

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
(CIRCUIT AT INDORE)

O.A. NO.855/2003

This the 7th day of March, 2005

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI A. S. SANGHVI, MEMBER (J)

Ashok Mumar Jain S/O G.R.Jain,
P.A. (SBCO) (since retired),
R/O Flat No.102, Saranga Apartment,
Snehlata Ganj, Indore.

... Applicant

(By Shri Sujoy Paul, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Communication,
Department of Post,
New Delhi.

2. Chief Post Master General,
Chhattisgarh Circle,
Raipur.

3. Senior Superintendent of Post Offices,
Jabalpur. ... Respondents

(By Shri S. P. Singh, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicant has challenged Annexure A/1 dated 11.6.2003 whereby he has been denied his claim for grant of promotion under TBOP and BCR w.e.f. 1.7.1992 and 12.6.1993 respectively. The learned counsel pointed out that earlier on applicant had filed O.A. No.553/1997 which was disposed of vide order dated 2.8.2002 (Annexure A/5) with the following directions:

"10. In this view of the matter, we dispose of this OA by directing the respondents to reconsider the entire matter with regard to grant of OTBP and BCR to the applicant from due date in the light of the observations made above and also keeping in view the fact that applicant was made to suffer twice on account of the punishment. Respondents are directed to take a final decision in the matter

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within a period of three months by passing a detailed and speaking order. In the event applicant is found entitled for his OTBP and BCR from 1992 and 1993 respectively, he shall also be entitled to all consequential benefits. The OA is accordingly disposed of. No costs."

Respondents have passed Annexure A/1 in pursuance of the aforesaid directions of the Tribunal and denied applicant's claim.

2. The learned counsel of applicant contended that applicant completed 16 years of service on 10.6.1983 and 26 years of service on 10.6.1993. As such, in terms of the scheme of OTBP and BCR which was promulgated in the year 1991 applicant ought to have been accorded the benefit of promotion under OTBP from 1.7.1992 (as modified, 30.6.1992) and BCR from 12.6.1993. The learned counsel further stated that in a departmental enquiry initiated against the applicant on 6.11.1990, applicant's one increment was withheld for a period of six months, which punishment came to an end on 30.6.1992. He further stated that the second chargesheet against the applicant was issued on 4.6.1992 in which applicant was awarded punishment of censure only. He maintained that applicant should have been given TBOP from 1.7.1992, ~~of six months~~ ^{1b} immediately after the expiry of the period for which ~~one increment was withheld for a period of six months~~ ^{1b} ~~1b~~ and as the applicant was punished with censure only in respect of the second chargesheet, his BCR should have been given w.e.f. 12.6.1993.

3. The learned counsel of respondents stated that while in the first departmental enquiry applicant was awarded penalty of withholding of one increment of pay for a period of six months without cumulative effect vide order dated 6.3.1991, during the pendency of that punishment another disciplinary enquiry was initiated

against the applicant on 4.6.1992 which concluded with the punishment of censure by order dated 29.9.1992. Against the earlier punishment of withholding of increment applicant had filed a revision petition in which the disciplinary authority was directed to conduct de novo enquiry from the stage of examination of relevant documents. The disciplinary authority vide its order dated 27.7.1994 upheld the punishment which was awarded earlier on. The learned counsel pointed out that the applicant was allowed the benefit of two promotions w.e.f. 2.7.1994 after the penalty of withholding of one increment was re-awarded in the de novo enquiry. The learned counsel maintained that in the above backdrop not applicant could/have been accorded the TBOP and BCR promotions as claimed by him; they could have been granted only on 2.7.1994.

4. We have considered the respective contentions of the parties and studied the material on record.

5. It is undisputed that applicant completed 16 years of service for the purpose of TBOP on 10.6.1983 and 26 years for the purpose of BCR on 10.6.1993. It is also not disputed that applicant had already undergone the punishment of withholding of increment for a period of six months inflicted upon him vide respondents' earlier orders. In this connection, a specific finding of this Tribunal exists in order dated 2.8.2002 in OA No.553/1997. It was held that the punishment of withholding of increment imposed upon the applicant on 1.1.1992 had already taken effect.

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In our view, even ~~if~~ the respondents have upheld the punishment of withholding of increment against the applicant, applicant cannot be subjected to double jeopardy in the sense that when he had already undergone

the punishment of withholding of increment effective from 1.1.1992, the same cannot be re-inflicted upon the applicant from 1.1.1992 and 30.6.1992 as contended on behalf of the respondents. Thus, the punishment of withholding of increment did not survive after 30.6.1992. Thereafter applicant has suffered the punishment of censure only in the second disciplinary proceedings against him. That punishment was awarded vide memo dated 29.9.1992. As per trite law there would not be any effect of the punishment of censure from 30.9.1992. In this light, applicant would be entitled to grant of the benefit of TBOP w.e.f. 30.9.1992 and further benefit of BCR w.e.f. 10.6.1993.

6. In the light of the above discussion made and reasons stated, Annexure A/1 dated 11.6.2003 is quashed and set aside and respondents are directed to consider granting the benefit of TBOP to the applicant w.e.f. 30.9.1992 and BCR w.e.f. 10.6.1993. Respondents are further directed to pass appropriate orders as above expeditiously and preferably within a period of two months from the date of communication of these orders.

No costs.

A. S. Sanghvi
(A. S. Sanghvi)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

7.3.05

/as/

पृष्ठांकन सं. ओ/व्हा..... जदलपुर, दि.....
प्रतिलिपि अधिकारी:—

- (1) संविद, उच्च व्यापारालय द्वारा प्रदेशिकान, जहाजपुर
- (2) आदेशक श्री/श्रीमती/कु..... के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/कु..... के काउंसल
- (4) उच्चपाल, योग्या, जदलपुर व्यापारीठ सूचना एवं आवश्यक कार्यकारी हेतु

C. Paul D/V-2030
C. P. D/V-2040 D/V-2038

उपर्युक्त दिनांक

*Issued by
On 16/03/2005
B/S*