

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of decision: 11th January, 2005

O.A.No.370/2003

P.C.Kilania s/o Shri Durga Prasad Kilania, aged about 36 years, r/o 13/216, Malviya Nagar, Jaipur at present working as Postal Assistant C.O. (Office of Post Master General, Rajasthan Circle), Jaipur.

.. Applicant

Versus

1. Union of India through its Secretary, Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Assistant Post Master General (S&V) Office of Post Master General, Rajasthan Circle, Jaipur.

.. Respondents

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

Mr. Tej Prakash Sharma, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMV.)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying for the following reliefs:-

- "i) That entire record relating to the case be recalled or any after perusing the same respondents may be directed to allow next higher scale Rs. 4500-7000 from the date 7.5.1996 junior so allowed with all consequential benefits including arrears of pay and allowances by quashing letter dated 12.6.2003 (Annexure A/1).
- ii) That the provisions of scheme dated 22.7.1993 (Annexure A/6) in para 3.12 with the letter dated 17.5.2000 (Annexure A/11) be quashed and set aside being against the provisions the provisions of article 14, 16 of the Constitution of India.

iii) Any other order/directions of relief be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.

iv) That the costs of this application may be awarded."

2. Briefly stated the applicant was initially appointed as L.D.C. vide memo dated 31.7.1992 and he joined his duty in the office of respondent No.2 on 7.8.1992. It is stated that one Smt. Sudha Bhasin was transferred under Rule 38 of P&T Manual Vol.IV vide memo dated 21.6.88 with certain conditions and one of the condition was that she will have to pass type test at 30 W.P.M. within a year. She was, however, declared successful in the type test in the year 1994. It is further stated that initially the respondents assigned seniority to the applicant below Smt. Sudha Bhasin but subsequently he filed OA No.74/2001 in the Tribunal thereby praying for refixing seniority above Smt. Sudha Bhasin as the applicant has passed the type test before Smt. Sudha Bhasin. During the pendency of the OA, seniority of Smt. Sudha Bhasin was refixed w.e.f. 9.4.97 vide memo dated 24.12.2002 and the applicant was shown senior to Smt. Sudha Bhasin vide order dated 21.4.2003. The grievance of the applicant is that Smt. Sudha Bhasin has been granted benefit under Time Bound One Promotion (TBOP) and Biennial Cadre Review (BCR) schemes whereas such benefit has not been extended to the applicant being senior to Smt. Sudha Bhasin. The applicant has further pleaded that as per the D.G. Posts instructions dated 22.7.93 (Ann.A6) an employee has to be placed in the next higher scale after completion of 16 years of service but senior like the applicant were being ignored to allow

next higher scale for the reason that they have not completed 16 years of service. It is further pleaded that these provisions were challenged before various benches of Hon'ble Tribunal and also before this Hon'ble Tribunal and it has been held that such senior persons are also entitled higher scale irrespective of completion of required length of service and after considering the decisions of various benches, the respondent No.1 himself issued instructions vide letter dated 8.2.1996 stating therein that official whose seniority has been adversely affected by implementation of scheme placing their juniors in next higher scale of pay are also entitled next higher scale from the date junior so allowed. It is further pleaded that Smt. Sudha Bhasin has been granted higher pay scale under TBOP scheme after completion of 16 years of service. Thus, according to the applicant, he is also entitled for grant of benefit of TBOP scheme w.e.f. the date Smt. Sudha Bhasin has been granted, who is admittedly junior to the applicant.

2.1 It appears that the applicant has also made representation in that regard to the authorities which was rejected vide order dated 12.6.2003 (Ann.A1) whereby it has been stated that his representation has been considered by the competent authority and found that the criteria of TBOP/BCR is based on the length of service irrespective of seniority. Smt. Sudha Bhasin got TBOP after completion of 16 years of service whereas the applicant was found not to have yet completed 16 years of service. Now, there is no provision to grant TBOP at par with junior. Hence, his representation was rejected. IT is this order which is under challenge in this OA.

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3. The respondents have filed reply. In the reply, it has been stated that the department of Post introduced TBOP and BCR scheme to Group 'C' staff vide D.G.Posts, New Delhi letter dated 22.7.93. This scheme stipulated that the scheme will come into effect from 26.6.93 and para 3.2 says that posts of LDCs/UDCs who opt to remain in the existing scale, will be abolished and equal number of posts of time scale Postal Assistant will be created. As such the cadre of LDCs and UDCs had merged into the cadre of time scale Postal Assistant. It is further stated that the benefit extended vide order dated 8.2.96 whereby the senior persons who have not completed requisite number of years service were also granted the benefit under TBOP scheme at par with their junior (has been superseded by Postal Directorate's order dated 17.5.2000 which is in force. In this order, it has been clearly mentioned that placement under TBOP and BCR schemes are based on length of service of the official concerned and not on the criteria of seniority. Therefore, senior in the gradation list cannot claim higher scale of pay at par with their juniors, if their junior have got higher scale of pay by virtue of their completion of prescribed period of service i.e. 16 and 26 years respectively.

4. The applicant has not filed any rejoinder.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 It is not in dispute that the benefit under the TBOP/BCR scheme issued vide D.G.Posts letter dated 22.7.93 and effective from 26.6.93, the financial upgradation was to be granted on completion of 16 years

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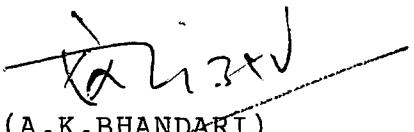
of service and second financial upgradation after completion of 26 years of service. The sole criteria for granting such financial upgradation under TBOP and BCR scheme is based on length of service of the official concerned, and it has nothing to do with the seniority. IT is no doubt true, that on earlier occasion, the respondents issued instruction vide letter dated 8.2.96 whereby the persons who have not completed requisite number of years of service were granted the benefit under the TBOP/BCR scheme solely on the ground that such benefit has been granted to the junior persons, but the said scheme has been superseded vide Directorate's order dated 17.5.2000 as pleaded by the respondents. Thus, the applicant cannot base his claim on the basis of instructions/letter dated 8.2.96 which stood already superseded. Further, the applicant has not challenged the validity of the order dated 17.5.2000 whereby earlier order dated 8.2.96 has been superseded. Thus, we are of the view that the respondents have not committed any illegality thereby rejecting the representation of the vide impugned order dated 12.6.2003 (Ann.A1) whereby it has been specifically stated that the criteria of TBOP/BCR is based on length of service irrespective of seniority and Smt. Sudha bhasin has got TBOP on completion of 16 years of service whereas the applicant has not completed 16 years of service. Further, the matter is no longer res-integra. At this stage, it will be relevant to quote the decision of the Apex Court in the case of State of Punjab and Anr. vs. Kuldip Singh and Anr., JT 2002 (5) SC 205. The ratio of this judgment is squarely applicable in the instant case. That was a case where the selection grade was to be granted to those

employees who have completed 15 years of service. Such benefit was denied to senior persons who have not completed 15 years of service though the said relief was granted to some of the junior employees, who have completed 15 years of service. Aggrieved persons filed Writ Petition before the Hon'ble High Court thereby claiming selection grade pay on the ground that employees who were junior to them have been granted such higher scale of pay. The Hon'ble High Court directed the Government to grant selection grade pay to the petitioners though they had not completed 15 years of qualifying service in terms of Govt. circulars. The matter was carried to the Hon'ble Apex Court. The Apex Court held that the claim of an employee for selection grade should be dealt with only in accordance with the circular issued by the Government. It was further held that in terms of instructions in the circulars, it is manifest that an employee in order to be eligible for grant of selection grade pay should have completed 15 years of service. Therefore, the High Court erred in directing the Government to grant selection grade pay to respondents, who did not possess the required fifteen years service.

5.2 Viewing the matter form the ratio laid down by the Apex Court in the case of State of Punjab (supra), we are of the view that completion of 16 years of service is sine-qua-non for grant of benefit under TBOP scheme. Since admittedly the applicant has not completed 16 years of service, as such he is not entitled to grant of benefit under TBOP scheme simply on the ground that such benefit has been granted to his junior namely Smt. Sudha

Bhasin.

6. Accordingly, the OA is dismissed with no order as to costs.


(A.K.BHANDARI)

MEMBER (A)


(M.L.CHAUHAN)

MEMBER (J)