

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL****CALCUTTA BENCH**

An Application u/s 19 of the Administrative Tribunal Act, 1985.

ORIGINAL APPLICATION NO. 350 / 64 OF 2016

1. Ashok Kumar Dutta, aged about 54 years, son of Late Bhabani Prasad Dutta, working as P.A./SBCO posted at Serampore H.O., residing at 15-A, Chakraborty Lane, Srirampore South Hooghly, Pin - 712201.

2. Smt. Ratna Bhattacharjee (Sarkar), aged about 50 years, son of Late Shibendra Nath Bhattacharjee working as P.A. / SBCO posted at Midnapore H.O., residing at B-1/202, Bally Tower, 5, Sricharan Sarani, P.O. Bally, District - Howrah, Pin - 711201.

3. Manoj Banerjee, about 52 years son of Late Sourendra Banerjee, working as P.A. / SBCO posted at Raniganj H.O., residing at Satyajit Nagar, Near B.C. College, Asansol

Four, District : Burdwan, Pin -
713304.

.....Applicants

--Versus--

1. Union of India, through the
Secretary to the Govt. of India,
Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi - 110116.

2. The Director General of Posts,
Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi - 110006.

3. The Chief Postmaster General,
West Bengal Circle, Yogayog
Bhawan, C.R. Avenue, Kolkata -
700012.

4. The Post Master General,
Kolkata Region, Yogayog Bhawan,
C.R. Avenue, Kolkata - 700012.

..... Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/64/2016

Date of Order: 17.7.19.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ashis Kumar Dutta & 2 Ors. Vs. UOI & Ors.

For the Applicant(s): Mr. P.Sanyal & Mr. K.Chakraborty, Counsel

For the Respondent(s): Mr. B.P.Manna, Counsel

ORDER

Bidisha Banerjee, Member (J):

Ld. Counsels were heard and materials on record were perused.

2. In this O.A. the applicants have sought for the following reliefs:

"a) An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 to move this application jointly.

b) An order directing the respondent to grant the benefits under TBOP and BCR Scheme to the applicants herein with effect from 01.8.1991 and 1.7.1999 respectively, at par with Nikhil Ranjan Biswas and as have been granted to the similarly circumstanced employees namely, applicants of O.A.No. 1108 of 2008 following the order dated 29.08.2013 passed by the Hon'ble Tribunal and upheld by the Hon'ble High Court at Calcutta by the order and judgement dated 8.7.2014 passed in WPCT No. 104 of 2014, who are seniors to Nikhil Ranjan Biswas with all consequential benefits including difference of pay and allowances within a period as to this Hon'ble Tribunal may seem fit and proper.

c) An order directing the respondents to produce all relevant records.

d) And other order or further order or orders as this Hon'ble Tribunal may deem fit and proper."

3. It transpires from the facts pleaded, relief claimed and records that the applicants have primarily sought for the benefit of the order passed by this Tribunal in O.A. No. 1108 of 2008, as upheld by the Hon'ble High Court in WPCT No. 104 of 2014, to claim seniority above Shri Nikhil Ranjan Biswas, as claimed by Shri Anup Kumar Mitra in O.A. No. 295/2017. As applicant's representations, submitted on different dates as contained in Annexure-A/7 to this O.A., have not been disposed of, Ld. Counsel for the applicants, repeatedly sought for a direction upon the Respondents for consideration and disposal of the representations and issuance of speaking order. We note that such a direction could have been issued at the outset, when the matter was nascent yet to be admitted and obviously before completion of pleadings.

4. Respondents have filed a reply wherein the seniority position of the applicants vis-à-vis Nikhil Ranjan Biswas has been depicted as under:

Sl. No.	Name of the Official	D.O.E. in the Department	Designation prior to 01.08.91	Seniority position in the first combined gradation list corrected up to 01.07.2002	Remarks
1.	Sri Ashis Kr. Dutta	13.03.85	LDC	207	
2.	Smt. Ratna Bhattacharjee (Sarkar)	12.08.91	LDC	258	
3.	Sri Manoj Banerjee	01.11.87	LDC	255	
4.	Sri Nikhil Ranjan Biswas	11.11.70	LDC	263	Trfd in W.B. Circle on 22.05.95 under Rule 38

A bare perusal of the chart exemplifies that the Nikhil Ranjan Biswas is way above the applicants in terms of date of entry or eligibility to TBOP/BCR.

5. In **A.K.Nigam v Sunil Misra, 1994 SCC (L&S) 539, Union of India v C.N.Poonnappan, 1996 SCC (L&S) 331**, the Hon'ble Supreme Court held that on transfer from one unit to another on compassionate ground an employee may be placed at the bottom of the seniority list, but the service rendered by him at the other unit, if regular service, has to be counted towards experience and eligibility for promotion in the new unit.

The above principle of counting of experience for the purpose of eligibility for promotion came up before the Hon'ble Supreme Court once again in **Scientific Adviser to the Raksha Mantri v V.M.Joseph, 1998 SCC (L&S) 1362**. In this case the respondent was a Storekeeper at Central Ordnance Depot, Pune from 27.4.1971 to 5.6.1977. On his prayer, he was transferred on compassionate ground to Cochin Depot on 6.6.1977 with bottom seniority. In the new office, a post of Senior Storekeeper was created but promotion to the post was given to the immediate senior to the respondent. The respondent successfully challenged the same when the Union of India filed the instant appeal. The plea of the Government was that respondent could complete the required 3 years regular service only subsequent to his transfer and therefore was not eligible. The Hon'ble Apex Court rejected the contention and settled the law thus:

"Even if an employee is transferred at his own request, from one place to another on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for

promotion cannot be confused with seniority as they are two different and distinct factors."

6. In **Renu Mallick v Union of India**, 1994 SCC (L&S) 570, case where the promotion rules for the post of Inspector provided for 5 years experience as U.D.C. or 13 years experience in the posts of L.D.C. and U.D.C. together with at least 2 years service in the post of U.D.C., it was held that there being no stipulation in the rules that the employee being eligible as per rules should be considered for promotion to the post of Inspector. In that case, the employee came on transfer "on her own request", therefore, her seniority in previous Collectorate was taken away for the purpose of her seniority in the new charge, but that had no relevance for judging her eligibility. It was held that seniority and eligibility are different concepts and her past service was also counted for the purpose of eligibility. The appellant having met the eligibility as per rules by rendering service of 5 years as U.D.C. and a total service of 13 years for computing the qualifying service the Court allowed the application.

7. Identical arguments have been advanced by the applicants in O.A.No. 295/2017 banking upon the Gradation List of 2007, which stood corrected later on. Having noted that the applicants therein entered into service long after Sri Nikhil Ranjan Biswas who was granted TBOP/BCR benefits upon due completion of 16 and 26 years of service, in accordance with the Scheme, and the applicants having failed to substantiate their claim that they stood on par with Sri Rabindra Nath Modak, applicant in O.A. No. 1108/2008, the O.A. stood rejected. Under similar circumstances, we feel that no relief can be granted to the present applicant. Accordingly, his claim fails. Respondents having disclosed the entire

facts, we find no reason to remand the matter back to the authorities for issuing a speaking order on the representation.

8. O.A. is, accordingly, dismissed without any order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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