

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of hearing & Order: January 06, 2015.

+ **W.P.(C) 5/2015 & CM APPL. No.15/2015 (stay) & CM APP
16/2015 (exemption)**

UNION OF INDIA & ORS. Petitioners
Through: Ms. Prabha Sharma, Proxy
Counsel for Mr. Hilal Haider, Sr.
Gov. Counsel
versus

JAWAHAR SINGH Respondent
Through: Mr. M.K. Bhardwaj, Advocate

+ **W.P.(C) 10/2015 & CM APPL. No.23/2015 (stay) CM No.
24/2015 (exemption)**

UNION OF INDIA & ORS. Petitioners
Through: Ms. Prabha Sharma, Proxy
Counsel for Mr. Hilal Haider, Sr.
Gov. Counsel
versus

JAWAHAR SINGH Respondent
Through: Mr. M.K. Bhardwaj, Advocate

**CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S.MEHTA**

KAILASH GAMBHIR, J. (ORAL)

CAVEAT Nos.2 & 3/2015

Since the respondent is represented through a counsel, therefore,
the caveats stand discharged.

CM APPL No. 16/2015 (Exemption) in W.P.(C) 5/2015
CM APPL No. 24/2015 (Exemption) in W.P.(C) 10/2015

Exemptions allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 5/2015 & CM No. 15/2015 (Stay)
W.P.(C) 10/2015 & CM No. 23/2015 (Stay)

The Writ Petition (C) No. 5/2015 has been filed by the petitioner/ Union of India against the order dated 28.08.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as 'CAT, New Delhi'*) thereby allowing the Original Application (*in short 'OA'*) filed by the respondent and the Writ Petition (C) No. 10/2015 has been filed by the petitioners/ Union of India against the same order dated 28.08.2014 whereby a direction was given to these petitioners to give effect to the promotion order dated 05.08.2011 from the same date itself with all consequential benefits.

We have heard Ms. Prabha Sharma, the learned counsel for the petitioners and Mr. M.K. Bhardwaj, Advocate who appears on advance notice on behalf of the respondent.

At the stage of preliminary hearing, we find that both these writ petitions preferred by the petitioners/Union of India are devoid of merit warranting no interference in the well reasoned order passed by the W.P.(C) 5/2015 & W.P.(C) 10/2015

learned CAT, New Delhi.

The little background of facts which led to the filing of two separate OA's by the respondent would be necessary to appreciate the nature of the controversy. In the OA filed by the respondent before the Allahabad Bench, which was later on transferred to the CAT, New Delhi and registered as OA No.1779/2014, the grievance raised by the respondent was against the order dated 20/23.07.2012 wherein by one stroke, the petitioners had cancelled the notional promotion granted to the respondent in Lower Selection Grade (*in short 'LSG'*) (APM Account) Line with effect from 01.01.2002 and also the promotion granted to him in Higher Selection Grade-II (*in short 'HSG-II'*) cadre and further *ad hoc* promotion granted to him in HSG-I cadre with immediate effect.

The learned CAT, New Delhi although agreed with the stand of these petitioners that the promotion of the respondent to LSG (APM Account) Line was on the basis of Divisional Seniority and also the fact that if the respondent was not promoted as LSG (APM Account) Line w.e.f. 01.01.2002, he would not have got his promotion as HSG-II and HSG-I w.e.f. 09.01.2007 and 11.01.2008 respectively but at the same time found no justification in the decision of these petitioners to treat all

the aforesaid three promotions as irregular warranting cancellation with immediate effect. For better appreciation, the relevant paras of the order dated 28.08.2014 are reproduced as under:-

“11. We have heard the learned counsel for the Applicant Shri M.K. Bhardwaj and the learned counsel for the Respondents Shri Tanveer Ahmed. The factual position in this case is that the Applicant was initially appointed as a Postal Assistant with effect from 06.03.1984. In Postal Assistant (PA) cadre, there are two lines, namely, those who have qualified the Accountant Examination and placed in Accounts Line and those who have not passed the aforesaid Examination and still remain in the general line. The Applicant passed the PO&RMS Accountant Examination in the year 1992 and on that basis, he was appointed as PA (Accountant) w.e.f. 22.11.1992. The next promotional post for both categories is Lower Selection Grade (LSG). The PA (Accountants) were promoted to LSG (Accountants) on the basis of Circle level seniority but the general line PAs were promoted to LSG (General Line) at Divisional Level up to 17.05.2006. However, the Superintendent of Post Offices, Bijnore Division, vide his letter dated 13.12.2004, granted notional promotion to the Applicant to the post of LSG cadre in Accountants Line with effect from 01.01.2002 on the basis of his Divisional Seniority. As per rules, the officials promoted to LSG cadre are entitled for the further promotion to HSG-II cadre and then to HSG-I cadre. Accordingly, he was promoted to the post of HSG-II vide order dated 09.01.2007, vide order dated 11.01.2008 on the basis of Circle Seniority. Therefore, we agree with the Respondents that the promotion of the Applicant to LSG (Accountant Line) on the basis of Divisional Seniority was a mistake.

We also agree with the Respondents that if Applicant were not promoted as LSG (Accountant Line) w.e.f. 01.01.2002, he would not have got his promotion as HSG-II and HSG-I w.e.f. 09.01.2007 and 11.01.2008 respectively. But the fact of the matter is that it is after almost 9 years, the Respondents have suddenly served the show cause notice dated 02.06.2011 upon the Applicant stating that all the aforesaid promotions were irregular and, therefore, they are liable to be cancelled with immediate effect. Their contention is that since his first promotion as LSG (Accountant Line) with effect from 01.01.2002 itself was irregular, the subsequent two promotions to the cadre of HSG-II and HSG-I earned by him are also irregular. In our considered view, the aforesaid contention cannot be accepted in the facts and circumstances of the case. The Superintendent of Post Offices, Bijnore Division granted the notional promotion to the Applicant vide his letter dated 13.12.2004 based on DG(P) letter No.4-16/2002 SPB-II dated 12.11.2002 and the subsequent letter No.137-10/1996-SPB-II dated 28.01.2003. According to the aforesaid order dated 12.11.2002, the norm based LSG/HSG-II post may be filled up notionally in terms of the relevant Recruitment Rules from the year when the norms based promotions have not been carried out and promotion to the upgraded post in HSG-I could be made in accordance with the Recruitment Rules from amongst the formally appointed LSG-II with requisite three years actual/notional service, in the grade, as the case may be. By the subsequent order dated 28.01.2003, the Respondents have clarified that as LSG is a Divisional cadre, there is no need of preparing any Circle seniority list for promotion to LSG. Later, the cadre of LSG Accountants and APM (Account) was divisionalized at par with General Line LSG Officials. The said letter reads as under:-

The question of Divisionalization of the cadre of LSG Accountants/APM(A/C) at par with the General Lines LSG officials has been under consideration for sometime past. The matter has been examined in depth and now it has been decided to declare the LSG Accountants (APMs A/Cs) as a Divisional cadre at par with the LSG General Line officials with immediate effect.

Further, DG(P) letter No.9-3/94-SPB-II dated 08.06.1994 also states that the question of Divisionalization of the cadre of LSG Accountants/APM(A/C) at par with the General Lines LSG officials has been under consideration for sometime past it has been decided to declare the LSG Accountants (APMs A/Cs) as a Divisional cadre at par with the LSG General Line officials with immediate effect. But contention of the Respondents is that though Divisionalization of P.O. and RMS Accountant and APM (Accounts) cadre were issued vide Directorate New Delhi No.9-3/94-SPB-II dated 08.06.1994 yet it was clarified vide the subsequent letter of the Directorate No.9-3/94-SPB-II dated 13.02.1995 that the term Divisionalization as mentioned in Directorate letter dated 08.06.1994 related only to transfer liability and no other aspect of LSG Accountants cadre were changed. The Superintendent of Post Offices, Bijnore Division may not be aware of the said clarification dated 13.02.1995.

12. Even otherwise, the question is when an employee has been given three promotions in the service period of an employee and he has worked satisfactorily on those posts, is it justifiable to cancel those promotions at a belated stage particularly when there was admittedly neither any fraud nor any

concealment of facts nor any misrepresentation by the Applicant in securing all those three promotions. The Respondents have also no case that the Applicant is not qualified for holding those three promotional posts. Therefore, it is unfair that the Applicant be asked to work as PA (Accountant) or LSG (Accountant) after almost 14 years after he was promoted as LSG (Accountant) way back on 01.01.2002. Therefore, there is no question of withdrawing the promotions given to the Applicant as LSG (Accountant), HSG-II and HSG-I. Consequently, he is entitled to continue in the last promoted post of GSG-I on the sole consideration that he had been continuing in the promoted posts for quite a long time and it is not appropriate to revert him at this belated stage. However, his further promotions and other service benefits shall be based on his own right, i.e., on the basis of his seniority he would be entitled to. The aforesaid view is also supported by the Apex Courts judgment in Saroj Kumar Tyagi Vs. State of Uttar Pradesh 1988 (1) JT 2 wherein it has been held as under:-

2. When the matter was taken up for hearing some time back we had suggested to the counsel for the State of Uttar Pradesh that so far as the appellants are concerned the State should consider retaining them in the post of Supply inspector as they had already worked for a considerable period continuously in such posts notwithstanding the fact that by their respective seniority in their own right they may not be entitled to promotion. It is not disputed that a list of seniority had been drawn up on 1/4/1976 in the lower cadre of Head Clerk out of which promotional opportunity is available to the post of inspector of Supplies. We agree with the High court that in their own right these

appellants were not entitled to promotion and on the sole consideration that they have been in employment continuously in the higher post for several years, we do not propose to disturb their appointment as Inspectors of Supplies. It may be pointed out that appellant No.1 has, in the meantime, on the basis of his own merit and record, been promoted. Similarly, Prabhu Dayal who is appellant in Civil No. 116/86 had once been promoted in 1982 and had later been reverted but on the basis of his own seniority has again been promoted. Therefore, so far as Saroj Kumar in Civil No. 329/85 and Prabhu Dayal in Civil No. 116/86 are concerned, they must be taken as having been promoted on regular basis and are not covered by the order which we propose to make in regard to others.

3. So far as the remaining appellants are concerned, they would be entitled to continue as Inspectors of Supplies not on the basis that by their own seniority they had earned such promotion but on the sole consideration that they had been continuing in the promotional posts for quite a long period and we have not considered it appropriate to revert them. Their continuing in the higher post would not confer any seniority to earn them other service advantages including further promotion until in their own right i.e. on the basis of their seniority they would be entitled to the same. Prabhu Dayal would be entitled to claim his seniority on the basis of promotion with effect from 5/08/1982, whereas Saroj Kumar would be entitled to claim his seniority in the cadre of Inspector of supplies from the date he has actually been promoted. Our direction not to disturb the appellants is in the peculiar facts of

*the case and may not be taken as a precedent.
Both the appeals are disposed of. No costs.*

13. In view of the above position, we allow this OA and quash and set aside the impugned letter dated 20/23.07.2012 cancelling the promotions (i) granted to the Applicant in LSG (APM Account) Line w.e.f. 01.01.2002 vide SPOs Bijnore Memo No. B/Genl./LSG/Promotion dated 13.12.2004, (ii) granted to him in HSG-II cadre vide Circle Office Memo No.STA/181-XA/HSG-II(NB)/Promotion/07/6 dated 09.01.2007 and (iii) granted in HSG-I cadre on ad hoc basis vide Circle Office Memo No.STA/19-XA/HSG-I/2007/2 dated 11.01.2008. Consequently the Respondents shall permit the Applicant to continue on the post of HSG-I with all benefits which he was enjoying on that post. We also make the interim order passed in this case on 31.07.2012 staying the operation of the order absolute. The Respondents may fix his seniority in his entitled cadre on notional basis. His further promotions from the post of HSG-I shall be on the basis of said seniority position. The aforesaid directions shall be complied with by passing appropriate order, within a period of 2 months from the date of receipt of a copy of this order.

14. There shall be no order as to costs.”

The other OA bearing No.3064/2014 was filed by the respondent to seek enforcement of his promotion order dated 23.06.2011 and 05.08.2011 on the basis of the result of the Departmental Competitive Examination which was qualified by the respondent for promotion to the Postal Service Group ‘B’ in the Pay Band of Rs.9300-34800 on regular

basis. This promotion to Group 'B' post was denied to the respondent on the same premise that his initial promotions to LSG (APM Account) Line, HSG-II and HSG-I were irregular and thus cancelled. Based on the view taken by the learned CAT, New Delhi in deciding OA No.1779/2014, the learned CAT, New Delhi allowed the OA No.3064/2014 by directing the respondents to give effect to the promotion order dated 05.08.2011 from the same date itself with all consequential benefits.

Ms. Prabha Sharma, the learned counsel appearing for the petitioners strongly contended that LSG (APM Account) Line cadre has always been a Circle Cadre and therefore, the promotion of the respondent to LSG (APM Account) vide Memo No. B/Genl./LSG/Promotion dated 13.12.2004 on the basis of the Divisional Seniority was irregular on the very face of it and was in denial of consideration of case of other deserving candidates who were senior to the respondent at Divisional Level. The learned counsel also submits that the then SPO, Bijnore Division had acted arbitrarily and in contravention of the general rule and proper procedure for conducting DPC at Divisional Level in promoting the respondent without seeking any prior approval by the

higher authority, which was the Chief Post Master General, Lucknow, U.P. (*in short* 'CPMG, Lucknow'). The learned counsel also submits that because of this illegality which crept at the stage of the promotion of the respondent to the said post of LSG (APM Account) would have rendered him ineligible for his further promotions to HSG-II and HSG-I, as such a course will amount to perpetuating the illegality done at the time of his first promotion. In support of her arguments, the learned counsel for the petitioners placed reliance on the judgment of Apex Court in the case of ***Hitendra Singh & Ors. v. Dr. P.D. Krishi Vidyapeeth by Reg. & Ors., (2014) 8 SCC 369.***

The respondent was initially appointed as a Postal Assistant (*in short* 'PA') in Bijnore Division on 06.03.1984 and thereafter he was posted as PA (Accountant) after having qualified PO & RMS Accounts Examination in the year 1992. The respondent was promoted to LSG (APM Account) in the Pay Scale of Rs.4500-125-7000 w.e.f. 01.01.2002 vide Memo No. B/Genl./LSG/ Promotion dated 13.12.2004 and it is not in dispute between the parties that the respondent had fulfilled all the laid down eligibility conditions for seeking promotion to the said post of HSG-II in the Pay Scale of Rs.5000-150-8000 by the order of the CPMG,

Lucknow vide order dated 09.01.2007 and was further promoted to HSG-I in the Pay Scale of Rs.6500-200-10500 vide order dated 11.01.2008 and all these promotions in HSG Cadres were made by the petitioners by convening the DPC and certainly the DPC must have satisfied itself with regard to the eligibility and suitability of the respondent as were prescribed for promotion to the said cadres of HSG. After having received these promotions, the respondent had further competed to participate in the Postal Service Group 'B' examination to seek promotion to Postal Service Group 'B' in the Pay Scale of Rs. 9300-34800 on regular basis and on the basis of the result of the Departmental Competitive Examination, the respondent was declared successful for his promotion to Postal Service Group 'B' cadre on 23.06.2011. It is thereafter for the first time, the petitioners supposedly realised that the respondent was wrongly granted promotion to LSG (APM Account) by the then SPO, Bijnore division at Divisional Level and Circle Office was also wrong in granting promotion to HSG-II and I based on his wrong seniority in LSG (APM Account). The petitioners in this manner sought to ruin the entire career of the respondent by one stroke and for which they are blaming the then SPO, Bijnore Division on the ground that he

was not competent to issue the order for notional promotion against the vacancies of LSG (APM Account) because the same was a circle cadre as clarified by Directorate Letter No. 6-19/82-SPB-II dated 02.06.1986.

We find ourselves quite intrigued and flabbergasted to notice that if there was any kind of irregularity in promoting the respondent as LSG (APM Account) w.e.f. 01.01.2002 then why such irregularity was not noticed or brought to the notice of the two DPCs whose decision led to the promotion of the respondent to HSG-II and I w.e.f. 09.01.2007 and 11.01.2008 respectively. It is after a gap of about 9 years that the petitioners served a Show Cause Notice dated 02.06.2011 upon the respondent, taking a stand that all the aforesaid three promotions were irregular and are therefore, liable to be cancelled with immediate effect.

We find ourselves in complete agreement with the reasoning given by the learned CAT, New Delhi that when an employee has been given three promotions in his service period and he has worked satisfactorily on his post, it would not be justified to cancel all the promotions at a belated stage particularly when there was admittedly neither any fraud, nor any concealment of fact or any misrepresentation by the respondent in securing all these promotions. The learned CAT, New Delhi also

observed that it is not the case of the petitioners that the respondent was not qualified for holding these three promotional posts and therefore, it would be most unfair to revert the respondent back to work as a PA (Accountant) or LSG after almost 14 years of his service on the said post after the said promotions. The learned CAT, New Delhi has also placed reliance on the judgment of the Supreme Court in the case of ***Saroj Kumar Tyagi v. State of U.P., 1988 (1) JT 2*** to fortify their reasoning.

We find no reason to interfere with the impugned orders passed by the learned CAT, New Delhi which are under challenge in the present writ petitions. The decision in ***Hitendra Singh (supra)***, on which reliance was placed by the learned counsel for the petitioners is of no help to the facts of the present case wherein the entire process of selection and appointment in the cadre of Senior Assistants and Junior Assistants came under challenge. The Supreme Court after appreciating the findings recorded by Inquiry Committee headed by Justice H.W. Dhabe found that the entire selection process was vitiated by irregularities and favouritism and therefore, the facts of the present case are clearly distinguishable where the petitioners themselves kept on giving one promotion after another to the respondent without demur or possible objection.

There is no merit in the present petitions. The petitioners are accordingly directed to comply with the direction given by the learned CAT, New Delhi in both the orders dated 28.08.2014 passed by the learned CAT, New Delhi within a period of one month from the date of this order.

In view of the above, both the petitions and the stay applications are dismissed.

KAILASH GAMBHIR, J

I.S.MEHTA, J

JANUARY 06, 2015

v