

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 740/1994

New Delhi this the 3rd October, 1996.

(18)

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri K. Ramamoorthy, Member (A)

Shri Nathu Ram,
Son of Shri Nihal Singh,
Resident of Badli Delhi
C/o Shri Sant Lal Advocate,
C-21(B) New Multan Nagar,
Delhi-110 056.

Applicant

(By Advocate: Shri Sant Lal)

vs

1. The Union of India,
through the Secretary,
Ministry of Communications,
Dept. of Posts.
Dak Bhawan,
New Delhi-110 001.

The Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi-110 001.

The Senior Superintendent,
New Delhi Sorting Division,
New Delhi-110 001.

Respondent

(By Advocate: Shri M.K. Gupta)

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O R D E R (ORAL)

Hon'ble Shri A.V. Haridasan, Vice Chairman(J)

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The applicant who retired from service as a Head Mailman, is aggrieved by the order dated 17.12.1992 (Annexure A-1) by which he was retired from government service with immediate effect 'on attaining the age of superannuation' and the order dated 5.8.1993 by which he was treated to have been retired w.e.f. 31.5.1991 and would be deemed to have been re-employed w.e.f. 1.6.1991 till 21.12.1992. The applicant who commenced his career in group 'D' service in RMS w.e.f. 8.10.1956 was on the basis of a BCR Scheme granted a higher pay scale of Rs. 950-1400/- w.e.f. 1.10.1991 by order dated 5.3.1992. While the applicant was continuing in service and as according to him he could continue in service till the age of 60 years in accordance with the provisions contained in FR 56(e), the impugned orders were issued by the respondents. The date of birth of the applicant is 6.5.1933 and according to the provisions of FR 56(e), the date of his superannuation according to the applicant, is 31.5.1993. Even after the grant of the promotion to the pay scale of Rs. 950-1400/-, the applicant continued to be a group 'D' employee and, therefore, the impugned orders of the respondents are unreasonable, illegal and unjustified according to the applicant. Therefore, the applicant prays that the impugned orders at Annexure A-1 & A-2 may be quashed and respondents be directed to treat the applicant retired w.e.f. 31.5.1993 on attaining the age of 60 years of service in accordance with the provisions of FR 56(e).

The respondents seek to justify the impugned orders on the ground that as the applicant was granted the pay scale of Rs. 950-1400/- w.e.f. 1.10.1991, a scale which is in the group 'C' post, the retirement age of the applicant naturally became 58 years in accordance with the provision of FR 56(a). A scale of pay, the maximum of which is above Rs. 1150/- under the government of India falls into group 'C'. Therefore, the applicant having been inducted into a pay scale, the maximum of which is more than Rs. 1150/-, ceased to be a group 'D' employee and therefore, there is nothing illegal in the action of the respondents, contend the respondents.

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We have heard the learned counsel on either side and perused the materials on record. None of the documents appended either to the application or to the reply statement, shows that as a result of the BCR scheme a group 'D' official who has been granted a higher pay scale of Rs. 950-1400/- would be elevated from group 'D' to group 'C'. Infact all these documents Annexures A-4 dated 5.3.92; R-1 dated 16.10.1992 and R-2 dated 16.3.1993 mentioned that the officials who have been promoted to the scale of Rs. 950-1400/- are group 'D' officials. In order to ascertain whether any post created or upgraded after the year 1986 would be continued in the same cadre or group of posts or would go into the next higher group, we will have to see the provisions contained in Rule 4 and 6 of the CCA (CCS) Rules and the Govt. of India instructions thereunder. In Rule 6, the description of post and classification on the basis of the pay scale has been given. Going by this data, a central civil post carrying a pay or scale of pay

maximum of which is above Rs. 1150/- would fall in group 'C' post. It is undisputed that after the promotion under the BCR Scheme, the applicant was granted the higher pay scale of Rs. 950-1400/- . It is pertinent to mention that under the proviso to Govt. of India decision, it has been stated as follows:-

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"Provided that post created on or after 1.1.1986 as specified addition in existing cadre shall have the same classification as post in the cadre which they are....."

We have already mentioned that in all the orders issued pursuant to the BCR Scheme stipulated that a higher pay scale of Rs. 950-1400/- was given to the officials in group 'D' cadre on completion of 26 years service. As the higher pay scale of Rs. 950-1400 for group 'D' employees was introduced much after 1.1.86 going by the language of the proviso quoted above, it should be held that the post despite the higher scale continued in group 'D'. Therefore, merely because by order dated 5.3.1992, the applicant was given the higher pay scale of Rs. 950-1400/- w.e.f. 1.10.1991 it cannot be held that the applicant ceased to hold the group 'D' post. In other words even after the grant of pay scale of Rs. 950-1400/- by the order dated 5.3.1992 to applicant was holding a group 'D' post and, therefore, under the provision of FR 56(e) he was entitled to continue till the age of 60 years before his retirement.

Further the impugned order at A-1 dated 17.12.1992 was issued all of a sudden by the respondents retiring the applicant with immediate effect purporting

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to be on attaining the age of his superannuation without mentioning on what date he would complete which year of age. This order was later on amended by the order dated 5.8.1993 by which the applicant was treated to have been retired w.e.f. 30.5.1991. Both these orders are totally unjustified because on 31.5.1991 the applicant was undisputedly a group 'D' employee getting a pay in the scale maximum of which was below Rs.1150/- only. Even after the applicant was given higher pay scale of Rs. 950-1400/- if the respondents wanted to retire the applicant before the attainment of 60 years of age he should have been asked whether he would accept the lower pay scale and continue upto 60 years or would retire at the age of 58 years of age. This has not been done in this case. Learned counsel for the respondents stated that a general circular was issued on 28.7.1992. There is nothing on record to show that the applicant was specifically asked to exercise his option and that the applicant exercised his option to retire at the age of 58 years. Going by the impugned orders Annexures A-1 & A-2, there is not even an indication that the applicant was either given an option or that he has exercised such an option. If that had been done then there would not have been any requirement of issuing the order of Annexure A-2.

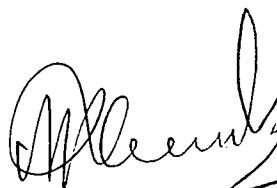
In the light of what is stated above, we set aside the impugned orders Annexures A-1 & A-2 and direct the respondents to treat that the applicant retired on 31.5.1993 on the attainment of the age of 60 years in the pay scale of Rs. 950-1400/-, and to pay the arrears of pay and allowance for the period he was kept out of

service and to settle his retiral benefits within a period of three months from the date of communication of this order. There is no orders as to costs.

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(K. RAMAMOORTHY)
MEMBER(A)

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(A.V. HARIDASAN)
VICE-CHAIRMAN(J)