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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1985.

O.A. NO. 350/ 295 / 2017

1. Anup Kumar Mitra, son of Late Alik Kumar Mitra, Postal Assistant Savings Bank Control Organisation (in short PA SBCO), presently posted at Central Processing Unit, Yogayog Bhawan, Kolkata, resident of Village + Post Office - Chandannagar, District: Nadia, Pin- 741 509.

2. Debaprasad Majumder, son of Late Sudhir Kumar Mazumder, Postal Assistant Savings Bank Control Organisation (in short PA SBCO), presently posted at Internal Checking Unit Savings Branch [in short ICO (SB)] Kolkata Region, resident of 'D/2 Thakurdas Banerjee Road, Post Office- Belgharia, Pin - 700 056.

3. Raghu Ranjan Das, son of Late Ajit Kumar Das, Postal Assistant Savings Bank Control Organisation (in short PA SBCO), presently posted at Internal Checking Unit Savings Branch [in short ICO (SB)], Yogayog Bhawan, resident of 45, Ramsita Ghat Street, Pioneer Place, 1st Floor, Flat No. 101, P.O. - Hooghly, Pin-712 232.

4. Prabir Kumar Dutta, son of Late Banku Behari Dutta, Postal Assistant Savings Bank Control Organisation(PA SBCO), presently posted at Kolkata GPO, resident of 56/1 Doctor Lane, Kolkata - 700 014.

5. Sambhu Nath Halder, son of Paritosh Kumar Halder, Postal Assistant Savings Bank Control Organisation(PA SBCO), presently posted at Kolkata GPO, resident of P.O. - Sultanpur, District - South 24-Parganas, Pin - 743 332.

6. Bidhan Chandra Mondal, son of
Panchanan Mondal, Postal Assistant
Savings Bank Control Organisation(PA
SBCO), presently posted at Kolkata GPO,
resident of Village - Dhanberia, Post Office
- Diamond Harbour, District : South 24
Parganas, Pin - 743 331.

7. Sasanka Sekhar Chatterjee, son of
Late Chandrakanta Chatterjee, Postal
Assistant Savings Bank Control
Organisation (PA SBCO), presently posted
at Srerampur Head Post Office, resident of
Royal Estd Society, M.M. Roy Road, P.O.
- Rajpur, District - South 24 Parganas,
Pin - 700 149.

8. Swapan Mitra, son of Late Prakash
Chandra Mitra, Postal Assistant Savings
Bank Control Organisation (PA SBCO),
presently posted at Howrah Head Post
Office, resident of 20/2, K.M. Sarani (5th

Lane), P.O. - Morepukur, Rishra District -
Hooghly, Pin- 712 250.

9. Pravanjan Maity, son of Late
Kalipada Maity, Postal Assistant Savings
Bank Control Organisation (PA SBCO),
presently posted at Midnapur Head Post
Office, resident of village - Durgapur, Post
Office- Diamond Harbour, District - East
Midnapur, Pin - 721 401.

10. Debasish Bandyopadhyay, son of
Late Alokanda Bandyopadhyay, Postal
Assistant Savings Bank Control
Organisation (PA SBCO), presently posted
at Ranaghat Head Post Office, resident of
Jogendra Moulick Lane, Krishnagar High
Street, District - Nadia, Pin - 741 101.

11. Tapas Kumar Ghosh, son of Late
Ramkrishna Ghosh, Postal Assistant
Savings Bank Control Organisation (PA
SBCO), presently posted at Arambag Head

Post Office, resident of Village + Post
Office: Akna District: Hooghly, Pin- 712
148.

... Applicants

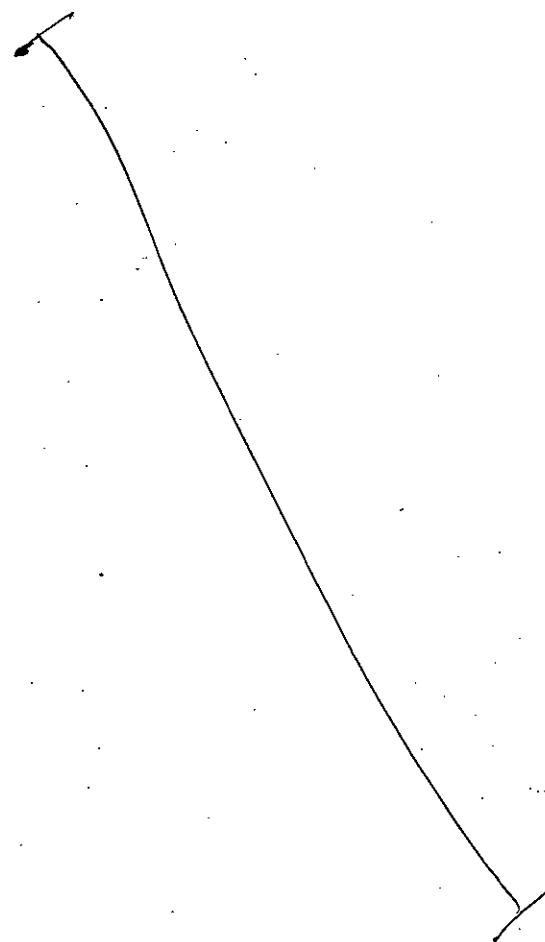
-VERSUS-

1. The Union of India, through the secretary to the Government of India, Ministry of Communication, department of Posts, Dak Bhawan, Parliament Street, New Delhi-110001.
2. The Director of Postal Services, South Bengal Region, Yagayog Bhawan, Kolkata-700012.
3. The Assistant Director of Postal Services (Staff, E & PN), Office of The Chief Postmaster General, Yogayog Bhawan, West Bengal Circle, Kolkata – 700 012.
3. The Chief Post-Master General, West Bengal Circle, Yagayog Bhawan, C.R. Avenue, Kolkata-700012.

4. The Post-Master General, South
Bengal Region, Yogayog Bhawan, Kolkata-
700012.

5. The Assistant Post-Master General
(Staff), Office of The Chief Post Master
Circle, Yogayog Bhawan, C.R.Avenue,
Kolkata- 700012.

.... Respondents.



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/295/2017

Date of Order: 11.7.19

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

Anup Kumar Mitra & 10 Ors. Vs. UOI & Ors.

For the Applicant(s): Mr. P. Adhikari, Counsel

For the Respondent(s): Ms. P. Goswami, 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) Leave may be granted to file the application jointly as the applicants have common interest in the cause of action in terms of Rule 4(V)(b) of the Central Administrative Tribunal (Procedure) Rules, 1987.

b) To issue order directing the Respondents Authorities to forthwith consider the case of the applicants for granting benefits of BCR scheme w.e.f. 01.01.1997 i.e. the date their immediate junior received the benefits of BCR scheme along with all consequential benefits.

c) To issue an order setting aside the impugned order dated 12.08.2016 being no. -SFB/Z-812/BCR/PA(SBCO)/2016 (Annexure 'A-6')

d) Any other order and/or orders as Your Lordships may deem fit and proper."

3. We note that the representation of one of the applicants, i.e. Shri Pravanjan Maity, seeking such benefit was examined by the competent authority and was disposed of by order dated 12.08.2016 issued by the Assistant Director of Postal Services (Staff, E&PN), O/o CPMG, West Bengal Circle, with the approval of the competent authority. The said order has been impugned in the present O.A. as Annexure-A/6 and is set out herein with supplied emphasis for clarity.

"The representation of Sri Pravanjan Maity dated nil has been examined and it is observed that

- 1) Sri Pravanjan Maity entered in the Department of Posts as LDC(SBCO) on 28.08.1981. He has prayed for financial up-gradation under BCR Scheme at par with Sri Nikhil Ranjan Biswas, erstwhile LDC(SBCO) before completion of required 26 years of regular service from the date of entry in the department.
- 2) Sri Nikhil Ranjan Biswas was appointed as LDC(SBCO) in the Department on 11.11.1970 at Dhubri HO in N.E.Circle and he was transferred to W.B.Circle on 22.05.1995 under Rule-38 of P&T manual Vol-IV. He was granted financial up-gradation under TBOP/BCR scheme w.e.f. 01.08.1991 and 01.01.1997 on completion of 16/26 years of service.
- 3) Sri Nikhil Ranjan Biswas and said applicant were erstwhile LDCs prior to 01.08.1991 and Sri Biswas is service senior to the applicant for more than 10(ten) years. Being same cadre officials, one official cannot claim financial benefits under BCR scheme at par with the service senior official. In view of that, the said applicant cannot claim to get financial benefits under BCR scheme at par with Sri Nikhil Kumar Biswas.
- 4) Sri Nikhil Ranjan Biswas was shown below the applicants in the gradation list corrected upto 01.07.2007 due to his transfer to W.B.Circle under Rule-38 of P&T manual Vol-IV which was considered on desiration for own convenience and without making any injury to the rights of the others.

This is issued with the approval of the competent authority."

A bare perusal of the speaking order dated 12.08.2016 extracted supra, demonstrates that the applicant, being emboldened by the orders passed by this Tribunal in O.A. No. 1108/2008 rendered on 29.08.2013 in Rabindra Nath Modak Vs. Union of India & Ors, has sought for the financial upgradation under BCR Scheme on par with one Nikhil Ranjan Biswas, erstwhile LDC (SBCO), on the ground that said Nikhil Ranjan Biswas stood below him in the gradation list of 2007 and was, as such, junior to him and if Nikhil Ranjan Biswas, a junior is allowed BCR benefits even without completing the required 26 years of regular service from the date of entry in the department, the applicant, who is senior to Biswas ought to be conferred with BCR benefits on par with Biswas.

4. Respondents have filed a detailed reply and have refuted the claim of the applicant that he is senior to Biswas. Reiterating the contents of the speaking order, the Respondents have depicted the seniority position of the applicants vis-à-vis the said junior, Nikhil Ranjan Biswas, in the following manner:

Sl. No.	Name of the Official	Date of entry in the deptt. (as per Gr. List as on 01.7.2007)	Designa-tion prior to 01.08.91	Position in the Gr. List corrected upto 01.7.2007	Remarks
1.	Anup Kumar Mitra (Applicant No.1)	03.07.90	LDC	202	

2.	Debaprasad Majumdar	29.04.87	LDC	174	
3.	Raghu Ranjan Das	03.03.85	LDC	163	
4.	Prabir Kumar Dutta	27.04.87	LDC	176	
5.	Sambhu Nath Halder	04.03.85	LDC	171	
6.	Bidhan Chandra Mondal	01.03.85	LDC	168	
7.	Sasanka Sekhar Chatterjee	06.08.91	LDC	214	
8.	Swapan Mitra	09.11.81	LDC	135	
9.	Pravanjan Maity	28.08.81	LDC	129	
10.	Debasish Bandyopadhyay	03.10.90	LDC	200	
11.	Tapas Kumar Ghosh	21.06.90	LDC	207	
12.	Nikhil Ranjan Biswas	11.11.70	LDC	220	Trfd in W.B.Circle on 22.5.95 under Rule-38 of P&T Manual Vol-IV

Respondents have categorically stated that all the 11 PA (SBCO) Officials, listed above, did not complete the required 16 and 26 years of service on the crucial date, i.e. 01.08.1991 and 01.01.1997. Nikhil Ranjan Biswas, who joined department on 11.11.1970 at Dhubri Head Office under N.E. Circle, was transferred to W.B. Circle as LDC (SBCO) on 22.05.1995 under Rule 38 of P&T, Vol. IV. He was granted financial upgradation under TBOP and BCR w.e.f. 01.08.1991 and 01.01.1997 on completion of 16 and 26 years of service respectively in terms of the circular and policy of the government in consonance with the TBOP/BCR Scheme. Although the applicant has claimed that Nikhil Ranjan Biswas is junior to the applicant, citing the Gradation List as annexed at Annexure-A/4 to the O.A., Respondents have categorically denied that the said

gradation list was maintained and is continuing till this date. Respondents have submitted that Nikhil Ranjan Biswas is actually service senior to the applicants and, therefore, the applicants cannot claim financial benefits under TBOP/BCR on par with Sri Nikhil Ranjan Biswas. Accordingly, the Respondents have justified rejection of the prayer of the applicant for the benefits as claimed for in the representation.

5. Ld. Counsel for the applicants, to maintain his challenge, would place the judgment of this Tribunal in O.A. 1108/2008 (referred to in speaking order) wherein despite non-completion of 16 and 26 years of service in LDC, the applicant, Rabindra Nath Modak, was directed to be granted TBOP/BCR benefits. The Tribunal having found that the said applicant figured above one Aruna Banerjee and Uma Biswas, who were granted TBOP/BCR on par with their juniors, directed the authorities to grant identical benefits as granted to the applicant in O.A. 1148/2003 w.e.f. the date their juniors Aruna Banerjee and Uma Biswas, or whosoever it might be, were accorded TBOP/BPC benefits. The order of the Tribunal to the extent relevant and germane to the issue is extracted herein:

"We find that in the case of Aruna Banerjee, her past service in Rehabilitation Dept. was reckoned for computing 16 years for grant of TBOP&BCR. Similarly Uma Biswas who was from Telecom Dept. was accorded TBOP&BCR benefits by reckoning her past service in Telecom Dept. with service in Postal Dept. for TBOP&BCR.

We find that Shri Subrata Goswami & Ors., applicants in O.A. 1061 of 2008 were granted benefits at par with Aruna as they ranked senior to her.

12. We also find that probably Dwijen Chandra Sarkar was identically circumstanced as Aruna Banerjee & Uma Biswas, where as the present applicants are ones who already figure at Srl. No.5 onwards in the gradation list above Aruna Banerjee and Uma Biswas, and pray for grant of TBOP&BCR at par with the said juniors. The applicants in O.A. 1148 of 2003 had also asked for a similar relief as Smt. Biswas was found junior to them.

13. Having observed as above we hold that the present applicants are similarly circumstanced to the applicants in O.A. 1148 of 2003. The circular dated 17.5.2000 which debars their consideration is already declared as invalid in Lilamma Jacob (supra). The decision rendered in Lilamma Jacob was never discussed while the decisions, as banked upon by the respondents, were rendered or else the Bench would not have ventured to take a view contrary to the Hon'ble Apex Court.

14. Having held as above we direct the authorities to grant identical benefits as granted to the applicants in O.A. 1148 of 2003 w.e.f. the date their juniors Aruna Banerjee or Uma Biswas or whosoever it might be, have been accorded TBOP&BCR benefits, with arrears from due dates within three months from the date of communication of this order."

6. Ld. Counsel for the Respondents denied the applicability of the said ratio to the present case on the ground that the present applicant did not stand on the same footing as Rabindra Nath Modak, which we also note upon examination of the pleadings and records supplied by the parties.

7. Ld. Counsel for the applicants, in a bid to torpedo and pulverise the arguments of Respondents, would strenuously urge that the Nikhil Ranjan Biswas having come to West Bengal Circle on his own request was taken in on

bottom seniority and, therefore, his date of appointment in West Bengal Circle fell on 22.05.1995 whereas that of the applicant was 03.07.1990. Therefore, applicant was way ahead of the said Biswas in terms of seniority.

8. We note that an employee, on his transfer at his own request, loses seniority and is taken in on bottom seniority at the place of transfer but that does not wipe out his period of service in the erstwhile place. His eligibility and suitability in terms of seniority in past position counts. There is an ocean of difference between weightage given for years of service rendered by an employee for the purpose of promotion and weightage given for the purpose of seniority in a grade. While the first concerns eligibility for promotion to a higher post, the second concerns seniority for being considered for promotion to a higher post.

9. In **A.K.Nigam v Sunil Misra, 1994 SCC (L&S) 539, Union of India v C.N.Poonnappan, 1996 SCC (L&S) 331**, 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."

10. 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.

11. The applicant may be senior to Biswas in the grade due to assignment of bottom seniority to Biswas but in terms of eligibility for promotion to higher post/conferment of higher grade, that requires completion of service of a particular length, Biswas is way ahead of the applicant.

12. In the aforesaid backdrop, we hold that Nikhil Ranjan Biswas having served the department since 11.11.1970 was rightly accorded TBOP/BCR benefits upon completion of 16/26 years of service from date of entry. Such being the position, we are unable to concur with the view expressed by the applicant to justify his claim that Nikhil Ranjan Biswas was in any way junior to him in terms of date of appointment. Therefore, the claim of the applicant, Sri Anup Kumar Mitra, fails and the O.A. is, accordingly, dismissed. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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