

27.02.2008

OA Nos. 169/07, 380/07, 381/07 & 382/07

Present :Mr. P.N.Jatti, counsel for the applicant.

Mr. Gaurav Jain, counsel for the respondents.

Written statements in these cases have been filed. Rejoinders thereto are still awaited. Learned counsel for the applicants states that identical cases have already been decided by the Hon'ble Bench. He insists to list these matters before the Hon'ble Bench. Let these cases be placed before the Hon'ble Bench for direction/appropriate orders on 03.03.2008.

akv

  
(GURMIT SINGH)  
DEPUTY REGISTRAR


03.3.2008


OA Nos. 169/07, 380/07, 381/07 & 382/07

Mr. P.N. Jatti, Counsel for the applicant  
Mr. Gaurav Jain, Counsel for the respondents

Heard learned Counsel for the parties.

For the reasons dictated separately, the OA is disposed of.

  
(J.A. Shukla)  
M(A)

  
(M.L. Chauhan)  
M(L)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 3<sup>rd</sup> day of March, 2008

CORAM:

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

ORIGINAL APPLICATION No.169/2007

B.M.Sunda  
s/o Shri Chunni Lal,  
r/o N.J.Dyer Bhawan RMS),  
N.B.C. Road,  
Hasanpura (A),  
Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through the Secretary to the 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 Gaurav Jain)

ORIGINAL APPLICATION No.380/2007

R.K.Pathan,  
s/o Janab Basir Khan,

r/o 465, Shanti Nagar,  
Khatipura road, Jaipur,  
Presently working in the office of  
R.M.S., Jp.Dn.Japur.

.. 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 Gaurav Jain)

ORIGINAL APPLICATION No.381/2007

Ramphool Bairwa,  
s/o Shri Kanhiya Lal Bairwa,  
r/o 70 A Patel Nagar,  
Jaipur, presently working in the  
Office of the Sr. Supdt., R.M.S.,  
Jp.Dn.Jaipur Opp. Radio Station,  
M.I.Road, 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 Gaurav Jain)

ORIGINAL APPLICATION No.382/2007

D.S.Yadav,  
s/o Shri Daulat Ram Yadav,  
r/o 28, A.K.Gopalan Nagar,  
Khatipura, Jaipur,  
presently working as SA BCR,  
SRO, 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. Opp. Radio Station, M.I.Road, Jaipur

.. Respondents

(By Advocate: Shri Gaurav Jain)

### O R D E R (ORAL)

By this common order, we propose to dispose of these Original Applications as the issue involved is same.

2. Briefly stated, facts of the case are that the applicants are postal employees who were 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 they should be granted upgradation under the BCR scheme from the date they 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 in OA No.169/2007 namely Shri B.M.Sunda, was granted higher pay scale of BCR w.e.f. 1.1.2001 instead of 4.7.2000, as according to the applicant, he has completed 26 years of service on 4.07.2000. However, according to the respondents as per service record the applicant has completed 26 years of service on 6.7.2000. The applicant in OA No.380/2007, R.K.Pathan, was granted higher pay scale of BCR w.e.f. 1.7.2006 whereas according to the applicant he has completed 26 years of service on 28.7.2005. However, the respondents in the reply have stated that the applicant has completed 26 years of service on 21.2.2006 and not on 28.07.2005. The applicant in OA No. 381/2007, Ramphool Bairwa, was granted higher pay scale of BCR w.e.f. 1.7.06 whereas according to the

applicant he has completed 26 years of service on 1.1.2006. According to the respondents, the applicant has completed 26 years of service on 19.1.2006 instead of 1.1.2006. Similarly, the applicant in OA No.382/2007, D.S.Yadav was granted higher pay scale of BCR w.e.f. 1.7.2006, whereas according to the applicant, he has completed 26 years of service on 18.03.06. According to the respondents, the applicant has completed 26 years of service on 24.04.2006.

3. Notices of these applications were given to the respondents. The stand taken by the respondents in these cases 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 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 also taken the plea that these OAs are time barred. 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. (Ann.A3) 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.

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

5. We are of the view that the applicants are 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 applicants, in case they are not extended the benefit rendered by this Tribunal in different cases as affirmed by the

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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 they 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 in OA No.169/2007 is entitled to grant of higher pay scale under BCR scheme on completion of 26 years of service w.e.f. 7.7.2000, the applicant in OA No.380/2007 is entitled to grant of higher pay scale under BCR w.e.f. 22.2.2006, the applicant in OA No. 381/2007 is entitled to grant of higher pay scale w.e.f. 20.1.06 and applicant in OA No. 382/2007 is entitled for higher pay scale under BCR scheme w.e.f. 25.4.2006.

Since there is delay on the part of the applicant in OA No.167/07, as such, the said benefit shall be granted to the applicant in this OA notionally from the aforesaid date. However, the consequential benefits of higher pay scale shall be granted to the applicant from the date of submission of representation to the higher authorities, which in the instant case is 12.7.2006. However, in the case of remaining 3 OAs, the impugned order is dated 25.9.2006 and OAs in these cases have been filed on 24.09.2007, i.e. within a period of one year. Thus, it is not a case of delay, although the applicants have not filed any representation before the authority. Accordingly, the applicant shall be entitled to the consequential

benefits of higher pay scale under BCR scheme from the due date.

6. With these observations, the OAs are allowed with no order as to costs.

(G.P. SHUKLA)

Administrative Member

(M.L. CHAUHAN)

Judicial Member

R/