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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00701/2017

Monday, this the 10th day of June, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN,	...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA,	...JUDICIAL MEMBER

Shri K.P.Gopi,
Aged 71 years,
S/o Imbichutty,
Retired sorting Assistant (TBOP),
HRO, Calicut,
Residing at Uthradam,
Naduvattom Vayanasala,
Beypore North PO,
Kozhikode – 673 015.

....Applicant

(By Advocate Mr.Martin G. Thottan)

V e r s u s

1. The Director General of Post,
Dak Bhavan,
New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle,
Trivandrum-695 033.
3. The Superintendent of Posts,
RMS CT Division,
Calicut – 673 032.

....Respondents

(By Advocate Mr. P.G.Jayan, ACGSC for Respondents)

This application having been heard on 6th June, 2019, the Tribunal on
10th June, 2019 delivered the following :

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ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

The applicant is a retired Sorting Assistant, who retired while working as HRO , Calicut RMS under the respondents. He had been initially appointed under the Postal services as Mail Guard with effect from 30.10.1972 and then promoted to the cadre of Sorting Assistant with effect from 01.07.1979. He was the beneficiary of financial upgradation under Time Bound One Promotion (TBOP) on completion of 16 years of qualifying service in the grade, with effect from 12.09.1995. Having completed 26 years of service on 10.10.2005, the applicant claims that he became eligible for grant of pay scale equivalent to the pay scale of HSG-II as a benefit under BCR scheme.

2. Aggrieved by the denial of the benefits under the BCR scheme the applicant submitted several representations; Annexure A2 representation was rejected by the 3rd Respondent on the ground that the applicant completed 26 years of service in the cadre only on 10.10.2005 and as per the scheme the crucial date for promotion under BCR is 1st January and 1st July. Respondents maintain that as the applicant was not in service as on 01.01.2006 , he is not entitled for benefits of BCR. A copy of the letter of 3rd respondent dated 28.10.2016 to this effect is produced as Annexure A3.

3. The reply statement has been filed by the respondents supporting the

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stand of the department indicated in Annexure A3. It is maintained that as per BCR provisions, the Department Promotion Committees are to be convened in January and July every year and BCR is to be granted on 1st January and 1st July. Since the applicant was not in service on 01.01.2006 he was not granted BCR.

4. Heard Shri Martin, learned Counsel for the applicant and Standing Counsel Shri P.G.Jayan appearing on behalf of the respondents. The issue whether the benefits under the BCR Scheme dated 11.10.1991 are to be granted from the date of completion of 26 years of satisfactory service or from the crucial dates of 1st January or 1st July, as the case may be, has been decided by the C.A.T, Lucknow Bench in A.L.Pal vs. U.O.I – 2002 (1) ATJ 298 and by the C.A.T., Mumbai Bench in K.G.Patil vs. U.O.I – 2003 (3) ATJ 594. It was held that the benefits of BCR Scheme is to be extended from the date the employee completes 26 years of service. Therefore the applicant argues that he is entitled to the benefits with effect from 10.10.2005 when he completed 26 years of service. His juniors have already been granted the benefits of the BCR.

5. The applicant had retired from service on 31.10.2005. Although it is conceded by the respondents in the written statement that after deducting non-qualifying service, the applicant did indeed complete 26 years of qualifying service on 10.10.2005, the BCR review was due only with effect

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from 01.01.2006. Having retired from service on 31.10.2005 he was not eligible for the same.

6. The Hon'ble High Court of Gujarat while refusing to interfere with the orders of C.A.T., Ahmedabad Bench on the very same issue had ruled thus:

“We have considered the contentions of the learned counsel for the petitioners carefully. The Tribunal found that it is the intention of the Government to provide benefit of promotion under BCR Scheme with effect from the date the employee completes 26 years of service, provided he is otherwise found fit and the crucial date as prescribed in para-8 of the aforesaid Scheme is the only date on which the department is required to review the cases of such employees who would be completing or have completed 26 years of service on the crucial dates. The Tribunal has also found that if the contention of the petitioners is considered to be genuine, then it would amount to discrimination against the employee themselves as each one of them would be competing 26 years of service on different dates which would not be the intention of the Scheme. We have also found the intention in para 2 of the BCR Scheme relevant part of which is reproduced as under:

“However, with a view to providing relief to the employees, the Government have accepted the need for Biennial Cadre Review i.e. (once in two years) under which the incumbents of existing posts would be enabled to draw pay in higher scales on completion of 26 years of service, not only for providing promotional opportunities for the staff concerned but also on the basis of functional justification.....”

BCR Scheme does not provide the exact date from which the employees would be entitled for benefit either from the date on which they complete 26 years of service or from the date on which the review is held. One view has already been taken by the Tribunal and that view does not appear to be patently illegal or irrational to this Court. Hence, this court does not think it proper to exercise its extraordinary discretionary jurisdiction under Article 226 of the Constitution. After going through the material on record and the submissions of the learned counsel for the parties, we find that the Tribunal has not committed any error and as such, we do not find any good reason for interference with the impugned order

7. The issue is appropriately addressed in the various judgments referred to. There is no ground for denying the applicant the benefit that he has sought. Annexure A3 is set aside. Appropriate order conferring the benefits

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prayed for are to be issued by the respondents within two months from the date of receipt of copy of this order. OA is disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00701/2017

- 1. Annexure A1:** True copy of the scheme of Biennial Cadre Review dated 11.10.1991 issued by the Department of Posts.
 - 2. Annexure A2:** True copy of the representation submitted by the applicant dated 24.10.2016.
 - 3. Annexure A3:** True copy of the Letter bearing No.B1/133/Dlgs dated 28.10.2016 issued by the third respondent.
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