

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 30.4.04

OA 514/2002

Banwari Lal Bangalia, Supervisor (LSG) BCR HSG-II O/o Railway Mail Service, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Sr. Supdt. Railway Mail Service, Opp. Radio Station, Jaipur.
4. Umrao Verma, Manager, RLO, Jawahar Nagar Post Office, Jaipur.
5. Janki Lal, HSG SA O/o Railway Mail Service, Jaipur.

... Respondents

CORAM:

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

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.P.N.Jatti

For the Respondents

... Mr.N.C.Goyal

ORDER

PER HON'BLE MR.M.L.CHAUHAN

The applicant ~~when~~ was initially appointed as Sorting Assistant in the Department of Post & Telegraph w.e.f. 9.8.64, was given financial upgradation on completion of 16 years of service in the cadre in terms of One Time Bound Promotion (OTBP) Scheme effective w.e.f. 30.11.83 and further on completion of 26 years of service under Biennial Cadre Review (BCR) Scheme w.e.f. 1.10.91. The applicant has filed this OA for giving seniority to him over and above respondents No.4 & 5 who were appointed as Sorting Assistant on 23.5.68 and 15.7.67 and also one Shri Dan Dayal Singh who was appointed as Sorting Assistant on 31.8.66. The grievance of the applicant is that he was promoted in the LSG Supervisory Cadre vide order dated 2.2.95 (Ann.A/7), whereas the aforesaid persons were promoted in LSG Supervisory Cadre vide order dated 1.7.96 (Ann.A/8). As such, these persons could not have been placed above the applicant in the seniority list issued on 30.11.99, corrected upto 1.1.99. It is further averred that applicant filed a representation against this seniority list. Since representation of the applicant was not decided, he filed an OA in this Tribunal which was registered as OA 426/2001. Subsequently, his representation was rejected vide impugned order (Ann.A/1), which was received by the applicant on 15.6.2002. Accordingly, the OA was withdrawn with liberty to file afresh OA for redressal of the grievances. Now the

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applicant has challenged the order dated 15.6.2002 (Ann.A/1) and order dated 20.9.2000 (Ann.A/1A) whereby respondent No.4 has been promoted to the post of HSG-I Cadre. The grievance of the applicant in this OA is that since persons junior to him have been promoted to the post of HSG-I Cadre, as such he was also entitled to be promoted to the said cadre w.e.f. the date his juniors have been promoted. In relief, he has prayed that the respondents be directed to correct the gradation list of HSG-II/BCR officials (RMS), corrected upto 1.1.99, circulated vide order dated 30.11.99, and that applicant be posted in HSG-I in the pay scale of Rs.6500-10500 w.e.f. 20.9.2000, the date on which his junior had been promoted.

2. Notice of this OA was given to the respondents. The respondents have filed reply. The fact that the above named officials -namely respondents No.4 & 5 and one Shri Dan Dayal Singh were appointed as Sorting Assistant after the applicant has not been denied. In the reply it has been stated that these three officials when were appointed later on in the department than the applicant had passed the 1/3 quota LSG Examination agaisnt the vacancy of 1979-80 held on 15.2.81 whereas the applicant did not appear in the said examination. As such, he could not be promoted to the post of LSG Supervisory Cadre. The fact that these three officials though qualified the examination were never promoted to LSG Supervisory Cadre had been denied by the respondents. In fact, the respondents have placed on record the promotion order of these three persons as Ann.R/3 and Ann.R/4. These promotion orders were issued vide letter dated 3.3.82 and 30.9.83. Thus, according to the respondents, these three officers were senior to the applicant in the cadre of LSG Supervisory to which post the applicant was never promoted. The respondents have further stated that the applicant was only given financial upgradation in terms of OFBP and BCR Schemes after completion of 16 years and 26 years of service. Even such financial upgradation was given to the applicant after the promotion of these three officers in LSG Cadre. It is further stated that both these financial upgradation in the higher pay scale were granted to avoid stagnation in the pay scale. It is further stated that the grievance of the applicant regarding seniority was considered by the competent authority and the same was decided on 7.5.2002. The representation of the applicant was rejected for the reasons that the applicant cannot claim seniority in BCR Scheme at par with persons who were already senior to him in LSG Cadre. The fact that the applicant was posted as LSG Supervisory Cadre has not been denied.

3. The applicant has not filed any rejoinder.

4. We have heard the learned counsel for the parties and have gone

62

through the material placed on record.

5. The fact that the applicant was appointed as Sorting Assistant prior to the appointment of respondents No.4 and 5 and once Shri Dan Dayal Singh has not been denied. Further, it has also not been disputed that further promotion to the post from the cadre of Sorting Assistant was that of LSG Supervisory Cadre. The selection to the said post is to be made; (a) 1/3rd quota by written examination (b) 2/3rd by seniority. It is also not disputed that the respondents No.4 and 5 and one Shri Dan Dayal Singh appeared in the examination held for the post of LSG Supervisory Cadre on 15.2.81 against the vacancy of 1979-80 and were declared successful. Copy of the letter dated 29.8.81 whereby the result of LSG Supervisory Grade-I Examination was declared has been placed on record as Ann.R/2. Subsequently, these three persons were considered fit by the DPC for promotion to LSG Cadre and were given promotion in LSG Supervisory Cadre on regular basis vide letter dated 3.3.82 and 30.9.83 (Ann.R/3 and Ann.R/4 respectively). Admittedly, the applicant was not a member of LSG Supervisory Cadre when these three persons were promoted. In fact, the applicant has not been promoted in the cadre of LSG Supervisory till date. However, he has been given only the benefit of two financial upgradations in terms of OBTB and BCR Schemes thereto subsequent to the promotion of these three persons in the cadre of LSG Supervisory. Merely because on account of financial upgradation, the applicant was granted scales at par with these three officers do not make him a member of LSG for the purpose of seniority. He shall be deemed to be a member belonging to Sorting Assistant till he is promoted on functional post of LSG/HSG-II in accordance with rules and qualify the written examination.

6. Much emphasis has been laid by the applicant to Ann.A/7 and Ann.A/8. Vide Ann.A/7 dated 2.2.95 persons named therein including the applicant who were given the benefit of financial upgradation under BCR Scheme were posted against the post of HSG/LSG Supervisory. Vide Ann.A/8 dated 1.7.96 the persons named therein including the aforesaid three officers who joined the department as Sorting Assistant later than the applicant were transferred and posted against the post mentioned therein. On the basis of these facts, the learned counsel for the applicant argued that the applicant was promoted on 2.2.95 (Ann.A/7) whereas the aforesaid three persons were promoted on 1.7.96 in HSG Supervisory Cadre, as such, the applicant is senior to these officials. Thus, the respondents were not justified in treating the applicant as junior to these officers vide seniority list dated 30.11.99 and subsequently his representation against this seniority list could not have been rejected vide letter dated 7.5.2002 and conveyed vide Ann.A/1.

7. The submissions made by the learned counsel for the applicant deserves outright rejection. As can be seen from the perusal of Ann.A/7 and Ann.A/8, these are only posting and transfer orders and these cannot be treated as promotion orders. On the contrary, the respondents have placed on record a letter dated 13.3.82 (Ann.R/3) and letter dated 30.9.83 (Ann.R/4) which make it clear that aforesaid persons named therein including aforesaid three persons were promoted on regular basis against the vacancies of 1981-82. Thus, contention of the applicant that aforesaid three persons were promoted in the year 1996 is without any substance. Similarly, the posting of the applicant against the Supervisory post of HSG/LSG Cadre cannot be termed to promotion order against that post. It was simply a posting of the applicant against the cadre post of HSG/LSG Supervisory and such posting order cannot constitute to be a promotion of the applicant against the cadre of HSG/LSG. That apart, matter in controversy is also covered by the decision of this Tribunal rendered in OA 273/2003 and other connected matters, B.S.Sinsinwar v. UOI & Ors., decided on 7.1.2004. In these cases also the controversy was regarding non-selection of the applicants therein to LSG (Non-based post). The contention put forth by the applicants in these cases were that when they have been entitled to grant of financial upgradation/benefit under the BCR Scheme, how could they be denied promotion of lower scale of LSG (Non-based post). This Tribunal has held that merely grant of upgradation on completion of 16/26 years of service do not give a right of automatic promotion to the higher scale. The applicants remain members of a cadre before grant of benefit under the scheme and they cannot claim that they should be treated as having been promoted only because they have already completed certain years of service on the post against which they were posted. At this stage, it would be useful to reproduce para-6 of the judgement which has bearing on this case also :

"The apprehension of the applicants in all these OAs is misconceived inasmuch as they are not being deprived of financial benefits already granted to them under OTBP/BCR Scheme. The financial upgradations under those schemes do not confer right of promotion on the applicants. However, the respondents have been taking work from these persons of higher posts considering their suitability for the post and also considering the fact that they were drawing the emoluments under the financial upgradation schemes. These financial upgradations on completion of 16/26 years of service do not give a right of automatic promotion to the higher scales. The applicants remain members of the cadre before grant of these schemes. Therefore, they cannot claim that they should be treated as having been promoted only because they have already completed certain years of service on the post which they were posted. The transfer and the posting orders of the applicants cannot be taken as promotion orders."

16

8. In view of what has been stated above, we are of the view that the applicant is not entitled to any relief claimed. Accordingly, the OA dismissed. No costs.

AKB
(A.K.BHANDARI)

MEMBER (A)

MLC
(M.L.CHAUHAN)

MEMBER (J)