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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1890/2002

New Delhi this the 9th day of September, 2003

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairan (J)
Hon'ble Shri S.K.Naik, Member (A)

1. Shri Hukam Chand Garg,
S/O Shri Poona Lal Garg
2. Shri Om Prakash Sharma,
S/O Shri Banwari Lal Sharma
3. Shri Kajori Lal Meena
S/O Shri Pancha Ram Meena,
4. Shri Vijay Pal Singh Yadav
S/O Shri Khacheru Singh Yadav

..Applicants

(All the above applicants are working
as Assistant Managers, Mail Motor
service, under Sr.Manager Mail Motor
Service in Delhi Postal Circle and
their address for service of notice
is C/O Sh.Sant Lal, Advocate,
C-21 (B) New Multan Nagar, Delhi-56

(By Advocate Shri Sant Lal)

VERSUS

1. The Union of India, through the
Secretary, Ministry of
Communications, Deptt.of Posts,
Dak Bhawan, New Delhi-110001
2. The Secretary, Ministry of Finance,
Department of Expenditure
(Implementation Cell), Trikuta
Bhawan, Bhikaji Cama Place, New Delhi-66

..Respondents

(By Advocate Shri R.P.Aggarwal)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

This is yet another case where the applicants have
prayed for setting aside the impugned order issued by the
respondents dated 10.9.2001, granting them the revised pay
scale of Rs.5500-9000 with a further prayer for a
direction to the respondents to grant them instead,
revised pay scale of Rs.6500-10500.

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2. Four applicants have prayed that as they are working as Assistant Managers, Mail Motor Service (MMS) with the respondents they should be given the revised pay scale of Rs.6500-10500 which is the next higher pay scale above the cadre of Inspectors. The grade of Inspectors has been given the revised pay scale of Rs.5500-9000 and on further promotion to the post of Assistant Managers they have been given the same pay scale of Rs.5500-9000. Admittedly, previously the applicants - Assistant Managers, MMS were granted the revised pay scale of Rs.5000-8000, which on representations and further consideration by the respondents had been revised to the pay scale of Rs.5500-9000. One of the main grievances of the applicants in the present OA is that this revised pay is nothing but the scale which the feeder grade of Inspectors, MMS are getting. Shri Sant Lal, learned counsel has submitted that in the stream of Clerks, MMS, Postal Assistants and Sorting Assistants etc., the respondents have themselves taken a decision to upgrade the entire cadre of HSG-II (Rs.5000-8000) to HSG-1 in the revised pay scale of Rs.6500-10500. He has, therefore, contended that there should be no hitch in similarly upgrading the Assistant Managers in the next higher revised pay scale of Rs. 6500-10500. He has, therefore, contended that the respondents have acted in an arbitrary and illegal manner while fixing revised pay scale of the applicants as Assistant Managers in the pay scale of Rs. 5500-9000 w.e.f. 1.1.1996. His other main contention is that Inspectors being the feeder cadre for promotion to

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the post of Assistant Managers, both these categories cannot be placed in the same scale. He has relied on the judgements of the Hon'ble Supreme Court in **Union of India and Ors Vs. Ashoke Kumar Banerjee** (1998)(2)SCSLJ 41), **State of Rajasthan Vs. Fateh Chand Soni** (1996) (1)(22) 123) and the Constitutional Bench judgement in **Lalit Mohan Deb and Ors Vs. UOI & Ors** (1973) (3)SCC 862). He has contended that, as held by the Hon'ble Apex Court in these judgements, the promotion post necessarily has to have a higher pay scale because promotion post is a higher post with a higher pay.

3. We have seen the reply filed by the respondents and heard Shri R.P. Aggarwal, learned counsel for the respondents. Learned counsel has contended that the anomaly of pay scale arising out of the pay of Inspectors has been rectified by granting the Assistant Managers revised pay scale of Rs.5500-9000 w.e.f. 1.1.1996. According to him, the matter has been considered by the respondents, including the Ministry of Finance. As there are a number of cases where the feeder and promotional cadres both have the same pay scale, it is not possible to upgrade the pay scale of Assistant Managers, MMS to the grade of Dy. Managers, MMS which is a General Central Service Group 'B' in the pay scale of Rs.6500-10500 as claimed by the applicants. He has also submitted the relevant Departmental records which we have seen. The Ministry of Finance has, inter-alia, stated that with regard to the Department of Posts' proposal regarding

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upgradation of pay scale of Assistant Managers, MMS from Rs.5500-9000 to Rs.6500-10500^{if P2} cannot be done. The reasons given by the Ministry of Finance, Department of Expenditure, for not agreeing to the proposal to upgrade the pay scale of Assistant Managers to Rs.6500-10500 is ^{P2} ~~for~~ the mere fact that certain feeder and promotion posts which have been placed in an identical pay scale is not by itself a reason enough to place the promotion post in a still higher scale and an attempt should be made to restructure the cadre with the objective of eliminating a level. However, if this was not operationally feasible, if the promotion post carries higher functional responsibilities, the benefit of pay fixation under FR 22(I)(a)(I) may be allowed. Learned counsel for the respondents has further pointed out with regard to the submissions made by the learned counsel for the applicants for upgradation of posts of HSG II to HSG I, that certain posts have been upgraded on functional basis. In the reply filed by the respondents to the averments made by the applicants in Para 5.7 of the OA, the respondents have stated, inter-alia, that in the Department of Posts, there is a basic cadre of Postal Assistant/Sorting Assistant and their strength is about 1.30 lakhs. Out of these posts 1622 posts were upgraded on the basis of functional justification and organisational requirements. He has, therefore, prayed that the applicants are not entitled to any relief as prayed for and the OA may, therefore, be dismissed.

4. We have carefully considered the pleadings and

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the submissions made by the learned counsel for the parties.

5. During the hearing, learned counsel for the applicants has submitted that at no stage the above analogous position of Inspectors/Assistant Managers, MMS getting the same pay scale was placed before the Anamoly Committee. Following the ^e aforesaid judgements of the Hon'ble Supreme Courts relied upon by the learned counsel for the applicants, the reasons given by the respondents mentioned above to deny them ^{the Rs.} higher pay scale than what the incumbents of the feeder grade of Inspectors, MMS pay scale cannot be accepted. In Lalit Mohan Dev's case (supra), the Constitutional Bench of the Hon'ble Supreme Court has held that it is well recognised that a promotion post is a higher post with a higher pay. It is not disputed by the respondents that the post of Assistant Managers, MMS is a promotion post ~~to~~ the feeder grade of Inspectors, MMS. Therefore, we see merit in the submissions made by the learned counsel for the applicants that the post of Inspectors, MMS and the promotion post of Assistant Managers cannot be placed in the same pay scale as the latter post is admittedly a promotional post. In this view of the matter, the reasons given by the respondents for not considering the applicants case for being placed in a higher pay scale cannot be sustained. However, it is relevant to note that if indeed the claim of the applicants for being placed in the revised pay scale of Rs. 6500-10500 is

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considered by the respondents, it would give rise to another anomalous position, namely, the next promotional post from Assistant Manager to Deputy Manager, MMS will be in the same pay scale. At the same time we are not satisfied with the reasons given by the respondents/Ministry of Finance, Department of Expenditure that the mere fact that certain feeder and promotion posts have been placed in an identical pay scale is not by itself reason enough to place the matter before the competent authority. It also appears that the Nodal Ministry has not taken necessary steps to restructure the cadre with the objective of eliminating one level as suggested by that Ministry. These issues have to be considered from all angles by the respondents. It is settled law that it is not for the judicial forum but basically for the Government which has the power to remove such anomalies, which apparently has not been duly considered with a view to finding a solution in the matter.

6. In the result, for the reasons given above, the OA is disposed of with the following directions:-

Respondents shall consider the claim of the applicants, keeping in view also suggestion given by Respondent No. 2 while dealing with the proposal referred to above. If necessary, they shall constitute an Anomaly Committee to deal with the matter, in which apart from the representative of the respondents, they shall have a representative of the Department of Personnel and Training at the level of not less than the rank of Joint Secretary, to consider the matter in accordance

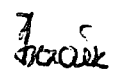
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with law, rules and instructions, keeping also
in view the relevant judgements of the Hon'ble
Supreme Court, referred to above;

(ii) The above Committee shall take an
appropriate decision in the matter within six
months from the date of receipt of a copy of
this order, with intimation to the applicants.

No costs.


(S.K. Naik)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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