

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI.

O.A.1405/87.

P.C.Aggarwal and others	...	<u>Applicants.</u>
-versus-		
Union of India and others	...	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri B.C.Mathur, Vice Chairman(Admn).

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman(Jud.).

For the applicants- Shri B.S.Mainee, Advocate.

For the respondents- Shri O.N.Moolri, Advocate.

Date of hearing and order - 24.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman (J.) :-

The applicants, while they were working as Head Parcel Clerks at the Railway Station Delhi Main, were selected for the post of Chief Parcel Clerks in the scale of Rs. 455-700/- p.m., and were duly empanelled after the viva voce, by the proceedings dated 19.12.85 (Annexure-III). By the proceedings dated 1.1.1986 issued by the Divisional Personnel Officer, they were appointed to officiate in the scale of Rs. 455-700/- and were posted at the stations indicated against their names. They were also allowed to draw officiating pay in the scale of Rs. 455-700/- and as quantified in the said proceeding itself. Accordingly, the applicants were being paid upto May, 1987, and the annual increment was also allowed on 1.1.1987. However, by the order dated 22.5.1987, their pay was fixed in the corresponding new pay scales, whereby they were not allowed the corresponding scale of pay in the grade of Rs. 455-700/- as revised by the Fourth Central Pay Commission and were allowed only the revised equivalent of the scale of Rs. 425-640/-.

2. It is urged by the applicants that the aforesaid orders of the respondents by reducing their salary to

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14
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the lower scale is illegal and arbitrary. It is pointed out that even prior to 1.1.1986, the applicants have been occupying the post of Chief Parcel Clerks against which they were duly posted on 1.1.1986. It is contended that as on 1.1.1986 since they have been duly promoted to that grade by the proceedings issued on that date, the scale of pay applicable to them was Rs. 455-700 and hence the equivalent of the said scale (Rs. 1400-2300/-) according to the revised pay scale they are entitled to. There is also the plea that before reducing their salary no opportunity of being heard was allowed.

3. The applicants have prayed for quashing the aforesaid orders refixing their pay and for a direction to the respondents to restore the original fixation.

4. In the reply filed on behalf of the respondents, it is contended that the application is premature since the applicants have not exhausted the remedy available to them since they have not submitted any representation against the impugned order. It is stated that the order promoting the applicants to the post of Chief Parcel Clerks was given effect to only from the date they took independent charge of the post after 1.1.1986 and not with effect from 1.1.1986, as alleged by the applicants. There is also the contention that the applicants were promoted from the lower grade, in between January, 1986 to September, 1986 and not on 1.1.1986. As regards the earlier fixation of pay, it is stated that it was done only on a provisional basis. The respondents

6

would add that in accordance with the revised pay Rules, the refixation has been correctly done and is not open to challenge.

5. The preliminary objection raised by the respondents is that the application is not maintainable since the applicants have not exhausted the alternative remedy of filing a representation against the impugned order cannot be gone into at this stage since the application has been admitted and the respondents have filed reply on merits.

6. The short point that arises for determination is whether the order dated 22.5.1987 under which the pay of the applicants in the scale of pay of Chief Parcel Clerk has been refixed is sustainable in law or not.

7. It is not in dispute that the applicants have been holding the post of Chief Parcel Clerks even when their lien was only in the post of Head Parcel Clerks, and that while so they were allowed to participate in the selection for regular appointment to the post of Chief Parcel Clerk, and as a result of their having come out successful were empanelled by the proceedings dated 19.12.85 for such appointment to the post of Chief Parcel Clerks. The actual order promoting them to the post of Chief Parcel Clerk was issued on 1.1.1986 and by the same order they were given posting as well. Since the applicants had already been working against the same post, there was no question of change of

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station or taking charge of ^a different post. As such, we have to hold that the applicants assumed the charge of the post of Chief Parcel Clerks on 1.1.1986 itself pursuant to the promotion.

8. Counsel of the respondents submitted that the fact that they were holding the charge of the post of Chief Parcel Clerks as on 1.1.1986 does not mean that by the order of promotion issued on 1.1.1986, they have been promoted to the higher post and have assumed independent charge of the higher post. We are unable to accept the ^{submission} ~~contention~~ that the order dated 1.1.1986 is an order by which these applicants have been regularly promoted to the post of Chief Parcel Clerk. The order further shows that they have been ^{actually} posted against the posts. There is nothing in the order to indicate that it was subject to any condition or that they were to hold the post not on an independent basis. We would also like to point out that by the self-same order they were allowed to draw pay in the scale of Rs. 455-700/-. namely, the scale of pay of the post of Chief Parcel Clerk. Pursuant to the aforesaid direction, their pay was correctly fixed in the higher scale with effect from 1.1.1986 and they were drawing the said scale of pay as well as the increment from 1.1.1987. While so, the impugned proceedings have been issued re-fixing the scale of pay of the applicants on the premise that as on 1.1.1986 they were entitled only to the scale of pay of Rs. 425-640, ^{and allowing only} the equivalent of the same in the revised scale of pay. Though there is a vague statement in the reply filed by the respondents that the orders of promotion were

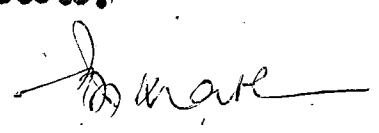
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given effect to only from the date the applicants took independent charge of higher grade post after 1.1.1986 and not on 1.1.86 (vide clause (iii) to para 3 of the reply) and that the applicants were promoted from the lower grade of Rs. 425-640/- ^{to} and not from Rs. 455-700 in between (vide clause XVIII of Para. 3), January, 1986 to September, 1986 and not on 1.1.1986, the respondents have not produced any material to substantiate the said contention. We cannot countenance the said plea in the face of the unqualified promotion that has been allowed to the applicants to the higher grade by the order dated 1.1.1986.

9. It follows from what is stated above that the re-fixation of the pay of these applicants by the impugned proceedings dated 22.5.1987 cannot be sustained. It is accordingly quashed ~~so far as it relates to the applicants.~~ We direct the respondents to restore the original fixation of pay and to have the pay of the applicants fixed in the corresponding ^{revised} scale of pay accordingly.

10. The application is allowed as above. The parties are allowed to bear their own costs.


(G. Sreedharan Nair)
Vice Chairman (J.)


(B.C. Mathur)
Vice Chairman(A).

S.P. Singh/
24.4.90