

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 112 of 91 199
XXXXXX

DATE OF DECISION 18-02-92

D. Sasidharan Applicant (s)

Shri P.S. Biju & Shri C.S. Ramanathan Advocate for the Applicant (s)

Versus

The Postmaster General, Central Region, Cochin and another Respondent (s)

Shri P. Sankaran Kutty Nair ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

N. Dharmadan, M(J)

The grievance of the applicant is that his junior Shri Abubacker is drawing higher scale of pay and that his request for stepping up of his pay under FR-22 was illegally rejected as per impugned order at Annexure A-5 which reads as follows:

"....After examining the representation PMG Kochy has intimated that the representation for stepping up of pay with that of Sri Abubacker does not find any reasonable ground...."

2. Seniority list Annexure A-1 clearly shows that Shri V.K. Abubacker is junior to the applicant in the post of Lower Selection Grade (LSG for short) as on

....

1-7-89. Though both the applicant and Shri Abubacker were promoted to LSG cadre with effect from 25-9-79, Shri Abubacker is drawing higher pay. The applicant knew about this anomalous position only in 1988. Immediately he filed Annexure A-2 representation for stepping up of his pay stating that while Shri Abubacker is drawing a pay of Rs.1680/-, the applicant is getting only Rs.1640/-. This is really an anomaly and he is entitled to get his pay stepped up to maintain equality with his junior. The Superintendent of Post offices, Alleppey Division by his letter dated 19-7-88 (Annexure A-3) rejected the same taking the view that anomaly is not the result of fixation of pay under FR 22C hence he is not eligible to get stepping up of his pay considering the higher pay of Shri Abubacker, who is admittedly junior. Annexure A-4 appeal was turned down by the impugned proceedings, Annexure A-5. This is a laconic order which does not give any reason for rejecting the request of the applicant.

3. The impugned order is sought to be supported by the respondents in the reply statement on the plea that Shri Abubacker was officiating for more than one year in LSG post before his regular selection and promotion to the cadre of 1/3rd quota on 25-9-79 and he earned one increment in LSG cadre. Therefore, the applicant's case can be distinguished. He did not get the opportunity nor did he claim to work in an officiating manner in the post of LSG cadre at any time. Under these circumstances, there is no provision in the rules for stepping up of pay of the

applicant as claimed in this application.

4. Admittedly the junior of the applicant is drawing higher pay and there is an anomalous situation as pointed out by the applicant. For removal of the anomaly of this nature the Govt. have issued orders.

A perusal of Government of India order No.10 given under FR-22C would be helpful for deciding the issue arising in this case. It is extracted below:

"..10. REMOVAL OF ANOMALY BY STEPPING UP OF PAY OF SENIOR ON PROMOTION DRAWING LESS PAY THAN HIS JUNIOR

(a) As a result of application of FR-22C:- In order to remove the anomaly of a Govt. servant promoted or appointed to a higher post on or after 1-4-61 drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and the same cadre.

(b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of F.R. 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer....."

"The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay...."

5. Above order mentions three conditions for granting stepping up of the pay viz. (1) both the junior and senior

officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.

(2) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(3) The anomaly should be directly as a result of the application of FR-22.C in the revised scale of pay.

6. Having considered the case of the applicant in detail we are of the view that the applicant satisfies all the above three conditions. The contention of the respondents is that the anomaly is not the direct result of the application of FR-22.C. This plea cannot be accepted because admittedly the applicant is drawing only lesser salary than that of his junior Shri Abubacker and the applicant was senior and he should have been considered for posting in L.S.G. cadre when vacancy arose. The failure to post him in the LSG cadre is not his fault. The respondents have no case that either the applicant was not available or that he wilfully evaded from being posted in the LSG cadre. The statement of the respondents that since the applicant was working as Wireless Licence Inspector he could not officiate in LSG cadre, cannot be accepted as a valid explanation to deny a legal right which he is entitled under the above Government of India order. Under these circumstances, we are of the view that the contention that Shri Abubacker was officiating for more than one year in the LSG cadre before his regular promotion and thereby he earned an increment, cannot be taken as a ground for denying equality

in the matter of pay particularly when, admittedly there is an anomaly and the condition in the Govt. of India order N_o.10 had been fully satisfied by the applicant as indicated above.

7. In the result, having heard the matter, we are of the view that anomaly pointed out by the applicant in the matter of his pay is liable to be rectified. Accordingly, we quash Annexure A-5 and direct the respondents to step up the applicant with that of his junior Shri Abubacker and grant him all consequential benefits.

8. Accordingly the O.A. is allowed.

9. There shall be no order as to costs.

N. Dharmadan
(N. Dharmadan)

Member (Judicial) 18.2.92

S.P. Mukerji
(S.P. Mukerji)

Member (Administrative) 18.2.92

18-2-92

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