

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the *14th* day of September, 2009

ORIGINAL APPLICATION No.462/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Gopal Lal Bharti
s/o Shri Krishna Chand Bharti,
r/o 21/229, Near Jagdish Temple,
Sripura, Kota and retired on 30.4.2005
from the post of Assistant Post Master
(HSG-II), Head Post Office,
Kota.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary, Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur
3. Director, Postal Services, Jaipur Region, Jaipur.

... Respondents

(By Advocate: Shri Gaurav Jain)

ORDER

Per M.L.Chauhan, M(J)

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

- i) That entire record relating to the case be called for and after perusing the same respondents may be directed to allow the promotion to the applicant into the cadre of H.S.G.-I in the scale of Rs. 6500-10,500 by quashing letter dated 22.9.2004 (Annexure A/1) with the letters dated 12/2/2002, 10/11/2003 (Annexure A/9 & A/10) from the date juniors so promoted with all consequential benefits.
- ii) That the respondents be further directed to allow benefits of difference of pay and allowances after due fixation with the revision of pensionary benefits.
- iii) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant joined the Department of Posts as Postal Assistant (PA) on 16th November, 1965. Thereafter the applicant was promoted to Lower Selection Grade (LSG) cadre w.e.f. 11.5.1980 and further granted financial upgradation under BCR scheme in the pay scale of Rs. 5000-8000 w.e.f. 25.11.1991. The applicant retired on superannuation on 30.4.2005. As can be seen from the prayer clause, the grievance of the applicant is regarding his promotion in the cadre of HSG-I and HSG-II by quashing letters dated 22.9.2004 (Ann.A/1), letter dated 12.2.2002 and 11.11.2003 (Ann.A/9 and A/10).

3. The respondents have filed reply. In the reply the stand taken by the respondents is that prior to introduction of Time Bound one Promotion (TBOP) scheme and Biennial Cadre Review (BCR)

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scheme, promotional avenues available in the PA cadre was to that of LSG cadre and HSG cadre. It is further stated that since the TBOP scheme was introduced on 30.11.1983 and BCR scheme from 1.10.1991, the officials of PA cadre who have completed 16 years of service were allowed first financial upgradation under TBOP scheme and after completion of 26 years service they were allowed second financial upgradation under BCR scheme and promotions in LSG and HSG cadre on regular basis were almost stopped and the officials of LSG/TBOP/BCR grades were managing the supervisory posts of LSG and HSG cadre till the Govt. of India Ministry of Communication, Department of Posts vide letter dated 16.7.2001 decided upgradation of 1622 HSG-II posts in HSG-I. Accordingly, the officials were to get promotions in HSG-I in the pay scale of Rs. 6500-10500. For that purpose, DPC was convened for selection of officials for promotion to HSG-I. It is further stated that officials with 3 years of service in HSG-II on regular basis were eligible for promotions in HSG-I. It is further stated that in order to create feeder cadre as per recruitment rules for promotion to HSG-II and HSG-I promotions in LSG and HSG-II with retrospective date were made on notional basis and thereafter regular promotion into HSG-I by the DPC were made. The applicant who was placed under higher pay scale pursuant to BCR scheme and holding the status of LSG+BCR was considered along with other officials for promotion to HSG-I by the DPC held under the amended instructions/criteria dated 27.3.1997 (Ann.R/1) but the applicant could not find place in the select panel drawn up by the DPC held for selection of HSG-II *and* ~~BCR~~

for selection in HSG-I in the first attempt in the year 2002. It is further stated that the applicant was granted only the financial upgradation and he was never granted promotion to HSG-II cadre on regular basis. The respondents have further stated that the department has not only upgraded 1622 post of HSG-II in HSG-I but also formulated another fast track promotion scheme for regular promotion to LSG and HSG-II cadre in the ratio of 33.34% by promotion by DPC and 66.66 % of the post by way of prescribed examination, aptitude test and also amended the concerned recruitment rules. It is further stated that the case of the applicant was submitted for consideration of his promotion into HSG-II (norm based) on regular basis to the DPC on 2.7.2003 along with other 11 officials and again on 8.7.2004, but the applicant could not find place in select panel as evident from letter dated 2.9.2004. It is further stated that selection method and criteria for the posts which are in the pay scale of Rs. 3700-5000 and above have been placed under the head of selection by merit and the posts below the scale Rs. 3700-5000 as per selection cum seniority whereby zone of consideration has been revised and a benchmark of grading 'Good' in the ACR has been made a factor in which the applicant could not find place as per eligibility criteria. It is further stated that despite this, case of the applicant was every time referred for selection into HSG-I on first attempt and thereafter for HSG-II promotion regularly to the DPC but he could not be promoted either in HSG-II or in HSG-I on regular basis.

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

5. From the prayer clause, as reproduced above, it is evident that the applicant is aggrieved by his non-selection for promotion to HSG-I pursuant to panel in the year 2002 and further non-promotion of the applicant to HSG-II grade pursuant to DPC held in the year 2003 as conveyed to the applicant vide letter dated 10.11.2003 (Ann.A/10) and further non-promotion of the applicant to the post of HSG-II against norm based vacancy in the year 2004 as informed vide Ann.A/1. Thus, as can be seen from the prayer clause, the applicant is seeking plural remedies based on different cause of actions, as such, the present OA cannot be entertained in view of the provisions contained under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987.

That apart, even on merit, the applicant has not made out any case for grant of relief. As can be seen from Ann.A/9, the case of the applicant was considered for selection to HSG-I by the DPC in the year 2002 but the applicant could not be placed in the panel drawn up by the DPC on the basis of unsatisfactory record of service as reflected in the ACRs. The respondents have placed on record a consolidated information of special report of Kota Division officials for filling up of HSG-II norm based posts on record as Ann.R/3-II. Perusal of this document reveals that ACRs for the period w.e.f. 199-97 to 2000-01 were considered for grant of promotion and the applicant has earned four 'Average' grading and one 'Good' grading in the 5 years' ACRs. Thus, on the face of this documents, it

cannot be said that the respondents have committed infirmity in not granting promotion to the applicant either to HSG-I post or HSG-II norm based post in the year 2002 and in the year 2003. Further, the selection to the post in question was to be made in terms of OM dated 27.3.1997 (Ann.R/1) and OM dated 8.2.2002 (Ann.R/2) which stipulate that the posts which are in the level of Rs. 3700-5000 and above are to be filled by method of selection by merit whereas the posts which are below the level of Rs. 3700-5000 have to be filled as per selection cum seniority.

6. We have perused the instructions contained in Ann.R/1 and Ann.R/2. As can be seen from Ann.R/3-II, the applicant has not obtained the benchmark of grading 'Good' in ACR, as such, his name could not find place in the select panel as per eligibility criteria. Although the case of the applicant was every time referred for selection into HSG-I on first attempt and thereafter for HSG-II promotion regularly to the DPC but the applicant could not be promoted either in HSG-II or in HSG-I on regular basis. Further, from the material placed on record, it is also evident that case of the applicant for promotion to the post of HSG-I was considered in the light of the instructions dated 27.3.1997 as the DPC was held in January, 2002 whereas case of the applicant for subsequent promotion to the post of HSG-II was considered in the light of the modified instructions dated 8.2.2002. Since the applicant could not find fit for promotion to the post of HSG-II norm based post and HSG-I according to the benchmark, as such, he could not be promoted. According to us, the letter Ann.A/9 and A/10 whereby

the applicant was informed that his name has not been placed in the select panel by the DPC for selection to the post of HSG-II cannot be faulted.

7. Similarly, the applicant has not made out any case for grant of relief when his case was considered in the year 2004. For that purpose, the learned counsel for the applicant has drawn our attention to Ann.R/5 which formed basis for selection of candidates to the post of HSG-II in the year 2004 in which name of the applicant has not been placed in select panel Ann.A/1. It was argued that one Shri Bhagwati Prasad Gupta, who was similarly situated and was not granted promotion on earlier two occasions had been granted promotion whereas the applicant has been denied such promotion. We have perused Ann.R/5, which is a statement prepared by the department for the purpose of consideration by the DPC. As per this documents, ACRs for the year 1999-2000 to 2003-2004 were taken into consideration. The applicant was graded as 'Good' in the year 1999-2000, 'Very Good'/Average in the year 2000-01, 'Average' in the year 2001-02, 'Good' in the year 2002-03 and 'Good' in the year 2003-04 whereas Shri Bhagwati Prasad Gupta was assessed as 'Very Good' in the year 1999-2000, 'Good' in the year 2000-01 and 'Very Good' for subsequent three years. Admittedly, ACRs of Shri Bhagwati Prasad Gupta who has been empanelled were better as compared to the applicant. In any case, it is for the DPC to evaluate ACRs of a candidate and the grading as reflected in the ACRs as per Ann.R/5

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cannot be taken in the face value for the purpose of arriving as to whether a person has achieved requisite benchmark for promotion.

8. Be that as it may, facts remain that name of the applicant was not included in the select panel for the year 2004 by the DPC for promotion to the post of HSG-II. Simply because Shri Bhagwati Prasad Gupta has been found fit for promotion by the DPC to the post of HSG-II in the DPC held on 22.2.2004 will not, ipso facto, entitle the applicant to be promoted for the said post when the DPC has not found the applicant fit for promotion. The applicant has not alleged as to how the panel prepared by the DPC in the year 2004 is vitiated or it has not been prepared correctly. In the absence of any such averment made in the OA, it is not permissible for us to grant any relief on the basis of Ann.R/5 document prepared by the department for the purpose of consideration by the DPC and to hold that the applicant has obtained requisite benchmark and was fit for promotion to the post of HSG-II. As already stated above, simply because junior person to the applicant who was found fit by the DPC has been promoted on earlier occasion is no ground to grant relief to the applicant.

9. Yet for another reason, the applicant cannot be granted any relief. The applicant has not impleaded the affected party as party-respondent in this OA who will materially be affected in case promotion is granted to the applicant as prayed for by him firstly in the year 2002 and subsequently in the years 2003 and 2004. As such no effective relief can be granted to the applicant in view of the law laid down by the Hon'ble Apex Court in the case of Prabodh

Verma vs. State of U.P., 1984 SCC (L&S) 704 and the law as laid down in the case of State of Uttarakhand vs. Madan Mohan Joshi, (2008) 2 SCC (L&S) 197 whereby the case was remitted back to the High Court for consideration of the matter afresh and respondent before the Apex Court was given liberty to move an appropriate application for impleading affected parties as respondents in the writ petition.

10. For the foregoing reasons, the OA is dismissed with no order as to costs.



(B.L.KHATRI)
Admv. Member



(M.L.CHAUHAN)
Judl.Member

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