

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: Allahabad this...6th.....day of May....1996

CORAM: Hon'ble Mr S.Dayal, Member (A)

ORIGINAL APPLICATION NO. 1532 OF 1993

M.L. Srivastava, aged about 60 years
son of Late Sri Lal Bahadur Lal,
Retd. Sr. Superintendent of Post Offices,
Azamgarh, presently residing at House
No. 517, Netanagar, Kydganj, Allahabad - Petitioner
(By Advocate Sri R.C.Sinha)
versus

1. Union of India, through Secretary,
Ministry of Communication, Department
of Post, New Delhi
2. Director General, Department of Post,
New Delhi
3. Chief Post Master General, U.P. Circle,
Lucknow
4. Director, Postal Accounts, Lucknow
... Respondents
(By Advocate Mr. S. Srivastava)

ORDER

(By Hon'ble Mr. S. Dayal, Member (A))

The applicant seeks the following
reliefs:

(i) Setting aside of order dated 21.11.89 which certifies the availability of commuted leave but invites attention to Govt. of India's decision under Rule 10 of Swamy's Compilation of F.R. and S.R. according to which commutation is not permissible after the employee ceases to be in service.

(ii) Setting aside of letter dated 21.5.90 intimating to the applicant that commutation cannot be done after retirement.

(iii) Setting aside of letter dated 3.6.91 rejecting the request of the applicant to revise the order of his pay fixation and payment of D.C.R.G.

(iv) Setting aside of letter dated 1.4.92 by which the request of the applicant to reconsider his request made in letter dated 1.5.91 and rejected by letter dated 3.6.91.

(v) Issue a direction to the respondents to give benefit of F.R.Z.Z.C. as classified by letter dated 23.8.82.

(vi) Issue a direction for refixation of pension after pay is refixed in terms of relief of refixation of pay asked for in the previous clause.

(vii) Direction to pay interest of 18% per month for eight months delay in payment of D.C.R.G. .

(viii) Direction for payment of difference of DCRG based on pay of Rs.3500/- and

(ix) Direction for conversion of earned leave sanctioned for 94 days earlier into commuted leave.

1. The facts as stated in the application are that the applicant retired from the post of Senior Superintendent of Post Offices, Azamgarh, on 31.7.89 after reaching the age of superannuation. The pay of the applicant was fixed on his promotion to junior time scale in Kanpur at Rs.3300/- P.M. The applicant claims that he was posted on promotion to Senior Time Scale of Group 'A' at Azamgarh on temporary and adhoc basis, it is claimed that the post of S.S.P.O., Azamgarh, Division was in the Senior Time Scale of Group 'A'. The benefit of FRZZD is claimed on the ground that the applicant held a post carrying higher duties and responsibilities in a temporary capacity

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It is also claimed that benefit of FRZZC is also available in case of local/ad-hoc promotion from one Group 'A' post to a higher Group A post. It is claimed that FRZCC should have been applied and pay ~~be~~ fixed at Rs. 3500/- P.M. The applicant also made a representation on 5.7.89 for conversion of earned leave granted on medical certificate into commuted leave. The applicant had also represented for calculation of DCRG on pay of Rs. 3500/- P.M. and payment of interest from August 1989 to March 1990. The applicant was informed that since he was not approved in the Junior Time Scale of Pay, he was not entitled to benefit of FRZZC. The request for interest on late payment of DCRG was rejected on the ground that certificate by the competent authority was issued only on 5.2.90.

2. The arguments of Shri H.S. Srivastava, proxy counsel to Shri R.C. Sinha, learned counsel for the applicant and Km. Sadhana Srivastava, learned counsel for the respondents were heard.

3. Taking up the claim of the applicant first that he was promoted to Senior Time Scale of Group A, a perusal of Annexure A-1 to the original application shows that there was an order for promotion of the applicant to Junior Time Scale of Group A as SSPO, Kanpur city on temporary and ad-hoc basis in order dated 30.01.89 at Annexure A-1. His posting to S.S.P.Os Kanpur was made by another order dated 11.04.89 at Annexure A-2 on temporary and ad-hoc basis on his request and cost but the post for which promotion was made is stated to be SPSO, Banda. By another order dated 11-04-89 the applicant was posted as SSPO Azamgarh at his request and cost on temporary and ad-hoc promotion and again the post from which promotion was shown was that of SPOs Banda and SSPOs Kanpur

City designated. This information given in column 3 was wrong as the respondents have admitted in paragraph 8 of their counter reply that the applicant officiated as Senior Superintendent of Post Offices, Kanpur Division, Kanpur from 31.3.89 to 21.4.89. It is also admitted in the next paragraph that the applicant took charge of the post of Senior Supdt. of Post Offices, Azamgarh, on 28.4.89, on purely temporary and adhoc basis. The Respondents have admitted that this post was in senior time scale of Groupd 'A' in Paragraph 12 of their counter reply. In response to Paragraph 4(8) of the application that the benefit of fixation of pay is available under FRZZC even in respect of local / adhoc promotion from one Group 'A' to another higher Group 'A' post Annexure A-III to the application clarifies that the provision of FRZZC is applicable to a person holding a post in substantive temporary or officiating capacity and promoted or appointed to a higher post on substantive temporary or officiating capacity. The respondents have contended that the benefit of this clairification is not applicable to the applicant because he was promoted only on temporary or adhoc basis to junior time scale of Group 'A' post. However, the clarification is clear and categorical that even if a person is appointed from one Group 'A' post held by him on temporary basis to another higher Group 'A' post again held by him on temporary basis, the provision of FRZZC would be applicable. In view of this the applicant's claim that his pay should have been fixed in Senior Time Scale of Group 'A' post after giving him the benefit of FRZZC in junior time scale in Group 'A' has merit.

4. The second relief claimed by the applicant of conversion of his earned leave into commuted leave has also been examined. Although it is true that the applicant had asked for such conversion of all earned leave taken on medical certificates in the sixties, seventies and eighties on 5.7.89 which was 26 days before the date of his superannuation, the order for conversion could not be passed before his superannuation. The claim of the applicant that either the order should have been passed before his superannuation or the claim should be treated to be admissible because it was preferred while the applicant was in service is not tenable. The Government of India's decision under Rule 10 does not permit such a conversion after the applicant ceases to be in service. The request for conversion of nature of leave for the entire period of service barely twenty six days before retirement

cannot be said to have cast any obligation on the respondent to pass an order before the date of retirement nor would result in keeping this matter alive after the retirement of the applicant. As a matter of fact pension papers are prepared well in advance and in cases of superannuation the leave account of the employees for the past period is finalised and sent along with pension papers for passing orders for encashment of leave. Therefore, an application made before 26 days of superannuation can be said to be highly belated, and does not deserve consideration.

5. The third relief of Late payment of DCRG and claim of interest on late payment is not supported by proper facts in the application. A bare mention of dates of superannuation and of payment of DCRG would not entitle the applicant to claim interest on the so called late payment based on mention of these dates. It is true that the applicant superannuated on 31.7.89 and was paid DCRG on 10.4.90 but the temporary and adhoc promotion of the applicant to Junior time group 'A' came in the last four months of the applicant's service. This required recalculation of gratuity besides the applicant had to obtain his various clearances for whatever was to be paid by him to the Department at the time of superannuation and such clearance had to be verified. A period of eight months thus cannot be considered to be excessive and such payment cannot be permitted to be treated as late payment on which Respondents are required to pay any interest. Therefore, this relief can not be granted.

6. The last relief asked for by the applicant is recalculation of DCRG as he was entitled to pay fixation in the senior scale of Group 'A' under FRZZC. We have already upheld his claim for refixation of pay under FRZZC Paragraph 3 of this judgement. Therefore, the claim that his DCRG should be recalculated on this basis has merit.

7. In view of the discussion in the preceding Annexure 'A' XIII and A-XVI are quashed in so far as they relate to anomalies in fixation of pay and the following reliefs are to be given to the applicant by the respondents

(i) The pay of the applicant shall be refixed within two months of the date of communication of this order after giving the applicant benefit of FRZZC over his post in junior time scale of Group 'A' for his pay fixation in Senior time scale of Group 'A'.

(ii) The DCRG admissible to the applicant shall be recalculated after fixation of pay in senior time scale of Group 'A' and

(iii) Arrears arising out of refixation of pay and recalculation of DCRG shall be paid to the applicant within four months from the date of communication of this order.

8. There shall be no order as to costs.

Shaw
MEMBER (A)