

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 469 OF 2007

Thursday, this the 28th day of February, 2008.

CORAM :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mrs. O.P.SOSAMMA, ADMINISTRATIVE MEMBER**

K.C.Xavier
Postal Assistant (Circle Office)
Office of the Postmaster General
Central Region, Kochi – 682 018 : Applicant

(By Advocate Mr.O.V.Radhakrishnan, Senior with
Mrs .K.Radhamani Amma, Mr.K.V.Joy
Mr.K.Ramachandran and Mr.Vikanth K Puthumana)

Versus

1. Accounts Officer
Office of the Postmaster General
Central Region (Annexe), Ernakulam HPO Complex
Kochi – 682 011
2. Director of Postal Accounts
Thiruvananthapuram
3. Director of Postal Services
Central Region, Kochi – 682 018
4. Chief Postmaster General
Kerala Circle, Thiruvananthapuram
5. Union of India represented by its Secretary
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)
New Delhi – 110 001 : Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 09.01.2008, the
Tribunal on 28.02.2008 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Pay fixation is the main issue involved in this case. The
applicant, who entered service in 1969, was placed in the LSG

scale of Rs.1400-2300 in 1993. At that time, he opted for 01.01.1994 as his date for increment. Hence, first of January happens to be his date for increment annually. Provision exists for placement, after 26 years of service and under is called 'BCR Scheme' and in so far as the applicant is concerned he became eligible for being placed in the scale of pay of Rs.1600-2660 with effect from 17.05.1995 which was later on changed as 25.04.1995. His pay on 25.04.1995 was Rs.1800 in the scale of Rs.1400-2300. The applicant opted for deferring his promotion till he received one increment as on 1st of January, 1996 in the scale of Rs.1400-2300. Accordingly vide Annexure A-5 the applicants pay in the LSG was fixed at Rs.1900 with effect from 01.01.1996.

2. In the wake of acceptance of Vth Central Pay Commission Recommendations, Revised Pay Rules, 1997 were promulgated effective from 01.01.1996. Accordingly, the replacement scale in respect of 1600-2660 was 5000-150-8000. Since the revised pay scale was published in 1997, by that time the applicant drew his pay in the promotional post in the erstwhile pay scale 1600-2660 and his pay was fixed of Rs 1950 invoking the provisions of FR 22 (1) (a) (i). On the revision of pay scale the applicant was fixed at Rs.6050 vide Annexure A-6 However, after a pretty long time vide Annexure A-7 order dated 06.02.2007 the applicant's pay as on 01.01.1996 was sought to be placed at Rs.5750 instead of Rs.6050. The applicant was given an opportunity to represent and accordingly he had filed representation dated 20.02.2007

vide Annexure A-10. In response to the above, the respondents have issued Annexure A-11 order asked the applicants to exercise his option if any, for fixation of pay on promotion to BCR Scheme. The applicant has filed Annexure A-12 representation stating that the pay fixation already done stands justified by rules and proposal to allow the applicant another opportunity to exercise fresh option appears to be "immature" as the applicant was apprehensive that the respondents may not accede to his request, he had approached this Tribunal seeking the following Reliefs:-

i, To call for the records leading to Annexure A-7 memo dated 06.02.2007, A-8 memo dated 23.04.1999 and A-9 Corrigendum dated 10.08.1999 and A-11 letter date d18.06.2007 and set aside the same.

ii, To declare that the pay of the applicant fixed as per Annexure A-5 and A-6 Pay Fixation Statements is not liable to be refixed on the basis of Annexures A-8 and A-9 which are ultra vires, void and inoperative;

iii, To issue appropriate direction or order directing the respondents not to proceed with or to take further steps pursuant to Annexure A-7 memo dated 06.02.2007 and A-11 letter dated 18.06.2007 and to fix his pension and to grant his retiral benefits on the basis of the Pay he has been drawing on the basis of Annexures A-5 and A-6 Pay Fixation Statements;

iv, To grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case.

3. Respondents have contested the O.A. According to them since the date of increment of the applicant under the date of effect of the revised pay happened to be one of the same viz., 01.01.1996, the applicant's pay as on 01.01.1996 would be in



accordance with the provisions of Annexure A-8 order dated 23.04.1999 read with corrigendum dated 10.08.1999 (Annexure A-9)

According to the aforesaid orders, fixation of pay in respect of cases wherein promotion was due and granted prior to 01.01.1996 but option exercised for drawing the increment at the lower scale of pay after enjoying the next increment would be regulated as under :-

" On 1st January 1996, the pay of such Government servants may be fixed in the promoted posts with reference to pay that had been fixed at the time, of promotion initially at the stage on time scale of new post above the pay in the lower post or from which he has been promoted on regular basis. They will be allowed to draw that pay in the revised scales with effect from 1st January, 1996.

(Para 2 (ii)) : Their notional pay in the lower posts in the revised scales may also be fixed as on 1st January, 1996. From the dates of accrual of the next increment in the revised scale in the lower post, their pay in the promoted post may be re-fixed on the basis of provisions of FR 22 (I) (a) (i). "

4. The respondents tried to explain the position in Para 4 of their counter. They have further stated vide Annexure A-5 as under :-

" With regard to para 4.4 of the Original Application it is submitted that to rectify the anomalies arising out of fixation of pay on promotion under the provisions of FR 22 1 (a) (i) in respect of employees who had been promoted before 01.01.1996 and who had exercised option to have their pay fixed from their DNI in the lower scale which fell on or after 01.01.1996. Department of Personnel & Training has issued the OM No.1/12/97-Estt (Pay.I) dated 23.04.1999 read with corrigendum dated 10.08.1999 attached as Annexure A-8 and A-9 respectively in the O.A. One option clause was also mentioned in the said OM to be exercised within three months. The case of the applicant is exactly the same as mentioned in the said OM. According to the OM the pay of the official has to be fixed with reference to the pay in the lower post in the revised scale on 01.01.1996 and to be refixed from the DNI in the lower post to the promoted post under the provisions of FR 22 1 (a) (i). Accordingly, the applicant will get

Rs.5900/- only in the revised scale with effect from 01.01.1996 as explained previously. However, as the irregularity was noticed only at the time of internal check inspection of the office from 22.11.2005 to 28.11.2005, i.e after 6 years of issue of the DOPT OM dated 23.04.1999, there was no other choice to rectify the irregularity than giving him another chance for revised option. He was therefore given a chance for fresh option in accordance with DOPT OM dated 23.04.1999 by this Respondent vide A-11 letter dated 18.06.2007. But he has still not given revised option. Annexure A-8 and A-9 have been issued in conformation with the fundamental Rules which are statutory and thereby with the intent of streamlining the process of implementation in such anomalous situations. "

5. *The applicant has filed rejoinder wherein he maintained his earlier contention and as regards Para 5 of the counter, the reaction of the applicant is as under as contained in Para 4 of the rejoinder :-*

"With reference to Para 5 of the reply statement it is submitted that Annexures A-8 and A-9, to the extent they collide with the statutory direction contained in Rule 7 (1) of the Revised Pay Rules, are ultra vires and void. The applicant is not legally obliged to give a fresh option as called for by Annexure A-11. Compelling the applicant to submit a fresh option on the past issue of BCR placement is unauthorised and impermissible. The applicant submits that his pay on placement under BCR Scheme was already fixed as per Annexure A-5 and the pay on coming over to the revised scale was fixed correctly as per Annexure A-6 and there is no scope for recalling or reviewing the Pay Fixation based on Annexures A-8 and A-9 orders dated 23.04.1999 and 10.08.1999. The applicant submits that Annexures A-5 and A-6 Pay fixations were made by the respondents on the basis of the Option submitted by the applicant for fixation of pay on promotion on the date of next increment due namely, 01.01.1996. "

6. At the time when the case was initially listed for hearing, Annexure A-7 order whereby the applicant's pay was sought to be reduced to Rs.5750 as on 01.01.1996 and Annexure A-11 order

whereby he was asked to exercise a fresh options were directed to be kept in abeyance. According to the applicant, this interim order was deliberately violated by the respondents and a C.P.(C) is pending in this case.

7. Senior Counsel for the applicant submitted that the pay fixation is to be based on Para 7 of the CCS Revised (Pay Rules, 1997 coupled with the provisions of definition relating to existing scale, present scale and revised scale as per the Rules. In addition, according to the counsel the pay fixation also is based on provisions contained in the Biennial Cadre Review. Accordingly, according to Senior Counsel the term, existing scale having been defined as the present scale applicable to the post already held by the government servant as on 1st date of January, 1996 and the term present scale further having been defined to mean the scale of pay specified in Column 3 of first schedule, the pre-revised scale would hold the term existing scale. And while calculating fixation of pay on promotion as on 01.01.1996 which date incidentally is also the date for switching over to revised pay scales first promotion should be granted in the pre revised pay scale and thereafter revised pay scale should be placed in the revised pay scale in accordance with the Rule 7 thereof. Viewed from that angle, according to the applicant Annexure A-5 order is the correct calculation whereby the pay of the applicant was fixed in the pre revised pay scale on his promotion taken effective from 01.01.1996. According to the Senior Counsel it was this revised pay that has been taken into consideration while fixing the pay of the applicant in the revised



scale of Rs.5000-8000. Counsel for applicant referred to number of decisions as under:-

1995 Suppl 1 SCC 18
2004 7 SCC 261
2004 7 SCC 219

8. In addition to the revised Pay Rules, 1997, FR & SR, Pension Rules and CAT Rules have also been relied upon by the Senior Counsel. The SCGSC has taken the Tribunal through Para 4 & 5 of the reply statement and submitted that as stated therein the applicant's pay has been correctly fixed. Accordingly the Senior Standing Counsel, otherwise, it would amount to the applicant's having been granted double benefits.

9. It is true that the intention to seek option for fixation of pay on promotion is with a view to enabling the individuals to draw that pay which is more advantageous. Under the normal circumstances, the fixation does not pose any problem. Here, as stated earlier, the date of next increment in respect of the earlier post held by the applicant as well as the date of coming into force of the revised pay scale happened to be one and the same i.e. 01-01-1996. Specific stipulation is available as to the method of calculation for fixation of pay when promotion is effected on or after 01-01-1996 vide Annexure A-8 and A-9. It is pertinent to point out that in none of these orders, there is any mention about the 'existing pay'; rather, it has been specifically mentioned therein that notional fixation in the lower post should be fixed in the revised pay scale, vide para 2(ii) of Annexure A-8 order as confirmed by Annexure A-9 order. In an identical situation that occurred when the IV C.P.C. Recommendation was accepted and Revised Pay Rules, 1986 were



introduced, the Government had issued an order dated 15-12-1986 stating, "*In cases of a Government servant promoted to a higher post on or after 1-1-1986, the pay in the revised scale should be fixed with reference to the lower post under CCS (RP) Rules, 1986 and then the pay fixed in the revised scale of the higher post under normal rules.*" The reason is obvious. As and from 01-01-1986, pre-revised pay scales ceased to exist. See **Chander Bhan Gill v. Union of India, (1994) 5 SCC 328** wherein the Apex Court has held "*The pre-revised scale ceased to operate on 31-12-1985.*" The same rule operates in respect of Revised Pay Rules, 1997. As on 01-01-1996 for any post, it is the revised pay scale that would be available for fixation of pay and not the pre-revised pay scale. As such, there is no illegality in the orders passed vide Annexure A-8 and A-9 and consequently, the prayer for quashing the said orders has to be rejected.

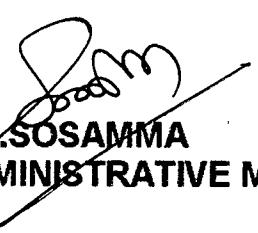
10. In view of the above, the calculation made vide Annexure A-5 which was based on the pre-revised pay scale had been rightly proposed to be modified vide Annexure A-7 Memo and thus, there is no illegality in the action taken by the respondents in revising the pay of the applicant. In fact, the applicant had been given an opportunity to exercise his revised option vide order dated 18-06-2007 (Annexure A-11), which he had not chosen to avail of. If the option to have the pay fixed with effect from 25-04-1995 ie. the date of promotion under TBOP is more advantageous, he may choose the same now though the time limit prescribed had expired. This much concession, the applicant can be granted. Such an option may be exercised on or before 31-03-2008. If such option is exercised, the pay of the applicant be revised accordingly and his last pay drawn be worked out in order to refix the pension payable to the applicant and the said revised pension shall be applicable

[Signature]

from 01-04-2008. If no such option is exercised, the respondents may proceed ahead as per their calculation vide Annexure A-7 order. Till then, whatever excess amount, if any, has been paid to the applicant, the same shall not be recovered, as such a payment was not caused on any misrepresentation by the applicant and it was a bonafide mistake on the part of the respondents whereby such excess payment came to be paid to the applicant. The decision by the Apex Court in *Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18*: " as affirmed in the subsequent decisions of the Apex Court in the case of *Bihar SEB v. Bijay Bhadur, (2000) 10 SCC 99* and in the case of *Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709* and *Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492* would apply.

11. The OA is , disposed of on the above terms.

Dated, the 28th February, 2008.


O.P.SOSAMMA
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

VS