CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU

ORIGINAL APPLICATION NO.170/001820/2018

DATED THIS THE 10TH DAY OF DECEMBER, 2019

HON'BLE DR.K.B.SURESH …MEMBER(J)
HON'BLE SHRI C.V. SANKAR …MEMBER(A)

Smt. N. Poonkodi,
W/o V. Shivakumar,
Aged about 52 years,
Working as Postal Assistant,
Bangalore-GPO-56 0 001,
Residing at No. 610, 6th Cross,
7th Main, New Thippasandra,
Bangalore-560 075. . ...Applicant.

(By Advocate Shri P. Kamalesan)

V/s.

1. The Union of India
Rep. by Secretary,
Department of Posts,
Dak Bhavan,
New Delhi-110 001.

2.Chief Post Master General,
Karnataka Circle,
Bengaluru-560 001.

3.Chief Post Master,
Bangalore GPO,
Bengaluru-560 001. ...Respondents

(By Shri Vishnu Bhat, Standing Counsel for Respondents)

O R D E R (ORAL)

HON'BLE DR.K.B.SURESH …MEMBER(J)

Heard. The matter seems to be covered by so many orders of the Tribunals, High Courts and Apex Court. We have taken one amongst them (Annexure A-5), which we quote here:

"CENTRAL ADMINISTRATIVE TRIBUNAL

Jabalpur Bench

T.A. No. 82/86

All India Postal Employees Union

Vs

Union of India & 2 Others

CORAM: Hon'ble Shri S.K.S. Chib, Vice Chairman

Hon'ble Shri K.S. Khare, Member (J)

JUDGMENT

(Delivered this day the 16th December 86)

First petitioner Govind Singh Asiwal, in a representative capacity as a Circle Secretary of All India Postal Employees Union Class II representing employees of Regular Trained Post (R.T.P) in post offices, and second petitioner V.P. Malviya filed writ petition M.P. 1159/1985 on 14.4.1985. They seek regularization of all R.T.P. employees in the posts of Postal Assistants and wages with other facilities like that of Postal Assistant on the ground of similar work and similar pay etc.,

2. There is no dispute that Shri V.P. Malviya, like some other R.T.P. employees were taken in the posts of R.T.P on 30.7.1982 and subsequently by Senior Supdt Post Offices Bhopal in pursuance of advertisements dated 6.8.82 (Annexure A) 20.8.82 (Annexure D) and 13.3.83 (Annexure E). The first two advertisements were fore recruitment of Postal Assistants while the third was for R.T.P. They all claim to the doing regular jobs and performing the same work as that of Postal Assistants after undergoing necessary training.

3. Petitioner's stand is that more work is extracted from a R.T.P. employee under threat and pressure, which is a nature almost like 'Begar' prohibited under Article 23 of the Constitution. Some of these RTP employees were initially appointed on Rs. 2 per hour, which was revised from time to time. On the other hand, a Postal Assistant, doing the same work, gets nearly Rs. 900/- per month with other facilities as stated in para 10 of the petition. In comparison, of a RTP employee in aggregate gets Rs.

400 to Rs. 500 per months only without any other facility. They are denied the right of equal pay for equal work and are therefore discriminated against.

Petitioner further states that some of these RTP employees are getting overaged for other services and jobs; some have their original certificate obtained by Respondents depriving them from seeking employment elsewhere. Despite representations made on 20.1.1984 (Annexure F) and on 4.4.1984 (Annexure G) no relief has been extended to them. By now all of them would have been absorbed and regularized as Postal Assistants, had persons from other departments like Railway Mail Service and Telephones not been taken in preference to them. They claim prior right of absorption on regular appts.

The contention of the petitioners is that there is no justification for such discrimination in view of the directive principles of "equal pay and equal work" and the fundamental rights to 'equality' guaranteed under Articles 14 and 16 of the Constitution, as also the law laid down by the Hon'ble Supreme Court in cases of Randhir Singh, Menaka Gandhi, International Air Port Authority, Asia and Olympic Employees etc.

4. Respondents in their return dated 25.6.85 aver that in terms of the scheme envisaged in Annexure R1 a standing pool of trained reserve candidates for Posts and RMS Offices had been constituted for utilizing their services as short duty staff to minimize staff shortage. They were expected to work for 8 hours daily and hourly rates of wages after their training. They were neither trained nor employed like regular employees of the answering Respondents. It is a reasonable classification which is not in contravention of Article 14 or 16 or any other provision of the Constitution or the law laid down by Hon'ble Supreme Court of India. Employees of the RTP on the basis of their seniority would be gradually absorbed on a regular basis in the event of availability of vacancies, since no vacancies can be filled up as per policy of the Government of India for the present and therefore the RTP employees would have to wait for their turn for their absorption. The RTP personnel are not gazette for leave, transfer or promotion, so they can not get other facilities like those of regular postal assistants. They can not claim regularization under the scheme envisaged in Annexure R1.

5. We have gone through the documents and Affidavits produced by the parties and heard learned counsels for both sides.

6. First point for our consideration is whether the RTP personnel are doing the same work as Postal Assistants in regular employment of the Respondents. In para 12 of the petition, petitioners plead in the following terms.

> *"Both Reserve Trained pool hereafter called as R.T.P. and Regular Employees are doing one and the same job, that is similar job. The only difference is that the Reserve Trained Pool hereafter called as R.T.P. are made to do more work than Regular Employees under threat and pressure."*

As against the above averment of the petitioner, reply of answering Respondents in para 4 of their return dated 24.6.85, filed on 25.6.1985 in the High Court, is as under:-

"In reply to allegation made in paragraphs 9 to 13 of the petition, the factual position mentioned therein is not disputed."

Thus, it is an admitted fact that R.T.P personnel and regular Postal Assistants are doing one and the same job. This is also clear from the scheme of the R.T.P pool which is at Annexure R1, R.T.P. personnel are trained as a reserve and then required to work as assistants in Post and R.M.S. Offices, initially against short term vacancies due to absenteeism or any other reason, eventually to be absorbed against regular posts.

7. In the course of argument, learned Shri A.P. Tare, standing counsel for the Respondents drew our attention to para 6 of the return, wherein it has been stated; "The petitioners are required to work on substitute basis and the work of the petitioners category is not the same as a regular worker, of the petitioners category those who have been employed by the answering Respondents on regular basis" He argued that work of, the two differ. No duty list of the two posts has been produced by the Respondents. We are unable to agree with this argument because the two are required to do the same work for all practical purposes. R.T.P. personnel admittedly perform the same work in absence of regular postal assistants, as per scheme Annexure R1.

It is also not in dispute that R.T.P. employees are paid wages on hourly basis. Earlier it was Rs. 2 per hour as stated in the scheme at Annexure R1 on the ground that they are not regular employees. For the same reason they do not get facilities listed in para 10 of the position. In para 8 of the return answering Respondents state that the posts of R.T.Ps are not gazette for leave, transfer, promotion etc., and they have no right to claim the same as regular employees.

8. It is to be seen how far the plea of the Respondents is justified in view of the fact that the R.T.P. employees perform the same work as regular Postal Assistants and how far the Governments Scheme contained in the circular dated 30.10.1980 (Annexure R1) is itself discriminatory and violative of Article 14 of the Constitution.

Equal protection under Article 14 of the Constitution means the right to equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed. It embraces the entire realm of "State action". It extends not only when an individual is discriminated against in the matter of exercise of his rights but also in the matter of imposing liabilities upon him, and also in the matter of employment as specifically laid down in Article 16 of the Constitution viz, salary, periodical increments, promotions, terms of leave, gratuity pension, superannuation etc.

It has been argued by learned Sri Tare, standing counsel of the Respondents that, a classification can be there if such classification is conducive to administrative efficiency in the service concerned. This is reasonable and justifiable. If the differences between the two groups are sufficient to give any preferential treatment to one group or there is no

reasonable nexus between such difference and the recruitment, the court may strike it down as violative of the fundamental rights contained in Article 14 and 16 of the Constitution. The Court would not interfere unless the classification results in pronounced inequality. On the other hand, it would not uphold a mini-classification, where the differences between the classes or categories are inconsequential.

9. For recruitment of Postal Assistants two advertisements, one of 6.3.82 and other of 20.8.82 were issued. On basis of those advertisements which were for the posts of regular Postal Assistants petitioner 2 and other like him have been taken in the R.T.P. as they did not qualify for the regular posts on the merit list. The third advertisement was for taking persons in R.T.P itself. It seems the argument of classification has been advanced only to show that no fresh recruitment to the posts of Postal Assistants is being done in accordance with the policy of the Central Government as disclosed in para 8 of the return. The question is that the entire premise of the circular dated 30.10.1980 (Annexure R1) is that the reserve pool although comprising of a reserve is recruited through the same system but comprise of persons on a lower order of merit, but the clear instruction is that this reserve pool as far as the persons recruited to it are concerned is a temporary and transitory feature, and that they have to be eventually absorbed against regular posts of Postal Assistants. If as the result of any other Governments policy no fresh recruitment to the posts of regular Postal Assistant is to be done, then the entire scheme of this circular (Annexure R1) as laid down in paras 2 (x), 2 (vi), 3 breaks down. Although there may be reasonable classification introduced in the original circular, but as the result of the ban on recruitment to regular posts of Postal Assistants, a result of another policy, the process of absorption of the personnel of the R.T.P against regular posts is halted, and an element of unreasonable discrimination is introduced, which is violative of Article 14 of the Constitution, and has to be struck down. The Respondents had their two choices; (a) either to scrap the scheme laid down in their circular of 30.10.1980 or (b) to review their fresh policy of not having recruitment to posts of Postal Assistants which indirectly adversely affects the petitioners as well. Para 3 of the aforesaid circular itself envisaged originally the operation of the scheme as an experimental measure for the period of one year and can be discontinued, but it has to be observed that the cause of action arose in respect of the persons recruited under the scheme which include, at the time of that recruitment to R.T.P the reasonable prospects of their eventual adoption as Postal Assistants.

10. Under the circumstances to end the unreasonable and unjust classification that has been introduced as the result of a dual policy of the Government as reflected in the issue of the circular (Annexure P1) and the stopping of further recruitment and absorption to the cadre of posts of Postal Assistants, as affirmed in para 8 of the Respondent's return dated 24.6.1985, we direct that:-

(a) Government shall review their policy to stop recruitment/absorption of persons against regular Postal Assistants.

(b) No person shall be inducted from other Departments like Railway Mail Service and Telecommunication Department to man posts of

Postal Assistants until the petitioners are absorbed against regular posts.

(c) No fresh persons be taken and recruited against the R.T.P (Reserved Trained Pool). Until the Government reviews their policy as under (a) above the operation of the circular dated 31.10.1980 (Annexure R1) in regard to recruitment of fresh persons to R.T.P other than petitioners is struck down in exercise of this Tribunal's writ jurisdiction.

(d) The absorption of the petitioners against regular posts will be so phased on the basis of para 2 of circular of 30.10.1980, as if no restriction had been imposed on their regular recruitment/absorption earlier and shall be completed within a reasonable period from the date of this order, if necessary by creating supernumerary posts, and subject to screening of the unfit by a specially constituted Screening Committee to examine their record and performance. The Screening Committee shall also keep in view their seniority in the R.T.P.

11. As regards the question of equal pay for equal work claimed by the petitioners, we have also to keep in mind Article 39 relating to Directive Principles of State Policy in Part IV of the Constitution, while reading Article 14 and 16 in the present case. This provision together with other provisions of the Constitution contain one main objective, namely, the building of a welfare state and egalitarian, social order, as pointed out by Hon'ble the Supreme Court in Keshavanda Vs State of Kerala (1973) 4 SCC 225. If the state itself violates the directive principles and introduces inequality in the matter of equal pay for equal work it would be most unfortunate and cannot be justified. It is a peculiar attitude to take on the part of respondents to say that they would pay only hourly wages to R.T.P employees and not the same wages as other similarly employed Postal Assistants when they are performing the same work as held by us in paras 6 and 7 of this order. It cannot be justified also in the light of the following observations of Hon'ble the Supreme Court, cited in the case of Surendra Singh Vs the Engineers in Chief C.P.W.D A.T.R 1986 SC 76.

"The argument lies ill in the mouth of Central Government, for it is all too familiar argument with the exploiting class and a welfare sate committed to a socialistic pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much un- employment, the choice for the majority of people is to starve or take employment on whatever exploitative terms are offered by the employer. This fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there should be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work for equal value".

In the matter of Dearness and other allowances and the need for maintaining equality between wages of casual workers and salary etc of regularly appointed Telephone operators the order of Supreme Court dated 28.7.85 in the case of All India Telegraph Engineering Employees Union Vs

Union of India and Another has also been cited by the petitioner's besides some other rulings.

12. Under the circumstances, for reasons stated in the preceding paragraph we find the provisions of circular dated 30.10.1980 (Annexure R1) in so far they relate to payment of hourly rates of wages to employees in the R.T.P discriminatory and violative of Articles 14 and 16 of the Constitution and are struck down. We direct respondents that the R.T.P employees performing the same duties as Postal Assistants, shall be paid the same salary and emoluments per mensem as are being received by Postal Assistants with effect from the date of their appointment. As regards other conditions of service and facilities requested by the petitioners, this is subject to their regular absorption as directed in para 10.

13. In the net result this petition is allowed in this manner as directed in paras 10 and 12 of this judgment. In the circumstances of the case the parties shall bear their own costs of litigation.

Sd/- *Sd/-*

(K.B.Kare) *(S.K.S. Chib)*

Member(J) *Vice Chairman"*

2. This matter was taken up to the Hon'ble High Court, which upheld the orders of the Tribunal and it went to Hon'ble Apex Court, which upheld the order of the Tribunal and therefore it was implemented and in all other places this has been implemented.

3. It appears that the applicant is now in the same boat. So she is also to be treated equally. Therefore, OA is allowed to the same treatment as has been allowed in the other cases. Applicant is also beneficiary for the same, which may be implemented within the next two months. No costs.

(C.V. SANKAR) (DR.K.B.SURESH)

MEMBER(A) MEMBER(J)

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Annexures referred to by the Applicant in OA No.170/001820/2018

1. Annexure A1 : (1)Copy of Sr. Supt. Of Post Offices, Trichirapalli Dn. letter dated 8.6.1983.
2. Annexure A2 : Copy of Sr. Supt. Of Post Offices, Trichirapalli Dn. letter dated 4.1.1990.
3. Annexure A3 : Copy of representation of applicant dated 27.6.2018.
4. Annexure A4 : Copy of representation of applicant dated 7.7.2018.
5. Annexure A5 : Copy of Hon'ble CAT, Bombay Bench, camp at Nagpur order dated 31.8.2010 in OA.719 to 727/1996.
6. Annexure A6 : Copy of Hon'ble CAT, Jabalpur Bench, order dated 16.12.1986 in OA.No.TA.82/86.
7. Annexure A7 : Copy of High Court of Hyderabad order dated 10.3.2017 in WP. MP. No.21430/2016 in WP.No.17400/2016.
8. Annexure A8 : Copy of Dept. of Posts, letter dated 21.2.2018.
9. Annexure A9 : : Copy of Supt. Of Post Offices , Hanamkonda Dn, letter dated 20.6.2018.

Annexures referred to by the Respondents

1. Annexure -R1 : Copy of Dept. of Post, New Delhi letter dated 12.12.2012.

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