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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2347/2000

New Delhi, this the 6th day of January, 2002

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

1. Shri Phool Singh
S/o Shri Jage Ram
R/o Village & P.O.Jantikalan
Distt. Sonepat, HARYANA.

2. Shri I.D.Sharma
S/o Shri Onkar Dutt
R/o 243, Prashant Vihar
Delhi.

(By Advocate Shri S.K.Gupta) ...Applicants

V E R S U S

Govt. of India : through

1. Secretary
Dept. of Personnel, Training
and Public Grievances, North Block
New Delhi.

2. Secretary-cum-Director General
Department of Posts
Dak Tar Bhawan
New Delhi - 110 001.

3. Chief Post Master General
Delhi Circle
New Delhi - 110 001.

4. Post Master
I.P.Post Office, (I.P.Head Post Office)
New Delhi - 110 002.

(By Advocate Shri R.P.Agarwal and
Shri P.P.Ralhan, proxy for Shri J.B.Mudgil) ...Respondents

O R D E R

By Hon'ble Shri Govindan S.Tampi,

S/Shri Phool Singh and I.D.Sharma, applicant
in this OA seek the following reliefs :-

8 (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 ;

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(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

(v) to award the cost of the petition ;

2. Heard S/Shri S.K.Gupta and P.P.Ralhan as well as R.P.Agarwal, learned counsel for the applicants and the respondents respectively.

3. Both the applicants who joined as Postmen in 1965 became LDCs in 1970, UDCs in 1977 and L.S.G.Supervisor in 1991, under TBOP Scheme. Both of them opted for the new grade after the dates of next increment i.e. 1-12-1991 and 1-1-1992 respectively. Thereafter they were granted promotion to HSG under BCR scheme. After accepting the second option and re-fixing the pay accordingly in 1997 and 1998, on 12-10-2000, the respondents indicated that on promotion under TBOP, the pay cannot be given to the applicant but has to be fixed directly under FR 22-1 (a) (i) and that there has been wrong fixation of pay and that to correct the same, both of them should lose one increment each. Applicant No. 2's annual increment has also been withheld. Hence this OA. According to the applicants, the policy decision dated

28-7-1991 and the promotion letter dated 1-1-1997, had mentioned about the options, which they had exercised before re-fixation of pay and the same cannot be unsettled. Having asked for the option, which the applicants acted upon, respondents cannot go back on the same. Pay fixation ordered correctly in accordance with the option cannot be unsettled. Application should, therefore, be accepted, pleads Shri Gupta.

4. In the detailed reply filed on behalf of the respondents state that both the applicants were granted promotions under TBOP and BCR, shortly following one another and, therefore, they could not be given the benefit of two fixation but of only one. In such cases, the pay will be fixed w.r.t. the pay admissible on the scale of the second promotion and the individual will not be entitled to refixation of pay for the first promotion. The pay of the applicant on promotion under TBOP cannot be fixed by giving him the benefit of split option under saving clause of FR 22-I (a) (1) 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. Applicants have been given wrong fixation of pay by taking into consideration two promotions and two options, which followed one another in quick succession. The correction has been ordered by the respondents in terms of the advice of the Deptt. of Personnel, who were consulted in this regard. These actions cannot be assailed, according to the respondents. Both Shri Ralhan and Shri

R.P. Aggarwal, Sr. counsel appearing for the respondents urge that their action should be upheld as it represents the correct interpretation of law.

5. We have carefully considered the matter. 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 on 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

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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.

6. In the result, we are convinced that the applicants have correctly made out a case for our interference. OA succeeds and is accordingly allowed. Impugned order dated 12-10-2000, directing the refixation (downward revision) of the pay of the applicants, is quashed and set aside with full consequential benefits. Directions for recovery of alleged excess payment are also set aside, and the interim order is made absolute. Respondents are also directed to release the grant of annual increments, withheld from applicant No.2. This shall be done within three months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
JUDICIAL MEMBER

(Govindan S. Tampi)
ADMINISTRATIVE MEMBER

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