

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

JAIPUR, this the 21st day of February, 2005

ORIGINAL APPLICATION No. 121/2003

CORAM:

HON'BLE MR. V.K.MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

R.C.Meena
s/o Shri Sultan Meena,
r/o Plot No.9, Shakari Basti,
Near Vardhman Public School,
Nagar Nigam Colony, Amer Road,
Jaipur and presently working
as H.S.G.-II(BCR) P.A.
in the office of Chief Post
Master General, Rajasthan Circle,
Jaipur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through
its Secretary to the Government of India,
Department of Posts,
Ministry of Communications,
Dak Bhawan, New Delhi..
 2. Chief Post Master General,
Rajasthan Circle,
Jaipur.
 3. Director,
Postal Services, Jaipur Region,
Jaipur.
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4. Shri Jeevan Ram Meena,
Section Supervisor (Mails),
Office of Chief Post Master General,
Rajasthan Circle, Jaipur.
5. Shri Rohitashav Kumar, HSG-II (BCR)
Postal Assistant,
Office of Chief Post Master General,
Rajasthan Circle, Jaipur.

.. Respondents

(By Advocate: Shri N.C.Goyal)

ORDER (ORAL)

The present Original Application has been filed against the Memo dated 2.1.2003 (Ann.A1) by which representation of the applicant for placing him senior to respondent No.4 and also placing him in BCR scale Rs. 1600-2600 (Rs.5000-8000) has been rejected. Further, his claim for seniority qua respondent No.5 has also been rejected.

2. Briefly stated, the facts of the case are that the applicant, who is ST candidate, was initially appointed as Postal Assistant on 28.9.1977. He was promoted as UDC in the year 1984. Next promotion from post of UDC is in the LSG cadre. Appointment to LSG cadre is 2/3 by seniority-cum-fitness and 1/3 by examination. In the year 1993, the respondent department introduced scheme of OTBP/BCR on completion of 16 years and 26 years of service respectively to

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Group-C staff of Circle and Administrative offices. The said scheme was effective from 26.6.93. The applicant opted for the scheme from the date of its implementation. He was allowed OTBP promotion w.e.f. 27.9.93 on completion of 16 years of service. At this stage, it may be stated that before introduction of OTBP/BCR scheme, UDCs of Circle office/Regional office were entitled for further promotion under 1/3 quota of LSG by qualifying departmental examination while promotion against 2/3 quota was on seniority-cum-fitness. The applicant as well as respondent No.4 both were in the zone of consideration for selection for promotion to 2/3 quota of LSG in the scale of pay of Rs. 1400-2300 (pre-revised) against vacancy reserved for ST community for the year 1993. The applicant being senior to respondent No.4 was placed in the select panel drawn up by the DPC held on 7.5.1993. After accepting the recommendations of the DPC, the applicant was ordered to be promoted against the vacancy reserved for ST under 2/3 quota of LSG vide office Memo dated 18.5.93. The applicant submitted unconditional declination to accept the aforesaid promotion to LSG cadre vide his application dated 19.5.1993. The respondents have placed copy of the said application on record as Ann.R/1 with their reply. The unconditional declination of the applicant was accepted by the competent authority vide memo dated 25.5.93 and accordingly he was debarred for

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promotion for one year as per instructions on the subject. The DPC for the aforesaid vacant post of 2/3 LSG of 1993 belonging to ST community was again held on 21.7.93 and respondent No.4 immediate junior to the applicant was placed in the select panel. Accordingly, Shri Jeevan Ram Meena was promoted against the vacancy of ST against 2/3 LSG cadre vide office Memo dated 29.7.93 in the scale of pay of Rs. 1400-2300 (pre-revised) and consequent upon acceptance of promotion respondent No.4 ranked senior to the applicant. The applicant made a representation challenging his re-allotment to other region vide memo dated 7.2.95 and 7.6.95 debarring him for promotion. The said representation was rejected vide order dated 24.11.95. Against this order the applicant filed OA No.578/95 in this Tribunal. The applicant has also filed another OA No.149/2001. In this OA, the prayer of the applicant was that he may be promoted in the higher pay scale of Rs. 1600-2660 from the date his juniors were promoted vide memo dated 14.2.97. Both these OAs were disposed of by common order dated 1.5.2002 whereby this Tribunal directed the respondent No.2 the Chief Postmaster General, Rajasthan Circle, Jaipur to take appropriate decision in the matter of the applicant with reference to his representation dated 27.2.2001 within a period of 60 days. Accordingly, vide impugned order dated 2.1.2003



(Ann.A1), the respondent No.2 has rejected the representation of the applicant, hence this OA.

3. The respondents have filed reply. The facts as stated above have not been disputed. In the reply, it has been stated that case of the applicant for promotion in the LSG cadre was considered against 2/3 quota of vacancies which were to be filled on seniority-cum-fitness basis from UDC cadre against ST point. Since the applicant declined to accept the promotion, as can be seen from his application dated 19.5.93 (Ann.R1), Shri Jeevan Ram Meena (respondent No.4) who was next senior ST candidate in UDC cadre was promoted on ad-hoc basis in LSG cadre against 2/3 quota against ST vacancy and was posted in the office of Post Master General, Rajasthan Western Region, Jodhpur vide Memo dated 10.6.93. Subsequently, the posting order of respondent No.4 was modified and he was re-allotted to the Postmaster General Rajasthan, Southern Region, Ajmer vide Memo dated 28.6.93. Since respondent No.4 accepted ad-hoc promotion and joined in the office of Postmaster General, Rajasthan Southern Region, Ajmer and subsequently in the DPC which was held on 21.7.93 his name was recommended for regular promotion and thus he was also regularly promoted against ST vacancy in LSG 2/3 quota vide order dated 29.7.93. Thus, according to the respondents, it cannot be said that the respondent

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No.4 is junior to the applicant. The applicant was senior in the UDC cadre but not in the cadre of LSG. The respondents have further stated that pursuant to scheme of OTBP/BCR which was introduced in the year 1993 to give financial upgradation to Group-C employees on completion of 16 years and 26 years, the applicant was placed in the next higher scale of OTBP w.e.f. 27.9.93 and posted in the Circle office, Jaipur on an operative post. It is further stated that as per order of the Department of Personnel/Postal Directorate, the officials of ST/SC community were eligible to be considered for promotion to the higher grade under BCR on completion of 17 years of satisfactory service. As such, on completion of 17 years of service the applicant was allowed promotion to HSG-II scale under BCR against a shortfall ST point w.e.f. 1.1.95 and he was posted in Regional office of the Postmaster General, Rajasthan, Southern Region, Ajmer against a vacant supervisory post vide Memo dated 7.2.1995, but the applicant has declined his promotion unconditionally vide application dated 6.6.95. The applicant has also declined that he would not claim for promotion if his junior is promoted. The respondents have annexed copy of the application dated 6.6.95 along with their reply as Ann.R/2. It is further stated that the applicant's declination was accepted and he was allowed to continue as Postal Assistant (TBOP) in Circle Office, Jaipur. Since the

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applicant had declined the promotion and as such, he was not entitled for promotion for a period of one year as per rules. It is further stated that his next junior ST candidate Shri Rohitashav Kumar Meena who had completed 17 years of service was promoted, as such he has no claim of seniority against respondent No.5.

4. The applicant has not filed any rejoinder.

5. We have heard the learned counsel for the applicant, the learned counsel for the official respondents and gone through the material placed on record.

5.1 The main grievance of the applicant is that since he was senior to respondent Nos. 4 and 5 as UDC and they have been promoted earlier over-riding the seniority of the applicant, as such he is entitled for higher grade from the date juniors were promoted on the basis of seniority in the base grade and also entitled for seniority on that account.

5.2 We have given thoughtful consideration to the submissions made by the learned counsel for the applicant. It is not disputed that the applicant was senior to respondent Nos.4 and 5 in the cadre of UDC. It is also not in dispute that UDC is feeder cadre for promotion to the post of LSG where promotion has to be made 2/3 by seniority-cum-fitness and 1/3 by examination. The applicant, who admittedly belongs to

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ST category, was in fact considered for promotion in LSG cadre against 2/3 quota of vacancy on seniority-cum-fitness basis and he was also issued appointment letter but the applicant declined the said promotion vide his application dated 19.5.93 (Ann.R1). It is also evident from the material placed on record that respondent No.4 who was next senior in the UDC cadre was initially appointed on ad-hoc basis in LSG cadre against 2/3 quota of ST vacancy vide memo dated 10.6.93 and subsequently modified vide letter dated 28.6.93 and on regular basis w.e.f. 29.7.93 on the recommendation of the DPC. Thus, it cannot be said that the respondent No.4 is junior to the applicant as on promotion to the post of LSG cadre the respondents No.4 was promoted earlier to the applicant in the LSG cadre and on his promotion to LSG he was no longer a member of UDC cadre. Thus, the applicant cannot claim any parity qua respondent No.4 regarding seniority as well as fixation of pay on that account. The respondents in their reply have categorically stated that respondent No.4 who was given promotion in LSG cadre against 2/3 quota of vacancy has to be treated senior to all those officials who are granted financial upgradation under TBOP scheme after completion of 16 years of service. The respondents have also explained circumstances under which respondent No.4 was granted higher pay scale under BCR scheme w.e.f. 26.6.93 as one Dharamveer Singh UDC who

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was junior to respondent No.4 was granted the benefit under BCR scheme w.e.f. 26.6.93 and as such respondent No.4 was also placed in the higher scale under BCR w.e.f. 26.6.93 vide order dated 14.2.97 (Ann.A13). Thus, we are of the firm view that the applicant has not made out any case for the purpose of granting higher pay scale as well as seniority qua respondent No.4.

5.3 So far as grievance of the applicant that at least he deserves to be senior to respondents No.5, Rohitashav Kumar Meena, we see considerable force in the submission made by the learned counsel for the applicant. As can be seen from the material placed on record, the respondent No.5 was not granted promotion. However, he was given financial upgradation under TOBP/BCR scheme over and above the applicant as the applicant declined the BCR promotion on completion of 17 years of service against shortfall quota of ST w.e.f. 1.1.95 and in his place promotion was given to his junior ST Shri Rohitashav Kumar (respondent No.5). According to us, the mere fact that the applicant has declined promotion under BCR scheme will not ip-so-facto make respondent No.5 senior to the applicant, at the most, respondent No.5 may be entitled to the scale of BCR scheme from the earlier date than the applicant. This fact is also clear from the instructions dated 17.5.2000 (Ann.A19) whereby it has been stated that placing under TBOP/BCR scheme is not

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a promotion and the seniority in the gradation list will remain intact. At this stage, it will be useful to quota para 2 and 3 of the instructions dated 17.5.2000, which is in the following terms:

"2. It is further reiterated that placement under Time Bond One Promotion (TBOP) and Biennial Cadre Review (BCR) schemes are based on the length of service of the official(s) concerned and not on the criteria of seniority. Seniors in the gradation list therefore cannot claim higher scale of pay at par with their juniors, if their juniors have got higher scale of pay by virtue of their completion of the prescribed period of service i.e. 16/26 years respectively. Juniors have been placed in the higher scale of pay based on their completing the requisite number of years' service which their seniors have not completed. In other words, TBOP/BCR schemes are not promotions against the norms based posts in LSG and HSG-II grades but only placements in the same scale of pay on completion of 16 and 26 years of service respectively. Eligibility condition for placement in the higher scale of pay under the scheme is 16 and 26 years of service respectively. Clearly, seniors in gradation list will not be considered for next higher scale of pay from the date their immediate juniors become eligible for next higher grade without completing the prescribed period of service as per the eligibility condition of placements in the higher scale of pay.

3. However, seniority in the gradation list will remain intact. TBOP and BCR officials will also be considered against norms based posts (supervisory posts) as per their seniority and fitness basis in their turn."

Thus, from the portion as quoted above, it is clear that financial upgradation in terms of TBOP/BCR scheme are not promotions against the norms based posts of LSG/HSG grade but placement in the same scale of pay on completion of 16 and 26 year of service respectively and further the seniority in the gradation list will remain intact. Admittedly,

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the applicant as well as respondent No.5 belong to the cadre of UDC, as such mere fact that respondent No.5 was granted financial upgradation under BCR scheme when the applicant declined such promotion will not ip-so-facto make respondent No.5 senior to the applicant in terms of instruction dated 17.5.2000, relevant portion of which has been quoted above. To that extent, the impugned order cannot be sustained. Accordingly, the applicant shall be treated as senior to respondent No.5 in the cadre of UDC irrespective of grant of financial upgradation under the BCR scheme from the earlier date.

6. With these observations, the OA is partly allowed with no order as to costs.


(M.L. CHAUHAN)

Member (J)


(V.K. MAJOTRA)

Vice Chairman (A)

21.2.05