

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. No. 217/2001

New Delhi, this 16th day of August 2001

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

Hon'ble Shri Govindan S. Tampi, Member (A)

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				<u>Age about</u>
1. Sr.	R.L. Srivastava	S/O. Sr.	S.B. Srivastava	57 Yr
2. "	S.K. Sharma	" " "	M.L. Sharma	57 "
3. "	V.B. Chitkara	" " "	F.C Chitkara	58 "
4. "	S.L. Papreja	" " "	P.B Papreja	57 "
5. Smt.	Pran Lata Sharma	W/O	" M.L. Sharma	59 "
6. "	A.V. Bhavani	" " "	K.C. Kasavan	59 "
7. "	Savita Rani Narang	" " "	Sant Ram Narang	59 "
8. Sr.	Mahipal Singh	S/O	" Budh Prakash	46 "
9. "	L.B. Satiya	" " "	Mool Chand	52 "
10. "	Sabbash Chand	" " "	Om Prakash	50 "
11. "	Deepak Chauhani	" " "	Kasturi Lal	51 "
12. "	G.D. Aggarwal	" " "	Jado Ram Aggarwal	48 "
13. Smt.	Sudeek Taneja	W/O	" K.L. Taneja	53 "
14. "	Ved Jandvani	" " "	R.K. Jindwani	54 "
15. "	Rita Sethi	" " "	Sethi	50 "
16. "	Gusta Madhvan	D/O	" T.S.K Chari	49 "
17. "	Sushma Joshi	" " "	G.K. Sharma	42 "
18. Sr.	Harsh Chand	S/O	" Moti Lal	52 "
19. "	Ravinder Prasad I	" " "	Shridhar Prasad	45 "
20. "	Ramman Dass	" " "	Hand Kishore	54 "
21. "	R.S. Chakraborty	" " "	Shiv Narain	52 "
22. "	V.B. Aggarwal	" " "	Uggar Sain Aggarwal	47 "
23. "	Narpat Singh	" " "	Ma nge Ram	47 "
24. "	Gordhan Singh	" " "	Jaharia Singh	51 "
25. "	Saty Ram	" " "	Shyama Ram	59 "
26. "	R.S. Gupta	" " "	Gopi Chand Gupta	57 "

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.....Applicants

(By : Shri Sant Lal, Advocate)

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Versus

1. Union of India, through the Secretary
Ministry of Communications, Dept. of Posts,
Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Delhi Circle,
Meghdoot Bhawan, New Delhi.

.....Respondents.

(By: Shri R.N. Singh proxy counsel for Sh. R.V.
Sinha Advocate)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

In O.A. No. 217/2001, Shri R.K. Srivastava and 25 others are challenging the move by the respondents to revise the fixation of pay granted to them and to effect recovery of the amount allegedly paid in excess.

2. M.A. No. 195/2001 for joining allowed.

3. Shri Sant Lal, learned counsel appeared for the applicants while Sh. R. N. Singh, learned proxy counsel for Sh. R V Sinha represented the respondents i.e. Ministry of Communication and Chief Post Master General Delhi Circle.

4. All the applicants, except applicant No. 21 are Postal Assistants while applicant 21 is Section Supervisor, working in the office of the Chief Post Master General Delhi.

5. Post & Telegraph Deptt. had introduced on 17.12.83, Time Bound One Promotion (TBOP) w.e.f. 30.11.83, for placement of Group 'D' & 'C' employees, in the next

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higher grade on their completing 16 years of service. Subsequently on 11.10.91, they introduced w.e.f. 1.10.91 another scheme Biennial Cadre Review (BCR) for grant of next higher grade to Group 'C' & 'D' on completion of 26 years of service. Pay fixation in both the schemes were to be made under FR 22(1)(a)(1) (old FR 22 C). The two schemes, which were not earlier available to the ministerial staff in the Circle/Administrative Offices, were made applicable to them also w.e.f. 22.6.93 by Deptt's order No. 4-12/88-PE.T (Pt.) dated 22.7.93 and those of the staff who had completed 16 & 26 years were accordingly made eligible for promotion to the scales of Rs.1400-2300/- and 1600-2660/- (The scheme was amended on 8.2.96, to protect the seniority of the officials). Following the above, CPMG, Delhi Circle, placed the applicants in the higher scale of Rs.1400-2300/- w.e.f. 26.6.93 by order dated 26.11.93 under TBOP and in the scale of Rs., 1600-2660/- w.e.f. 26.6.93 under BCR by orders of 26.11.93 and 13.8.96. However, on 14.12.2000 i.e. nearly four to seven years later, the respondents indicated that they were revising the above fixation wrongly done and ordering recovery of amounts paid in excess, in terms of Postal Directorate letter dated 22.12.98. These orders are under challenge in this OA. Recovery of amounts has been stayed by the Tribunal on 25.1.2001. In the Assured Career Progression Scheme (ACP), introduced on acceptance of the 5th CPC, granting financial upgradation in Group 'B', 'C' & 'D' on completion of 12 & 24 years, DoPT has clarified

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that the upgradations shall follow; one after the other, and not by skipping one stage. Postal Department's directions in this regard are against the spirit of DoPT's clarification. According to the applicants the move by the Department has been designed to take away the benefit of second upgradation, in an arbitrary manner to the majority of the Staff and to deny the benefit to totally to those who are yet to complete 26 years. It is discriminatory in that while other government servants get the benefit of ACP, involving two financial upgradations. Postal employees like the applicants are denied the benefits, which have been provided under the authorised schemes. Further the respondents have sought to revise the pay and recover the amounts allegedly paid in excess, without any notice and in flagrant violation of the directions of the Hon'ble Apex Court in Bhagwan Shukla Vs. Union of India and Others [1994(5) JT 253 SC] Sharvan Kumar Jha Vs. State of Bihar (1991 AIR SC 309] and State of Orissa Vs. Dr. Binapani (AIR 1967 SC 1269). In view of the above the applicants seek the intervention of the Tribunal to render them justice.~

6. In their counter, respondents state that they had wrongly given the benefit earlier, as the schemes did not have any instruction against grant of two promotions on the same day. Subsequently, the matter was examined following Internal Audit objection, resulting in the issue of the Postal Directorate's letter dated 22.12.98 which led to in the cancellation of one of the two promotion orders and the

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recovery of the amount paid in excess, through the order dated 14.12.2000 which have given rise to the OA. The respondents reiterate their position and endorse the audit objection, against two promotions on the same day. According to them, ACP, introduced by DoPT was meant for those officials who are not covered under any other promotion scheme and it was only financial upgradation. The instructions relating to ACP was, therefore, not applicable in the instant case relating TBOP and BCR. They also point out that the OA was premature as the applicants had not waited for the response to their representations before rushing in with this OA. Besides, the respondents had acted correctly and in furtherance of the instructions in force. They also point out that as this recovery was being ordered only to correct the excess payment, wrongly made, no notice was at all necessary. The application deserved to be dismissed as having no merits, plead the respondents.

7. During oral submissions both the learned counsel pressed their respective pleas fervently. Besides, Shri Sant Lal, learned counsel referred to the decision dated 23.4.98 of the Bangalore Bench of the Tribunal in the identical matter in OA 231/97, filed by H.V. Gopala Rao, holding for the applicant, adopting a decision of Mumbai Bench and stated that the orders therein supported his case.

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8. We have carefully considered the matter. In this case the applicants who have been granted the benefit of TBOP as well as BCR having completed 16 and 26 years of service in terms of P&T's order No. 4/12/88-PE I (Pt.) dated 22.7.93 and granted the scales of Rs. 1400 - 2300/- and thereafter Rs. 1600 - 2660/- are sought to be denied one of the promotions on the basis of clarification dated 22.12.98 and being directed to refund portion of pay and allowances, drawn by them. While the schemes were introduced and were made applicable to the applicants no instructions were issued that both the benefits could not be availed themselves of by the applicants but as has been brought out in the counter a clarification has been issued in the wake of certain Internal Audit Objections. Clarification issued vide Postal Department's letter No. 2-146/96-PAP/PET dated 22.12.98, directs that the pay of the officials on completion of 26 years of as on crucial date would be fixed directly in the corresponding scale of pay, for which they were eligible. These rulings are based on FR 22(1)(a)(1). as per the provisions of FR, no official can be given two promotions on the same day." This clarification does not represent the correct appreciation of facts. TBOP and BCR are two different schemes under which officials who have completed 16 years and 26 years of service in the basic grade are given the benefit of fixation in the next higher grade. Relevant instructions issued in this regard do not provide that a person who avails himself for the benefits of one shall have to

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forfeit the right for getting the benefit of other . It stands to reason that persons who have completed 26 years of service in the basic grade would have completed 16 years as well and, therefore, they would be entitled for availing themselves of both the schemes unless and until the schemes specifically provide that a person getting the benefit of one shall be denied the benefit of the other. In the absence of any such provisions the schemes are to be considered as co-existing measures and not alternate measures. It is only by a coincidence that both the schemes have been extended to the ministerial staff like the applicant on the same date i.e. 26.6.93. That does not mean that two promotions are being granted on the day but only that benefit of two promotions - one after 16 years and the next after 26 years - have been granted on the same day. There cannot be any objection to it in law. Cancellation of one of the promotions, as has been proposed runs contrary to the above. This also leads to a situation of a person skipping the intermediate scale to go to the third higher grade, which is not permissible in law. It is in this context that clarification No.17 issued by the DOP&T in their OM No. 35034/1/97-Estt(D) (vol.IV) dated 10./2.2000 relating to ACR become relevant. The same reads as below :

"An employee who has completed 24 years of service is to be allowed two upgradation directly . What will be the mode of fixation of pay of the employee?

The following illustration shall clarify the doubt; An incumbent in the pay scale of Rs. 4000-6000/ (S-7) has put in 24 years of regular service without a regular promotion. The incumbent shall be allowed two upgradations i.e. to S-8 and S-9. His pay shall first be fixed in S-8 and then in S-9. Pay fixation directly from S-7 to S-9 shall not be allowed."

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Thus according to DoPT, in ACP, financial upgradation for those who have completed 24 years of service will be in two stages one following the other. There is no reason why the same could not be adopted in the case of Postal Department as well as to clarification has been issued by DOP&T, which is the nodal Ministry, for all service matters under the Govt. of India. The two schemes in the Postal Department i.e. TBOP and BCR and ACP in other departments perform the same function of removal stagnation, though coverage are 16 years and 26 years in on the one hand and 12 years and 24 years in a combined manner in the other. As such the respondents version that ACR is only a financial upgradation while TBOP/BCR are promotional schemes and the principle governing one cannot be extended to the other is fallacious and incorrect. The benefits of both the schemes are correctly available to the applicants,

9. We also find that our findings are fortified by the stand taken in similar and identical matters by the Bangalore and Mumbai Benches of the Tribunal. In the case of H.V. Gopala Rao Vs UOI decided on 23.4.1998 (O.A. No. 231/97), Bangalore Bench has reiterated their earlier decision dated 31.3.98 (in OA No. 367/97) relying upon the decision of the Mumbai Bench in the case of Baburao Shankar Dhuri Vs UOI and Others [(1997) 30 ATC. 70] Relevant portion of the decision of the Mumbai Bench reads as below:

"However, there appears to be substance in the contention of the applicant that the clarification given by the department that applicants who have completed 26 years of service may be allowed to opt only once whereas the employees who have not completed 26 years of services would be able to opt twice. It has been pointed out by the applicant that an official who completed 25 years 11 months and 29 days on 26.6.1993 and falls one day short as on 26.6.93 would get two pay fixations including one

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in LSG cadre on 26.6.93 but those who enter the HSG cadre directly would get only one pay fixation and to this extent there is an inequity. The employees of the Postal Department to whom the scheme is applicable and who completed 16 to 26 years belong to a homogeneous and uniform class and they cannot be broken up into two arbitrary classes one completing 26 years on the prescribed date and another not having completed 26 years on the prescribed date. The original scheme did not envisage any such differentiation and the clarification subsequently given that pay may be fixed only once in the corresponding scale for which the officials qualify on the basis of their length of service is clearly in derogation of the nature and logic of the scheme. This clarification contained in circular dated 8.8.1995 is liable to be quashed and get aside. subsequently, applicant is entitled to refixation of the pay as if this clarification did not exist."

10. It is also seen that Mumbai Bench has quashed a clarification issued in similar circumstances that only one fixation was permissible in the corresponding scale, which the officials qualify on the basis of their length of service. This is the position we have adopted as brought out in our detailed findings in para 8 above.

11. In the above view of the matter, the application succeeds and is accordingly allowed. The impugned communications dated 22.12.98 and 14.12.2000 are quashed and set aside, with directions to the respondents to grant all consequential reliefs to the applicant, within three months from the receipt of a copy of this order. Interim order dated 25.1.2001, against recovery is made absolute.

12. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)