challenged the promotions within the period of limitation and now he should ^{not} be allowed to assail the promotion orders of the members of the reserved category. He submitted that the rejection of the representations by the respondents did not extend the period of limitation for challenging the action of 1991. In this connection he pointed out that the applicant himself has not challenged the promotions of his juniors and he simply wants that his pay should be stepped up which, it was urged, cannot be done as the conditions required for stepping up do not exist.

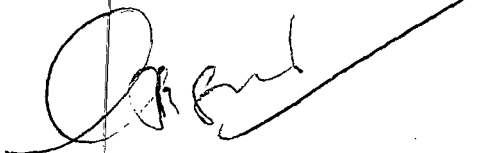
7. As against this, the applicant contended that he was not aware of the promotions of the junior persons before 1996 and, therefore, he had no occasion to challenge those promotions.

8. We have given the matter our thoughtful consideration.

9. In the OA it is nowhere stated that the applicant was not aware of the promotions of his juniors prior to 1996. What is stated at para-3 of the OA is that the OA is within limitation. No facts have been stated as to how the OA is within limitation. In the grounds it is nowhere stated that as the applicant did not know about the promotions of his juniors, he could not challenge the promotions earlier to 1996 or could not claim stepping up of his pay.

10. The applicant contended that from 1992 to 1996 he was posted in another circle and, therefore, he did not get the information. This explanation of the applicant advanced during arguments cannot be accepted since it is nowhere stated in the OA and the respondents did not have an opportunity to meet this contention.

11. Be that as it may, it is evident that the applicant did not challenge the promotions of so called juniors as also he did not demand




the stepping up of pay prior to 1996. What was stated in the representations filed from 1996 onwards is also not known to us as copies of the representations have not been placed on record. In any case, the said representations also had not been made for more than four years of the orders of promotions.

12. In our opinion, the OA is liable to be dismissed on the sole ground that the claim is barred by limitation. It may be that in the counter a specific plea of limitation has not been raised but the respondents cannot be debarred from raising the plea during the course of arguments, which is based on the provisions of law. The Apex Court time and again has held that if the claim is barred by limitation, the court cannot grant the relief. The applicant has also not filed MA for condonation of delay. Therefore, the OA is liable to be dismissed on the ground of limitation alone.

13. Even on merits, the applicant cannot succeed. As already stated, the applicant has not challenged the promotions of his juniors and he only wants stepping up of his pay. Stepping up of pay can be granted on fulfilling certain conditions. One of the conditions for stepping up under OM dated 4.2.66 or OMs issued on the same subject subsequently under FR-22C, now FR-22 (1)(a)(i), is that both the junior and senior officers, belonged to the same cadre, and the posts to which they have been promoted or appointed should be identical and in the same cadre. Admittedly, the applicant was never promoted or appointed on the post of HSG-I on which the juniors are said to have been promoted. Therefore, he cannot claim stepping up. So also, the second ground for stepping up is that the scales of pay of the lower and higher posts for which the employees are entitled to draw should be identical. Admittedly, the pay scale of the post of HSG-I and that of the applicant on the post of PSS Group-B was not identical. That being so, the applicant cannot get stepping up of pay.

14. For the reasons stated above, this OA is held to be devoid of merit and is hereby dismissed. No order as to costs.


(GOPAL SINGH)
MEMBER (A)


(G. N. GUPTA)
VICE CHAIRMAN