

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.452/2000

Monday this the 3rd day of June, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

N.Sivadasan
S/o Narayanan
Mail Man (BCR)
O/o the Head Record Office
Trivandrum, residing at
Thandakkaran Vilakathu Veedu
Kulathoor P.O.

...Applicant

(By advocate Mr.Sasidharan Chempazhanthiyil/Mr.Vishnu)

Versus

1. Senior Superintendent
R.M.S. 'TV' Division
Trivandrum.
2. The Head Record Officer
RMS TV Division, Trivandrum.
3. Director General
Postal Department
New Delhi.
4. Union of India rep. by
its Secretary, Ministry of
Communications, New Delhi.

Respondents

(By advocate Mr.A.Sathyanadhan, ACGSC)

The application having been heard on 3rd June,, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant entered service of the first respondent on 20.10.65. He was given BCR promotion on completion of 26 years on 6.11.91 by A-1 letter dated 9.10.95. The applicant submitted that he was given an option to accept the BCR pay scale of Rs. 825-1200 and continue in service till the age of 60 years or to accept the pay scale of Rs.950-1400 and retire at the age of 58 years which was the normal age of retirement of employees in Group C and above at that time. The applicant exercised the

option in favour of the first alternative. Accordingly by A-2 letter dated 14.9.94 his pay was fixed in the pay scale of Rs.825-1200 and was permitted to be in service till the age of 60. The retirement age of employees in Group C and above was increased from 58 to 60 with effect from 13.5.98 by a policy decision taken by the Government of India. By A-3 letter dated 24.2.99 third respondent's letter dated 11.2.99 doing away with the option from Group 'D' employees was circulated. Applicant claimed that with the increase in the age of retirement of Group C employees, grant of option to Group D officials to choose either of the two BCR pay scales became redundant. The juniors of the applicant who completed 26 years on 13.5.98 were granted automatically the higher BCR pay scale of Rs.950-1400 (pre-revised)/Rs.3050-4590 (revised). By A-4 letter dated 30.11.99, the scale of pay under BCR Scheme for all the Group D employees was ordered to be Rs.950-1400 whose replacement scale was Rs.3050-4590. Applicant claimed that he was given an option in terms of A-4 to come over to BCR pay scale of Rs.3050-4590 in place of his pay scale of Rs.2750-4400 (pre-revised Rs.825-1200). Applicant exercised the option to come over to Rs. 3050-4590 with effect from 13.5.98 by A-5 option dated 29.12.99 and accordingly his pay was refixed in the scale of pay of Rs. 3050-4590 with effect from 13.5.98. Third respondent issued a further order dated 28.2.2000 which was communicated by the C.P.M.G.Kerala vide communication dated 7.3.2000. Second respondent issued letter No.A3/BCR dated 22.3.2000 directing to revise the refixation of pay of the applicant in the pay scale of Rs.3050-4590 and recover a sum of Rs.1621 from the salary of the applicant starting from the month of April, 2000 by A-7. The




applicant was informed of the contents of A-7 and also the fact of recovery of the first instalment from the pay for the month of April 2000. Applicant filed A-8 representation dated 20.4.2000 to the second respondent. Understanding that the first respondent would not wait till the disposal of the A-8 representation but would give effect to A-7, he filed this Original Application seeking the following reliefs:

- i) Call for the records and quash A-6 and A-7.
- ii) Call for the records and quash A-3 to the extent that it permits continuance of two different pay scales for BCR officials even after raising of the age of retirement to 60.
- iii) Declare that continuance of two BCR scales of pay for Group D BCR officials is illegal and direct the respondents to take action accordingly.
- iv) Direct the respondents not to make any recovery from the applicant pursuant to A-7.
- v) Declare that the decision and direction in A-7 to effect recovery from the applicant is illegal as A-7 was issued without notice to the applicant, and
- vi) Issue such other direction, order or declaration as this Hon'ble Tribunal deem fit and proper in the circumstances of the case.

2. According to the applicant, A-7 was illegal and arbitrary as the same was issued without notice to the applicant. Going back on A-4 was illegal and arbitrary. Continuing with two different pay scales for the same work in the same cadre was discriminatory and illegal in view of raising of the retirement age to 60 for all employees.

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3. First respondent filed reply statement on behalf of all the respondents resisting the claim of the applicant. It was submitted that as per the Director General (Posts) letter dated 27.12.93 Group D officials would have the option of selecting the pay scale of Rs.950-1400 or the pay scale of Rs.825-1200 on their promotion under BCR Scheme. If an official chose the pay scale of Rs.950-1400, he would have to retire at the age of 58 years. If a Group-D official on promotion under BCR chose the scale of Rs.825-1200 he would continue to be a Group-D official notwithstanding the Group-C pay scale of Rs.825-1200 and would retire at the age of 60 years. The applicant exercised his option in favour of the second choice and accordingly his pay was fixed in the pay scale of Rs. 825-1200. Consequent on the increase in the age of retirement of all the employees, the system of seeking option from the Group-D employees under BCR Scheme had become redundant and hence it was decided to do away with the option system vide DG (Posts) letter dated 11.2.99. The DG's letter further clarified that the scale of pay of Rs. 950-1400 (pre-revised) whose replacement scale was Rs.3050-4590 as per the Government orders on the recommendations of Vth Central Pay Commission would be applicable to all Group-D employees under BCR Scheme with effect from 13.5.98. While so, the respondents had an occasion to review the case of the applicant in the light of the DG's (R-1) letter dated 28.2.2000 in which it was clarified that the officials promoted under BCR Scheme in the scale of Rs.825-1200/2750-4400 before 13.5.98 were not eligible for the pay scale of Rs.3050-4590 even from 13.5.98. It was in pursuance of R-1 that the respondents had initiated action for the recovery of excess payment already made to the



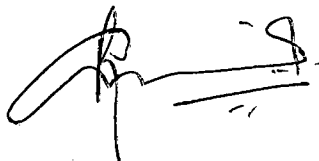
applicant. Accordingly the applicant was informed by letter dated 22.3.2000 of the proposal for recovery of the excess amount from the salary of the applicant for the month of April, 2000. Applicant submitted A-8 representation addressed to the third respondent challenging the legality of the order issued by the second respondent. Before the disposal of the said representation, the applicant filed this OA seeking the reliefs mentioned above. On the basis of an interim order passed by this Tribunal, the operation of the impugned order was stayed. It was submitted that according to R-1(A) letter cases of officials who were given the opportunity and had exercised option prior to 13.5.98 would not be reopened. Since the applicant had already exercised an option before 13.5.98 and the DG's order dated 30.11.99 giving effect to the scale of Rs.3050-4590 with effect from 13.5.98 did not contain any retrospective effect, the applicant was not entitled for the scale of Rs.3050-4590. The contention of the applicant that junior officials were drawing more pay than him was contrary to truth and hence denied. The applicant had voluntarily submitted A-5 option on 29.12.99. But the pay of the applicant was erroneously fixed by the 2nd respondent in the pay scale of Rs. 3050-4590. On receipt of subsequent clarification, the case was reviewed and the excess amount paid was recovered vide A-7. The over payment had occurred due to the wrong fixation of pay. As per Rule 86 of the P&T Financial Hand Book Vol.I, "any payment objected by Account/Audit Officer shall be recovered by the Drawing and Disbursing Officer under intimation to the official". The applicant had been initiated regarding the recovery by A-7 letter. Excess payment made due to the wrong fixation of pay



could not be treated as illegal. Applicant was informed in advance regarding the recovery through A-7 letter. Officials who had already exercised their option prior to 13.5.98 did not come under the purview of new scale. A-6 & A-7 were not opposed to A-4. A-4 orders were issued in continuation of A-3. Para 3 of A-3 order clearly stated that the proposal for cancellation of option system would take effect from 13.5.98 only and the cases already decided prior to the increase in the age of retirement would not be reopened. A-6 was issued as a clarification to A-3 and A-4. A-7 was issued on the basis of A-6. The reliefs sought for by the applicant were unsustainable and hence liable to be rejected.

4. Heard the learned counsel for the applicant. In the absence of the learned counsel for the respondents, we have given careful consideration to the submissions made by the learned counsel for the applicant and the rival pleadings and the documents brought on record.

5. We find from the pleadings that on the basis of the D.G.(Posts) letter dated 27.12.93, Group-D officials were given option to choose the BCR scale of Rs.825-1200 or 950-1400 and those who opted for 825-1200 would continue up to the age of 60 treating them as Group-D officials and those who chose Rs. 950-1400 would superannuate at the age of 58 years, the age of retirement of Group-C officials and above in existence at that time. Applicant herein who was also given such an option had exercised the option to choose the pay scale of Rs.825-1200 so that he could continue in service upto the age of 60 years. With

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the increase in the age of superannuation of all Central Government Employees from 58 to 60 years with effect from 13.5.98, the D.G.'s (Posts) letter dated 11.2.99 had done away with the exercise of option for Group-D employees with effect from 13.5.98. The said letter which is contained in A-3 impugned order reads as under:

"I am directed to invite your attention to the orders contained in letter No.45-10/92-SPB-I dated 27.12.93 of this Department regarding exercising of option by Group-D employees on promotion to BCR for selecting scale of pay and age of retirement.

Consequent on raising of retirement age of Central Government Employees to 60 years vide O.M. 25012/2/97-Estt.(A) dated 13.5.98 of Department of Personnel & Training, the question of doing away with the seeking of option from Group-D employees under BCR scheme has been examined in consultation with Department of Personnel & Training. they have observed that with the increase in the age of retirement from 58 to 60 years the seeking of option from Group-D employees under BCR scheme has become redundant and have agreed to the proposal of this Department to do away with the option system.

These orders will take effect from 13.5.98 i.e. when the age of retirement was raised from 58 to 60 years and no retrospective claims will be entertained which means cases decided prior to increase in age of retirement will not be reopened."

6. Subsequently D.G.(Posts) by A-4 letter dated 30.11.99 clarified as under:

"Sub: Option for Group-D employees on placement under BCR scheme for selecting scale of pay clarification regarding.

This is in continuation of this office letter No.37/40/95-SPB I dated 11.2.99 regarding doing away with the option clause for Group-D employees on their placement under BCR Scheme.

It is clarified that w.e.f. 13.5.98 the date of enhancement of retirement age from 58 to 60 years for all Government employees, the scale of pay under BCR scheme for Group-D employees will be applicable to all Group-D



employees as per BCR order No.22-1/89-PE.I dated 11.10.91 i.e. the scale of Rs.950-1400/- (pre-revised) whose replacement scale in Rs. 3050-75-3950-80-4590/- as per Government orders on the recommendations of Vth Central Pay Commission.

Sd/-
Asstt. Dir. General (Estt.)"

7. According to the respondents, they had revised the pay of the Group-D officials including the applicant to the scale of Rs. 3050-4590 and arrears were also paid with effect from 13.5.98. On receipt of A-6 letter which reads as under, the respondents reviewed the case of the applicant and issued A7 letter proposing recovery of Rs. 1621 as over payment made to him.

"Copy of DG (P) letter No.37-40/95-SPB.I PE.I dated 28.2.2000 addressed to Chief PMG, Karnataka Circle, Bangalore.

Sub: Option for Group-D BCR officials on placement under BCR Scheme for selecting scale of pay.

Sir,


I am directed to refer your D.O.letter No.ST A/4-3/BCR/Rgls/II dated 4.1.2000 seeking clarification regarding the scale of pay of BCR Group 'D' employees on/after 13.5.98.

This office letter of even number dated 30.11.99 was in continuation of this office letter of even number dated 11.2.99 which clearly stipulated that no retrospective claim will be entertained. Cases of the officials who were given the opportunity and had exercised option prior to 13.5.98 which means cases decided prior to increase in age of retirement will not be reopened.

Yours faithfully,

Sd/-
Karuna Pillai
Director (Estt)."

8. The first ground advanced by the applicant is that the proposed recovery was without any notice and hence learned counsel for the applicant submitted that it was violative of the



principles of natural justice, arbitrary and illegal. According to the respondents, A-7 itself was the notice. Learned counsel for the applicant countered this by saying that A-7 having been issued on 22.3.2000 to recover the excess amount from the salary of the applicant for the month of April, 2000 could not be treated as notice. We find force in this argument. On going through A-7, we find that it is not a notice. It is a communication of decision. On this ground alone, we are of the view that A-7 is liable to be set aside and quashed.

9. The next ground advanced by the applicant was that in terms of A-4 the applicant was given an option to come over to BCR scale of Rs.3050-4590 by the respondents and hence the applicant exercised the option. Respondents could not go back on A-4 and doing so would be arbitrary and illegal and the same was without any basis. Further with the raising of retirement age to 60 years, the option to be exercised by BCR officials to either of the two pay scales i.e. Rs.825-1200 or Rs.950-1400 had become redundant. When in A-3 it is stated that no option is required, all Group-D officials after 13.5.98 should be given only one scale as stated in A-4, to go back on the same by A-6 would mean continuing two scales of pay to the same set of employees being in BCR cadre. Continuing two different pay scales when there exist no difference between the two categories would be illegal and discriminatory. Therefore one pay scale has to be given to BCR officials. Learned counsel for the applicant cited the ratio of the judgement of the Hon'ble Supreme Court in D.S.Nakara & Others Vs. Union of India 1983 (1) SCC 305, referring to the head note. "Labour and Services - Pension Revision of



non-contributory retirement pension scheme - All pensioners have equal right to receive the benefits of liberalized pension scheme - Pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension - Criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after that date while depriving the benefits to those retiring prior to that date, held, violative of Article 14 - such unconstitutional part can be severed from the otherwise constitutional provision by reading down the provision - Omitting the offending criterion will not make the scheme, having financial implications, retrospective in operation - The pension of those retired earlier to it - No arrears can be claimed by such pensioners." He submitted that even though in Nakara's case the matter pertained to pension, the dictum laid down therein was squarely applicable in the facts and circumstances to this case where instead of pensioners it was BCR officials and when the Government had decided to do away with the option to those who would be getting BCR after 13.5.98 and would be eligible for the pay scale of Rs.3050-4590 from that date, those who had exercised option prior to 13.5.98 would be in the scale of Rs.825-1200 (equivalent to the scale 2750-4400) would be discriminatory and violative of Article 14. On careful consideration of the submissions, we find substance in the submissions made by the learned counsel for the applicant. In any case, from the pleadings, we have not found any reason advanced by the respondents as to why they had to issue A-6 clarification after issuing A-4 letter. In A-4 letter, it had been categorically stated that after 13.5.98 the scale of



pay under BCR scheme for Group-D employees would be applicable to all Group D employees as per BCR order dated 11.10.91 i.e. the scale of Rs.950-1400. Why this had to be modified has not been submitted in the reply statement at all nor is there any reason given in A-6. On a reading of A-3 letter we find that the doing away with the option and putting all the Group - D employees in one BCR scale of Rs.3050-4590 would be effective from 13.5.98 only. The only condition stipulated in the letter dated 11.2.99 was that no retrospective claim would be entertained i.e. cases prior to the increase in the retirement age would not be reopened. That means no claim in respect of scale of Rs.950-1400 (revised to Rs.3050-4590) w.e.f. 13.5.98 would be made retrospective and no claim on that count would be entertained. In any case after 13.5.98, in our view, there cannot be two classes of Group-D employees who have completed 26 years of service and who are in service doing same type of job but with different BCR pay scales one Rs.3050-4590 and another Rs.2750-4400.

10. In the result, this OA succeeds. We set aside and quash A-7 letter dated 22.3.2000 proposing to recover an amount of Rs. 1621 from the salary of the applicant. We set aside and quash A-6. We quash A-3 to the extent that it permits continuance of two different pay scales to the BCR officials even after the raising the retirement age to 60 years declaring the grant of two different BCR pay scales as illegal and discriminatory. We direct the respondents not to make any recovery from the applicant pursuant to A-7.



11. In the circumstances, the OA is allowed to the above extent with no order as to costs.

Dated 3rd June, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of the letter No.B-II/III-BCR/Part dated 9.10.95 issued by the 1st respondent.
2. A-2 : True copy of the Memo No.B II/III/BCR dated 14.9.94 issued by the 1st respondent.
3. A-3 : True copy of the letter No.B II/3/Gnl dated 24.2.99 issued by the 1st respondent.
4. A-4 : True copy of the order No.37-40/95-SPB-I/PN.I dated 30.11.99 issued by Assistant Director General(Estt.).
5. A-5 : True copy of the option exercised by the applicant on 29.12.99.
6. A-6 : True copy of the order No.37/40/85-SPB.I/PE.I(Pt.) dt.28.2.2000 issued by the 3rd respondent.
7. A-7 : True copy of the letter No.A3/BCR dated 22.3.2000 issued by the 2nd respondent.
8. A-8 : True copy of the representation dt.20.4.2000 submitted by the applicant to the 2nd respondent.

Respondents' Annexures:

1. R-1 : Photostat copy of the letter No.ST/8-1/III dated 7.3.2000 issued by Mr.Karuna Pillai, Director(Estt.), Office of the Chief Postmaster General, Kerala Circle, Trivandrum.

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10.6.02