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**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

05.11.2009

OA No. 288/2008

Mr. P.N. Jatti, Counsel for applicant.
Ms. Usha Singh, Proxy counsel for
Mr. V.S. Gurjar, Counsel for respondents.

Heard learned counsel for the applicant.

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


(B.L. KHATRI)
MEMBER(A)


(M.L. CHAUHAN)
MEMBER (J)

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH**

Jaipur, this the 05th day of November, 2009

ORIGINAL APPLICATION NO. 288/2008

CORAM:

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

A.L. Balani son of Late Shri Tak Chand Balani, by caste Balani, aged about 62 years, resident of 2/22, H.B. Colony, Devipura, Sikar (Rajasthan). Presently retired as Senior superintendent Post Officer, Kota Division, Kota.

.....APPLICANT

(By Advocate: Mr. P.N. Jatti)

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Postmaster General, Southern Region, Ajmer.

.....RESPONDENTS

(By Advocate : Mrs. Usha Singh proxy to Mr. V.S. Gurjar)

ORDER (ORAL)

The grievance of the applicant in this case is regarding not granting him promotion to the Senior Time Scale on the basis of adverse remarks in the ACRs for the year 2005-2006, against which the applicant has made representation to the authorities vide letter dated 26.06.2006 (Annexure A/7). According to the learned counsel for the applicant, so long as the representation against the adverse remarks ^{was} ~~were~~ not decided finally, it was not permissible for the Selection Committee to take adverse remarks into consideration for the grant of Senior Selection grade.

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2. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have stated that the applicant had retired on superannuation w.e.f. 31.05.2007. It is further stated that while working as Senior Superintendent of Post Offices, Kota, the applicant was communicated with adverse remarks for the year 2004-2005, which remarks were ordered to be withdrawn by Chief Post Master General, Rajasthan Circle, Jaipur on receipt of representation dated 09.08.2005 (Annexure A/5). It is further stated the applicant was communicated with adverse remarks while reviewing the ACRs for the year 2005-2006 under Post Master General, Southern Region ajmer vide letter No. PMG/Con./CRs/Adv/2005-06 dated 13.06.2006 (Annexure A/6) by the then Post Master General. The applicant made representation dated 26.06.2006 (Annexure A/7) against the said remarks, which was forwarded to Chief Post Master General, Rajasthan Circle, Jaipur vide Post Master General, Southern Region, Ajmer letter No. PMG/Con./CR/Adv/AL Balani/05-06 dated 26.03.2007 (Annexure R/2). It is further stated that the said representation of the applicant is still under consideration with the Chief Post Master General, Rajasthan Circle, Jaipur. Meanwhile, the applicant was considered by the DPC convened for considering promotion to the grade of Senior Time Scale of Indian Postal Service, Group 'A' for the year 2007-2008 and on the basis of service records as reflected from ACRs of the applicant, he has been found 'Unfit' by the DPC. Therefore, his name could not be included in the Directorate Memo dated 29.06.2007 whereas junior to the applicant and others were promoted to officiate on regular basis in the Senior Time Scale of Indian Postal Service Group 'A' w.e.f. 01.04.2007.

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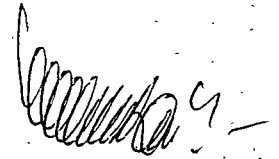
3. We have heard the learned counsel for the parties. In view of the stand taken by the respondents and the fact that representation of the applicant against the adverse remarks, as mentioned above, has not been decided so far, it was not permissible for the DPC to declare the applicant 'unfit'. Law on this point is well settled by the Apex Court in number of decisions. At this stage, we wish to refer to the decision of the Apex Court in the case of **Brij Mohan Singh vs. State of Punjab**, AIR 1987 SC 948 whereby the Apex court has held that unless the representation against the adverse entry is communicated and considered and disposed of, it is not just and fair to act upon these adverse entries. Similar view has also been taken by the Apex Court in the case of **State of MP vs. Bani Singh**, AIR 1990 SC 1308 whereby the Apex Court has held that when representation against the adverse entry is pending, such adverse remarks cannot be considered for withholding promotion.

4. In view of the law laid down by the Apex Court, we are of the view that the applicant has made out a case for the grant of relief. Accordingly, Respondent no. 2 is directed to decide the representation of the applicant dated 26.06.2006 (Annexure A/7) within a period of two months from the date of receipt of a copy of this order and if respondent no. 2 is pleased to expunge or modify the remarks recorded in the ACR for the year 2005-2006, the claim of the applicant for the grant of promotion to Senior Time Scale w.e.f. 01.04.2007 from which date, such scale has been granted to the junior shall be considered afresh and if found fit, he shall be granted promotion from due date.

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5. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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