

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
NEXXUSO.A. No.
~~XXXXXX~~

83 OF

1990

DATE OF DECISION 12.7.1991

Mr. P. S. Bapat

Petitioner

Party in person

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mr. P. M. Raval

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. S. Santhana Krishnan : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *ND*
4. Whether it needs to be circulated to other Benches of the Tribunal? *N*

Mr.P.S.Bapat,
Sr.Suptd.of Post Offices,
Vadodara West Division,
Fateganj,
Vadodara - 390 002.

...Applicant.

(Party in Person)

Versus

1. Union of India to be served through Secretary Postal Board Dak Bhavan, Parliament Street, New Delhi.
2. Director General (Postal), Department of Posts Ministry of Communication Dak Tar Bhavan, New Delhi.
3. Chief Postmaster General, Ahmedabad.

...Respondents.

(Advocate : Mr.P.M.Raval)

JUDGMENT

O.A. No. 83 OF 1990.

Date : 12-07-1991

Per : Hon'ble Mr.S.Santhana Krishnan : Judicial Member

The applicant in this application under Section 19 of the Administrative Tribunals Act, 1985, challenges the orders of the respondents dated 16.9.1980 and 17.6.1986.

2. It is seen from the allegations in the application that the applicant was originally working under the respondents in the Postal Department, as a clerk and thereafter on being successful in the competitive examination promoted to the post of Inspector of Post Offices. Thereafter by virtue of fitness-cum-seniority he was promoted to officiate to the cadre of HSG/ASP in grade of Rs.335 to Rs.425/- w.e.f. 13.8.1973. Since there was promotional avenue from cadre of IPO to cadre of ASP/HSG I, the applicant was thus officiating in the pay scale of Rs.335-15-425. Thereafter, when

the Third Pay Commission was appointed, it introduced two grades in the HSG, namely HSG I, and HSG II. The old HSG Grade was trifurcated by Third Pay Commission as HSG II, and HSG I and ASP. The post of ASP and HSG I were interchangeable. The pay of the applicant was fixed under Fundamental Rules 22-a (ii) and FR-30. The decision of not fixing higher responsibilities in the HSG I when the ASP was appointed in the said post was anomalous and therefore, the revised orders were issued under the DGP & T by memo dated 16.9.1980. By this it was made clear that the posting to HSG I from ASP will involve higher duties and responsibilities and pay will be fixed under FR-22-C. In view of the above said clarifications, recovery of Rs.1,374.55, was ordered as per the order dated 13.11.1985. The applicant submitted a representation that the recovery cannot be made and the benefit of fixation of pay as per FR-22.C of the Fundamental Rules, should be given from 1.1.1973, the date of the Third Pay Commission and not from 16.9.1980. The representation was rejected. Hence the applicant filed OA/322/87, before this Tribunal claiming both the reliefs. At the time of the arguments when it was pointed out about the plurality of reliefs claimed by him, he restricted the claim only regarding the recovery. He also claims that one Mr. Karanjkar, who was junior to him and promoted to HSG I on 29.3.1980 and he is getting higher pay. The fixation is arbitrary and is violative of Article 14 of the Constitution of India. Hence this application for quashing and setting aside the above said orders.

3. The respondents in the reply disputes, the averments made in the application and also points out that when the person was posted from ASP to HSG I, it is only a transfer and not a promotion and hence fixation was allowed under FR-22-a, read with FR-30, when certain



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7

difficulties were pointed out, the President issued the memo dated 16.9.1980, clarifying that any transfer from ASP to HSG I, be treated involving higher duties and responsibilities and pay will be fixed under FR-22-C. They deny, that there was any junior government servant in higher pay. They also claim that as per Article 309, of the Constitution of India, the President has got power to make rules and as such the memo dated 29.8.1980, is a reasonable classification and as such not violative of Article 14 of Constitution of India.

4. The applicant filed a rejoinder disputing the allegations made in the reply.

5. Heard the applicant in person as well as the counsel appearing for the respondents. Records were also perused.

6. The applicant in this application challenges orders dated 16.9.1980 and 17.6.1986. The present application was filed on 25.9.1989. Hence the applicant will have to establish that the application is not barred by limitation. The respondents raised a specific plea in the reply that the application is barred by limitation. The applicant on this aspect placed reliance on the representation made on 22.4.1985. This is shown in Annexure-A/1. Annexure-A/2, is the order rejecting the representation. But we are not able to find out on which date it was issued. Admittedly this was issued in 1986. The applicant also placed reliance on Annexure-A/9, the order passed in OA/322/87. In this application, the applicant challenged the validity of the order dated 25.11.1985, ordering recovery of a sum of Rs.1,374.55, from the applicant and also challenged the order of fixing of pay under FR-22-C, from ASP to HSG I, cadre from 29.8.1980, instead of 1.1.1973. At the time of the arguments when it was pointed out that there are two

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reliefs in the application, the applicant restricted his claim regarding the recovery and reserved his right to pursue his other reliefs, ^{+ either} whereby making representations or by filing separate application in accordance with law. It is significant to note that the Tribunal has not given any permission to the applicant to withdraw one relief with a liberty to file a fresh application on the same cause of action.

7. In the above said order the Tribunal found that the order dated 25.11.1985, recovering certain amount is illegal as it does not cancel the earlier order and that no notice was given to the applicant before recovery.

8. Admittedly the applicant has not chosen to make any representation to the authorities, thereafter. ^{On} the other hand he has chosen to come forward with this application. Under Section 21 of the Administrative Tribunals Act, 1985, the applicant will have to file that application within one year from the date of the order or if any representation is made and a period of six months had expired without a final order within one year from the date of the expiry of the said period of six months.

9. Realising this difficulty the applicant on 26.9.1989, filed MA/590/89, to condone the delay. By an order dated 21.1.1990, the delay is condoned. As per Section 21 (3), the applicant will have to establish sufficient cause for not making application between 1980 to 1989, regarding the order dated 16.9.1980, and from 1986 to 1989, regarding the order dated 17.6.1986. One would expect the applicant to explain sufficient cause for the delay. On the other hand in MA/590/89, the applicant has not given any cause much less sufficient cause for the delay. His only prayer as we see from the application is

9

as follows :- "It is therefore, prayed that accompanying, O.A. requesting to that orders issued,-----may kindly be permitted within the limitations of the Central Administrative Tribunals Act, and if there is any delay the same may kindly be condoned, in the interest of fair justice." This will not amount ~~the~~ sufficient cause for the delay between 1980-89. Hence the respondents are entitled to urge in the main application, that the claim is barred by limitation.

10. As the applicant did not press this prayer in his original application No.322/87, the question of limitation will have to be considered ~~about~~ ^{about}. As already stated, the Tribunal has not given any permission to the applicant to withdraw the relief with a liberty to file a fresh case on the same cause of action. Hence we find force in the contention of the respondents that the present application is barred by limitation.

11. Even taking for granted, that the applicant is entitled to urge his claim on merits, it is admitted that the post of ASP to HSG I was not a promotional post and they are interchangeable. The applicant produced Annexure/A/4, the order whereby the post of HSG I was found to involve higher duties and responsibilities and thereby directing the respondents to fix the pay ~~as~~ per FR-22-C. It further directs that the said order takes effect from 21.9.1980, ^{and} past cases should not be reopened. Prior to this, the pay was ~~fixed~~ as per the provisions of FR-30, read with FR-22-a-(ii). The main grievance of the applicant is that the above ~~sound~~ ^{other} giving benefit from 29.8.1980, is arbitrary and violative of Article-14, of the Constitution. Annexure-A/3, is the recommendation of the pay commission. Annexure-A/6, show the promotion from clerical cadre, on seniority cum fitness basis and as well from clerical grade by passing IPO competative

examination. The applicant also produces the extract of FR-22-a, FR-22-c., and FR-30, Rules in Annexure-A/7. There is no dispute that prior to the Third Pay Commission, there was only one grade in HSG I, but after Third Pay Commission's recommendation it was devolved into HSG I and HSG II. The pay scale of ASP is Rs.550-25-750-EB-30-900. The pay of HSG II is Rs.550-20-650-25-750. The pay of HSG I is Rs.700-30-760-35-900.

12. Admittedly there is no promotion from the post of ASP and HSG I. It was a transferable post. As per the Annexure-A/4, the appointment from ASP to HSG I involve higher duties and responsibilities and hence pay to be fixed under the provisions of FR-22-C. The applicant failed to show how the date fixed as 29.8.1980, is arbitrary. In fact, Article-14, of the constitution states as follows :

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

If a discrimination is based on a reasonable basis, it cannot be said discriminatory.

By 'reasonable', it is meant that the classification must not be arbitrary but must be rational. The classical test as judicially enunciated requires the fulfilment of two conditions, namely, (1) The classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others. (2) The differential must have a rational relation to the object sought to be achieved by the law under challenge."

13. The order in question do not apply to the applicant alone. It apply to all persons who were similarly situated on 29.8.1980, if there is no such order, the applicant's pay will have to be fixed only under FR-22-a-(ii), read with FR-30, as the post of HSG I from ASP is not a promotional post. The applicant cannot claim any benefit under FR-22-C. Hence to give benefit to the applicant and persons similarly situated, taking into consideration the recommendations of the Third Pay Commission, the president has chosen to issue the above said Rule. The fact that the president has got such powers is not disputed. Though the applicant has raised a plea in para-6-(B)-(D) that one Mr.Karanjkar, a junior who was promoted after 29.8.1980, got higher pay, the particulars give are follows : -

"Pay of the applicant on 1.5.1978, as ASP
Rs.780/-, pay in HSG Gadre I on 1.5.1978,
Rs.760+20, pay of Mr.Karanjkar, on 7.7.81,
Rs.780/- his pay in HSG Grade I- on 7.7.81,
Rs.830/-. The pay of the applicant on 7.7.1981,
is not given and as such the applicant failed
to establish that any junior has got higher pay.*

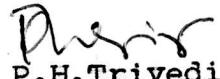
14. Even otherwise we are entitled to take judicial notice of the fact that any recommendation of any pay commission give benefits to the persons joining the post afterwards and not to any persons already in service. Unless the applicant establishes that the order dated 17.6.86, is either arbitrary or affends the provisions of Article-14, of the constitution of India, he cannot claim any relief in this application. The order in question namely Annexure-A/4, directs the respondents to give effect to the order from 29.8.1980. The applicant states that it should be ^{effect} given from 1.1.1973. Even if date is taken as 1.1.1973,

another person of the same department may come forward with another application and can claim that fixing of the date 1.1.1973, is arbitrary. Unless the applicant establishes that the fixing of the date as 29.8.1980, under Annexure-A/4, attracts the provisions of Article 14 of the Constitution, he cannot have any grievance against this order. As already pointed out Article 14 of the Constitution of India, permits reasonable classification and as such we find no force in the contention of the applicant that the order under Annexure-A/4, giving reliefs to the applicant from 29.8.1980, is arbitrary. In fact, the above said order is passed in respect of the class of persons who are similarly situated as that of the applicant. Hence, we are unable to agree with the contention of the applicant with either, this is arbitrary or in any way offends the provisions of the Article 14 of the Constitution of India. If the contention of the applicant is accepted then fixing any date in an order is violative of Article 14 of the Constitution of India. This is not the intention of Article 14 of the Constitution and the judgments referred by the applicant, in his application. The other orders challenged by the applicant is only the order rejecting his representation made prior to the order in OA/322/87.

15. Hence the applicant failed to establish that the orders in question are violative of Article 14, of the Constitution of India, and as such he is ^{not} entitled to claim any relief in this application.

16. In view of the above discussion, we find no merit in this application and accordingly the application fails and is dismissed. We however, ~~order~~ ^{order} no order as to costs.


(S. Santhana Krishnan)
Judicial Member


(P.H. Trivedi)
Vice Chairman

MA/175/90

in

OA/83/90

12

Coram : Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Hon'ble Mr. D.K. Agrawal

: Judicial Member

23-10-1990

Heard Mr.T.H.Sompura for Mr.P.M.Raval, learned advocate for the ~~app~~ respondents. The petitioner party-in-person present. The case be posted for final hearing in January, 1991. With this order, MA/175/90 stands disposed of.

D.K.Agrawal

(D.K.Agrawal)
Judicial Member

P.H.Trivedi

(P.H.Trivedi)
Vice Chairman

a.a.b.

DATE	OFFICE REPORT	ORDERS.
(8) 13.1.93		<p>None for the applicant. This is for preliminary hearing. Notice has been issued to the applicant but service has not been reported. Call on 25th January, 1993.</p> <p><i>N</i> <i>V</i></p> <p>(R.C.Bhatt) Member (J) (N.V.Krishnan) Vice Chairman</p>
25.1.93 24		<p>VTC</p> <p>Shri P.S.S.Bapat, party in person.</p> <p>Shri Akil Kureshi, advocate for the respondents.</p> <p>Heard. Order passed separately.</p> <p>(R.C.Bhatt) (N.V.Krishnan) Member (J) Vice Chairman</p>
		<p>*SS</p>

R.A. 35/91
in
O.A. 83/90

VS

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		<p>*SS</p>