$~R-22

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

\+ **W.P. (C) 4807/2002**

% *Date of Judgment: 30th January, 2017*

UNION OF INDIA ..... Petitioner

Through: Mr. Bhagwan Swarup Shukla, CGSC with Mr. Shambhu Chaturvedi, Advocate.

Versus

PHOOL SINGH & ORS ..... Respondents

Through: Mr. S.K. Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (*ORAL*)

1. Rule DB in this matter was issued on 09.08.2002

2. Challenge in this writ petition is to the order dated 04.01.2002 passed by the Central Administrative Tribunal (hereinafter referred to as '*the Tribunal'*). The respondents No.1 and 2 had filed an OA 2347/2000 before the Tribunal seeking a direction to quash and set-aside the letter dated 12.10.2000, by which the respondents No.1 and 2 were asked to give fresh options for the fixation of their pay which could put the respondents No.1 and 2 to disadvantage.

3. At the outset, it would be relevant to mention that the Scheme of Time Bound One Promotion (TBOP) and Biennial Cadre Review (BCR) were introduced by the Department of Posts for its employees. The

TBOP was introduced with effect from 30.11.1983 vide circular dated 17.12.1983 and Biennial Cadre Review was introduced with effect from 01.10.1991. The TBOP and BCR Schemes were available in the Department of Posts for higher scale on completion of 16 years and 26 years of service.

4. The necessary facts which are required to be noticed for disposal of this writ petition are that the respondents No.1 and 2 had joined as Postman on 20.05.1965 and 06.04.1965 respectively. Subsequently, they were promoted as LDC on 15.05.1973 and 11.10.1971 and thereafter promoted as UDC on 31.12.1977 and 08.01.1978. The next increment of respondent No.1 and 2 in UDC scale was due on 01.12.1991 and 01.01.1992 respectively. The respondents No.1 and 2 were thereafter granted promotion to HSG (Higher Supervisory Grade) under BCR Scheme (Biennial Cadre Review). The respondents No.1 and 2 accepted the second option for the fixation of their pay and their pay was re-fixed in the year 1997 and 1998. On 12.10.2000, the respondents No.1 and 2 were informed that upon their promotion under the Time Bound One Promotion Scheme i.e. TBOP, the pay cannot be given but has to be fixed directly under clause FR-22 1 (a) (i). The respondents No.1 and 2 were also informed that there has been a wrong fixation of pay and upon correction of the same; both the respondents No.1 and 2 would lose one increment each. This led to the filing of the OA 2347/2000 seeking the following reliefs:

> *"(i) to quash and set-aside the letter dated 12.10.2000 (Annexure A-1) asking the applicants to give the fresh option which is dis-advantageous to the applicants;*
> *(ii) direct the respondents not to recover any amount;*

> *(iii) to further direct the respondents to release the withhold increment in respect of applicant no. 2 with interest @ 18% p.a.*
> *(iv) to pass such other and further order which this Hon'ble Tribunal may deem fit and proper and*
> *(iv) to award the cost of the petition."*

5. The submissions of the applicants (respondents No.1 and 2 herein) before the Tribunal was that the policy decision dated 28.07.1991 and the promotion letter dated 01.01.1997 had offered options to the respondents No.1 and 2, which they had exercised before re-fixation of pay, which cannot be unsettled. It was also argued that the options were asked by the petitioner herein and based on the offer, options were made. The stand of the Government before the Tribunal and before this Court today is that the respondents No.1 and 2 were granted promotions under the TBOP and BCR schemes shortly following one another and therefore they could not be given the benefit of two pay fixations, but only one.

6. It is submitted by Mr. Shukla, learned counsel for the petitioner that the pay of the respondents No.1 and 2 was to be fixed as per admissible scales on the second promotion and an individual is not entitled to re-fixation of pay for the first promotion. It is further contended that the pay of the respondents No.1 and 2 on promotion under TBOP cannot be fixed by giving them the benefit of split option under saving clause of FR 22-I (a)(i) and it will be fixed directly under the said rule. Fixation of pay, taking into consideration the option was permissible only for the second promotion under BCR. He further contends that the respondents No.1 and 2 have been given wrong

fixation of pay by taking into consideration two promotions and two options, which followed one another in quick succession. He further contends that the correction has been ordered by the petitioner in terms of the advice of the Department of Personnel, who was consulted in this regard.

7. Per contra, Mr. S.K. Gupta, learned counsel appearing on behalf of the respondents No.1 and 2 submits that there is no infirmity in the order passed by the Tribunal, which would require interference under Article 226 of the Constitution of India. He submits that the order of the Tribunal has been acted upon. The respondents No.1 and 2 have retired and no recovery can be made from them. Even otherwise, there is no bar of two promotions in succession. He has drawn attention of the court to the Swamy's Handbook and reliance is placed on Government Instructions, Department of Posts, Lr.No. 22-4/2000-PE. I dated 25th September, 2002.

> ***"(17) Fixation of pay of the officials placed directly in the BCR scale on completion of 26 years of service as on 26-06-1993—***
> *Time Bound One Promotion (TBOP) and Biennial Cadre Reviews (BCR) Schemes were extended to the staff of Administrative Officers (Circle/Regional Officers) vide this office Letter No. 4-12/88-PE, dated 22.07.1993. The scheme was made applicable with effect from 26-6-1993. Under these orders, officials who had completed 26 years of service on the crucial date (date of implementation of the scheme) were directly placed in the BCR scale of pay. References have been received since then demanding that in all such cases pay should first be fixed in TBOP scale and then re-fixed in BCR scale of pay on the same day.*
> *2. The case has been examined in detail in consultation with the Department of Personnel and*

Training and Ministry of Finance, (Department of Expenditure). It has now been decided that such officials in Administrative Offices (Circle/Regional Officers) whose pay on the date of introduction of TBOP/BCR scheme on 26-6-1993 was directly fixed in the BCR scale of pay, may be allowed pay fixation in TBOP scale first and then in BCR scale of pay on the same day.

3. The option of pay fixation in the next higher grade based on the date of increment may also be allowed as per rules.

4. A compliance report, i.e., number of official benefitted and financial implications, etc., may be furnished to this office after implementation of these instructions.

5. All Heads of Circles are requested to settle all such cases expeditiously."

8. Mr. Gupta, learned counsel for the respondents No.1 and 2, submits that reading of said Government instructions makes it abundantly clear that the office is to be allowed pay fixation in TBOP scale first and then in the BCR scale of pay on the same day, thus making it implicit that there is no bar of the pay scales being fixed first in the TBOP scale and then in BCR scale.

9. We have heard the learned counsel for the parties and considered their rival submissions.

10. The Tribunal has allowed the aforesaid OA and it has been held as under: -

"5…….While the applicants seek the benefit of two promotion by two fixations, respondents state that since the promotions have come in quick succession, the benefit of the second promotion alone can be given. It is not disputed that the applicants became eligible for two promotions, first under Time Bound One Promotion

> *scheme (TBOP) extended by respondents' letter dated 26-7-1991 w.e.f. 1-8-1991 by order issued on 3-1-1992 and second under BCR w.e.f. 1-10-1991 by order issued on 1-1-1997. Both the schemes specifically provided for option which the applicants have duly exercised leading to the two fixations. There have been thus two clear promotions, though the effect thereon came within two months of one another, according to the respondents, such an arrangement cannot be permitted. The fact, however, is and not disclosed by the respondents, that between these two promotions six years had intervened and the fixation of the first promotion had been given effect and come to stay, by which time i.e. 1997, the second promotion under BCR came about, though w.e.f. 1-10-1991. The fixation ordered on the first promotion under TBOP, cannot be overlooked as the respondents are seeking to do by the impugned order. By their action they are advising the applicants that they were entitled for only one promotion. This was not correct. TBOP and BCR are promotions governed under two mutually exclusive schemes and merely because the entitlement to both had come simultaneously in the case of any member of the staff, one of them cannot be denied. This is what exactly the respondents are attempting to do. It was not the fault of the applicants that the promotions have come together, as the orders directing them were issued with nearly six years in between. They also could not have presumed that by an order to issue on a future date, they would be entitled for the second promotion, during a short period from one another. That being the case, the directions in the impugned letter dated 12-10-2000 and the proposed recovery of amounts allegedly paid early are seeking to unsettled issues already settled and cannot be accepted. They deserve to be set at nought."*

11. The sole argument of the learned counsel for the petitioner is that the respondents No.1 and 2 cannot be given benefit of two promotions by

two fixations in quick succession and only benefit of second promotion can be given to them.

12. Mr. Gupta, learned counsel for the respondents No.1 and 2, has submitted that there is no bar and has placed reliance on Government Instructions, which we have reproduced in paragraph aforegoing. He has further contended that the respondents No.1 and 2 have since retired and the order of the Tribunal has already been given effect.

13. We have asked the learned counsel for the petitioner to place any Government Instructions on record, which would debar the respondent No.1 and 2 from benefit of two promotions by two fixations. No Government instructions have been produced or relied upon. In this case, the petitioner had given the options to the respondents No.1 and 2 and based on the offer made, the respondents No.1 and 2 had given their options. Even otherwise, the respondents No.1 and 2 were entitled to promotion as they had completed 26 years of service and thus were directly placed in the BCR scale of pay. The respondents No.1 and 2 also became entitled under TBOP scale at the same time. It seems that the respondents No.1 and 2 became entitled to two promotions at quick succession but the court cannot lose track of the fact that it is only after putting in 26 years of service that they were entitled to the BCR scale of pay.

14. Having given these options without assigning any Government instructions, in our view, the petitioner could not have withdrawn the offer. We also find no infirmity in the reason given by the Tribunal and also not inclined to interfere with the order as the respondents No.1 and 2 have since retired.

15. Resultantly, writ petition is dismissed. No costs.

G. S. SISTANI, J.

VINOD GOEL, J.

JANUARY 30, 2017
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