NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL

26.10.2006
OA 247/2006

None for the applicant.
Mr. T.P.Sharma, counsel for the respondents.

Reply not filed. Learned counsel for the respondents seeks and is granted three weeks time to file written statement. Rejoinder, if any, may be filed within two weeks thereafter. Be listed on 13.12.2006 for further orders.

[GURMIT SINGH]
DEPUTY REGISTRAR.

AKV

Reply filed
&
Rejoinder
Not filed
&
8-12-06

OA 247/2006
13.12.2006

Present : m Mr. P.N.Jatti, codunsel for the applicant.
Mr.T.P.Sharma, counsel for the respondents.

Reply filed. Learned counsel for the applicant states that he does not intend to file any rejoinder. Thus pleadings are complete. Let the case be placed before the Hon'ble Bench for admission/hearing on 02.01.2007.

DEPUTY REGISTRAR.

AKV

Rejoinder
Not filed
&
27-12-06

2-1-07

Mr. P.N. Jatti – Counsel for applicant
Mr. T.P. Sharma – counsel for resp.

For the reasons detailed separately, the OA is allowed.

(M.L. Chauhan)
Member (J)

(M.P. Shukla)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 2nd day of January, 2007

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

ORIGINAL APPLICATION No.247/2006

Satya Narain Sharma
s/o Shri Rampal,
r/o P&T Quarter,
Behind Jaipur General Post Office,
Jaipur, presently working as SA BCR
in the office of the Senior Supdt.
Railway Mail Service,
JP Dn. Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.

2. The Chief Post Master General, Rajasthan Circle, Jaipur.

3. The Senior Superintendent, Railway Mail Service, Jp Dn., Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

O R D E R (ORAL)

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

> "8.1 That by a suitable writ/order or the direction and set aside Impugned order dated 6.7.2005 vide Annexure A/1 be quashed and further the respondents be directed to allow the higher pay scale of BCR be allowed to the applicant with effect from 16.7.2004 in stead of 1.1.2005 with all consequential benefits.
>
> 8.2 That the humble applicant prays that the respondents be directed to pay all the arrears of the Higher Pay scale of BCR with effect from 16.7.2004.
>
> 8.3 Any other relief which the Hon'ble Bench deems fit."

2. Briefly stated, facts of the case are that the applicant is postal employee who was placed to the next higher grade under Biennial Cadre Review (BCR) Scheme after completion of 26 years of service. As per the scheme, the officials who have completed 26 years of service between 1st January to 30th June were given second time bound promotion under the BCR scheme from 1st July of the year whereas the officials who have completed 26 years of service from 1st July to 31st December were given promotion under BCR scheme from 1st January of the next year. The grievance of the applicant is that he should be granted upgradation under the BCR scheme from the date he completed 26 years of service instead of 1st January/1st July. At this stage, it will be relevant to mention that applicant was granted higher pay scale of BCR w.e.f.

1.1.2005 instead of 16.07.2004, as according to the applicant, he has completed 26 years of service on 15.07.2004. However, according to the respondents as per service record the applicant has completed 26 years of service on 2.08.2004.

2. Notices of this application was given to the respondents. The stand taken by the respondents in this case is that as per Director General (Posts) New Delhi letter No.22-1/89 PE 1 dated 11.10.91 whereby the scheme of BCR was introduced w.e.f. 1.10.91, the officials who have completed 26 years of service between 1st January to 30th June of the year were to be placed to the next higher scale of pay w.e.f. 1st July and officials who have completed 26 years of service between 1st July to 31st December were to be placed to the next higher scale of pay w.e.f. 1st January of the next year. Accordingly, the benefit of higher pay scale was given to the applicant in terms of the aforesaid scheme. The respondents have further admitted that the matter is covered by the judgment rendered by this Tribunal as affirmed by the Hon'ble High Court but it has also been stated that the judgment rendered by this Tribunal vide order dated 9.8.2001 in OA No. 80/2001, Sua Lal vs. Union of India and ors. on which reliance has been placed by the applicant was challenged before the Hon'ble High Court in DB Civil Writ Petition No.5574/2001 which was

dismissed by the Hon'ble High Court vide order dated 19.4.2005 and the said judgment has been challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 3210/2006. It is further stated that the Hon'ble Supreme Court has issued notices to the respondents which were delivered to the respondents on 5.6.2006. As such, the matter is sub-judice and pending before the Hon'ble Supreme Court of India and the respondent Department will decide the case of the applicants after the decision of the Appeal pending before the Hon'ble Supreme Court.

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

4. We are of the view that the applicant is entitled to the relief. It may be stated that the Hon'ble Supreme Court has not stayed operation of the judgment rendered by the Hon'ble High Court, as such, it will cause undue hardship to the applicant, in case he is not extended the benefit rendered by this Tribunal in different cases as affirmed by the Hon'ble High Court. However, the matter on this point is no longer res-integra and the same is covered by the decision of the Full Bench, Chandigarh of the Tribunal in the case of Piran Dutta & 25 others vs. Union of India & Ors., reported in 2005 (1) ATJ 430. The question which was placed before the Full Bench was as follows:-

"Whether the benefits under BCR Scheme dated 11.10.91 are to be granted from the date one completes 26 years of satisfactory service.

OR

From the crucial dates of 1st January or 1sr July as the case may be, which is based on the Biennial Cadre Review of posts to be placed against such identified for upgradation from these crucial dates each year as per subsequent clarifications."

The question was answered as follows:-

"The benefit under the Biennial Cadre Review Scheme dated 11.10.91 has to be granted from the date one completes 26 years of satisfactory service."

Thus, in view of the decision rendered by the Full Bench in the case of Piran Dutta (supra), the benefit given under the Biennial Cadre Review Scheme has to be granted to the applicant when he completed 26 years of service. At this stage, it may also be noticed that even the Hon'ble High Court of Judicature for Rajasthan, Jaipur Bench in DB Writ Petition No. 5574/2001 decided on 19.01.2005 has upheld the eligibility of the respondents therein to grant the benefit under Biennial Cadre Review Scheme from the date when the respondents therein have completed 26 years of service. Thus, in the light of the decision rendered by the Full Bench, Chandigarh of the Tribunal in the case of Piran Dutta (supra) and also in view of the decision rendered by the Hon'ble High Court of Rajasthan, Jaipur Bench, we hold that the applicant is entitled to grant of higher pay scale under BCR scheme on completion of 26 years of service w.e.f. 3.08.2004. He shall be entitled to the consequential benefits of

higher pay scale under BCR w.e.f. 3.08.2004 instead of 1.1.2005.

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

(J.P.SHUKLA)
Administrative Member

(M.L.CHAUHAN)
Judicial Member

R/