

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 480 OF 1999

(Cuttack, this the 2nd day of August, 2001)

All India Postal Employees Union
Postmen & Group-D, Orissa Circle

and two others

..... Applicants

Vrs.

Union of India and others

....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? *Yes.*
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2.8.2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. All India Postal Employees Union
Postmen & Group D, Orissa Circle
represented through its Circle
Secretary, Shri Debabrata Mohanty,
aged about 35 years,
son of late N.C.Mohanty,
At-Neula, P.O-Bari,
Dist. Jajpur at present
serving as Postman, Rourkela Head
Office, under Sundergarh Postal
Division, Rourkela.
2. Kishore Chandra Natia, aged about 46 years,
son of late Jogendranatia
Ranihat Gopal Sahi,
Cuttack, at present working as
Postman, Cuttack GPO, Assistant Circle
Secretary, All India Postal Employees Union,
Postmen & Group-D, Orissa Circle.
3. All India RMS & HMS Employees Union,
Mail Guard & Gr.D Orissa Circle Branch,
Cuttack, represented through its Circle Secretary,
Paramananda Mohanty,
aged about 54 years, s/o late Nilakantha Mohanty,
At/PO-Kankadapal, Dist.Dhenkanal,
at present working as Mail Guard, HRO, RMS 'N' Division,
Cuttack-1. Petitioners

Advocates for applicants - M/s A.K.Mishra
J.Sengupta, D.K.Panda,
P.R.J.Dash
G.Sinha

J.Sen
Vrs.

1. Union of India, represented through its Director General
of Posts, Government of India, Ministry of Communications,
Department of Posts, Dak Bhawan, Sansad Marg, New
Delhi-110 001.

2. Union of India, represented through its Secretary, Ministry of Finance, Central Secretariat, New Delhi-1.
3. Chief Postmaster General, Orissa Circle, Bhubaneswar, District-Khurda, Pin-751 001.

.....Respondents

Advocate for respondents - Mr.A.R.Routray
ACGSC

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application, three Unions of all India postal employees, representing Postmen and Mail Guards, have prayed for quashing the order dated 3.7.1998 giving effect to the revised scale of pay of Rs.3050-4590/- with effect from 10.10.1997. They have also prayed for quashing the orders dated 13.8.1999 (Annexure-7) and 16.8.1999 (Annexure-8) ordering recovery of overpayment. The third prayer is for a direction to the respondents to pay the petitioners the above pay scale from 1.1.1996 with arrears and also to direct the respondents that the petitioners are entitled to receive two increments in the scale of Rs.2750-4400/-. as has been allowed to them. The respondents have filed counter opposing the prayers of the applicants. No rejoinder has been filed. We have heard Shri A.K.Mishra, the learned counsel for the petitioners and Shri A.Routray, the learned Additional Standing Counsel for the respondents and have perused the records. The learned counsel for the petitioners has relied on the decision of Full Bench of the Hon'ble High Court of Orissa in the case of

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Debendranath Samantray v. Director of Industries and others, XLI(1975) CLT 763, and the decision of the Hon'ble Supreme Court in the case of E.S.P.Rajaram and others v. Union of India and others, AIR 2001 SC 581. The learned Additional Standing Counsel has relied on the decision of the Bangalore Bench of the Tribunal in the case of All India Postal Employees Union v. The Senior Superintendent of Post Offices, South Division, Jayanagar and others, OA No.528 of 1999, decided on 16.2.2001, copy of which has been enclosed to the counter. We have perused these decisions.

2.The present dispute is regarding emoluments of Postmen and Mail Guards. Admittedly, they were in the Fourth Pay Commission pay scale of Rs.825-1200/-. Fifth Pay Commission & recommended the replacement scale of Rs.2750-55-4400/-. The Union Government while accepting the recommendation and bringing into effect the Fifth Pay Commission pay scale with effect from 1.1.1996 improved upon the pay scale recommended by the Fifth Pay Commission. The replacement scale allowed was Rs.2750-70-3800-75-4400/- with a stipulation that two advance increments will be allowed. Thus, it is seen that within the spread of the scale the rate of annual increment was increased and two advance increments were allowed. Subsequently, because of further negotiation between the Staff and the representatives of the Government, in order dated 3.7.1998 (Annexure-3) Mail Guards and Postmen were allowed the scale of Rs.3050-75-3950-80-4590/-. It was also indicated that under TBOP and BCR Schemes, on completion of requisite years of satisfactory service, they would get the scale of

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Rs.3200-85-4900/- and Rs.4000-100-6000/- respectively.

It was indicated that the revised pay scale shall take effect from 10.10.1997 and for the period from 1.1.1996 when the Fifth Pay Commission pay scale came into force till 9.10.1997 the pay in the revised scale would be regulated in accordance with the provisions of the Central Civil Services (Revised Pay) Rules, 1997. The case of the applicants is that in the initial revised scale of pay of Rs.2750-4400/- they were allowed two advance increments at different stages and in some cases advance increments were also allowed in the scale of Rs.3050-4590/-. It also appears from Annexure-7 that in some Circles, Postmen and Mail Guards were allowed the scale of Rs.3050-4590/- from 1.1.1996. According to the applicants, this has resulted in overpayment and in orders at Annexures 7 and 8 instructions were issued to recover overpayments made. These orders of recovery have been challenged by the applicants and prayer has been made to allow the scale of Rs.3050-4590/- with effect from 1.1.1996 and grant two advance increments in the initial replacement scale of Rs.2750-70-3800-75-4400/-. It is not necessary to refer to the averments made by the respondents in their counter because these will be taken into account while considering the submissions made by the learned counsel of both sides.

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3. The first point to be considered is whether the pay scale of Rs.3050-4590/- should have been allowed from 1.1.1996, or in other words, whether the stipulation in the circular dated 3.7.1998 (Annexure-3) that this scale of pay would be effective from 10.10.1997 is legal. It has been submitted by the learned counsel for the petitioners that

as the scale was by way of replacement of the Fourth Pay Commission pay scale, this pay scale should have been allowed from 1.1.1996. Moreover, it is submitted that this pay scale should not have been introduced from an arbitrary date of 10.10.1997. In this connection, it has to be noted that the pay scale of Rs.3050-4590/- is not the Fifth Pay Commission replacement scale of the Fourth Pay Commission pay scale of Rs.825-1200/-. From the pleadings of the applicants themselves, it appears that the Fifth Pay Commission recommended the replacement scale of Rs.2750-55-4400/-. The Government while accepting the recommendation improved upon the scale with two advance increments and by changing the rate of increment and thereby reducing the spread of the scale in number of years. As the subsequent pay scale of Rs.3050-4590/- has come not on the basis of the recommendation of the Fifth Pay Commission nor on the basis of the Central Civil Services (Revised Pay) Rules, 1997, which gave effect to the Fifth Pay Commission pay scales, it is obvious that this scale of Rs.3050-4590/- was subsequently introduced by the Government and therefore, it was open for the Government legally to introduce the pay scale from a particular date to be specified by them and this is precisely what they have done in their order dated 3.7.1998 giving effect to this scale from 10.10.1997. As this is not a Fifth Pay Commission replacement scale but a subsequent improvement thereon and for that matter, a second improvement, we find no illegality in the Government introducing the pay scale from 10.10.1997. In case in some Circles this scale of pay has been allowed from 1.1.1996, this is obviously wrong moreso because in this circular dated 3.7.1998 it has been specifically mentioned that for

the period from 1.1.1996 to 9.10.1997 pay in the revised scale will be regulated by the Central Civil Services (Revised Pay) Rules, 1997 according to which the scale was Rs.2750-70-3800-75-4400/-.

4. The second aspect of the matter is granting of two advance increments. In the order dated 3.7.1998 there was no stipulation that in the pay scale of Rs.3050-4590/- two advance increments should be given. There is no case for getting two advance increments in the above scale. As regards getting two advance increments in the earlier revised pay scale of Rs.2750-70-3800-75-4400/-, in the order enclosed by the applicant at Annexure-2 it is mentioned that this scale will be given with two advance increments. The respondents have pointed out that the Fifth Pay Commission in paragraph 62.15 of their report have recommended that the Postman at entry will be placed in the pre-revised scale of Rs.825-1200/- at par with Constables of the Central Police Organisations. As Constables of Central Police Organisations were entitled to get two advance increments only at the time of their entry at the minimum of the then existing scale of pay, two advance increments were allowed in this revised scale of Rs.2750-70-3800-75-4400/-. It cannot be argued that while fixing the pay of Postmen and Mail Guards in this case, even at stages higher than the minimum two advance increments will be allowed. The method of fixation of pay in the revised scale has been laid down in Central Civil Services (Revised Pay) Rules, 1997 and this precludes granting of two advance increments at every stage of the scale. This contention of the learned counsel for the petitioners

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is held to be without any merit and is rejected.

5. The decision of the Full Bench of the Hon'ble High Court of Orissa in Debendranath Samantray's case (supra) deals with promotion from the post of Supervisor to the post of Foreman in Industrial Training Institute. The Full Bench have held that by executive instructions civil rights of Government servant cannot be adversely affected retrospectively. In the instant case, the pay scale of Rs.3050-4590/- has been allowed only from 10.10.1997 and there is no stipulation in any order that this scale would be allowed from 1.1.1996. Therefore, by fixing the effective date of this pay scale, i.e., 10.10.1997, no civil rights of the Postmen and Mail Guards have been taken away retrospectively. This decision, therefore, does not provide any support to the case of the applicants. The decision of the Hon'ble Supreme Court in E.S.P.Rajaram's case (supra) deals with completely different facts. That matter came up before the Hon'ble Supreme Court on more than one occasion and deals with the scale of pay of Traffic Apprentices recruited before and after 15.5.1987. In that case the Hon'ble Supreme Court in paragraph 23 of the judgment held that where the appellants before their Lordships had got certain financial benefits because of orders of different Benches of Central Administrative Tribunal against which SLPs before the Hon'ble Supreme Court were dismissed, the amount so given to them should not be recovered. There are also other decisions of the Hon'ble Supreme Court that overpayment has been made to

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an employee not because of any fault on his part, such amount should not be recovered after long lapse of time in the circumstances of those cases. But the present case is different because before getting the Fifth Pay Commission pay scale and arrears, an employee was required to give an undertaking that in case any overpayment has been made, the same would be recovered from him. This was so because in case of introduction of new pay scale, the requirement of pre-check of pay fixation has been dispensed with and there is always possibility of overpayment, as has been done in this case. In view of this and in view of the undertaking given by the employees, the Government are within their rights to recover the overpayments made. This contention of the learned counsel for the petitioners is also held to be without any merit and is rejected.

6. Before closing the matter, we note that these very points have been agitated by the concerned Postal Union at Bangalore before the Bangalore Bench of the Tribunal in OA No.528 of 1999 and the contentions of the applicants therein were rejected. We are in agreement with the logic and conclusion of the above decision as our above discussions would show. In view of this, we hold that the Original Application is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN