

6

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 248 OF 2002
Cuttack this the 04th day of July 2004

Harihara Mishra

...

Applicant(s)

-VERSUS-

Union of India & Ors.

...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

M.R. Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.248 OF 2002
Cuttack this the 8th day of July 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

Shri Hari Hara Mishra, aged about 61 years, S/o.
Late Maheswar Mishra, retired Sr. Superintendent of
Post Office, at present residing at Gajapati Nagar,
11th lane, PS: B.N.Pur, PO-Berhampur-10, Dist-Ganjam

...

Applicant

By the Advocates

M/s. S.C. Mishra
A.P. Mishra
T.K. Sahoo
P.K. Das
M.K. Misra

-VERSUS-

1. Union of India represented through its Secretary,
Department of Posts, Govt. of India, New Delhi-110001
2. Chief Post Master General, Orissa Circle, At/PO-
Bhubaneswar-1, Dist-Khurda
3. Post Master General, Berhampur Circle, At/PO-Berhampur-1
Dist-Ganjam
4. Dy. Director of Accounts (Postal), Orissa, At/PO/Dist-
Cuttack-5.

...

Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: This Original Application has
been filed by Shri Hari Hara Mishra, retired Sr. Superintendent
of Post Offices being aggrieved by the order dated 12.1.2001
(Annexure-11) issued by Respondent No.3 to the effect that
the fixation of his pay as made by P.A.O., Calcutta was
wrong and accordingly an amount of Rs.42,000/- paid in
excess ^{had} been recovered from the gratuity amount. He is also

✓

aggrieved by the order dated 11.10.2001(Annexure-15) by virtue of which his representation has been rejected by the Respondents by upholding Annexure-11 (as referred to above).

2. This matter was listed for hearing on 12.5.2004 and the matter on being called, none appeared on behalf of the applicant nor any request was made on his behalf seeking an adjournment. On the previous occasion on 29.8.2003 when the matter was called the situation was the same as on 12.5.2004. This being a year-old case of 2002 where the pleadings have been completed since long, it is not found either desirable or proper for us to allow the matter to drag on indefinitely. In this backdrop of the matter, with the aid and assistance of Shri A.K.Bose, learned Senior Standing Counsel we perused the materials available on record and also heard him on the merits of the case.

3. To bring to fore the issue raised in this O.A., the salient facts of the case are summerized as follows :

4. The applicant, while working as Assistant Superintendent of Post Offices (in short ASPOs), Puri in the scale of Rs.1640-2660/-) in substantive capacity was ordered to work as Post Master, Head Post Office, Puri, which is a Higher Selection Grade (in short H.S.G.) I, post in which post he joined with effect from 16.09.1987 and in accordance with FR-22-C, his pay was fixed at Rs.2525/- in the scale of Rs.2000-3200/-. While officiating as Post Master, Puri H.O., he was appointed to officiate as Deputy Superintendent of Post Offices(Group-B), Bhubaneswar (Rs.2000-3500/-) and he joined that post on 20.12.1987 and continued to work in that post upto 24.5.1988. He was reverted as

Post Master, Puri H.O. (H.S.G.-I) and continued in that post till he was again promoted on regular basis to the post of Postal Superintendent Services (in short PSS)

(Group-B) and was posted as Deputy Superintendent of Post Offices, Mizoram Division with effect from 8.11.1988.

Initially, his pay was fixed at the stage of Rs.2600/- with effect from 8.11.1988 with Date of Next Increment (in short D.N.I.) on 1.6.1989 in this Group-B post. The said fixation of pay was, however, amended on a representation made by the applicant to the competent authority and Director of Accounts (Postal), Calcutta, after examining his case fixed his pay in P.S.G., Group-B cadre at the stage of Rs.2675/- with D.N.I. on 22.6.1989 applying the condition as laid down under F.R. 22-C and Provision No.IV and Proviso to FR-22. Consequently, a fresh pay slip dated 29.5.1990 cancelling the earlier pay slip dated 8.5.1989 was also issued. Accordingly, the applicant had been getting the pay with D.N.I. on 1st of June each year till his promotion to Group-A of Indian Postal Service.

However, it was in July, 2000 when his pension papers and service records were sent by Res.No.2 to the Deputy Director (Postal), Cuttack for calculating his pensionary dues as the applicant was to retire from service with effect from 30.11.2000 the said authority, after verifying his Service Book objected to fixation of pay in P.S.G. Group-B cadre at the stage of Rs.2675/- on the ground that the provision of FR-22-C had undergone change. Res. No.2 was not convinced with regard to the objection raised by the Dy. Director (Accts.), Cuttack (Rs.No.4) and referred the matter to Res.No.1 for clarification. Res.No.1, after examining the matter upheld the objection

10

- 4 -

raised by Res.4 and advised Res. No. 2 that the pay fixation of the applicant had been correctly redetermined in terms of the existing rules, i.e., F.R.22-C amended as FR-22(I)(a)(i). But the grievance of the applicant is that his pay having been fixed-settled in the year 1987 by the authorities competent in this regard, the matter was no more open to the Deputy Director of Accounts(Postal), Cuttack(Res.No.4) to review it after 13 years to his disadvantage by improper and illegal application of rule, a rule which was introduced two years after his pay was fixed according to then existing rules with regard to pay fixation in terms of FR-22-C, Proviso-IV.

5. The Respondents-Department have contested the application by filing a detailed counter wherein they have not disputed the facts of the case. They have made a factual submission that the pay of the applicant was fixed in JTS(Group-A) cadre basing on the pay fixation made by the Post Master General, N.E.Circle. Pension papers of the applicant were sent to the Deputy Director of Accounts(P) Cuttack for doing the needful keeping in view the date of retirement of the applicant on 30.11.2000. The Res. No.4, Deputy Director Accounts, Cuttack, pointed out certain irregularities in pay fixation of the applicant and accordingly sought for clarification from the Postmaster General, Berhampur. In spite of clarifying the matter to the former by the P.M.G., Berhampur that the pay fixation of the applicant made by the Director of Accounts(Postal), Calcutta was done in accordance with the provision of the rules prevailing at that point of time and therefore, there was no case for revision, this position was not accepted

ly

by Respondent No.4, who insisted on refixation of pay of the applicant as per their calculation. Then the matter was taken up again by Respondent No.2 with Respondent No.4, the latter by his letter dated 30.10.2000(Annexure-R/4) reiterated ~~his~~ earlier stand that the pay of the applicant should be refixed as per the Directorate letter dated 28.4.1999(Annexure-R/5). Respondent No.2 had also taken up the matter with the Directorate (Res. No.1), but to no effect. In reply, Res. No.1 by a DO letter from Shri M.L. Malhotra, Asst.Director General(IC) to Shri B.B. Sahoo, Deputy Director of Accounts(Postal), Cuttack advised as follows

"...The matter has been examined on the basis of information supplied by you and to state that the pay of the officer had been wrongly fixed by the Director of Accounts (Postal), Calcutta. The pay of the officer as indicated in your D.O. letter is in consonance with the existing rules/orders. Calculation sheet showing the details of fixation of pay at different period is also attached which may clarify the entire position in a better way and remove all the doubts".

In the circumstances the Respondents have submitted that the pay of the applicant had to be refixed in consequence of which payment made in excess to the tune of Rs.42,757/- was ordered to be recovered from the applicant. In the counter the Respondents have also argued that the applicant was not entitled to get the benefit of pay fixation under FR-22-C in respect of the officiating arrangement as Postmaster, Puri as he did not hold HSG-I post on regular basis and that his pay was required to be fixed with reference to pay drawn in the substantive post and not that drawn on the higher post, which was held on ad hoc basis. With these submissions the Respondents have prayed for dismissal of this O.A., being devoid of merit.

5

We have given our anxious thoughts to the issue raised by the applicant in this Original Application. The point to be decided is whether the pay of the applicant on his promotion to PSS-Group B in 1987 was fixed in terms of the rules governing the field at that point of time. It has been pleaded by the applicant that his pay was fixed in PSS Group B in 1987 in terms of the provision of FR 22(c)-Proviso-4 and FR 22. It is the case of the applicant that the Respondents^{Am-3}, while forwarding his representation to the Member(Personnel), Postal Services Board under Annexure-14 had supported the contention of the applicant by stating that "the C.P.M.G., North East Circle accepted the pay fixation made by PAO, Calcutta and issued a fresh pay slip dated 29.5.1990 cancelling the earlier pay slip dated 8.5.1989, which may be seen as Annexure-5 to the representation. In the said letter they had also pointed out that they had been repeatedly pointing out to the Deputy Director of Accounts(Postal), Cuttack that the pay of the applicant had been fixed in accordance with the rules prevalent at that point of time. Respondent No.2 had also taken up this matter directly with the PA -I vide DO letter dated 3.11.2000 stating that "this office is of the opinion that since the case of Shri Mishra relates prior to 30.8.1989 when the benefit of proviso IV of FR 22-C and proviso to FR 22 was available PAO, Calcutta has fixed pay as per extant rules. The modified FR 22 came into effect from 30.8.1989. Hence it is presumed that D.O.P. letter dated 28.4.1989 is perhaps applicable to such cases of fixation effective on or after 30.8.1989." However, in reply to this letter,

2

13

Asst. Director General (IC) vide his letter dated 1.12.2000 (Annexure-R/6) stated that the pay of the officer as indicated in the DO letter of Dy. Director of Accounts (P) is "in consonance with the existing rules/orders". From the above discussion it is clear that both Res. Nos. 1 and 4 are bent upon in applying the amended rule which came into being from 30.8.1989 in the case of the applicant notwithstanding the fact that the pay fixation of the applicant was made prior to 30.8.1989. But the law is well settled that the effect of amended rules has only prospective effect and therefore, all cases arising before the amendment of the rule are to be governed by the old/unamended rule and not by the new rule. This law has been laid down by their Lordships of the Hon'ble Supreme Court in Civil Appeal Nos. 2954-55 and 1956-57 of 1980 in the case of Y.V. Rangaya & Ors. v. State of A.P. (reported in AIR 1983 SC 852). In the circumstances, the case of pay fixation of the applicant, who was promoted to PSS Group-B on regular basis with effect from 8.11.1988 will be governed by the provisions of FR-22-C, proviso-IV, as it existed at that point of time. The amended rule, i.e., FR-22(I)(a)(i) having come into force with effect from 30.8.1989 cannot be applied to the case of the applicant, which was settled earlier. It is also interesting to note that Res. No. 1, while clarifying the position with regard to fixation of pay of the applicant to Res. No. 4 (Annexure-R/6) had indicated that "the pay of the officer as indicated in your DO letter is in consonance with the existing rules/orders". From this, (emphasis supplied) it is clear that Res. No. 1 was upholding the action of Res. No. 4, i.e., wrong application of FR-22(I)(a)(i) in case of pay fixation of the applicant. But the fact remains that the past cases are to be governed by the rules prevalent at that

Dr

point of time. In the circumstances, any discretion to apply the provision of FR-22(I)(a)(i) to the case of pay fixation arising before 30.8.1989 would be ultra vires of the law of the land.

Further, we would also like to recall our decision in the case of Chandramani Rout, Sr. Superintendent of Post Offices (Retd.) v. Union of India & Ors. (in O.A.No.205/98 - disposed of by this Tribunal on 25.8.2000) wherein this Tribunal had in extenso discussed in Para - 7 of the judgment the implication on the application of the provisions of FR-22-C and FR-22(I)(a)(i) and observed that "the distinction between the previous FR-22-C and FR-22(I)(a)(i) is that in FR-22-C the word 'regularly' was not there and the stand taken that the applicant was not entitled to higher pay fixation because he was not appointed to HSG-I on regular basis is not valid since at that time FR-22-C was in force which did not envisage regular appointment to the higher post". The Tribunal ultimately held that the applicant in that O.A. was entitled to re-fixation of pay in PSS Group-B in terms of FR-22-C besides holding further that no recovery should be made from the retirement benefits of the applicant.

While dealing with the second aspect of the matter, we would like to say that as the action of Respondent No.4 in re-fixing the pay of the applicant (as discussed above) is ab initio void, the order of recovery of Rs.42,775/- from his D.C.R.G. is also bad in law. It has

42

already been held by the Courts in a catena of cases like S.Radh v. Union of India (O.A.No.348/1994 - decided on 30.9.1994), Vital Dagdoo Marathe v. The General Manager, Central Railway (ATR 1989(2) CAT 65 (New Bombay Bench), K.N.Ramamoorthy v. Director General, Ministry of Defence, 1991(1) ATJ 459(Madras Bench) and Satyananda V. Union of India, 1989(4)SLJ CAT 272 that recovery of overpayment due to fixation of pay cannot be ordered after long period. ^{of case laws} Our citation/would remain incomplete if we do not refer to the decision of the Apex Court in the case of Sahib Ram v. State of Haryana and ors., (Civil Appeal No.6868 of 1994 decided on 19.9.1994) wherein the Court held that the benefit of higher pay scale cannot be denied to an official if he was paid his salary in the higher scale not on account of any misrepresentation made by him, but because of the error committed by the employer. Thus the settled point of law is that no recovery on ground of overpayment due to wrong fixation of pay can be ordered after long period.

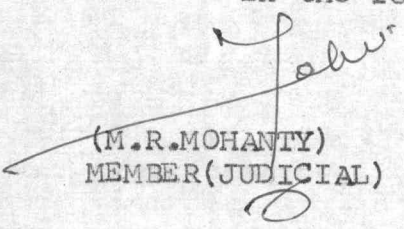
Having regard to what has been discussed above, and having applied the law decided in the case of Y.V. Rangaiah case(supra) we have no hesitation to quash the impugned order dated 12.1.2001 (Annexure-11) and the other dated 11.10.2001(Annexure-15) being not in conformity with the law. We order accordingly. Resultantly, we also uphold fixation of pay of the applicant by the Director of Accounts (Postal), Calcutta with effect from 8.11.1988, which was admittedly made in terms of the Proviso-IV of FR-22-C and also hold that there was no scope for

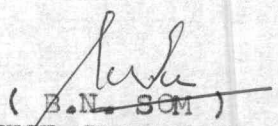
4

16

of the
application / provision of FR-22(I)(a)(i) at all in this
case. We also, therefore, direct that if any amount has
been recovered from the gratuity of the applicant already
the same should be refunded to him with interest payable
at the rate of 9% per annum with effect from the date
the gratuity amount after deduction was paid to the
applicant till the compliance of this order, as indicated
above. We also accordingly order that the pension of the
applicant be recalculated in consonance with the direction
as indicated and revised pension (along with arrears)
be paid to him within a period of 120 days from the date
of receipt of this order.

In the result, the O.A. succeeds. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

BJY