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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

26.09.2011

OA No. 429/2010 with MA 270/2011

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

Mr. Mukesh Agarwal, Counsel for respondents.

Heard. The OA as well as MA are disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S. Rathore)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 26th day of September, 2011

ORIGINAL APPLICATION No. 429/2010

With

MISC. APPLICATION NO. 270/2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Bhanwar Lal Sharma son of Ladu Ram Sharma, aged about 67 years, resident of Sardulpura, 419-Phulera, District Jaipur.

... Applicant:

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

Versus

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

... Respondents:

(By Advocates : Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant preferred this OA claiming relief that he may be allowed higher scale of pay under BCR Scheme with effect from 20.01.2003 with all consequential benefits.

2. Learned counsel for the respondents has raised preliminary objection with regard to the maintainability of this OA. It is submitted that the applicant has been retired from service on 30.06.2003 on attaining the age of superannuation. It is further submitted that the order under challenged is hopelessly time barred in view of the provisions of CAT Act, 1985 and the ratio decided by the



Hon'ble Supreme court. They further submitted that the representation of the applicant dated 26.06.2003 had already been considered and decided by the competent authority vide order dated 09.10.2003 (Annexure A/3). Thus in view of the fact that since the matter has already been decided and this OA has been filed after a belated stage and hopelessly time barred and deserves to be dismissed in view of the judgment of the Hon'ble Supreme Court in the case of **C. Jacob vs. Director of Geology and mining**, 2008(10) SCC 115 and **Union of India vs. M.K. Sarkar**, 2010(2) SCC 59.


3. In reply to the objections raised by the respondents, the applicant submitted that the Tribunal vide its judgment dated 19.09.2006 (OA Nos. 131/2006, 132/2006, 133/2006 and 134/2006) has held that applicants are entitled to grant of higher scale under BCR on completion of 26 years of service w.e.f. 18.09.1999 instead of 01.01.2000 in the case of applicant in OA No. 131/2006, 25.03.1995 instead of 01.07.1995 in the case of applicant in OA No. 132/2006, 18.09.1999 instead of 01.01.2000 in the case of applicant No. 133/2006 and 19.02.2000 instead of 01.07.2000 in the case of applicant in OA No. 134/2006. In respect of arrear, it is directed that respondents shall accorded the benefit of higher pay scale notionally from the aforesaid date and actual benefit from the date of submission of representation in October, 2005.



4. The judgment of the Tribunal was rendered on 19.09.2006 and taking advantage of the said judgment, the applicant filed a fresh representation before the respondents. Learned counsel for the applicant has drawn our attention towards note-sheet No. P-189/C at Page 8 and further upon perusal of order sheet P-196/C at Page 12 of Annexure A/1 reveals that representation submitted by the applicant is forwarded to the Director General Postal Services.

5. Learned counsel for the applicant referred to judgment rendered by the CAT Chandigarh Bench in the case of **Jasbir Singh Narula vs. Union of India & Others**, 1996 (3) CAT 571. Chandigarh Bench of the Tribunal held that pension is payable every month so is a recurring cause of action. Limitation does not apply. He also referred to the judgment of the Rajasthan High Court in the case of **Baso Devi vs. State of Rajasthan & Others**, 2003 (3) WLN 460 wherein Hon'ble High Court held that pension is recurring cause of action and hence the question of delay or laches does not arise.

5. Learned counsel for the applicant further submitted that since it relates to the pensionary benefits, the cause of action is still available to the applicant. It has been strongly opposed by the learned counsel for the respondents.



6. Be that as it may, we have considered the rival submission made by the respective parties and upon perusal of note sheet and the ratio decided by the Tribunal, it appears that this Tribunal has answered the question whether the benefit under BCR scheme vide letter dated 11.10.1991 has to be granted from the date one has completed 26 years of satisfactory service. Having answered the question, the Tribunal of this Bench held that in view of the judgment of the Full Bench in the case of Piran Dutta & 25 Others vs. Union of India & Others, 2005 (1) ATJ 430, the benefit given under BCR Scheme has to be granted to the applicant when he completed 26 years of service on 01.04.2004.

7. Since the question has been decided by the Tribunal is not in persona but in ram. We are not convinced with the submission made by the learned counsel for the respondents that the judgment rendered by the Tribunal is not in ram but in persona. The matter of BCR Scheme is pending before the Director General (Posts), in such circumstances; we deem it proper to direct the Director General (Posts) to decide the application of the applicant in view of the ratio decided by the Tribunal. It is expected from the respondents to consider the same expeditiously but not later than a period of three months from the date of receipt of a copy of this order.



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

9. Since the OA is disposed of, no order is required to be passed in MA No. 429/2010, which is also disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)