

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 19.02.03

OA No.166/2001

Bachchu Bhai Jain s/o Shri Nemi Chand Jain r/o Puchit Mohalla
Basan Darwaja Near Garg Dairy, Bharatpur and at present working as
Postal Assistant, Bharatpur Head Post Office, Bharatpur.

.. Applicant

VERSUS

1. Union of India through the Secretary, Govt. of India,
Department of Posts, Ministry of Communication, Dak
Bhawan, New Delhi - 110 001.
2. Chief Post Master General, Rajasthan Circle, Jaipur
3. The Superintendent of Post Offices, Bharatpur Postal
Division, Bharatpur.

.. Respondents.

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

Mr. B.N.Sandhu, counsel for respondents.

CORAM:

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

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the order dated 28.3.01
(Ann.A1) whereby his representation for grant of next higher scale
after completion of 16 years of service as per One Time Bound
Promotion (OTBP) scheme, has been rejected by respondent No.2. In
relief, he has prayed for quashing the impugned order and also for
appropriate directions to the respondents to allow him the next
higher grade carrying a pay scale of Rs. 4500-7000 w.e.f. 10.3.94
i.e. the date his next junior was so allowed or w.e.f. 4.2.95 or

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1.8.95 with all consequential benefits including pay and allowances, seniority etc. He has also prayed for quashing the order dated 6.6.96 (Ann.A3) whereby his request for placement in the higher grade was rejected.

2. The case of the applicant as made out, in brief, is that:-

2.1 He was appointed as Postal Assistant on 4.2.79 and since then he is continuously working to the entire satisfaction of the respondents.

2.2 The respondents introduced a scheme for placement in the next higher grade on completion of 16 years of service vide their letter dated 17.12.83 (Ann.A2). The scheme was given effect from 30.11.83.

2.3 As per the scheme, the applicant, having completed 16 years of service, was due for next higher grade on 4.2.95. The case of the applicant ought to have been considered in the year 1994 as per the provisions contained in Para 4 of the said scheme but his case was not considered in the year 1994. Based on his request, the respondent No.3 vide letter dated 6.6.96 (Ann.A3) informed him that the Departmental Promotion Committee did not find him fit for promotion. He should have been considered in the next higher grade in 1993 itself because one junior to the applicant Shri R.S.Gehlot was allowed next higher pay scale w.e.f. 10.3.94. Shri Gehlot, although an appointee of 10.3.78, but he joined the Bharatpur Postal Division from Chittorgarh Division on 30.6.91 under Rule 38 of the P&T Manual by accepting bottom seniority. Since Shri Gehlot became junior to him, he was entitled for next higher grade from the date Shri Gehlot was so allowed.

2.4 He made representation to the Director, Postal Services, which was rejected vide communication dated 26.5.97

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(Ann.A4). Thereafter, he preferred a representation dated 5.7.97 to respondent No.1, but he was advised by the respondents' letter dated 29.11.99 (Ann.A5) to represent to respondent No.2 instead of respondent No.1. Accordingly, he preferred representation to respondent No.2 on 29.12.99 (Ann.A6). His representation was rejected vide the impugned order dated 28.3.01 (Ann.A1).

3. The main grounds taken by the applicant are that :-

3.1 He is entitled for next higher grade w.e.f. 10.3.94 or from 4.2.95 or from 1.8.95, after the currency of punishment was over, as in similar cases the respondents allowed next higher grade to other officials like Shri Sita Ram Khanduja.

3.2 Nothing was adverse against the applicant upto 1994 and after 1.8.95. Therefore, he is entitled for next higher grade of Rs. 4500-7000 w.e.f. 4.2.95 or 1.8.95.

3.3 As per the provisions of the scheme, he was required to be considered in the year 1993-94 and further in succeeding years with the other eligible officials, but his case was not considered.

3.4 His representation dated 22.12.99 (Ann.A6) has not been duly considered. The respondents have not specified punishment awarded to him while rejecting his representation. The punishments are minor punishments of censure and stoppage of increments for 3 and six months awarded in the year 1993 and 1995. Besides these, nothing is adverse against the applicant since 1993.

4. The respondents have contested this application. Briefly stated, they have submitted that:-

4.1 The applicant was due for promotion under OTBP scheme in the year 1995 after completion of 16 years of service on 4.2.95 but due to the unsatisfactory service record, he was not

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recommended by the DPC.

4.2 At the time of second DPC held on 24.5.95, he was not granted promotion due to continuous unsatisfactory past service record. It is denied that the applicant had been working to the entire satisfaction of the respondents. He had been awarded punishment several times. Therefore, his service record cannot be said to be entirely satisfactory.

4.3 It has been clarified by the DOP & AR that the penalty of Censure itself does not render an employee unfit for promotion although it may be taken into account by the DPC for making overall assessment.

4.4 Placement under OTBF and BCR schemes are based on the length of service of the official concerned and not on the criterion of seniority. Seniors in the gradation list, therefore, cannot claim higher scale of pay with their juniors as per DGP&T instructions dated 17.5.2000 (Ann.R4).

4.5 The applicant has preferred a representation before respondent No.2 on 22.12.99 and not on 29.12.99. While deciding the said representation, the respondent No.2 took into consideration all the points alongwith relevant record. Each and every point raised by the applicant was considered and replied. The applicant was also permitted for personal hearing before respondent No.2 on 22.2.2001.

4.6 The name of the applicant was included every year in the list of candidates put up before the DPC for consideration. The DPC did not find him fit for promotion on the basis of confidential records of the applicant and accordingly, the applicant was informed of the decision of the DPC.

4.7 The year-wise details of confidential reports of the applicant are as under:-

"Year 1994-95

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(i) Average performance. He was punished for stoppage of increment for six months w.e.f. 1.2.95 without future effect, vide memo No. F.2/Misc./94-95 dt. 27.1.95.

(ii) He was punished with censure vide memo No.L-31/93-94 dt. 27.4.94.

(iii) Average grading.

Year 1995-96

An average work.

Year 1996-97

(i) Not fully devoted to duty.

(ii) Censure vide Memo No.G.2/11/96-97 dated 31.10.96 for wrong sorting of mail.

Year 1997-98

(i) Devotion to duty - Not good.

(ii) Censured vide memo No.L-18/97-98 dated 30.6.97 for detention of MOs of telephone operators.

Year 1998-99

Average worker.

Year 1999-2000

(i) Careless worker

(ii) The official was served chargesheet under Rule 16 vide SPOs Memo No.8/DF/1/95-96 dt. 28.5.99 for wrong consignment of Deeg RL 4725 dt. 12.5.95 and inflicted penalty of recovery of Rs. 2500/-"

4.8 The photostate copy of the minutes of the DPC meeting for the year 1995-2000 may be perused from Ann.R4. According to para 4 of the DGP&T letter dated 17.12.8 (Ann.R2), the DPC meeting is to be convened before 30th June to consider fitness of the officials completing 16 years of service in the grade during the year. It is also clarified in this para that the officials will be

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promoted to the next higher scale of pay when he completes 16 years of service i.e. due date of promotion subject to normal rules relating to promotion and they being found fit by the DPC on the basis of satisfactory service record.

4.9 After 4.2.95, the applicant was punished with the penalty of censure in 1996 and again in 1997. He was awarded the penalty of recovery of Rs. 2500/- vide order dated 28.5.99. Further, the record of the applicant for 5 years prior to the dates of holding the DPC, on every occasion, was not found satisfactory. Due to currency of punishment in the year 1995 he was not recommended for promotion by the DPC. The applicant was also inflicted with three penalties from the year 1989-90 to 1993-94. He was also punished with penalty of stoppage of one increment for six months without cumulative effect vide order dated 27.1.95. Therefore, the contention of the applicant with regard to the punishment inflicted upon him is not correct.

5. In rejoinder, the applicant has submitted that in the year 1995 when he was due for next higher grade, nothing was against the applicant except the punishment of stoppage of increment for 6 months w.e.f. 1.2.95 and thereafter he was awarded some punishment of censure which does not come in the way of allowing next higher scale as per the averments made by the respondents themselves based on their letter dated 24.4.84 (Ann.R3). Therefore, he is entitled for next higher scale of pay after completion of minor punishment i.e. with effect from 1.8.95. Besides, the respondents considered the matter on the same service record in the year 2002 and allowed him the next higher scale w.e.f. 10.5.02 vide their memo dated 14.05.2002 (Ann.A8).

6. Heard the learned counsel for the parties and perused

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the record.

6.1 During the course of argument, the learned counsel for the applicant submitted that there was no reason for not allowing the applicant next higher scale w.e.f. 1.8.95 i.e. the date when the currency of punishment of stoppage of increment for 6 months expired. He also submitted that based on the same record, the applicant was promoted in May, 02 and, therefore, the contention of the respondents that he was denied promotion based on the confidential record is not in order. He further submitted that the applicant ought to have been promoted w.e.f. 10.3.94, when junior to the applicant, Shri Gehlot was promoted.

6.2 The learned counsel for the respondents submitted that it is evident from the minutes of the meeting that the DPC considered the applicant every year but based on his ACRs as well as his record, he was not considered fit for promotion by the DPC. He further submitted that if the DPC based on his ACRs and the record before them found the applicant suitable in May, 2002, the applicant cannot claim that he should have been promoted during 1995.

6.3 As per the scheme of December, 1983 (Ann.A2), the DPC is required to assess the fitness of the officials for promotion to the next higher scale of pay. The applicant has no right for promotion. He has only right for consideration. He was duly considered by the DPC every year. The DPC did not find him fit for promotion to the next higher grade. The extract of the ACRs and the penalties imposed on the applicant have been given by the respondents in their reply as contained in para 4.7 and 4.9. Based on this record, the DPC had assessed him unfit on each occasion, such assessment cannot be said to be arbitrary.

6.4 If the DPC has found the applicant fit for promotion in the year 2002 based on the records before them or even as

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compassion being repeatedly ignored, the applicant cannot claim that he should have been promoted in 1995 itself.

6.5 The applicant cannot ~~also~~ seek promotion with reference to a person, who became junior by virtue of his transfer under Para 38 for the reason that para 2 of the Govt. of India letter dated 17.5.2000 (Ann.R4) clearly stipulates that placement under the scheme is based on length of service and not on the criteria of seniority. It is further stated therein that seniors cannot claim higher scale of pay at par with the juniors, if their juniors have got higher scale of pay by virtue of their completion of the prescribed period of service.

7. In view of above discussions, the OA is devoid of merit and therefore dismissed with no order as to costs.


(H.O.GUPTA)

Member (Administrative)


(G.L.GUPTA)

Vice Chairman