

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 290/00378/2017

JODHPUR, THIS THE 9TH MAY, 2018

CORAM

HON'BLE MR R. RAMANUJAM, MEMBER (A)
HON'BLE MR SURESH KUMAR MONGA, MEMBER (J)

BHOORA RAM CHAUDHARY S/O SHRI MOTI RAM, AGED ABOUT 61 YEARS,
B/C JAT, R/O VILL & PO - DANDALI, DISTRICT-BARMER.

OFFICE ADDRESS:- WORKED AS SPM (POSTAL DEPARTMENT).

.....APPLICANT

BY ADVOCATE: MR S.P. SINGH.

VERSUS

1. UNION OF INDIA THROUGH THE SECRETARY, GOVERNMENT OF INDIA,
MINISTRY OF COMMUNICATION, DEPARTMENT OF POST, DAK TAR
BAHAWAN, NEW DELHI.

2. CHIEF POSTMASTER GENERAL, RAJASTHAN CIRCLE, JAIPUR.

3. DIRECTOR OF ACCOUNTS (POSTAL), JAIPUR.

4. SUPERINTENDENT OF POST OFFICES, BARMER DIVISION, BARMER.

.....RESPONDENTS

BY ADVOCATE : MR K.S. YADAV.

ORDER (ORAL)

PER MR R. RAMANUJAM

HEARD BOTH SIDES. THE LIMITED ISSUE IN THIS CASE IS WHETHER AN APPOINTMENT ON 'PROMOTION' FROM THE POST OF POSTMAN TO POSTAL ASSISTANT BY LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION (LDCE) COULD BE SET OFF AGAINST ONE OF THE THREE FINANCIAL UPGRADATIONS ENVISAGED UNDER THE MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACP).

2. THE CONTENTION OF LEARNED COUNSEL FOR THE APPLICANT IS THAT THE APPOINTMENT OF THE APPLICANT THROUGH LDCE TO THE POST OF POSTAL ASSISTANT SHOULD BE REGARDED DIRECT RECRUITMENT AND NOT PROMOTION AS IT WAS EARNED ON MERIT AND NOT BY MERE COMPLETION OF RESIDENCY PERIOD ON THE LOWER POST. HE SEEKS TO RELY ON THE ORDER OF RAJASTHAN HIGH COURT IN DBCWP NO. 11336/2012 DATED 10.08.2015 (A/5) AND OF THE MADRAS HIGH COURT IN W.P. NO. 30629/14 DATED 04.02.2015 (A/6). HOWEVER, LEARNED COUNSEL FOR THE RESPONDENTS WOULD POINT OUT THAT THE SAID ORDER OF THE RAJASTHAN HIGH COURT HAD BEEN DISTINGUISHED IN

THE ORDER OF THE RAJASTHAN HIGH COURT IN DBCWP NO. 3968/08 DATED 31.05.2016 (R/9) WHEREIN IT WAS HELD THAT “WHERE THE RULES SPECIFICALLY PROVIDE FOR PROMOTION QUOTA, MAY BE TO BE FILLED IN BY WAY OF LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION, THE PROMOTIONS MADE BY THE METHOD SPECIFIED AS AFORESAID, HAS TO BE COUNTED AS PROMOTION FOR THE PURPOSE OF ACP SCHEME.” THE CONTENTION OF THE LEARNED COUNSEL FOR THE RESPONDENTS IS THAT THE RULES GOVERNING THE APPLICANT’S APPOINTMENT TO THE SAID POST DO PROVIDE THAT A CERTAIN PERCENTAGE OF POSTS SHALL BE FILLED BY LDCE METHOD IN THIS CASE. ACCORDINGLY, SUCH APPOINTMENT SHOULD BE DEEMED TO BE PROMOTION AND IS LIABLE TO BE SET OFF AGAINST ONE OF THE UPGRADATIONS PERMISSIBLE UNDER THE MACP SCHEME.

3. LEARNED COUNSEL FOR THE APPLICANT SUBMITS THAT FOLLOWING THE PREVIOUS ORDER OF THE HON’BLE RAJASTHAN HIGH COURT, BENEFITS HAD BEEN GRANTED TO MANY SIMILARLY PLACED EMPLOYEES AND, THEREFORE, THE APPLICANT HEREIN COULD NOT BE DISCRIMINATED AGAINST. LEARNED COUNSEL FOR THE RESPONDENTS WOULD, HOWEVER, SUBMIT THAT RELYING ON THE PREVIOUS JUDGMENT OF THE HON’BLE RAJASTHAN HIGH COURT IN DBCWP NO. 11336/2012 DATED 10.08.2015 (A/5), A NUMBER OF OAS HAD BEEN DECIDED BY THE TRIBUNAL IN FAVOUR OF THE APPLICANTS THEREIN, WHICH HAD BEEN CHALLENGED IN THE HON’BLE RAJASTHAN HIGH COURT. IT IS SUBMITTED THAT SOME 17 D.B. CIVIL WRIT PETITIONS WERE PENDING BEFORE THE HON’BLE RAJASTHAN HIGH COURT. IN THE MEANTIME, HON’BLE RAJASTHAN HIGH COURT HAD STAYED THE OPERATION OF THE ORDER PASSED BY THIS TRIBUNAL IN ONE SUCH CASE BY ORDER DATED 13.07.2017 IN DBCWP NO. 2858/17.

4. KEEPING IN VIEW THE AFORESAID POSITION AS ALSO THE FACT THAT HON’BLE RAJASTHAN AND MADRAS HIGH COURTS HAVE PASSED CONFLICTING ORDERS IN SIMILAR CASES, WE ARE OF THE VIEW THAT ENDS OF JUSTICE WOULD BE MET IN THIS CASE IF THE RESPONDENTS ARE DIRECTED TO AWAIT THE OUTCOME OF THE PENDING DBCWPS IN THE HON’BLE RAJASTHAN HIGH COURT. IN THE EVENT OF THE WRIT PETITIONS GOING IN FAVOUR OF PERSONS SIMILARLY PLACED AS THE APPLICANT HEREIN, THE APPLICANT’S CASE SHALL BE REVIEWED ACCORDINGLY BY THE COMPETENT AUTHORITY AND APPROPRIATE ORDERS PASSED.

5. OA IS DISPOSED OF IN THE ABOVE TERMS. NO COSTS.

[SURESH KUMAR MONGA]

MEMBER (J)

[R. RAMANUJAM]

MEMBER (A)

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