

Reserved
(On 26.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the **02nd** day of **August** 2018

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/00440 of 2007

Muni Raj Prasad Gupta, S/o late Kalpa Nath Gupta, R/o Village Kasya
Post Mehhudupur, District Sant Kabir Nagar.

.....Applicant.

By Adv: Shri A.K. Dave

VE R S U S

1. Union of India through the Secretary (Posts), Ministry of Communication and Information Technology, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General U.P. Circule, Hazratganj, Lucknow.
3. Post Master General, Gorakhpur Region, Gorakhpur.
4. Superintendent Post Office, Basti Division, Basti.

.....Respondents

By Adv: Shri S. Srivastava

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

This Original Application (in short OA) has been filed under section 19 of the Administrative Tribunal Act with the prayer for following reliefs:-

- "1. To issue an order rule or direction to the respondents to consider the legitimate claim of the applicant for his regular promotion on one of the twenty vacant post of L.S.G. norm based post in Basti Division in accordance with instructions contained in directorate letter No. 137/10/96-SPB-II dated 11.02.2002 and 28.01.2003 (Annexure No. A-5).***
- 2. To issue an order rule or direction to the respondent No. 2 for considering further promotion of the applicant on the post of H.S.G.-II in the grade of Rs. 5500 – 8000/- from the date his next junior has been given regular promotion vide letter dated 09.01.2007 to interpolate the name of applicant at the appropriate place in promotional order as well as in the seniority list of the cadre.***
- 3. To issue any other order and further order as the Hon'ble Court may deem fit and proper, in the facts and circumstances of the case.***
- 4. To award cost of application in favour of the applicant."***

2. The facts in brief as per the OA are that the applicant was appointed as Postal Assistant in 18.5.1974 and joined on 6.1.1975 after training as Clerk in Barhni post office as per the order dated 16.12.1974 (Annexure A-2) under the respondent no. 4. After introduction of the time bound one promotion scheme (in short TBOP), the applicant was given first upgradation to the next higher pay scale w.e.f. 6.1.1991 and second upgradation w.e.f. 1.7.2001 vide order dated 17.9.2002 (Annexure A-4). But it was not promotion. Although the applicant was eligible for promotion to Lower Selection Grade post (in short LSG) in the same pay scale, but such promotion was not considered by the respondent no. 4 in spite of availabilities of vacancies. Many of his juniors were promoted to LSG and then to Higher Selection Grade-II (in short HSG-II) posts in pay scale of Rs. 5500-8000. It is stated that the respondent no. 4 did not take up the case of the applicant and other eligible employees in spite of instructions from the higher authorities.

3. It is further stated in the OA that the respondent no. 2 circulated the combined seniority of 539 officials in LSG norm based posts as on 1.7.2004 (Annexure A-8), but as none of the senior eligible officials from Basti division including the applicant was included in the list. Being aggrieved by this gradation list, the Union submitted a detailed representation to the respondent no. 2, which was not considered and the respondent no. 2 went ahead with the promotion for about 109 officials to the post of HSG-II vide order dated 2.6.2005 (Annexure A-9). It is the case of the applicant that his case was not considered at all by the DPC meeting held on the basis of seniority list as on 1.7.2004 for promotion, although he was eligible for notional promotion based on vacant norm based posts. After upgradation under TBOP, the applicant was already getting the pay scale of HSG-II. Although the applicant was promoted against the post of HSG-II on local basis by the respondent no. 4 vide order dated 21.2.2003 (Annexure A-11), without allowing regular promotion and without restoring his legitimate place in the seniority list. It is stated by the applicant that unless this is not considered, he would be much junior for consideration for promotion to HSG-I in pay scale of Rs. 6500-10,500/-.

4. The respondents have filed the Counter Affidavit stating the following:-

- The applicant was given promotion in LSG norm based with effect from 4.5.2006 vide order dated 2.8.2007 (Annexure CA-3) and as per this order 6 officials are senior to the applicant. Promotion to HSG-II cadre is to be considered shortly after promotion in LSG.
- The applicant has not exhausted alternative remedy available to him as the applicant never submitted any individual representation with regard to his grievances. Hence, the OA is not maintainable.
- The averment that his case has not been considered in the DPC, is baseless.

5. The applicant filed Rejoinder, stating the following:-

- The promotion in LSG cadre should have been allowed before 1.7.2004, against the vacancies which arose on or after 7.2.2002 or after. Applicant's name could not be included in the order dated 1.7.2004 (Annexure A-8) since gradation list of the applicant and others was not sent in time by respondent no. 4 despite reminders from respondent no. 2.
- The applicant has approached the Tribunal after several representations submitted by the service Union with the respondent no. 2 on this issue and these were not considered by the respondents.
- The applicant was allowed promotion w.e.f. 4.5.2006 vide order dated 2.8.2007, but he was entitled for promotion w.e.f. July, 2001 so that he can be considered for further promotion from the date his juniors have been promoted.

6. The respondents have filed three Supplementary Counter Affidavits (in short SCA) on 13.1.2009, 25.8.2014 and 12.12.2017, stating the following:-

- The applicant has been promoted to LSG norm based cadre and his promotion to HSG-II will be considered in due course.
- The Department introduced a fast track promotion scheme under which 33.34% of vacancies in LSG were to be filled up on selection cum seniority and 66.66% vacancies were to be filled

up by means of promotion through departmental examination. Subsequently, LSG and HSG cadre was changed to Circle cadre and the fast track promotion was abolished.

- The applicant had not appeared in the departmental examination. But some of his juniors had appeared and were successful and due to non-availability of vacancy of LSG upto 30.4.2006 in Basti division, they were allotted other divisions.
- The Postal Assistants who had cleared the examination were promoted to LSG norm based cadre against vacancies arising from 2002 to 18.5.2006. Vacancies prior to 2002 were to be filled up notionally and the applicant could not find a place and his seniors were promoted. But the applicant was promoted w.e.f. 4.5.2006 (vide order dated 2.8.2007) from the date of occurrence of the vacancy.
- The fast track promotion scheme was introduced from 11.2.2002 and was abolished from 30.5.2006.
- Vide order dated 31.10.2007, the applicant's promotion to LSG cadre was changed to 1.4.2006.

7. We have heard learned counsel for the applicant, who argued that the applicant has been given promotion to LSG norm based cadre w.e.f. 1.4.2006, where as he was entitled for promotion w.e.f. 2002 on the basis of vacancy. In reply to the letter dated 7.2.2005 (Annexure A-5) from CPMG's office, the gradation list for the applicant was not sent by the respondent no. 4 for consideration of the DPC, for which many of the juniors of the applicant as listed in Annexure A-10 of the OA, were promoted. About the departmental examination, it was submitted that the same was not circulated and applicant was not aware of any such examination.

8. Shri L.M. Singh holding brief for the respondents' counsel reiterated the averments in SCAs filed by the respondents and stated that the applicant's juniors were promoted earlier to the applicant and promoted on HSG-II norm based posts, since they were qualified in the departmental examination as per the order dated 11.2.2002 (copy annexed to the SCA filed on 12.12.2017). Learned counsel for the

respondents has submitted a copy of the judgment of Hon'ble Apex court in the case of State of Jharkhand vs. Bhadey Munda and another reported in (2014) 10 SCC 398. In this case, the issue was retrospective promotion for an employee of Government of Jharkhand prior to the date when State of Jharkhand came into existence. The facts are different from the facts in the present OA.

9. We have carefully gone through the pleadings and materials available on record. The relevant issue to be decided in this case is correctness of the averment of the applicant in para 4.15, 4.17 and 5.5 of the OA that due to administrative lapse on the part of the respondent no. 4, the list of eligible officials of Basti division could not be sent to the respondent no. 2 for consideration of the DPC, due to which the case of the applicant could not be considered by the DPC, while considering the case of his juniors for promotion.

10. In reply to the averments in para 4.15, 4.17 and 5.5 of the OA, the respondents in their pleadings have stated in the Counter Affidavit that the applicant is working as Sub Post Master which is a HSG-II post and by filing the OA, he is trying to stay in the said post. Nothing has been stated as to whether the case of the applicant was considered by the DPC while considering the case of his juniors and whether the gradation list of the officials from Basti division was received and duly considered by the DPC or not. It is also contended by the respondents that the applicant has been promoted w.e.f. 4.5.2006 vide order dated 2.8.2007 (Annexure CA-3 to the Counter) and with the SCA filed on 12.12.2017, another order dated 31.10.2007 was attached promoting the applicant against LSG norm based post w.e.f. 1.4.2006 without clarifying whether the order dated 2.8.2007 was modified by ante-dating the promotion of the applicant. This order dated 31.10.2007 also indicates the possibility of ante-dating the promotion of the applicant on the post of LSG norm based cadre.

11. It is seen from the order dated 11.2.2002 annexed to the SCA filed on 12.12.2017 specifies the following procedure for filling up the norm based posts of LSG/HSG-II:-

“.....
(a) Lower Selection Grade and Higher Selection Grade-II posts in Post Offices and RMS offices will be filled by promotion in the following manner:-

- (i) **33.34% on the basis of selection-cum-seniority; and**
- (ii) **66.66% by means of promotion through a Departmental merit examination / Aptitude Test relating to functional needs.**

(b) Eligibility of length of service for those posts is as below:-

- (i) **For LSG - 16 years in PA/SA grade for promotion through selection-cum-seniority (Through DPC)
10 Years in the PA/SA grade for promotion through Departmental merit examination.**
- (ii) **For HSG-II - 10 Years in LSG for promotion through selection-cum-seniority (Through the DPC)
8 Years in LSG for selection through Aptitude Test."**

Vide order dated 30.5.2006, copy of which is enclosed with SCA, above procedure was modified to fill up the LSG/HSG-II posts by 100% promotion as per the amended Recruitment rules and the aforesaid order also states that any unfilled vacancy be filled up by the revised Recruitment Rules. Hence, from 11.2.2002 to 30.5.2006, 33.34% LSG posts were required to be filled up through DPC from among the officials with experience of 16 years as PA/SA. The DPC held after 11.2.2002 and 30.5.2006. It is averred by the applicant in the OA that the DPC held after 11.2.2002 to fill up the vacant posts, his case was not considered as the respondent no. 4 did not send the name of the applicant with the names of other eligible officials of Basti division. This has not been specifically denied by the respondents in their pleadings with supporting documents. How the applicant's juniors were promoted prior to the applicant to LSG norm based post through DPC, if any, and then promoted to HSG-II grade norm based posts, ignoring the case of the applicant, has also not been explained in the pleadings of the respondents.

12. In view of the facts and circumstances discussed above, we are of the view that it is possible that the applicant's case had been ignored when the DPC considered his juniors for promotion to norm based post of LSG as per the procedure laid down in the order dated 11.2.2002 and dated 30.5.2006 and if it is so, then the applicant will be entitled for ante-dating of his date of promotion to LSG norm based post from 1.4.2006 to a date on which any of his junior was promoted through DPC as per the order dated 11.2.2002 and list of his juniors

promoted earlier has been furnished in Annexure A-10 of the OA. However, the case of any of his junior promoted through departmental examination prior to 1.4.2006 as per the procedure laid down in the order dated 11.2.2002, will not have any effect on the applicant since admittedly, he had not appeared in the departmental examination.

13. In view of above, we direct the respondent no. 2 (CPMG, Uttar Pradesh) to re-examine the case of the applicant in the light of the observations in paragraphs 10, 11 and 12 of this order and take an appropriate decision on the prayer of the applicant for ante-dating his notional promotion to LSG norm based post from his present seniority granted already to him from 1.4.2006 to an earlier date at par with his junior who might have been promoted as per the procedure that was applicable at the time of holding the DPC meeting held after 11.2.2002 without considering the case of the applicant. In case it is found that the officials junior to the applicant had been considered by the DPC held after 11.2.2002 for promotion to norm based posts of LSG without considering the applicant's case, then the respondent No. 2 / competent authority shall convene the review DPC to consider the case of the applicant for promotion as per the rules with effect from the date his juniors were promoted and to make suitable recommendation to the appointing authority who shall pass appropriate order on such recommendation. In case of ante-dating of the promotion of the applicant on notional basis, he shall also be placed suitably in the seniority list and shall also be considered for subsequent promotion as per the rules from the date his juniors were promoted. These directions shall be complied by the respondents within four months from the date of receipt of a certified copy of this order.

14. The OA is partly allowed in terms of directions in paragraph No. 13 above. No costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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