

(2013) 05 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 63901 of 2012 (S-CAT)

The Senior Superintendent of Post Offices, The Chief
Postmaster General, The Postmaster General and The Union
of India

APPELLANT

Vs

S.C. Ankolekar

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Citation : (2013) 05 KAR CK 0020

Hon'ble Judges : N.K. Patil, J;B. Manohar, J

Bench : Division Bench

Advocate : M.B. Kanavi, for the Appellant; Ramesh I. Zirali, for the Respondent

Judgement

N.K. Patil, J.—In this petition, the respondents-petitioners are questioning the legality and validity of the order dated 13.3.2012 passed by the Central Administrative Tribunal, Bangalore Bench, in OA No. 18/2010 produced at Annexure-A, wherein, the Tribunal has allowed the application filed by the applicant-respondent. The brief facts of the case are: the applicant-respondent questioning the correctness of the impugned communication dated 30.12.2008 bearing No. B-6/19 vide Annexure-A4 issued by the first respondent/first petitioner and also seeking a direction to the first respondent/first petitioner to consider his case for BCR Grade III and grant the BCR Grade III from the date on which he completed 26 years of service (1/7/2007) with all consequential benefits while quashing the impugned letter bearing No. B-6/19 dated 30.12.2008 issued by the first respondent/first petitioner as arbitrary, discriminatory and void and consequently to direct the first respondent/first petitioner to recast the retirement benefits from 30.9.2007 and draw the benefits, has filed an application before the Central Administrative Tribunal, Bangalore Bench, Bangalore in OA No. 18/2010, contending that, he was initially selected and appointed as Postal Assistant w.e.f. 1.7.1981, his services are without any blemish and he belongs to Scheduled Caste. The respondents/petitioners introduced the TBOP Scheme, which is to be effected on completion of

16 years of service in case of OC candidates and 12 years in case of SC/ST candidates in the event of short fall vacancy. Further, the respondents/petitioners introduced the BCR scheme, BCR Grade-III is to be effected on completion of 26 years of service in case of OC candidates and 20 years of service in case of SC/ST candidates in the event of short fall vacancy and in otherwords, if there is no short fall vacancy, SC/ST candidates would get TBOP (on completion of 16 years) and BCR Grade-III (or. completion of 26 years) and 10% of the BCR would be granted as BCR Grade-IV. In pursuance of the TBOP scheme, he was promoted as TBOP in the scale of Rs. 4500-125-7000 from 7.7.1997. Further, it is contended that, in pursuance of the scheme introduced by the competent authority of the respondents/petitioners and as he has served and completed his 26 years of service as on 1.7.2007, he is entitled for promotion as BCR Grade-III on 1.7.2007 and while he was working as in charge SPM retired from service on attaining superannuation w.e.f. 30.9.2007. Thereafter, first respondent/first petitioner has issued a memo dated 7.9.2007 stating that he is PA TBOP. Immediately, on receipt of the said memo, he submitted his representation on 12.12.2008 seeking BCR Grade III Promotion vide Annexure-A3. In response to the said representation, first respondent/first petitioner, without considering his case and without any justification, has issued a reply on 30.12.2008 vide Annexure-A4) and prayed to allow the said application.

2. The said matter had come up for consideration before the Tribunal, which in turn, after hearing the learned counsel for both the parties and after perusing the materials available on record, has allowed the said application granting the prayer by directing the first respondent/first petitioner to consider the case for BCR w.e.f. 1.7.2007 with all consequential benefits, if necessary by conducting a review DPC and quashed the order impugned therein. Further, the Tribunal has granted 90 days time to the respondents/petitioners from the date of the receipt of the copy of the said order to conduct and review of the case of the applicant regarding grant of BCR. Being aggrieved by the said order, the respondents/petitioners have presented this petition seeking the reliefs as stated supra.

3. We have heard learned counsel appearing for the petitioners and learned counsel appearing for the respondent-applicant and perused the material available on record.

4. After hearing the learned counsel for both the parties and after perusing the order impugned before the Tribunal in OA No. 18/2010 which is produced along with the writ petition at ink page No. 28, it emerges that, the representation submitted by the applicant/respondent has disposed of by the first petitioner/first respondent, unilaterally, stating that on examining the provisions contained in the rulings on the subject and as per the existing rulings on the subject, unlike financial up gradation under TBOP, there is no provisions to give BCR from the actual date of completion of 26 years of qualifying service. Further, it is stated that, BCR will be given only on 1st January and 1st July of every year and the applicant has not completed 26 years of qualifying service as on 1.7.2007 and he

was not in service as on 1.1.2008 and therefore, financial up gradation under BCR could not be given to him. It is crystal clear from the contents of Annexure-A4 that, the representation given by the applicant has been disposed of exparte without affording reasonable opportunity of hearing to the respondent-applicant and without following the principles of natural justice. Therefore, the Tribunal is justified in quashing the Annexure-A4, but erred in issuing a positive direction to the first petitioner/first respondent to consider the case for BCR w.e.f. 1.7.2007 with all consequential benefits, if necessary by conducting a review DPC. Therefore, after perusal of Annexure-A4 issued by the first respondent/first petitioner, we are of the considered view that, the said Annexure-A4 has been issued by the first respondent/first petitioner in violation of the principles of natural justice and therefore, at any stretch of imagination the said communication cannot be sustained and is liable to be set aside and the matter requires reconsideration by the competent authority. Taking all these factors into consideration and without expressing any opinion on the merits and demerits of this case, it would suffice for this Court to issue appropriate direction to both the parties. In the light of the facts and circumstances of the case as stated above, the writ petition filed by petitioners is allowed in part. Quashing of the communication dated 30.12.2008 bearing No. B6/19 vide Annexure-A4 by the Tribunal is hereby confirmed. However, the consequential direction issued by the Tribunal is hereby set aside.

The matter stands remitted back to 2nd petitioner/2nd respondent, to reconsider the same and pass appropriate orders, in accordance with law, and decide the same, after affording reasonable opportunity of hearing to the petitioners and respondent, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this order.