

(7)

# THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR ORDER SHEET

APPLICATION NO.: \_\_\_\_\_

Applicant(s)

Respondent(s)

Advocate for Applicant(s)

Advocate for Respondent(s)

S OF THE REGISTRY

ORDERS OF THE TRIBUNAL

06.02.2008

OA No. 113/2007

Mr. P.N. Jatti, Counsel for applicant.

Mr. V.S. Gurjar, Counsel for respondents.

This case has been listed before the Deputy Registrar due to non availability of Division Bench. Be listed before the Hon'ble Bench on 20.03.2008.

  
(GURMIT SINGH)  
DEPUTY REGISTRAR

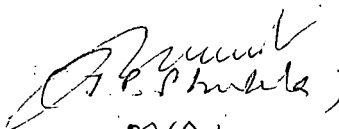
AHQ


20.2.2008 Mr. P.N. Jatti, Counsel for applicant  
Mr. V.S. Gurjar, Counsel for respondents.

Heard the learned counsel  
for the parties.

for the reasons dictated  
separately, the OA is allowed.

Learned counsel for the respondents  
submitted that he has filed reply in  
the Registry. Registry is directed  
to place the same on record.

  
(A.P. Phule)  
M(A)

  
(M.L. Chaudhary)  
M(T)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 20<sup>th</sup> day of March, 2008

ORIGINAL APPLICATION No.113/07

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)  
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

Subhabh Chand Agrawal  
s/o Shri Pol Chand Agrawal,  
retd. SA BCR O/o the Superintendent,  
Railway Mail Service ST Dn.,  
Jodhpur, present r/o 2/13,  
Jawahar Nagar, 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 Post Master General, Western Region, Jodhpur.
4. Superintendent, Railway Mail Service ST Dn. Jodhpur.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

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### 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 the respondents be directed to allow the Higher pay scale of BCR with effect from 5.7.2001 with all the consequential benefits.

8.2 The money which has been recovered from the applicant be refunded with a justified interest.

8.3 Any of the relief which the Hon'ble bench deems fit."

2. Briefly stated, facts of the case are that the applicants is postal employees 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 1<sup>st</sup> January to 30<sup>th</sup> June were given second time bound promotion under the BCR scheme from 1<sup>st</sup> July of the year whereas the officials who have completed 26 years of service from 1<sup>st</sup> July to 31<sup>st</sup> December were given promotion under BCR scheme from 1<sup>st</sup> January of the next year. The grievance of the applicants is that he should be granted upgradation under the BCR scheme from the date he completed 26 years of service instead of 1<sup>st</sup> January/1<sup>st</sup> July. At this stage, it will be relevant to mention that applicant was granted higher pay scale of BCR w.e.f. 1.1.2002 instead of 5.7.2001, as according to the applicant, he has completed 26 years of service on

5.7.2001. However, according to the respondents as per service record the applicant has completed 26 years of service on 26.7.2001 due to unqualified period of service of 21 days.

2. Notice of this application was given to the respondents. The stand taken by the respondents in the reply is that as per Director General (Posts) New Delhi letter dated 11.10.91 (Ann.R1) whereby the scheme of BCR was introduced w.e.f. 1.10.91, the officials who have completed 26 years of service between 1<sup>st</sup> January to 30<sup>th</sup> June of the year were to be placed to the next higher scale of pay w.e.f. 1<sup>st</sup> July and officials who have completed 26 years of service between 1<sup>st</sup> July to 31st December were to be placed to the next higher scale of pay w.e.f. 1<sup>st</sup> January of the next year. Accordingly, the benefit of higher pay scale was given to the applicants 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. 79/2001, Shankar Lal vs. Union of India and ors. on which reliance has been placed by the applicants 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 of 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 1<sup>st</sup> January or 1<sup>st</sup> 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."

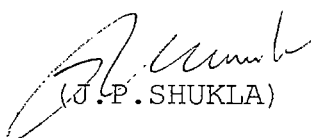
The question was answered as follows:-

"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 applicants when he complete 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 19.04.2005 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. 27.7.2001. Accordingly, the applicant shall be entitled to the consequential benefits of higher pay scale under BCR scheme from the due date and recovery, if any, made from the applicant shall be refunded to the applicant within three months from the date of receipt of this order.

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/