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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, CIRCUIT CAMP

BILASPUR

O.A.Nos.898 of 2000, 278, 329 & 520 of 2001

Bilaspur, this the 17th day of March, 2004

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan - Judicial Member

(1) Original Application No.898 of 2000

N.C.Roy & 9 others Vs. Union of India & 7 others

(2) Original Application No.278 of 2001

S.K.Mukherjee & 17 others Vs. Union of India & 4 others

(3) Original Application No.329 of 2001

Bishnu Pada Sanyal Vs. Union of India & 3 others

(4) Original Application No.520 of 2001

Smt.Minu Mullick & 2 ors Vs. Union of India & 3 others

Advocates :

Shri S.Paul, learned counsel for applicants in all the OAs
Shri S.A.Dharmadhikari, learned counsel for respondents in
O.A.278/2001

Shri P.Shankaram, learned counsel for respondents in OAs 329/01
and OA 520/2001.

Shri S.C.Sharma, learned counsel through Shri S.A.Dharmadhikari,
learned counsel for respondents in OA No.898/2000

Common Oral Order

By M.P.Singh, Vice Chairman -

As the issue involved in all the four aforementioned
OAs is common and the facts involved & grounds raised are
identical, for the sake of convenience, these OAs are being
disposed of by this common order.

2. The brief facts of the cases are that all the applicants
were earlier working in Mana Camp/Dandakaranya Project and they
were declared surplus. Subsequently they were redeployed with
the respondents. They were eligible for grant of One Time Bound
Promotion (for short 'OTBP') and BCR promotion on completion
of 16 years and 26 years of service respectively. In these
OAs they have come against the action of the respondents in
granting them the benefits of BCR promotion from the date of
assumption of the charge and not from the due date.

3. The question involved in these cases is whether the services rendered by the applicants in Mana Camp/ Dandakaranya Project would be taken into consideration for grant of the benefits of OTBP/BCR. The issue has been settled by the Hon'ble Supreme Court in the case of Dwijen Chandra Sarkar Vs. Union of India and another, 1998 (6)SCALE583 = AIR 1999 SC 598. In the said case, their Lordships have held that the past service of the appellants is to be counted for the limited purpose of eligibility for computing the number of years of qualifying service to enable them to claim the higher grade under the scheme of time-bound promotions. Certain employees had also approached this Tribunal in OAs Nos.304 to 306 of 1999, Smt. G. Roy & ors Vs. Union of India and others, which were disposed of by a common order dated 3.8.1999 Thereafter, a CCP No.46/99 was filed which was decided on 10.5.2000 directing the respondents that the principle as laid down by the Apex Court in the case of Dwijen Chandra Sarkar (Supra) shall be equally applicable to the applicants in those cases and they shall be granted all lawful consequential benefits.

4. For the sake of convenience, we are dealing with the facts narrated in OA 329/01. The applicant Bishnu Pada Sanyal was an employee of Mana Camp and was working as UDC w.e.f. 11.6.1965. He was declared surplus and redeployed with the respondents w.e.f. 18.7.1980 as UDC. He was eligible for grant of OTBP and BCR promotion on completion of 16 years and 26 years of service respectively. As the applicant was similarly situated as the appellants before the Hon'ble Supreme Court in the afore-mentioned case, he was given OTBP w.e.f. 9.9.1992 instead of 28.7.1996 after counting his services rendered in the erstwhile department. Subsequently he was also granted the BCR promotion. However, the respondents have issued another order dated 19.1.2001 (Annexure-A-9) whereby it is stated that no arrears shall be payable for the period from 9.9.1992 to the date of actual resumption in the BCR promotion i.e. 29.9.2000. It is further stated in the said letter that the arrears paid for the said period may be recovered. It is stated

by the applicant that before passing the impugned order of recovery no opportunity of hearing has been given to him. Aggrieved by this he has filed this OA.

4.1 The respondents in their reply have stated that the past service rendered by the applicant in the Rehabilitation Department was counted for the purpose of OTBP/BCR promotion based on the law laid down by the Apex Court in the case of Dwijan Chandra Sarkar (supra) and necessary orders to that effect were issued by respondent no.1 vide order dated 30.8.2000 (Annexure-A-4). Accordingly, the applicant was given benefit of OTBP from 9.9.1992 vide order dated 25.9.2000 (Annexure-A-5). He resumed the duty on promotion under OTBP scheme on 29.9.2000 (Annexure-A-6). The pay of the applicant was also fixed under FR 22(1)(d)(i) in higher scale of Rs.1400-2300 on promotion under OTBP scheme and accordingly arrears were paid. Subsequently the applicant was also given next promotion under BCR scheme after computing past service rendered by him in Department of Rehabilitation vide order dated 25.9.2000 notionally from 9.9.1992 as the said promotion is effective only from the date of assumption of charge being such promotions are on functional basis. Accordingly, no arrears shall be payable for the period from 9.9.1992 to the date of actual assumption of duties of higher post. The applicant assumed the duties of higher post only on 29.9.2000. As per the clarification issued by the respondent no.1 vide letter dated 11.3.1991 (Annexure-R-1) the promotion is on functional basis and it is effective only from the date of actual promotion. Therefore, the applicant is not entitled to any arrears of pay and allowances for the period from 9.9.1992 to 28.9.2000. However, while preparing the bill for claiming arrears of pay and allowances, the instructions were not followed and the applicant was paid the full monetary benefits of the OTBP/BCR promotions. Since the promotion under BCR scheme to applicant was only on notional basis, he is not entitled to arrears of pay for that period. However, when the anomaly was noticed, the order of BCR promotion was reviewed and corrected vide order dated 19.1.2001 wherein it was clearly mentioned that no arrears shall be payable for the period from

9.9.1992 to the date of actual assumption of BCR promotion i.e. 29.9.2000 and the arrears paid for the said period were directed to be recovered from the applicant.

4.2 Heard the learned counsel for the parties. The learned counsel for the respondents has submitted that as per the letter dated 11.3.1991(Annexure-R-1) the date of effect of promotion under BCR Scheme in the case of the applicant will be from the date of assumption of charge as the promotion was functional. He has drawn our attention to clarification No.13 issued by the said letter dated 11.3.1991 which reads as under-

"13. Date of effect of promotion : From the date of assumption whether date of completion of charges, as the promotions of 26 years or date of assumption of charge are functional".

The learned counsel has contended that in view of the aforesaid clarification, the pay of the applicant is to be fixed from the date he assumed the charge. Since the applicant was paid the arrears from the date of notional promotion, the same is required to be recovered from him.

4.3 On the other hand, the learned counsel for the applicant has drawn our attention to the decision of Dwijan Chandra Sarkar(Supra) wherein it has been held that on BCR promotion the pay fixation of the Government servant is required to be done from the date he has completed 26 years of service. In para 21 of the said judgment, their Lordships have further held as under-

"21. In our view, the Tribunal was in error and its order is set aside. The appellants will be entitled to the higher grade from the dates they completed 16 years of service computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P&T Department. They will be so entitled as long as they remained in the post of Assistant and till their normal promotion to a higher post according to Rules. The difference between the emoluments in the grade as due to them and amount which was actually paid to them shall be computed and be paid within a month from the date of this order".

From the reading of the above findings, it is clear that an employee is entitled for the benefit of OTBP from the date it was due. The contention of the learned counsel of the respondents that the applicant is not entitled for BCR promotion from the date of completion of 26 years and he is entitled for the said benefit only from the date he assumed charge of the post, as the post being a functional post, is not correct.

He has drawn our attention to the letter dated 18.3.1992 (Annexure-RJ/4) issued by the Govt. of India, Department of Telecom, New Delhi in which reference is also made to the letter dated 11.3.1991 by which clarification regarding the date of effect of promotion was given. Para (B) of the said circular speaks as under -

"(B) As per instructions contained in para No.12 of letter No.27-6/90-RE.II dated 11.3.1991, the following clarifications on various designations were given with reference to the stage of entry in the cadres:-

<u>STAGE OF ENTRY</u>	<u>GRADE ALLOTTED</u>
i) Initial entry i.e. Basic Grade	Grade-I
ii) OTBP scale	Grade-II
iii) BCR Scale	Grade-III
iv) 10% of posts in BCR pay scale to be placed in the pay scale of Rs.2000-3200	Grade-IV

Para 2(III) of the said letter reads as under -

"Supervisory Duties:
Offices in Grade-IV in the cadre of TOA(General), TOA (Phones), TOA (Telegraph), TOA (Telegraph/General) will perform supervisory duties without any extra remuneration or allowances. In case of non-availability of Grade-IV officials the supervisory duties will be performed by the senior most Grade-III official in the station without any extra remuneration or allowance. In case the senior most official in Grade-III in the station declines, the next below official in the station will perform supervisory duties".

It is, therefore, clear that only Grade-IV persons placed in the scale of Rs.2000-3200 were treated as supervisory officers and the post in the BCR promotion under Grade-III is not a supervisory post.

5. We have considered the rival contentions of the parties. It is an admitted fact that the applicant has been granted BCR promotion from 9.9.1992. The pay of the applicant in the higher grade has been fixed from this date and he had been granted the arrears of pay also. The issue relating to grant of higher scale of pay has already been settled by the Hon'ble Supreme Court in the case of Dwijan Chandra Sarkar (supra). Moreover, the department has issued clarification vide their letter dated 11.3.1991 (Annexure-R-1) which states that BCR promotion on completion of 26 years of service will take effect from the date of assumption of charge as the promotions are functional.

However, we find another letter issued by the department dated 18.3.1992 (Annexure-RJ/4) which is supersession of earlier letter dated 11.3.1991 that BCR scale falls in Grade-III which is not a supervisory and functional post. The Supervisory and functional posts are in Grade-IV which are in the scale of Rs.2000-3200 and, therefore, the contention of the learned counsel for the respondents that the date of effect for BCR promotion will be from the date of assumption of charge being functional post is not correct and is rejected. Even in the letter dated 16.10.1990 it has been emphasised by the department that DPC should be held in advance and the promotion should be granted on due dates i.e. on 1st January/ 1st July of the relevant year. A similar issue was involved in the case of Shrikant Pandey & 3 others Vs. Union of India & ors., O.A.No.159 of 2000 decided by this Tribunal on 9.3.2004, paras 6 and 7 of the said order are reproduced as under-

"6. We have very carefully considered the rival contentions made on behalf of the parties and we find that the benefit of BCR was introduced by the Department vide its order dated 16th October, 1990. The instructions contained in this order dated 16th October, 1990 provide that cadre review should be held in a half yearly instalment as on 1st January and 1st July of the year and it should also be held well in advance for the period from 1st July, 1992 to 30th July, 1994 so as to cater for promotion of those who would have completed 25 years of service on the four crucial dates. In other words the instructions contained in the aforesaid letter provide that the DPC should be held well in time so that the benefit of BCR could be given to the persons on the crucial dates i.e. the date on which the person has completed 25 years of service. In this case we find that there is a delay on the part of the respondents to hold the DPC and therefore the applicants cannot be made to suffer for the lapses committed on the part of the respondents. We are therefore of the considered view that the applicants be allowed the benefit of BCR from the date they have completed the 25 years of service.

7. Accordingly, the Original Application is allowed and the respondents are directed to grant the benefit of BCR to all the four applicants who had completed 25 years in service from the crucial dates i.e. from 1st January/ 1st July of the relevant year, in terms of the order dated 16th October, 1990..."

6. In view of the facts and circumstances discussed above, we are of the considered view that the benefit of BCR promotion to the applicant is to be given from the due date.

7. For the reasons recorded, the OA 329/2001 is allowed. As the other OAs 898/2000, 278/2001 and 520/2001 are similar they are also allowed. The respondents are directed to grant the BCR promotion to the applicants from the due dates with all consequential benefits. Recovery is, if any, made from the applicants be refunded back to them. The respondents are directed to comply with the aforesaid directions within a period of four months from the date of communication of this order.

8. A copy of this order be placed in OAs 278/2001, 898/2000 and 520/2001.

9. The Registry is directed to always enclose a copy of memo of parties of all the aforesaid OAs - OAs 898/2000 and 278, 329 and 520 of 2001, at the time of issuing certified copies of this order to the parties.

10. In the facts and circumstances of the case, the parties in all the four OAs are directed to bear their own costs.

Sd/-
Judicial Member

Sd/-
(H.P.Singh)
Vice Chairman.

rkv.