

(2013) 05 DEL CK 0447
In the Delhi High Court
Case No : W.P. (C) 6270/2007

Union of India and Others

APPELLANT

Vs

Shri Kishan and Another

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0447

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Heard learned counsel for the parties. It is not in dispute that the Post and Telegraph Department under the Ministry of Communication had introduced a "Time Bound One Promotion Scheme" as also a biennial cadre review scheme on December 17, 1983 as per which officers having rendered 16 years service were entitled to be placed in the next higher grade provided satisfactory service was rendered. Further, on rendering 10 more years service i.e. 26 years service in all, they were entitled to be placed in the next higher grade provided service rendered was satisfactory.

2. On February 08, 1996 an office order was issued introducing, what is commonly called the next below rule. The office order, inter-alia, directed as under:-

2. The case has been examined in consultation with the Ministry of Finance, Department of Expenditure. It has now been decided that all the officials, such as, UDCs in the Circle Office and SBCO, LSG (both 1/3rd and 2/3rd). P.O. & R.M.S. Accountants, whose seniority was adversely affected by implementation of GSR Scheme placing their juniors in the next higher scale of pay will now be considered for next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. This will, however, not be applicable to the officials who are senior to those officials, brought on transfer under Rule-38,

P & T Vol. IV and are placed in the next higher scale of pay by virtue of length of service.

3. Suffice would it be to state that as per the office order dated February 08, 1996, where, under the "Time Bound One Promotion Scheme" a junior person was placed in the next higher scale of pay, the senior person who may not have rendered the requisite length of service also became entitled to be placed in the next higher scale but on being appraised for having rendered satisfactory service.

4. The office order dated February 08, 1996 was modified on May 17, 2000. The said office memorandum, vide paragraph 2, took away the right conferred upon a senior officer as per paragraph 2 of the office memorandum dated February 08, 1996.

5. It was in the aforesaid legal position that the respondent filed an Original Application before the Tribunal in paragraph 4.6 whereof he pleaded as under:-

4.6 That the applicant was initially allowed TBOP with effect from 18-11-1993 and Respondent No. 5 with effect from 21-11-93 but subsequently the Respondent No. 5 was allowed promotion from 1-8-91, along with several others from the date one junior Shri Puttu Lal was allowed promotion in TBOP Scheme w.e.f. 1-8-91. A copy of the Memo dated 1-4-97 is annexed as Annexure A-2, but negligently and illegally the applicant was not allowed promotion (stepping up) from 1-8-91.

6. Responding to the averments made in para 4.6 of the original application, the writ petitioners responded as under:-

4.6 That the contents of the para No. 4.6 of the O.A. are partly admitted. It is submitted that the applicant was initially allowed T.B.O.P. w.e.f. 18.11.1993 and the respondent No. 5 w.e.f. 19.11.1993. It is further submitted that the Directorate General has issued modification in T.B.O.P./B.C.R. Scheme vide Directorate Communication No. 22-5/95-PE.I dated 8.2.1996 vide which the Pay Party was given to a senior official from the date from which his/her juniors were granted the Financial Upgradation. It is further submitted that many officials were granted the financial upgradation including the respondent No. 5 but the name of the applicant was omitted and as such his name was not considered for upgradation. In the meanwhile, the Directorate has withdrawn the so-called modified scheme vide letter No. 22-6/2000-PE.I dated 17.5.2000. Therefore, the applicant could not be given the benefit under T.B.O.P. Scheme or Next Higher Grade at par with his juniors. The copy of the same is enclosed herewith as ANNEXURE B-3.

7. But before that, in the preliminary submissions, vide para D, writ petitioners admitted as under:-

D) That the name of the applicant was omitted in the D.P.Cs. in the year 1997 and onwards.

8. From the pleadings of the petitioner it is apparent that the Department granted benefit of "Time Bound One Promotion" to the respondent on November 18, 1993 and to Ravi Shankar Shukla, a person admittedly junior to the respondent on November 19, 1993. But later on granted benefit of the "Time Bound Promotion" to said Ravi Shankar Shukla from an anterior date i.e. August 01, 1991. The reason why initially, petitioner and Sh. Ravi Shankar Shukla, were given benefit in the year 1993 was that both of them had joined service as an LDC on November 18, 1977 and thus 16 years service was completed as of November, 1993.

9. But, as a result of the promulgation of the office order dated February 08, 1996, since a person junior to both was granted benefit of time bound one promotion with effect from August 01, 1991, the person being Puttu Lal, to Ravi Shankar Shukla benefit was granted by making his one time bound promotion effective, under the order dated February 08, 1996 to August 01, 1991. But as regards the respondent, benefit was not accorded. The reason is the one pleading in paragraph "D" of the preliminary submissions to the reply filed to the original application. He was not even considered.

10. Suffice would it be for us to note that as long as the office order dated February 08, 1996 existed, till it was superseded by the office order May 17, 2000, benefit had to flow to all those who were entitled to the same in terms of paragraph 2 of the office order dated February 08, 1996.

11. This is the signature tune of the song sung by the Tribunal as per the decision which has been impugned before us, albeit with a reliance upon some case law which is wholly inapplicable. But in the core, there is a melody in the song sung by the Tribunal and thus we dismiss the writ petition but without any orders as to costs.