

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 2nd day of May 2002

Original Application no. 1391 of 1998.

Hon'ble Mr. Justice R.R.K. Trivedi, VC  
Hon'ble Maj Gen K.K. Srivastava, AM

1. Nawab Ali, S/o Sri Karamat Ali,
2. Hamid Ullah, S/o Sri Azim Ullah.
3. Surendra Lal, S/o late Ram Boojh Lal.

L.S.G. Accountants, Office of Head Record  
Officer, Railway Mail Service, A-Division,  
Allahabad.

... Applicants

By Adv : Km A Mumtaz

Versus

1. The Union of India, through Director General Posts,  
Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle,  
Lucknow.
3. The Director of Accounts, Postal, U.P. Circle,  
Lucknow.
4. The Post Master General, Allahabad Region,  
Allahabad.
5. The Senior Superintendent, Railway Mail Service, (RMS),  
A- Division, Allahabad.
6. The Head Record Officer, Railway Mail Service, A-Division,  
Allahabad.

... Respondents

By Adv : ~~Sri S.C. Mishra~~ Sri S.C. Mishra

O R D E R

Hon'ble Maj Gen KK Srivastava, Member (A).

In this OA filed under section 19 of the A.T. Act,  
1985, the applicants seek quashing of the orders dated

...2/-

14.8.1998 (Ann 1) passed by the respondent no. 1 and direction to the respondents to accept the options dated 2.4.1996 filed by the applicants pursuant to the issue of orders dated 26.5.1986 by respondent no. 1 as having been made within the stipulated period and refix their pay as per the options exercised by them.

2. The facts of the case, in short, giving rise to this OA are that the applicants were appointed as temporary sorters in Railway Mail Service (in short RMS) A-Division, Allahabad in the scale of Rs. 260-480. They passed the departmental PO/RMS Examination and were appointed as Accountants, applicant no. 1 Nawab Ali w.e.f. 31.12.1981, applicant no. 2 Hamid Ullah w.e.f. 16.1.1983 & applicant no. 3 Surendra Lal from 22.1.1981 and granted a special pay of Rs. 45/- per month in addition to their pay. On introduction of Time Bound One Promotion Scheme (in short TBOP) from 30.11.1983 their pay on promotion was fixed in the Lower <sup>in Selection</sup> Skilled Grade (in short LSG) scale taking into account the special pay drawn by them even though they had not drawn the scale for three years. <sup>in</sup> ~~and~~ Orders of respondent no. 1 dated 4.1.1972 specifically stipulated that the post of accountant/assistant accountant are in the cadre of time scale clerks and not in a separate cadre, these cannot be held substantively by the incumbent and special pay will be treated as part of pay for the purpose of fixation of pay on promotion to a higher grade only if the same has been drawn for at least three years. In 1996, <sup>in during</sup> the course of an audit fixation of pay, taking into consideration special pay when it had not been drawn for three years, was objected to by the Audit authorities and the applicants are being made to refund the excess amount (about Rs. 21000) paid to them in instalments of Rs. 400/- per month. Hence this OA which has been contested by the respondents by filing counter reply.

3. Heard Km. A Mumtaz, learned counsel for the applicants and Shri S.C. <sup>Mishra</sup>Tripathi, learned counsel for the respondents. The learned counsel for the parties have also filed written arguments. We have perused the same and also the material on record.

4. Km. A Mumtaz learned counsel for the applicant submitted that the applicants became aware of the order of respondent no. 1, Director General Post and Telegraph (in short DG P&T) dated 26.5.1986, laying down that Post Office and RMS accountants could also exercise their option to continue as PO/RMS Accountants drawing a pay plus special pay for a period of three years and accept the promotion to LSG cadre after completion of three years, during the course of 1996 audit only; traced and obtained a copy thereof from respondent no. 5 on 2.4.1996 and filed their option on the same date. The audit authorities held these options as time barred and their representation to respondent no. 1 for their acceptance and refixation of pay accordingly has been illegally rejected by respondent no. 1 by the impugned order of 14.8.1998. She also argued that the earlier audit parties never raised any objection in this regard and the observation of 1996 audit party is incorrect.

5. Km A Mumtaz submitted that the applicants pay under TBOP had been correctly fixed in accordance with decision 13 below FR 22 (C) (illustration 33 of Pay rules made easy) DG P&T order dated 4.1.1972 automatically stood redundant when a separate cadre of PO/RMS Accounts was formed on 10.11.1978 ( the cadre was subsequently declared defunct on 24.2.1981). The learned counsel further submitted that recoveries cannot be effected being time barred under the provision of item no. 100 of schedule of limitation <sup>Limitation</sup> Limitation



Act 1963 and in view of the decision of Hon'ble Allahabad High Court in Writ Petition no. 771 of 1986 Harish Chandra Srivastava Vs. State of UP & Ors.

6. Resisting the claim of the applicants Sri SC <sup>Miss</sup> ~~Tripathi~~ learned counsel for the respondents made the following submissions :-

- i. the applicants were working as accountants in the Department of Posts and are fully versed with the rules and regulations of the Department.
- ii. The pay fixation was done in these cases by applicant no. 3 only and none else.
- iii. The applicants were holding the posts of Accountants on temporary and adhoc basis and their pay on promotion to LSG could not be fixed under decision 13 below FR 22 (C)
- iv. The irregularity having been noticed by the audit authorities the <sup>amount</sup> ~~amount~~ excess paid to the applicants are being recovered from them
- v. The option envisaged in DG P&T orders of 26.5.1986 had to be exercised at the time of promotion and in any case could not be exercised 13 years after the promotion.

7. The learned counsel for the respondents finally submitted that the applicants had acted in a consorted manner and made wrong and irregular fixation of their pay. Not only this they concealed it for a period of 13 years from the previous Audit parties. They are all fully responsible for this act and should have been punished but were let off only after recovery of over payment.

8. We have carefully considered the submissions of learned counsel for the parties and have closely perused the

material on record besides the rule position. The perusal of records leaves no doubt in our mind that the pay fixation on promotion to LSG under TBOP had been wrongly done with a view to benefit the applicants. Neither the applicant no. 1 who had done the pay fixation nor other applicants were unaware of the fact that at the time of pay fixation (30.11.1983) they were only holding the appointment of accountant on temporary basis and were not holding any substantive appointment of accountant because there was no cadre and they could not therefore obtain the benefit of inclusion of special pay in their basic pay.

9. We <sup>also</sup> are ~~unable~~ to accept the claim of the applicants that they came to know of the provision of DG P&T order dated 26.5.1986 on 2.4.1996 only. It was too important a communication and knowledge of <sup>it is</sup> it <sup>is</sup> essential in their day to day <sup>is not acceptable</sup> functioning. <sup>Not</sup> to have been within their knowledge. Their claim would have carried credibility if it had been supported by any example where pay fixation after 26.5.1986 had been made in violation of those orders. Merely getting a copy endorsed to their office on 2.4.1996 does not imply that they were earlier ignorant of these orders. In fact, they would have found these orders considerably <sup>embarrassing</sup> as they had, contrary to these orders, availed of the benefit of special pay from a prior date. It was only when the Audit <sup>caught on</sup> <sup>to</sup> the irregularity <sup>that</sup> they chose to invoke these provisions, to cut their losses, claiming that they were not aware of these provisions earlier.

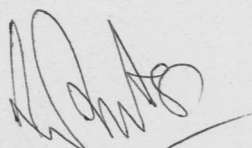
10. We also see little merit in the applicant's claim that option under DG P&T orders dated 26.5.1986 could be exercised at any time since no time limit was specified in the letter. The letter was clarificatory in nature indicating that the benefit of promotion under TBOP could be deferred till completion


of 3 years of service as an accountant. It was to be read in conjunction with FR 22 which permits an option in the first place. Obviously, the option to so defer the promotion had to be taken at the time of promotion and certainly not after 13 years and that too after availing the benefit of promotion.

11. The claim of the applicants that ordering recovery of overpaid salary after 13 years is hit by Limitation Act and would also be contrary to the pronouncement of Hon'ble High Court in Harish Chandra's case (supra) is equally misconceived, Limitation Act imposes no such bar where pay is wrongly fixed and Harish Chandra's case is clearly distinguishable as it relates to a case wherein individual was promoted to higher appointment and the scale applicable in higher appointment was sought to be denied to him on the ground that he had been wrongly promoted to the said scale. It was held by their lordships of Hon'ble High Court that petitioner could not be held responsible for securing promotion to the higher scale by misleading the department and therefore the payment of salary could not be recovered from him. Hence the decision of Hon'ble High Court of Allahabad would not be helpful to applicants.

12. In view of the foregoing discussions we do not find any good ground to interfere. The OA is devoid of any merit and accordingly dismissed.

13. There shall be no order as to costs.

  
Member (A)

  
Vice-Chairman

Dated 02/05/2002  
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