

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1088/2003

NEW DELHI THIS THE 7th DAY OF ^{February} ~~JANUARY~~ 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Sh. N P Sarin S/o L. Shri G P Sarin.
2. Sh. S R Bassi S/o Sh. Chuhra Ram,
3. Sh. S. Vasudevan S/o Shankaran
4. Sh. N S Sharma S/o Sunehria Lal Sharma
5. Smt. Saroj Bhasin W/o S K Bhasin

(All are working as Section Supervisors in HSG-II in the Office of CPMG Delhi Circle and their address for Service of Notices is C/o Shri Sant Lal Advocate, CAT Bar Room, New Delhi – 110001).

.....Applicants

(By Shri Sant Lal, Advocate)

VERSUS

1. Union of India, through the Secretary
Ministry of Communications,
Deptt. Of Posts, Dak Bhawan, New Delhi 110001
2. The Chief Postmaster General,
Delhi Circle, Meghdoot Bhawan, New Delhi-110001

.....Respondents

(By Shri B K Barera, Advocate)

ORDER

BY HON'BLE SHRI S A SINGH, MEMBER (A)

The applicants had earlier filed OA No. 2338/2002, which had been disposed of by the order dated 10.9.2002, directing the respondents to consider the representation of the applicants and pass a speaking order. In compliance with this direction the respondents passed order dated 28.1.2003, rejecting the claim of the applicants for restoration of benefit of HSG-I grade by upgrading the posts held by them. Aggrieved by this they have filed the present OA seeking following reliefs:

- i) to quash the impugned orders dated 3.5.2002, 27.5.2002, 18.4.2002 and 28.1.2003;
- ii) to direct the respondents to restore and re-identify the HSG-II posts of circle Office for up gradation to HSG-I as already done vide order dated 9.10.2001 on the basis of scheme of up gradation of 10% BCR HSG-II officials to HSG-I; and place the applicants in HSG-I grade as ordered earlier vide Memo. Dated 14.1.2002 ; and
- iii) to grant all consequential benefits.

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2. The applicants are Section Supervisors in HSG-II in the office of CPMG Delhi Circle of the Department of Posts. In the Department of Posts the basic cadre in Group 'C' is called Postal Assistants / Sorting Assistant (PA/SA) in the pay scale of Rs. 4000 – 6000/- and promotional avenues of PA/SA are as under:

PA/SA Time Scale (Rs.4000 – 6000/-)	Lower Selection Grade (Rs.4500 – 7000/-)
PA/SA LSG (4500 – 7000/-)	Higher Selection Grade-II (5000 – 8000/-)
Higher Selection Grade-II (Rs.5000 – 8000/-)	Higher Selection Grade-I (Rs.6500 – 10500/-)

3. Prior to 1983, the number of LSG, HSG-II and HSG-I norm based posts were few in comparison to number of PA/SA basic cadre posts, resulting in stagnation. To alleviate this situation, the erstwhile Department of Posts & Telegraphs introduced w.e.f. 30.11.1983 'One Time Bound Promotion Scheme (TBOP) for Group 'C' and Group 'D' officials. Under this Time Bound Promotion Scheme officials were placed after completion of 16 years regular service in the basic cadre in the next higher pay scale in the hierarchy without enhancement in their responsibilities. Subsequently another scheme called Biennial Cadre Review (BCR) was introduced which placed those group 'C' and 'D' staff who had been given the benefit of TBOP Scheme in the next higher scale after completion of 16 years of regular service. Persons placed under TBOP Schemes continued to work on the same post without any change in their duties and responsibilities. Hence there came into existences two types of employees - those who had been promoted against norm based supervisory posts and those who were placed as per TBOP and BCR Schemes i.e. they continued to work in their original posts.

4. In 1993 there was a demand by the staff Federation for up gradation of 10% of the posts held by BCR officials to HSG-I. Based on information collected from all the circles it was found that in 1993 there were 23297 BCR officials. A proposal for up gradation of 10% of these posts (viz. 2321 posts) was taken up with the Ministry of Finance. In 1995 Min. of Finance approved up gradation of 699 HSG-II posts to HSG-I. These 699 posts included the existing 491 norm based HSG-I posts. Consequently 208 HSG-II posts were upgraded to HSG-I vide order dated 6.11.95. Thus in 1995 the number of HSG-I posts were approximately 3% of the total BCR level officials available in 1993.

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5. The Staff Federation pressed the respondents to consider up gradation of additional 1622 posts so as to bring the total number of HSG-I posts to 10% of the existing BCR/HSG-II posts existing in 1993. A proposal for upgrading these posts on functional basis was sent to the Ministry of Finance. After receiving the approval of MOF the respondents issued orders on 30.3.2001 for up gradation of 1622 posts. These posts were originally distributed on the basis of BCR official in each circle. However, respondents vide their order dated 18.6.2001 kept in abeyance this order of 30.3.2001 and issued revised orders for up gradation the posts on functional basis. This up gradation involved upgrading 1429 HSG-II norms based posts and making up the difference between the sanction of 1622 and available 1429 HSG-I posts by up gradation of 193 LSG posts to HSG-I, on functional basis. Delhi Circle was given an allocation of 68 posts by revised orders of 16.7.2001 after taking into account number of HSG-II norms based posts available in the Circle. In the original order of 30.3.2001 only 28 posts had been allocated to Delhi circle. There was thus an increase of 40 posts in Delhi circle.

6. All the existing HSG-II norms based posts were upgraded to HSG-I by these orders. In addition 2356 LSG posts were converted to HSG-II on functional basis to maintain a ratio of 1:1 between HSG-I and its feeder cadre of HSG-II, for future promotions vide order 31.7.2001. However, because the number of posts upgraded in Delhi circle had been increased from 28 to 68, no LSG posts were allocated to this circle for upgradation.

7. The applicants were promoted to HSG-I against the newly upgraded posts, on ad hoc basis vide memo dated 14.1.2002, subject to the outcome of OA No. 2960/2002, filed by one Shri I D Sharma & Others. Subsequently, respondents issued impugned order dated 27.5.2002 reverting the applicants to the substantive grade of HSG-II. The applicants aggrieved by this filed the present OA seeking the reliefs mentioned above. The main ground of the applicants for seeking the relief is that the respondent No. 1 had issued a letter dated 16.7.2001 for up gradation of 193 LSG posts to HSG-I directly and at the same time the applicants who were already working in circle office Wing of the Delhi Circle in HSG-II grade (which had been upgraded to HSG-I vide respondents order dated 14.1.2002 under the 10% promotion scheme) had been downgraded to HSG-II thus

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they suffered great injustice and discrimination. ⁻⁴⁻ Moreover, this had been done without any Show Cause Notice and without an opportunity of hearing.

8. The respondents have contested the pleadings of the applicant stating that the approval of the competent authority for upgrading of 1622 posts to HSG-I was on functional basis and as number of HSG-II norms based posts were only 1429. 193 LSG posts were upgraded to HSG-I on functional basis to make up the difference. The initial orders dated 30.3.2001 issued by the respondents for upgrading posts to HSG-I were on the basis of number of BCR official in the circles. This was erroneous as the approval was for up gradation on functional basis. Hence the order was held in abeyance and revised orders were issued on 16.7.2001, rectifying the mistake.

9. For purpose of promotion parity between HSG-I and HSG-II was maintained at the level of 1:1 by converting 2356 LSG posts to HSG-II, vide order dated 31.7.2001.

10. The correct sequence for carrying these orders was to first upgrade HSG-II norms based posts to HSG-I and then convert required number of LSG posts to HSG-II for maintaining parity. In Delhi Circle first LSG posts were converted to HSG-II resulting in the present controversy. Clarification at Srl No. 1 was issued by Dte. Posts No. 22-1/89 PER (Vol. II) Pt. Dated 14.4.2002 and the mistake was corrected by reverting the applicants to their substantive grades.

11. We have heard the counsel for the parties and have gone through the records and files made available to us. It is not denied by the respondents that the applicants were promoted vide order dated 14.1.2002 on purely temporary and ad hoc basis to HSG-I, against up gradation of 8 HSG-II circle posts to HSG-I. It is also not denied by the respondents that 193 LSG posts were converted to HSG-I. The grievance of the applicants is that they should not have been reverted as they had already been promoted to HSG-I vide order dated 14.1.2002 and they cannot be reverted to their substantive grade when LSG posts are being upgraded at the same time. They are also aggrieved that posts for up gradation identified on the basis of scheme for up gradation of 10% BCR, HSG-II, officials to HSG-I have been changed to upgradation of posts on functional basis.

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12. It is not in controversy that the⁻⁵⁻ motivation for up gradation of HSG-II to HSG-I has arisen from the demand of the staff federation for up grading of 10% BCR / HSG-II officials. The averments of the respondents are that though the initial proposal was for such an upgradation, however, the approval of the competent authority was for up gradation on functional basis. Hence initial order of identification of posts on the basis of BCR officials had to be revised to upgradation of posts on functional basis.

13. We have gone through the records made available to us by the respondents and we find that though the initial proposal as per the demand of the staff federation for upgrading of 10% BCR/HSG-II posts, however, during the various discussions on file the final approval was for upgrading on functional basis..

14. As a Tribunal we cannot act as an Appellate Court and in a judicial review we can only go into the process of decision making. We have found nothing objectionable in the manner the decision to upgrade on functional basis was arrived at and the applicants have also not been able to show that the process was perverse, such as to cause us to interfere in setting right a wrong.

15. The apex court has held in the case of State of Haryana and Others Vs Ram Kumar Mann (SC SLJ 1997 (2) SC 257) that "wrong decision by the Government does not give right to enforce wrong order". In the case of Mahadev Gorai Insurance Inspector Vs Employees State Insurance Corporation (SLJ 1999 (2) CAT 90) the Hon'ble Tribunal has held that "Government can correct its own mistake and that mistake shall not be allowed to perpetuate". We therefore, find that though the motivation may have been the demand of Staff Federation for upgrading 10% of BCR/HSG-II posts but the decision of the Government was to upgrade equivalent number of posts on functional basis. Clearly the order dated 30.3.2001 was an error and it was rectified vide revised order dated 16.7.2001. The law laid down by the apex court in above referred case give government right to rectify a mistake and thus we find no infirmity in the action of the respondents, in this respect.

16. We now take up the question of the number of posts to be upgraded in the Delhi circle. This is an issue which is within the purview of the respondents and in a judicial review we cannot go into this unless it is shown to us that there is a wrong


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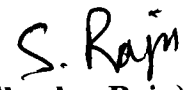
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which needs to be set right. The applicants have not been able to show any person junior to them who had stolen a march over them because of the revised allocation of posts by the respondents. We therefore, find no merit in this contention also.

17. In view of the foregoing the OA is without merit and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

Patwal/