

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 21st day of January, 2010

OA No.265/2007

CORAM:

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

Raj Rishi Gurjar
s/o Shri Moola Ram Gurjar,
r/o Post Master's Quarter,
Post Office Shahpura,
presently working as P.A. HSG-II
In the post office Shahpura (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. Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Superintendent of Post Offices,
Jaipur (MFL) Division,
Shastri Nagar,
Jaipur.
4. Smt. Madhuri Joshi,
SPM, Shastri Circle,
Udaipur.

... Respondents

(By Advocate: Shri Mukesh Agarwal)



ORDER (ORAL)

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

"That by a suitable writ/order or the direction the order dated 24/05/2007 wide annexure A/1, Dt. 16/2/2006 wide Annexure A/2 and order dated 21/3/2006 wide annexure A/3 be quashed and set aside being quite illegal, arbitrary and contradictory to the rules.

8.2 The humble applicant further prays that:

- (a) Higher pay scale of B.C.R. be allowed to the applicant in the grade of 5000-8000/- with effect from 01.10.1991, being the candidate of LSG 1/3 quota and this pay scale has been allowed to the similar persons with effect from 01.10.1991.
- (b) The promotion of HSG-II norm base be considered correctly as the candidate before to 1/3 LSG quota while this promotion of HSG-II has been considered with effect from 01/07/2000 with the general persons.
- (c) The promotion of HSG-Ist be allowed before to the juniors of the applicant who are as Mr. J.N.Bhargava whose appointment date is 08/08/1968 and Smt. Madhuri Joshi whose appointment date is 16/09/1969.
- (d) All the consequential benefits be allowed to the applicant of BCR higher pay scale with effect from 1/10/1991 and of HSG-II and HSG-I with effect from 11/10/2003.
- (e) Any other relief which the hon'ble bench deem fit."

2. As can be seen form the prayer clause, the grievance of the applicant is three fold- i) regarding grant of higher pay scale of BCR in the grade of Rs. 5000-8000 w.e.f. 1.10.1991 when the same was granted to other similar persons who had passed the LSG 1/3 quota examination, ii) promotion to HSG-II norm based and iii) promotion

by

to the post of HSG-I from the date when it was granted to one Shri J.N.Bhargava and Smt. Madhuri Joshi who were junior to the applicant.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that the applicant joined as Postal Assistant on 26.4.1968 and not on 7.9.1967 as alleged. It is further stated that the applicant has completed 26 years of service as on 26.4.1994. Thus, in terms of the instructions dated 17.5.2000 (Ann.R/1) the placement under BCR is based on length of service of the applicant and not on the basis of seniority. As such, BCR benefit was rightly granted to the applicant after completion of 26 years of service w.e.f. 1.7.1994.

As regards promotion of the applicant to HSG-II from the date when it was granted to person junior to the applicant, the respondents have stated that due to over sight name of the applicant could not be sent to the circle office for DPC for HSG-II cadre on 2.7.2003 pursuant to the circle office letter dated 18.6.2003. When this fact came to the notice of the office of SPOs, Jaipur (Mfl) on being representation made by the applicant dated 9.8.2005 whereby it has been informed that the applicant has already passed the LSG examination 1/3 quota during the year 1981, review DPC was held by the circle office and the applicant was found fit for promotion to HSG-II on the recommendations of the DPC he was ordered for promotion to HSG-II norms based cadre on notional basis w.e.f. 1.7.2000 as allowed to other officials and his seniority was also restored below Mool Ram and above Smt.



Madhuri Joshi who were already promoted in HSG-II cadre by the previous DPC. It is further stated that the order to this effect was issued vide circle office Memo dated 16.2.2006. Thus, according to the respondents, grievance of the applicant regarding his promotion in the HSG-II cadre w.e.f. 1.7.2000 when such promotion was granted to the junior officials to the applicant does not survive.

As regards promotion of the applicant to HSG-I⁴ cadre, it has been stated that pursuant to promotion of the applicant to HSG-II cadre, review DPC for promotion of the applicant to HSG-I was held but due to below bench-mark performance in the confidential reports in most of the years, the applicant was not found fit for promotion to HSG-I cadre. It is further stated that representation made by the applicant was considered and was rejected vide letter dated 13.3.2006 and appeal preferred by the applicant on 19.2.2007 was also considered and the applicant was informed vide letter dated 24.5.2007 (Ann.A/1)

4. The applicant has filed rejoinder. In the rejoinder, the only grievance raised by the applicant is regarding grant of higher pay scale of BCR w.e.f. 1.10.1991 pursuant to passing of LSG examination under 1/3 quota when the same was granted to persons similarly situated.

5. We have heard the learned counsel for the parties and gone through the material placed on record. In view of the fact that the applicant has been granted promotion notionally w.e.f. 1.7.200 in the cadre of HSG-II pursuant to review DPC when the said benefit was granted to person junior to the applicant namely Smt. Madhuri

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Joshi and his name has also been placed in the seniority list pursuant to such review DPC above Smt. Madhuri Joshi, the relief as prayed for by the applicant qua this aspect does not survive.

6. Similarly, in view of the stand taken by the respondents in the reply that pursuant to grant of such promotion to the applicant in HSG-II cadre, review DPC for promotion to the post of HSG-I was also held and since the applicant has not attained requisite benchmark, as such, he could not have been promoted. Thus, in view of the facts as stated above, which have not been disputed by the applicant in the rejoinder and, more particularly, when representation of the applicant for promotion to HSG-I was rejected vide impugned order dated 16/21-3.2006 (Ann.A/3) whereby it has been stipulated that the post of HSG-II is a selection post and bench-mark for promotion to HSG-I is 'good' and since performance of the applicant was below bench-mark, he has not been found fit for promotion, no relief can be granted to the applicant.

7. Now the only point which requires our consideration is whether the applicant is entitled to the BCR higher scale w.e.f. 1.10.1991 solely on the basis that he has passed the LSG examination without completing the requisite length of service of 26 years. Admittedly, the applicant has completed 26 years of service on 26.4.1994 and the applicant was allowed the benefit of BCR scale w.e.f. 1.7.1994. The respondents for this purpose have placed reliance on subsequent guidelines dated 17.5.2000 (Ann.R/1) whereby in para-2 it has been reiterated that placement under

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Time Bound One Promotion (TBOP) and Biennial Cadre (BCR) are based on length of service of the official concerned and not on the criteria of seniority. It is further stipulated that in case junior has got the higher pay scale by virtue of completion of prescribed period of service i.e. 16 and 26 years respectively and granted higher scale based upon their completing requisite number of years of service, such benefit cannot be granted to the so call senior official without completing the prescribed period of service as per the eligibility condition for placement in the higher scale of pay. Admittedly, the benefit under BCR scheme has to be granted after completion of 26 years of service. The seniority in a particular cadre has no relevancy for grant of benefit under TBOP/BCR schemes as the benefit under these schemes are extended where a persons is facing stagnation and no promotional chances are available. On the contrary, the seniority plays an important role where a person is to be granted promotion as per the recruitment rules after fulfilling the eligibility criteria. Since the applicant has put in 26 years of service in the year 1994 and condition precedent for granting benefit under BCR scheme is completion of 26 years of service and has nothing to do with passing of LSG examination and seniority, as such, according to us, the applicant is not entitled to grant of BCR benefit w.e.f. 1.10.1991. The view which we have taken is in conformity with the decision of the Apex Court in the case of State of Punjab and Anr. v. Kuldip Singh and Anr., 2002 SCC (L&S) 814. That was a case where the respondents before the Apex Court filed Writ Petition before the Hon'ble High Court thereby praying for



direction to the State Government to grant selection grade of pay scale w.e.f. 1.1.78 when persons junior to them were granted the higher pay. The Writ Petition was contested by the appellants before the Apex Court on the ground that the petitioners could not have been granted benefit of selection grade of pay before 15 years of service which is prescribed as eligibility condition under the Government circular. The said benefit was being sought on the basis of the judgment rendered by the Hon'ble High Court in the case of Devender Singh Shekhon, which decision was also upheld by the Apex Court by dismissing the SLP filed by the State Govt. The High Court allowed the Writ Petition and directed the appellants to extend the benefit as was given in the case of Devender Singh Shekhon. The matter was carried to the Apex Court. The Apex Court held that the criteria for entitlement to selection grade in the post of Sub-Divisional Engineer in Public Works Department of State of Punjab as per the circular issued by the Government was completion of 15 years of service. It was held that officials lacking this qualification could not have been granted the said selection grade merely on the ground that selection grade has been granted to another officer junior to him. The ratio as laid down by the Apex Court in the case of Kuldip Singh (supra) is squarely applicable in the facts and circumstances of this case. Thus the claim of the applicant for grant of BCR scheme benefit on the basis that junior to the applicant has been granted such benefit and the same be also extended to him w.e.f. 1991 when admittedly he has not completed 26 years of service, cannot be accepted.




8. Accordingly the OA is bereft of merit which is accordingly dismissed with no order as to costs.

9. In view of dismissal of the OA, no order is required to be passed in MA No.37/2009, which shall stand disposed of accordingly.



(ANIL KUMAR)
Admv. Member



(M.L. CHAUHAN)
Judl. Member

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