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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 373 of 1990

Date of Decision : 7th May, 1991

Raj Kishore Das

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. Ashok Mohanty
S. Sahoo
P.R. Dash and
B.B. Patnaik,
Advocates

For the respondents

Mr. A.K. Mishra,
Standing Counsel
(Central Government)

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C O R A M

HON'BLE MR. K.P. ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MR. C.S. PANDEY, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MR .C .S .PANDEY, MEMBER (ADMINISTRATIVE), The applicant is working as Superintendent of Post Offices, Bhadrak Division, District Balasore. The only relief claimed by him is that his pay should be stepped up to be at par with the pay of Shri Bhagyadhar Kar who, though junior to the applicant, is drawing higher pay.

2. The applicant entered the postal department as a clerk in the year 1955. In 1965 he appeared at the Departmental Examination for Inspector of Posts, and came out successful. He was promoted as Inspector in 1965 and subsequently as Assistant Superintendent of Post Offices in 1980. He continued in the grade of Assistant Superintendent of Post Offices till 6.11.1986. He was promoted to the gazetted rank of Deputy Superintendent of Post Offices by an order dated 21.10.1986 and was posted as Deputy Superintendent of Post Offices, Cuttack City Division. He joined this promotional post on 7.11.1986. This promotion was adhoc. Subsequently by an order dated 3.11.1987, he was given regular promotion in the Postal Service Group B, a grade in which he had been officiating from 7.11.86. Shri Bhagyadhar Kar, a colleague of the applicant, entered the postal department as a clerk two years later, ^{than the applicant} He also passed the departmental examination for postal inspectors with the applicant in 1965 and in the merit list he was junior to the applicant. He was promoted to the cadre of Assistant Superintendent of Post Offices in 1982. While working as A.S.P., he was promoted to officiate as Deputy Post Master, Bhubaneswar G.P.O. where he joined on 29.10.1986. That post was in the ^{higher} selection grade-I (HSG I). This H.S.G. I is a scale between the

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scale of Asstt. Superintendent of Post Offices and Deputy Superintendent of Post Offices. Shri Bhagyadhar Kar joined H.S.G. I on 29.10.1986. On that date, his pay was fixed under F.R. 22(c) at Rs.2450/-. The very next day i.e. 30.10.1986, he was also promoted on adhoc basis to the gazetted rank of Post Master Service Group-B. It is stated in the application *that* P.S. Group B and PMS Group B are identical grades with identical pay scale of Rs.2000-3500/-. The H.S.G. Gr.I is a little lower scale of Rs.2000-32000/-. Shri Bhagyadhar Kar's pay on 29.10.1986 was fixed under F.R. 22(c) at Rs.2450/- and on the next date i.e. on 30.10.1986, he was promoted on adhoc basis to PMS Group-B and his pay was fixed under F.R. 22(c) at Rs.2600/-. The applicant's pay on 7.11.1986, when he joined P.S. Group B was fixed at Rs.2450/- and his next date of increment was to be on 1.11.1987. The effect of the orders of pay fixation of the applicant and of Shri Bhagyadhar Kar is that whereas the applicant who is admittedly senior, had his pay fixed on 7.11.1986 at Rs.2450/-, the pay of Bhagyadhar Kar right from 30.10.1986 was fixed at Rs.2600/-. The grievance of the applicant is that he is drawing lower pay though he is senior to Bhagyadhar Kar. He claims that his pay should be stepped up at Rs.2450/- on 29.10.1986 and Rs.2600/- on 30.10.1986.

3. The respondents filed a reply. The facts stated in the application are not denied. It is stated however *that* the pay of the applicant has been fixed in accordance with the rules on the subject. Similarly the pay of Bhagyadhar Kar ~~has~~ also been fixed according to rules. There is admittedly an

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anomaly but according to the respondents, it cannot be helped. The respondents have also relied on the instructions issued in Directorate's letter dated 24.9.1986. The respondents contended that the letter of the Directorate, referred to above provides for eradicating anomalous situation in fixation of pay of two employees, but ~~though~~ the conditions laid down in the letter are not satisfied in the case of the applicant.

4. Before coming to this grade, the applicant had represented to the respondents claiming relief, but the respondent no.2, the Chief Post Master General replied in a letter dated 28.12.1989 (Annexure-7 to the original application) saying that the question of stepping up of pay of the applicant did not arise.

5. The counsel for the applicant filed a very comprehensive rejoinder to the written reply of the respondents.

6. We have ^{heard} Mr. Ashok Mohanty, learned counsel for the applicant and Mr. A.K. Mishra, learned Standing Counsel for the respondents.

7. Admittedly the applicant is senior to Shri Bhagyadhar Kar. He has been senior in all the cadres right from the cadre of clerk. It is equally true that on promotion to the P.S. Group-B cadre on 7.11.1986, the applicant's pay was fixed at Rs.2450/- is less than the pay of Shri Bhagyadhar Kar which has been fixed at Rs.2600/- with effect from 30.10.1986. Therefore though the applicant is senior, Bhagyadhar Kar was drawing higher pay with effect from 30.10.1986. The anomaly has arisen because whereas the applicant was promoted from the cadre of Asstt. Superintendent of Post Offices to the Gazetted grade of Postal Services

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Grade-II on 7.11.1986, Shri Bhagyadhar Kar joined the P.M.S. Group-B on 30.10.1986 via H.S.G. Gr-I in which he remained for one day only i.e. on 20.10.1986. ^{Had} However the applicant being given H.S.G. Gr.I, as he should have been given because of ^{his} seniority, the anomaly would not have arisen. Since the applicant was senior, he was promoted on adhoc basis to the postal services Group-B by an order dated 21.10.1986 and joined on 7.11.1986. Shri Bhagyadhar Kar was first promoted to H.S.G. Gr.I on 29.10.1986 and to P.M. Gr.B on 30.10.1986. Therefore while the applicant got the benefit of F.R.22(c) only once on 7.11.1986, Bhagyadhar Kar was given this benefit twice; once on 29.10.1986 when he joined the H.S.G. Gr.I and again on 30.10.1986 when he was promoted to officiate to PMS Gr.B. The applicant is not at all at fault. He is not responsible for this awkward and anomolous situation.

8. Mr. Ashok Mohanty, learned counsel for the applicant drew our attention to the instructions of Government of India issued by Ministry of Home Affairs ^{in the} Office memorandum dated 15.2.1983. It is published at page 93 of Swamy's Compilation of F.R.S.R. Pt.I (10th Edition). The Office memorandum dated 15.2.1983 specifically covers the case of the applicant and squarely applies to it. It deals with a situation where a junior is promoted to a higher grade later than the senior and the junior goes to the higher post through a selection grade. To remove the anomaly in pay fixation in such a situation, the pay of the senior officer should be stepped up to make it equal to the pay of the junior officers subject to the fulfilment of three conditions. The three conditions are :

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- i) The scale of pay of the lower post (ordinary grade) and higher post in which both junior and senior are entitled to draw pay should be identical.
- ii) The senior employee should have been eligible for appointment to selection grade but for his working in the higher post on or before the date on which the junior was appointed to the selection grade.
- iii) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding selection grade in the higher scale at the time of his promotion to the higher grade.

9. Now in the present case, the pay scale in the grade of Asstt. Superintendent of Post Offices in which the applicant and Bhagyadgar Kar were working is ~~identical~~. *Same*. Similarly both have been promoted to the P.S. Group-B service in same scale. The applicant who is senior ~~employee~~ was eligible for appointment to the selection grade earlier than Bhagyadhar Kar. In fact he ~~had~~ been promoted to the selection grade in April, 1986, but that order was cancelled, ~~soon after~~ his order for promotion to P.S. Group-B post was passed on 21.10.1986. That is why he was not available for posting as selection grade ~~when~~ Bhagyadhar Kar was posted on 29.10.1986. Therefore the second condition is also satisfied. ~~The~~ third condition is also satisfied because in all the grades upto Asstt. Superintendent of Post Offices, the applicant being senior must have drawn higher pay than Bhagyadhar Kar and no case has been made out that Bhagyadhar Kar ~~was~~ at any stage upto the cadre of Asstt. Superintendent of Post Offices, ever drawn higher pay than the applicant.

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Further the anomaly has arisen only because while the applicant was promoted directly from the cadre of A.S.P. to Group-B post, Bhagyddhar Kar came to Group B post through H.S.G. Gr.I in which grade he remained only for a day on 29.10.1986. Therefore the third condition is also satisfied.

10. From the aforesaid discussion, it is clear that the issue raised in the present original application is squarely covered by the office memorandum of the Ministry of Home Affaris referred to above. The applicant is therefore entitled to succeed. He claims that his pay should be fixed at Rs.2450/- on 29.10.1986 and Rs.2600/- on 30.10.1986. It may be recalled that the applicant joined the P.S.Group-B post on 7.11.1986. His pay on that date was fixed at Rs.1450/-. On that day Bhagyadhar Kar was drawing pay at Rs.2600/- with effect from 30.10.1986. Therefore the pay of the applicant should be stepped up to Rs.2600/- on 7.11.1986, i.e. the date on which he joined the P.S.Group-B service. He ^{is} also ~~be~~ entitled to arrears of salary. The application is allowed as above. The respondents are directed to comply with this order within a period of two months from the date of receipt of a copy of this judgment. ~~The~~ the application is accordingly disposed of.


VICE-CHAIRMAN


MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
/ P. K. Mahoo

