

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 4210/2012
MA 3522/2012
MA 3523/2012

Reserved on 14.02.2017
Pronounced on 20.02.2017

Hon'ble Mr. V.Ajay Kumar, Member (J)
Hon'ble Mr.P.K.Basu, Member (A)

Yad Ram Sharma,
S/o Shri Hari Narain Sharma,
R/o WZ 478/1 MS Block, Hari Nagar,
New Delhi-110064

... Applicant

(By Advocate : Mr. Anuesha Saha for Mr. Manu Mridul)

VERSUS

1. Union of India through
The Secretary,
Ministry of Communication & IT,
Department of Post, Dak Bhawan, Sansad Marg,
New Delhi-110001
2. The Chief Post Master General,
Rajasthan Circle,
Near Government Press, Jaipur
Rajasthan-302007
3. Senior Superintendent of Post Offices,
Alwar Division, Alwar,
Rajasthan-301001.

... Respondents

(By Advocate: Mr. R.K.Sharma)

ORDER

Hon'ble Mr. P.K.Basu, Member (A) :

The applicant joined the Postal Department on 31.07.1964 on the post of Postal Assistant.

2. In 1974, when he was posted as an officiating Sub Post Master Lower Selection Grade (LSG) an FIR was lodged against him on the charge of embezzlement of public money when a shortage of Rs.4400 was alleged to have been found against him. He was convicted by the

Trial Court and awarded 6 months rigorous imprisonment along with fine of Rs.200/- vide order dated 13.10.1984.

3. The applicant filed Criminal Appeal No.11/1985 before the Sessions Court. However, in the meanwhile, the applicant was compulsorily retired by the respondents on 25.05.1985 on the basis of conviction awarded by the Trial Court under Rule 19(1) of CCS (CCA) Rules, 1965.

4. Vide judgment dated 25.06.1986, the Sessions Court set aside the order dated 13.10.1984 of the Trial Court and acquitted the applicant from all charges vide its judgment dated 25.06.1986.

5. Based on this judgment, the applicant was reinstated and posted as Sub Post Master on 16.10.1986.

6. The respondents simultaneously filed Criminal appeal No. 495/1986 before the Hon'ble High Court of Rajasthan against the acquittal of the applicant by the learned Sessions Court.

7. Meanwhile, the applicant retired on attaining the age of superannuation on 31.05.2005.

8. Vide order dated 02.01.2008, the Hon'ble High Court of Rajasthan dismissed the Criminal Appeal filed by the respondents and affirmed the order of the learned Sessions Judge.

9. Pursuant to the aforesaid order of the Hon'ble High Court, the applicant was placed in the pay scale of LSG under Time Bound One Promotion (TBOP) and in the pay scale of HSG-II under Biennial Cadre Review (BCR) w.e.f. 30.11.1983 and 01.10.1991 respectively. His

case for promotion to HSG I was taken up by the DPC in 2003 but he was not promoted on the ground of pendency of the aforesaid criminal case. As stated by the applicant, there was a delay in payment of commutation of pension, gratuity and payment of bonus etc.

10. Being aggrieved by this action of the respondents of not granting him HSG-1, though according to him, he was eligible for this grade in the year 1996 itself, this OA has been filed seeking the following reliefs:

- i. Direct the Respondents to grant notional promotion to the Applicant in HSG Grade-1 and declare that the Applicant is entitled for consequential benefits arising out thereto, and
- ii. Declare that the Applicant is entitled for all the delayed payment as mentioned in table with interest @ 18% per annum from the date it became first due to till the payment, and
- iii. Declare that the Applicant is entitled for the expenses incurred on attaining the proceeding of the Criminal case wrongly initiated against the Applicant, and,
- iv. Award compensation of a sum of Rs.500000/- (Rupees five Lacs only) towards physical and mental harassment caused by the Respondents in not releasing his retirement benefits, and
- v. Award a compensation of Rs.300000/- (Rupees three Lacs only) as reimbursement of TA & DA expenses while attending trial Court, appellate Court and High Court during the past 34 years taking own casual or earned leave, and
- vi. Pass any other order or orders as may deem fit in the facts and circumstances of the case in the interest of justice; and."

According to the applicant, the amounts which were paid with delay are as follows:-

Sl. No.	Heads	Delayed paid amount	Date which on the amount became due	Actual date of payment
1.	Delayed payment of arrear amount	1.Rs.36,509/- towards encashment of earned leaves.	01.06.2005	12.05.2009

		2.Rs.222981/-towards Gratuity amount. 3.Rs.287238/-towards the differential amount of pay for the period between 01.07.1981 and 31.05.2005.	01.06.2005 01.07.1981 to 31.05.2005	03.08.2009 23.03.2009
		4. Rs.24418/-towards arrears arisen due to wrong fixation of the one increment for the period from 01.07.1992 to actual payment. 5.Rs.121343/-towards arrears of pension during the period between 01.06.2005 and 30.06.2009. 6.Rs.235620/-towards commutation amount taking 65 years as age factor 7.Rs.859/- and Rs.945/- towards bonus for financial year 1985-1986 and 1986-1987	01.07.1992 to 31.05.2005 01.06.2005 to 30.06.2009 01.06.2005 In the year 1986 and 1987	24.10.2009 10.12.2009 17.06.2010 02.03.2012
2.	Amount wrongly deducted	1.Rs.24680/- towards TDS from the amount towards differential amount of pay as mentioned in preceeding heads as item no.3 2.Rs.36314/- towards differential of amount of commutation determined on taking age of 65 years whereas the correct age factor is 61 years	23.03.2009 01.06.2005	Not paid Not paid

The grounds on which he has made the claim are:

- (1) That those who are juniors to the applicant were promoted in HSG-1 way back in the year 1995-96 and, therefore, he should be granted the promotion since he is exonerated from the date his immediate junior was promoted.

- (2) In **Union of India and Others Vs. K.V. Jankiraman and Others** (1993) 23 ATC 322), the Apex Court has held that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted.
- (3) The Hon'ble Apex Court in catena of decisions has held that retiral benefits are not a bounty rather a valuable right and property of the employees and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest.

11. The respondents in their reply first of all clarified that since the applicant was allowed placement in the next higher grade under TBOP and BCR w.e.f. 30.11.1983 and 1.10.1991, though, the pay scales allowed to him in the above said placement under TBOP & BCR Scheme are equal to pay scale of LSG & HSG-II respectively, but these placements cannot be termed as promotion to LSG and HSG-II respectively. In this regard, learned counsel for the respondents relied on letter dated 17.05.2010 (R-10) of the Department of Posts in which this has been clarified in the following words:-

"2. It is further reiterated that placements under Time Bound One Promotion (TBOP) and Biennial Cadre Reviews (BCR) schemes are based on the length of service of the official (s) concerned and not on the criterion of seniority. Seniors in the gradation list therefore cannot claim higher scale of pay at par with their juniors, if their juniors have got higher scale of pay by

virtue of their completion of the prescribed period of service i.e. 16/26 years respectively. Juniors have been placed in the higher scale of pay based on their completing the requisite number of years' service which their seniors have not completed. In other words, TBOP/BCR scheme s are not promotions against the norms based posts in LSG and HSG-II grades but only placements in the same scale of pay on completion of 16/26 years of service respectively. Eligibility condition for placement in the higher scale of pay under the scheme is 16 and 26 years of service respectively. Clearly, seniors in gradation list will not be considered for next higher scale of pay from the date their immediate juniors become eligible for next higher grade without completing the prescribed period of service as per the eligibility condition of placements in the higher scale of pay."

12. It is further stated that as per the Recruitment Rules (RRs) of HSG-I cadre minimum 03 years regular service in HSG-II cadre is essential for promotion to HSG-I cadre and since the applicant is simply a time scale postal assistant he was not eligible for promotion to HSG-1 as he was not in HSG-II cadre. In this regard, the following provisions of RR's have been submitted in their reply.

Sl. No.	Promotion	Eligibility criteria	Remarks
1.	LSG (NB)	Seniority cum fitness Subject to minimum 10 years service in postal asstt.cadre	During the period from 08-07-1989 to 29-05-2006, the LSG(NB) was divisional cadre as per D.G. Post New Delhi letter dated 31-07-1990 & 30-05-2006 (Copy enclosed as Annexure R-II & R-12) As such, the seniority of postal assistant for promotion to LSG(NB) cadre was to be determined on divisional basis during the period.
2.	HSG-II	Seniority cum fitness Subject to minimum 03 years services in LSG(NB) Cadre	Circle cadre
3.	HSG-I	Seniority cum fitness Subject to minimum 03 years service in HSG-II Cadre	Circle cadre

13. Regarding delay in payment, it is stated that the Department could make the payment only on receipt of the Hon'ble High Court

order dated 02.01.2008 after which every effort was made for early payment of all due benefits to the official.

14. It is further stated that the case of the applicant and his juniors were considered for notional promotion to LSG cadre w.e.f. 1.10.1991 but the applicant could not find place in selection panel due to his unsatisfactory record of service. The next DPC for promotion to LSG was held in the year 2004 but again he was not found fit for promotion to LSG due to his unsatisfactory record of service and average grading. It is stated that the applicant never submitted any representation against his non promotion to LSG cadre. His junior Shri Roop Kishore was promoted to LSG notionally w.e.f. 1.10.1991 and promoted to HSG-II cadre w.e.f. 29.11.2006 and further to HSG-I (on adhoc basis) w.e.f. 08.03.2007. It is stated that both these dates are after the date of retirement of the applicant. As such, had the applicant been promoted to LSG notionally w.e.f. 01.10.1991 or against the vacancies of the year 2004, he would not have been promoted to HSG-II & HSG-1 till his date of retirement i.e. 31.05.2005. Though he could not be granted regular promotion as LSG/HSG as already stated, these scales were allowed to him under the TBOP and BCR Scheme w.e.f. 30.11.1983 and 01.10.1991.

15. Heard the learned counsels and perused the pleadings.

16. First of all it needs to be clarified that the applicant has made a wrong statement in para 4 (j) that he was promoted in the cadre of LSG and HSG-II w.e.f. 30.11.1983 and 1.10.1991. This is factually incorrect as clarified by the respondents that he was never promoted but was granted the scales on upgradation under the TBOP and BCR scheme. Clearly the applicant has tried to mislead this Tribunal.

17. There was a criminal case against the applicant and Department could act only after the matter was finally disposed of by the Hon'ble High Court of Rajasthan on 2.01.2008 where after he was granted the upgradation under TBOP & BCR scheme as stated earlier. As explained by the respondents in their reply that applicant's case was considered by DPC twice but he was not found fit for promotion to LSG due to his unsatisfactory record of service and average grading. The applicant never submitted any representation against not getting his promotion to LSG grade. The respondents have also succinctly clarified that his junior got LSG grade notionally w.e.f. 01.10.1991, HSG-II w.e.f. 29.11.2006 and HSG-1 (on adhoc basis) w.e.f. 8.03.2007 and, therefore, even if the applicant had been promoted notionally to LSG on 01.10.1991 or against the vacancies of the year 2004 he could not have been promoted to HSG-II and HSG-1 till his date of retirement i.e.30.05.2005. Therefore, it is clear that the applicant failed to get promoted as LSG as the DPC found him unfit and it is not that he was not considered for promotion. Secondly, since he retired in 2005 and his junior could get HSG-II only in 2006 there is no way he could have got HSG-1 as he retired before that on 31.05.2005. Had the applicant challenged the decisions of the DPC not granting him promotion as LSG, he would have had a case. Having not challenged that he cannot claim promotion as HSG-I straightway without having got promotion as LSG and HSG-II. Therefore, his prayer to grant him promotion to HSG-1 cannot be allowed and is rejected.

18. As regards, interest payment for delay in release of his retirement dues, the applicant certainly deserves payment of interest for the delay beyond the date when High Court order dated 2.01.2008

was received by the respondents. The respondents would, therefore, pay interest for the delay beyond the period of 3 months from the date the High Court order dated 2.01.2008 was received by the respondents at the rate of interest applicable to GPF deposits.

19. As regards award of compensation of Rs.five lacs and Rs.three lacs sought by the applicant, this Tribunal is not the right forum for claiming of award of compensation for physical and mental harassment and reimbursement of TA and DA expenses.

20. The OA is disposed of with the above directions. MAs stand disposed of. No costs.

(P.K.Basu)
Member (A)

(V.Ajay Kumar)
Member (J)

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