

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00068/2015

Jabalpur, this Tuesday, the 18th day of September, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Prahalad Singh Sawariya,
S/o Late Shri Dhanraj Singh Sawariya,
DOB : 22.7.1947, Retired Postal Assistant (LSG)
R/o Narayan Nagar, ITI Road,
Hoshangabad 461001 (M.P.)

-Applicant

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. Union of India, Through its Secretary,
Ministry of Communication & IT,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi 110001

2. Chief Post Master General,
Madhya Pradesh Circle, Hoshangabad Road,
Bhopal 462012 (M.P.)

3. Director of Postal Services,
O/o Chief Post Master General,
Madhya Pradesh Circle, Hoshangabad Road,
Bhopal-462012 (MP)

4. Director, Postal Accounts (Pension),
Fourth Floor, Dak Bhawan,
Hoshangabad Road, Bhopal 462001

5. Sr. Superintendent of Post Officers,
Hoshangabad Division,
Hoshangabad (M.P.)-461001

-Respondents

(By Advocate –**Shri S.K.Mishra**)

(Date of reserving the order:-25.07.2018)

ORDER

By Ramesh Singh Thakur, JM:-

The applicant is Challenging the impugned order dated 22.07.2014 (Annexure A-1), whereby the respondents have rejected the claim of the applicant for promotion to the post of HSG-II & HSG-I on the ground that he has been retired from service. Hence he has filed this Original Application.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:

(8.1) Summon the entire relevant record from the possession of respondents for its kind perusal.

(8.2) Quash and set aside the order dated 22.7.2014 (Annexure A-1).

(8.3) Direct the respondents to open the sealed cover and promote the applicant if he has been found suitable for the post of HSG-II & HSG-I with all consequential benefits.

(8.4) Direct the respondents consider the applicant for promotion under BCR Scheme. The respondents be further directed to consider the case of the applicant for promotion for the post of HSG-I & HSG-II and if he found suitable, he should be promoted from the date when his immediate juniors were promoted with all consequential benefits arising thereto.

(8.5) Direct the respondents to revise the pension and retrial dues of the applicant on promotion and pay him all arrears arising thereto with 18% interest.

(8.6) Any other order/orders, direction/directions may also be passed.

(8.7) Award cost of the litigation to the applicant.”

3. The facts of the case in brief are that the applicant was appointed on the post of Postal Assistant on 16.06.1969. While working on the post of Postal Assistant, he appeared in the examination of LSG against 1/3rd quota and posted as Deputy Post Master, Rajgarh. Even after completion of 26 years of service on 16.06.1995 the respondents have not granted the promotion as HSG-II and HSG-I on the ground that a punishment was imposed upon the applicant with stoppage of one increment for two years vide order dated 18.07.1991.

3.1 Learned counsel for the applicant submitted that the above punishment was modified by DPS vide order dated 03.01.1992 with stoppage of increment for a period of six months. He further submitted that another charge-sheet was issued on 21.07.1995 which was decided on 05.12.1995 with imposition of punishment of recovery of Rs. 4000/- per month.

3.2 Learned counsel for the applicant further contended that a criminal case was also lodged against the applicant by CBI. The applicant was convicted by the Special Magistrate, CBI, Jabalpur vide order dated 30.09.2008 with a punishment of one year rigorous imprisonment with Rs. 1000/- fine for the offences

punishable under Section 409 & 477 of IPC. The applicant aggrieved against the conviction order filed a Criminal Appeal and got acquitted from the criminal charges by the Special Judge, CBI on 26.07.2011 (Annexure A-2).

3.3 The applicant further averred that after getting the acquittal order, he has preferred several representations which are collectively filed at Annexure A-3 and the respondents rejected the same vide order dated 22.07.2014 (Annexure A-1). The applicant received note sheet dated 16.07.2014 (Annexure A-4) under RTI wherein it has been mentioned that the TBP, BCR scheme has abolished on 01.09.2008 and M.A.C.P. Scheme has been introduced. The promotion to the post of HSG-I and HSG-II are post basis, and therefore, he cannot be provided the said benefit as he has been retired from service.

4. The main ground for challenge in this O.A. is that even after acquittal from the criminal case, the applicant was not considered for promotion and this action of the respondents is bad in law and violative of Article 14 & 16 of the Constitution of India.

5. The respondents have filed their reply. It is submitted by the respondents that the applicant was transferred under Rule 38 of P&T manual Vol. IV from Rajgarh to Hoshangabad Division and

joined on 28.08.1992 as Postal Assistant. Before completing 26 years of service an FIR/criminal case was registered against the applicant in the CBI Bhopal on 07.09.1994. A charge-sheet was filed against the applicant by CBI and learned Special Magistrate held the applicant guilty for such offence and vide order dated 26.07.2011 (Annexure A-2). During pendency of such proceeding the applicant attained the age of superannuation and retired from service on 31.07.2007.

5.1 Learned counsel for the respondents further contended that vide O.M. dated 18.09.2009 the Govt. of India adopted the MACP scheme w.e.f. 01.09.2008, to the employees working under Department of Posts and withdrew the existing TBOP/BCR scheme w.e.f. 01.09.2008 (Annexure R-1). Due to pendency of criminal case the applicant could not be granted financial up gradation under BCR scheme on completion of 26 years of service as such before completion of 26 years of service a criminal case was registered against him. Learned counsel for the respondents further averred that the HSG-II and HSG-I promotions are post based and the retired officials could not be promoted this cadre.

6. We have heard the learned counsel for the parties and carefully perused the pleadings and the documents available on record.

7. From the pleadings, it is clear that the applicant was appointed as Postal Assistant on 16.06.1969 and thereafter he appeared in the examination of LSG against 1/3rd quota and was posted as Deputy Post Master, Rajgarh. Before completing 26 years of service, an FIR/criminal case was registered against the applicant by the CBI Bhopal on 07.09.1994. During the pendency of such proceedings, the applicant attained the age of superannuation and retired from service on 31.07.2007. It is also clear from the pleadings that on 18.07.1991, a punishment of stoppage of one increment for two years was imposed on the applicant vide order dated 18.07.1991, which was later on modified to stoppage of one increment for a period of six months. In addition to this punishment, the punishment of recovery of Rs.4,000/- per month was also imposed on the applicant on 05.12.1995 in another disciplinary proceeding.

8. It is also clear from the pleadings of both the parties that the applicant had filed appeal against the judgment of the Special Magistrate, CBI dated 30.09.2008 before the Special Judge, CBI Jabalpur and the conviction passed by the Special Magistrate, CBI Jabalpur was set aside, qua the applicant, on 26.07.2011. After his acquittal in the said criminal case, though the applicant has made

the representation to the respondent department, however, the respondent department has not considered the same vide the impugned order (Annexure A-1). As per Annexure A-1, reasons given by the respondents is that since TBP/BCR Scheme has come to end on 01.09.2008 after introduction of MACP scheme, therefore, the applicant is not entitled for the benefit of TBP/BCR scheme.

9. It is pertinent to mention from the pleadings itself that the applicant has been acquitted by the competent court of law and the respondents should have taken into account to this while considering his representation. In their reply itself, the respondents have submitted that as the criminal case was pending against the applicant, therefore, he was not given the benefit of TBP/BCR scheme from the due date. The stand taken by the respondents is not sustainable in the eyes of law, especially, when the applicant has been acquitted from the charges, which were levelled by the CBI against the applicant. The reasons given by the respondents that the TBP/BRC scheme has come to end on 01.09.2008, has no relevance due to the fact that the acquittal of the applicant relates back to the date of registration of FIR. Moreover, in the impugned order dated 22.07.2014 (Annexure A-1), no reasons have been

assigned, while considering the case of the applicant besides his acquittal.

10. In view of the above, this Original Application is allowed. The impugned order dated 22.07.2014 (Annexure A-1) is quashed and set aside. The respondents are directed to consider the case of the applicant for promotion under BCR scheme as well as in HSG-I & HSG-II, as per the relevant scheme/rules and extend the benefit of the same from the due date, within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member