

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 112/97, 126/97 & 1361/97

FRIDAY THIS THE 10th DAY OF NOVEMBER, 2000.

C O R A M

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.No.112/97

Shajan David
Inspector of Railway Mail Service
Kochi Sorting Air
Railway Mail Service, Ernakulam Division
Cochin Sorting Air,
Kochi-35

Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Senior Superintendent
Railway Mail Service
Ernakulam Division
Kochi-682 011
2. Chief Postmaster General
Kerala Circle,
Trivandrum
3. Director General of Posts
Department of Posts,
New Delhi.
4. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.

Respondents

By Advocate Mr. M.H.J.David, J, ACGSC

O.A.No. 126/97

M.K. Karthikeyan Nair
Inspector of Railway Mail Service
Trivandrum II Sub Division
Kayamkulam.

Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Senior Superintendent of Railway Mail Service
Railway Mail Service Trivandrum Division
Thiruvananthapuram
2. Head Record Officer
Railway Mail Service Trivandrum Division
Thiruvananthapuram.

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3. Chief Postmaster General
Kerala Circle,
Thiruvananthapuram
4. Director of Postal Services (Head Quarters)
Office of the Chief Postmaster General
Thiruvananthapuram.
5. Director General of Posts
Department of Posts,
New Delhi.
6. Union of India represented by its Secretary
Ministry of Communications,
New Delhi.

Respondents

By Advocate Mr. James Kurian, ACGSC

O.A.No.1361/97

K. Balan
Sorting Assistant Superintendent
Office of the Postmaster General
Northern Region
Calicut-673 011

Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Postmaster General
Northern Region,
Calicut-673 011
2. Chief Postmaster General
Kerala Circle
Thiruvananthapuram
3. Director General of Posts
Department of Posts
New Delhi.
4. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi.

..Respoondents

By Advocate Mr. M.H.J. David J.,

These applications having been heard on 2.8.2000, the Tribunal delivered the following on 10.11.2000.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the facts involved in these three O.As are similar and the question of law involved are identical, these O.As were heard together and are being disposed of by this common order. We shall deal with the facts in O.A. NO. 126/97 in

detail and determine the question of law and apply the law decided by us to the facts of other two O.As. thereafter. O.A.No. 126/97

2. The facts which are not in dispute are that the applicant at the time of filing of this O.A. was working as Inspector of Railway Mail Service, Trivandrum 2nd Sub Division (RMS 'TV' Dn for short), Kayamkulam. He was initially appointed as Time Scale Sorting Assistant with effect from 19.11.74. He appeared in the Post Office and RMS Accountants Examination held on 28th and 29th April, 1983, came out successful and his name was included in the list of candidates qualified for appointment. He was regularly posted as Accountant, Head Record Office, Trivandrum with a special pay with effect from 4.4.88. He was promoted to the next higher grade under Time Bound One Promotion Scheme (TBOP scheme for short) in the scale of pay of Rs. 1400-2300/- w.e.f. 1.12.90 and posted as Lower Selection Grade Accountant, Head Records Office (Accounts) Thiruvananthapuram by A1 memo dated 31.12.90. On promotion to the Lower Selection Grade Cadre (LSG for short) his pay was fixed at Rs. 1520/- under FR 22 I(a)(1) taking into account the special pay drawn in lieu of higher scale in the post of Time scale Sorting Assistant in various spells for more than three years. By A2 memo dated 28.12.92 he was posted to officiate as Office Supervisor. He officiated as Office Supervisor/Inspector of RMS w.e.f. 29.12.92 to 14.5.93. During the officiating period his pay was fixed under FR 22 I(a)(1) at Rs. 1680/- in the scale of Rs. 1400-2300. While so he appeared for the Departmental Competitive Examination for appointment to the cadre of Inspector of Post Offices and RMS held in August, 1993 and came out successful in the examination and was included in the A3 list of candidates selected for appointment as Inspector of

RMS. He was deputed for training and after successful completion of the training he was posted to officiate as Additional Office Supervisor, office of the 1st respondent. The pay of the applicant was fixed at Rs. 1720/-. Thereafter by A-5 and A-6 memo dated 21.12.95 and 22.12.95 respectively the applicant was promoted to the cadre of Inspector of RMS and he joined as such on 29.12.95 in 'TV' Sub Division, Thiruvalla. By A-7 letter dated 3.1.96 he opted for fixation of pay at RS. 1800 under FR 22 I (a)(1) from the date of promotion. The option sought by the applicant was not allowed. Applicant submitted A-8 representation to the 4th respondent. The decision of the 4th respondent was advised to the applicant through the impugned order A-9 dated 11.7.96. In this order the clarification given by the Directorate by letter dated 31.5.95 (reproduced in A-10) was referred to, according to which LSG (TBOP) and Inspector of RMS in the scale of Rs. 1400-2300 were to be treated as identical, and fixation of pay under FR 22 I(a)(1) was not applicable. Subsequently, applicant received A-11 letter of the 2nd respondent intimating that the pay of the applicant on his officiating in the cadre of Inspector of RMS prior to his promotion from LSG to Inspector of RMS in various spells was fixed giving benefit under FR 22 I(a)(1) treating the Inspector of RMS post as one carrying duties and responsibilities of greater importance and that as per letter dated 31.5.95 of the Director General the benefit of fixation under FR 22 I (a)(1) was not applicable in the case of promotion from LSG (TBOP) to Inspector of RMS as the two posts carry identical time scale of pay and the appointment should not be deemed to involve higher responsibilities under proviso (iii) of FR 22. It had been said that the pay of the applicant was accordingly revised and an amount of Rs. 805/had been found to be excess pay drawn and the same was

ordered to be recovered from the pay and allowances of the applicant. Aggrieved by A-11 order of the 2nd respondent applicant submitted A-12 representation to the 3rd respondent to give necessary direction to the 2nd respondent to fix his pay under FR 22 I(a)(1) on promotion to the Inspector of RMS cadre and not to recover the officiating pay. Applicant also submitted A-13 representation dated 7.11.96 to the first respondent. Applicant received A-14 reply dated 27.12.96 from the first respondent rejecting the request made in A-13. An amount of Rs.. 805/- was recovered from the pay of the applicant. Aggrieved by the same the applicant filed this Original Application seeking the following reliefs:

- i) to call for the records relating to Annexures A9, A-10, A-11 and A-14 and to set aside the same
- ii) to declare that the applicant is entitled to get his pay fixed in the post of Inspector of RMS applying FR 22 I (a)(1)
- iii) to issue appropriate direction or order directing respondents 1 and 4 to accept the option exercised by the applicant for fixing his pay at Rs. 1800/- in the post of Inspector RMS applying FR 22 I (a)(1) from the date of his promotion, namely, 29.12.95 and to grant him pay and allowances and annual increments on that basis with effect from 29.12.95 and also to pay him arrears with 18% interest;
- iv) to issue appropriate direction or order directing the respondents to refund the amount recovered pursuant to Annexures A-11 and A-14 with 18% interest.
- v) to grant such other reliefs which this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case and
- vi) to award costs to the applicant.

3. Respondents filed reply statement resisting the claim of the applicant. They submitted that in the light of FR 22 since the two posts carry identical time scales of pay, as per Revised Pay Rules, 1986 and as the appointment did not involve higher responsibilities the fixation of pay under FR 22

I(a)(1) was not permissible. An additional reply statement was filed by respondents annexing copy of the judgment of this Tribunal in O.A.No. 584/95.

4. Applicant filed rejoinder.

5. We have heard Shri O.V. Radhakrishnan, learned counsel for applicant and Shri James Kurian, learned counsel for the respondents. Learned counsel for the applicant during his extensive arguments took us through Fundamental Rules, orders of the Tribunal and judgments of the Hon'ble Supreme Court. He submitted that the applicant was holding the post of Time Scale Sorting Assistant at the time of his promotion to the cadre of Inspector of RMS despite his promotion to the next higher grade of LSG under TBOP scheme. According to him promotion to the grade of LSG under TBOP scheme was not a promotion and it provided only a higher pay scale in the same post. The beneficiary of selection grade did not occupy a post which was higher in rank than the post earlier occupied by him. In support of this submission he referred to the decision of the Hon'ble Supreme Court in the case of Union of India and another Vs. S.S. Ranade reported in JT 1995 (5) SC 582. Referring to paragraphs 9, 11 and 12 of the judgment he submitted that granting of higher grade under TBOP scheme the LSG has to be taken as equivalent to grant of selection grade only. Again relying on the decision of the Hon'ble Supreme Court in Dwijen Chandra Sarkar and Another Vs. Union of India and Others reported in (1999) 2 SCC 119 he submitted that by promotion under the TBOP scheme the applicant got only a higher grade in terms of emoluments whereas he remained in the same category and as such his pay should be fixed applying FR 22 I (a)(1) on his appointment as Inspector. He also submitted that such a view had been taken by this Tribunal.

According to the learned counsel the applicant was retaining the post of Time Scale Sorting Assistant notwithstanding his promotion to the next higher grade of LSG TBOP and applying the principle enunciated by the Hon'ble Supreme Court in Union of India Vs. S.S. Ranade that in order to decide whether a post was either equivalent or higher or lower than another post, one could not look only at the pay scale for that post. One must also look at the duties and responsibilities that were attached to such posts. The applicant was receiving higher pay scale in the same post on getting TBOP and it was not a promotion to a higher post. The duties and responsibilities of Inspector of RMS were entirely different and higher than the duties and responsibilities of Time Scale Sorting Assistant and that of LSG TBOP. He submitted that the case of the applicant was fully covered by the decision of this Tribunal in Dhyneshwar Nandanwar Vs. Union of India and Others (1993 (2) SLJ (CAT) 305, Ramesh Chand Vs. Union of India and Another (1993 (2) SLJ (CAT) 95). He submitted that by promotion to LSG TBOP the benefit of FR 22 I(a)(1) was not applied by force of that rule but as a part of the benefit given under the scheme as a policy of the Government. According to him, the question of applying FR 22 I(a)(1) arises only when a Government servant holding a post was promoted or appointed to another post carrying duties and responsibilities of greater importance than those attaching the post held by him by force of the operation of the rule and not otherwise. He submitted that FR 22(2)(iii) had no application to the case of the applicant. In support of his argument he submitted that FR 22(I)(a)(1) spoke of two modes of recruitment namely promotion and appointment of a Government servant holding a post to another post. In paragraph III of FR 22(2) the expression 'is promoted' was conspicuously absent. Therefore, paragraph III of FR 22(2)

could be applied only in cases of 'appointment' and not promotion. The recruitment to the post of Inspector of RMS was governed by Post and Telegraphs (Inspectors of Post Offices, Inspectors of RMS and Inspectors (Uniforms)) Recruitment Rules, 1977 and the mode of appointment was by promotion on the basis of competitive examination. Therefore, para III of FR 22(2) could not at all be pressed into service in the case of promotion from the post of Time Scale Sorting Assistant to Inspector of RMS.

6. Learned counsel for respondents Shri James Kurian submitted that incorrect fixation of pay similar to that of applicant's case had been brought to the notice of the Director General and Director General by A-10 dated 31.5.95 issued instructions directing the subordinate offices to follow the provisions contained in FR 22 III. Learned counsel for the respondents submitted that what was contained in A-10 was nothing but reiteration of FR 22 III. Referring to the decision of the Hon'ble Supreme Court in Union of India Vs. Ashoke Kumar Banerjee (1998 (5) SCC 242) he submitted that the Hon'ble Supreme Court while considering a similar issue held that for applicability of FR 22(I)(a)(1) it was not sufficient to involve higher duties and responsibilities but it must also be satisfied with another condition that an employee was moving from a lower scale attached to a lower post to a higher scale attached to a higher post. According to him the case of Dwijen Chandra Sarkar and Another VS. Union of India and Others, relied on by the learned counsel for the applicant had no application in the facts and circumstances of the present case. In that case the Hon'ble Supreme Court was considering the services rendered by the applicant therein in his parent department before re-deployment to the Department of Posts for purpose of reckoning eligible service for promotion under the

TBOP scheme. He was of the view that the decision referred to therein was not at all relevant to the point at issue in the present O.A.

7. We have given careful consideration to the submissions of the learned counsel for the parties and rival pleadings and have perused the documents brought on record.

8. We find from Swamy's Compilation of FR SR, Part I General Rules (14th Edition 1999 Reprint), that there are four clauses viz; (I), (II), (III) and (IV) to FR 22. The said Rule is reproduced below:

FR 22(I) The initial pay of a Government Servant who is appointed to a post on a time-scale of pay is regulated as follows:

(a)(I) Where a government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more.

Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad hoc basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum for the time-scale of the lower post, his

initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees twenty five whichever is more

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On appointment on regular basis to such a new post, other than to an ex-cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

(3) When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in Clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time-scale:

Provided that, both in cases covered by Clause (a) and in cases, other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), if he-

(1) has previously held substantively or officiated

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale or

(2) is appointed subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis

then the initial pay shall not except in cases of reversion to parent cadre governed by proviso (1)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21) (a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post had been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of these increments shall unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (1)(iii) shall, on reversion to the parent cadre count towards initial fixation of pay, to the extent and subject to the conditions indicated below-

(a) the Government servant should have been approved for appointment to the particular grade or post in which the previous service is to be counted.

(b) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the Department itself or elsewhere and at least one junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed: and

(c) the service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex-cadre post.

(II) The President may specify posts outside the ordinary line of service the holder of which may, notwithstanding the provisions of this rule and subject to such conditions as the President may prescribe, be given officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and may thereupon be granted the same pay whether with or without any special pay attached to such posts as they would have received if still in the ordinary line.

(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the

Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

(IV) Notwithstanding anything contained in this rule, where a Government servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment.

9. It is evident from the above Fundamental Rule that FR 22 I(a)(1) will govern the fixation of pay in case the post to which the Government servant is promoted or appointed carries duties and responsibilities of greater importance than the post held by him. The post held by him is termed as 'lower post' and the post to which promotion or appointment is made is termed as 'higher post'. Clause III lays down that the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post which the Government servant holds at the time of his promotion or appointment or on a scale of pay identical therewith. According to FR 9(31)(6) " Time scales are said to be identical if the minimum, the maximum, the period of increment and the rate of 'increment of time scale are identical." FR 9(31)(6) states that "A post is said to be on the 'same time scale as another post on a time scale if the two time scales are identical and the posts falls within a 'cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility in a service or establishment or group of establishments, so that the pay of the holder of any particular post is determined by his position in the cadre or class and not by the fact that he holds that post." Applicant in the present O.A. on completion of 16 years of service has been promoted

to grade Rs. 1400-2300/- under TBOP scheme and his pay had been fixed under FR 22(1)(a)(1) with effect from 1.1.90. We find that the posts of Inspector of RMS, Office Supervisor etc. are in the same grade of Rs. 1400-2300/-. When the applicant worked against these posts between 1992 and 1993 his pay was fixed under FR 22 (I)(a)(1). However, authorities under the respondents in different circles were not very clear on the subject and had sought clarification from the fifth respondent-Director General, Postal Department. Accordingly the fifth respondent had issued letter dated 31.5.95 copy reproduced in A-10 which is one of the impugned orders. This is reproduced below:

A number of references have been/are being received from various circles offices seeking clarification regarding fixation of pay in cases of promotion from LSG(TBOP to IPO's cadre. It has been observed that these cases are being referred to Directorate in a routine manner without having them examined in consultation with the circle IFA with reference to the relevant rules on the subject published in FRSR Part I Under FR-22. In this connection attention is invited to Para 3(2)(iii) of Ministry of Personnel, Public Grievances and Pension (Departament of Personnel and Training) notification No.I-120/89-Estt(Pay) dated 30.8.89 circulated vide this office letter No.1-8/89-PAP dated 22.9.89 which clearly provides that for the purpose of FR 22 the appointment/posting shall not be deemed to involve the assumption of duties and responsibilities of greater importance of the post to which it is made is on the same scale as the post, other than a tenure post, which the Government servants holds on a regular basis at the time of his promotion or appointment or at a scale of pay identical with it. The Ministry of Finance has also observed that in a number of cases the Pay Commission has recommended only one scale for two posts, one being promotional to another. In all such cases, these posts will have to be treated either to have been merged or equivalent.

Thus any promotion from one grade to another on or after 1.1.86 is IPSO FACTO null and void these posts can only be treated as equivalent and there is no question of fixation of pay under FR-22-C. Some of the circles has pointed out that DOPT vide UO NO.2142/93-Estt (Pay) dated 20.12.93 has allowed pay fixation under FR 22-C in respect of promotion from Sr. Accounts Officer to Junior Time Scale in Indian P & T Account and Finance Group A. In this connection it is observed that promotion in the case involves

change of cadre from Group B to Group-A as such this can't be made applicable in the case of promotion from the same cadre i.e. from group-C to Group-C.

It is therefore, requested that in future all such cases should be examined in consultation with the IFA with reference to the current rulings position and the case should be referred to the Directorate for any clarification with the comments of IFA if any more point or doubt arises. This disposes of all the like cases referred to Directorate.

10. We find that the clarifiction contained in the above letter is in accordance with FR 22 reproduced earlier. In the light of this letter, the respondents did not fix the pay of the applicant on his posting as Inspector of RMS in grade Rs. 1400-2300. We are of the view that the judgment of the Hon'ble Apex Court in Ranade's case and Dwijen Chandra Sarkar's case cited by the learned counsel for the applicant have no application in the present O.A. In our view the ratio of the judgment of the Hon'ble Supreme Court in Ashoke Kumar Banerjee's case is squarely applicable in the facts of the present O.A. The learned counsel tried to distinguish the ratio of this judgment of the Hon'ble Apex Court from the case of the applicant in this O.A. He submitted that the initial pay of the applicant in the higher post of Inspector of RMS was not fixed by increasing his pay in the lower post regularly in accordance with FR 22(I)(a)(1) before his promotion as Inspector of RMS on regular basis and therefore the question of giving the benefit of FR 22 (I)(a)(1) on promotion to the post of Inspector of RMS second time did not arise and the situation that he would be given more pay than his seniors who might have got promotion earlier and might have got the benefit of FR 22(I)(a)(1) only once would be absent. Therefore, he submitted that the decision in the Ashoke Kumar Banerjee's case has no application at all to the case of the applicant.

11. In the case of Ashoke Kumar Banerjee the point for consideration was whether the respondent in that case namely Ashoke Kumar Banerjee who was in grade 1640-2900 as Junior Engineer and was granted Assistant Engineer's scale of pay of Rs. 2000-3500 on completion of 15 years service as Junior Engineer was entitled on regular promotion as Assistant Engineer on 1.8.91 again in the scale of pay of Rs. 2000-3500 for fixation of pay under FR 22(I)(a)(1). The Hon'ble Supreme Court after examining FR 22(I)(a)(1) held as follows:

In our view the respondent having received the same benefit in advance, while working as Junior Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000-3500 when he is promoted on 1.8.91 as Assistant Engineer. This is because as on 1.8.91, he is not being fitted into the "time scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22(I)(a)(1) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more."

12. We are of the view that the submissions of the learned counsel for the applicant that FR 22 (I) dealt with appointment and promotion whereas FR 22(III) dealt with only appointment has no validity from a complete reading of the Rule especially two clauses I and III of Rule 22 reproduced above. It is evident that both FR 22(I) and FR 22(III) covers 'promotion' and 'appointment.'

13. In the present OA the applicant on completion of 16 years of service has been promoted to the grade of Rs. 1400-2300 w.e.f. 1.1.90 under the TBOP Scheme. The post of Inspector of RMS is also in the grade of Rs. 1400-2300. Thus the applicant while working as a Sorting Assistant itself under the Scheme had been given the benefit of FR 22 I (a)(1) for fixation of pay in scale Rs. 1400-2300 which is the identical scale as that of Inspector of RMS. In such a situation when he is appointed by promotion as Inspector of RMS, he is not moved from a lower post holding a lower scale to a higher post having a higher scale. A basic grade Sorting Assistant would not have been covered by the TBOP Scheme had he become Inspector of RMS prior to completion of 16 years of service. In such an eventuality the anomaly contemplated in para 9 of Ashoke Kumar Banerjee's judgement could not be ruled out. Therefore, we are of the view that the applicant's claim for fixation of pay under FR 22(I)(a)(1) on promotion from LSG Sorting Assistant to Inspector RMS is not tenable. The decision of this Tribunal in Ramesh Chand's case would no longer be good law in the light of the law laid down by Hon'ble Supreme Court referred to above. In Ashoke Kumar Banerjee's case even though Sri Banerjee had moved from higher grade Junior Engineer (which was equal to the grade of the Assistant Engineer) to the supervisory post of Assistant Engineer, both the scales being identical Hon'ble Supreme Court held that fixation under FR 22(I)(a)(1) is not permissible. The applicant in the present OA has also moved to a supervisory position of Inspector RMS but on the same scale of pay as the LSG(TBOP). Moreover, in Ramesh Chand's case the Principal Bench had noted that FR 30 placing a restriction on conferring the benefit of FR-22 C on the ground that the posts of identical scale of pay broadly carry comparable duties and responsibilities had been deleted from

the Fundamental Rules vide Department of Personnel notification No.1/10/89-Estt.(Pay-I) dated 30.8.89 which was gazetted as GSR NO. 679 dated 16.9.89. From Swamy's Compilation of FRSR (14th Edition 1999) we find that even though FR 30 had been deleted in its place clause (II) and (III) had been introduced in the amended FR 22 which was gazetted on 16.9.89 by the same GSR. Therefore, one of the reasons for the said order of the Tribunal was not valid at all. Moreover, deciding the relative importance of duties and degrees of responsibilities of different posts are the function of expert bodies such as Pay Commission and Courts/Tribunals could not/^{generally} enter into these fields. For all the above reasons we hold that orders of this Tribunal in the two cited OAs should be taken as one between the parties and can no longer be taken as good precedents.

14. The note in A-17 referred to by the applicant in the rejoinder reads as under:

"Note:- Consequent on the acceptance of the Second Pay Commission's recommendations, Inspector of Post Offices/RMS on Rs. 210/380 may be deemed to carry higher responsibility when compared to posts in the revised LSG scale of Rs. 210/320 for the purpose of FR 22 and 30."

It is evident from the above that scale of pay of LSG was lower than the Inspector of Post Offices/RMS. But the situation is not the same after 1.1.86 when the Fourth Pay Commission gave the same pay scale of Rs. 1400-2300 to the LSG and Inspector of Post Offices/RMS. In effect the letter dated 31.5.95 of Director General of Posts states the above factual position and directs that there should be no fixation of pay under FR 22(I)(a)(1). Therefore, in our view the applicant's reliance on the above note for his claim has no validity.

15. In view of the foregoing we do not find any reason to set aside and quash A-10 impugned order of Director General, Department of Posts No. 2-20/95-PAP dated 31.5.95

16. Learned counsel for the applicant next urged the ground of violation of principles of natural justice in that the applicant was not given any notice or opportunity to place his case before recovery from his pay was ordered. He referred to the judgment of the Hon'ble Supreme Court in the following cases in support of his submissions:

- i) M. Gopalkrishna Naidu Vs. The State of Madhya Pradesh (AIR 1968 SC 240)
- ii) B.D. Gupta Vs. State of Haryana (AIR 1972 SC 2457)

17. He submitted that no opportunity was given before taking a decision as in the DG, Postal Department's letter dated 31.5.95 and when the first order is not in accordance with law, subsequent orders even if they are legal, are void. He cited the judgments of the Hon'ble Supreme Court in Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and another (AIR 1977 SC 747) and K.I. Shephard and Others Vs. Union of India and Others (AIR 1988 SC 686) in support of his submission. He also submitted that retrospective reduction in basic pay should not be done without giving an opportunity to show cause as laid down in Bhagwan Shukla Vs. Union of India and Others (AIR 1994 SC 2480)

18. We will examine the above ground keeping in view the law laid down by the Hon'ble Supreme Court regarding the principles of natural justice in UP State Road Transport Corporation and Others Vs. Ramachandra Yadav (JT 2000(8)SC

198 and in Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another.(JT 2000 (5) SCC 243. In the latter case Hon'ble Supreme Court held " from postal remarks on the notice and order when returned undelivered raised a clear presumption in favour of the Bank. Tribunal not justified in giving relief based on the false edifice built by the employee. Undue reliance on the principles of natural justice by Tribunal and High Court resulted in miscarriage of justice." In the latter case Hon'ble Apex Court held " Rules of natural justice are not embodied rules. The question whether in a given case the principles have been violated or not has to be found out on consideration as to whether the procedure adopted by the appropriate authority is in accordance with law or not, and further whether the delinquent knew what the charges he is going to meet. In other words, what is required to be examined is whether he has been given an opportunity to state his case and whether the Tribunal has acted in good faith. If these requirements are satisfied then it cannot be said that the principle of natural justice has been violated." We are aware that in these cases the Hon'ble Supreme Court was dealing with termination/dismissal of an employee from the Bank/UPSRRTC However, the same principles can apply even while judicially reviewing the employers' action of rectification and recovery of wrongly fixed pay of an employee and consequent over payment from him respectively.

19. We find that the applicant was regularly promoted as Inspector of RMS on 29.12.95. Prior to that the Director General, Department of Posts letter dated 31.5.95 has been circulated by the Senior Superintendent, RMS TV Division by A-10 letter dated 4.8.95 for information and guidance and necessary action of all concerned. When the applicant

requested for fixation of pay on appointment as Inspector of RMS w.e.f. 29.12.95 and the same was not acted upon, he submitted A-8 representation dated 6.2.96. We find from a reading of this representation that the applicant knew that he would not be getting the benefit of fixation of pay under FR 22 (I)(a)(1). This letter had been replied by A-9 dated 11.7.96 stating that the scale of pay in which he was working and the scale of pay of the Inspector of RMS to which he was appointed were identical and the benefit of FR 22(I)(a)(1) would not be available in the light of Director General, Postal Department's A-10 letter dated 31.5.95 and FR 22(III). He again submitted a representation A-12 dated 7.11.96 addressed to the third respondent on receipt of A-11 order of the second respondent dated 7.11.96 for the recovery of Rs. 805/- the excess paid pay and allowance for the officiating spells from 29.12.92 to 8.10.94. He also by A-13 representation dated 7.11.96 addressed to the first respondent requested that till disposal of his representation addressed to the third respondent the proposed recovery may be held in abeyance. These were replied by A-14 dated 27.12.96. In the light of the above we are unable to accept the plea of the applicant that he did not get an opportunity to represent his matter before the recovery was effected. As regards the ground advanced by the learned counsel for the applicant that A-10 has been issued without affording an opportunity, we hold that A-10 is in the nature of a general policy clarification reiterating the provisions of Fundamental Rule 22 for fixation of pay and applying the same to the case of posts in LSG and Inspector of Post Offices/RMS and in such cases we hold that there would be no need of issue of show cause notice before issuing a clarificatory order reiterating the rules position as contained in FR 22. We are of the view that the judgments cited by the learned counsel for the applicant will not be

applicable in the facts and circumstances of the present O.A. Accordingly, we reject the ground of violation of principles of natural justice in the facts and circumstances of this O.A.

20. It is not the case of the applicant that the amount of Rs. 805/- calculated as overpayment is not correct. Applicant is questioning the very basis of declaring the amount as over-payment. We have already held A-10 as valid not to be interfered by this Tribunal. We also do not find any infirmity in A-9, A-11 and A-14 orders which were issued pursuant to A-10 and in reply to his representation. Hence, we reject the relief sought for their quashing.

21. Thus, we find that the applicant is not entitled for any of the reliefs sought for. Accordingly, we dismiss this O.A. with no order as to costs.

O.A.No.112/97

22. The applicant in this O.A. who was working as Inspector of RMS, Kochi Sorting Air, Ernakulam Division (RMS Ek Division for short) has approached this Tribunal seeking the following reliefs:

i) to call for the records relating to Annexure A6, A7 and A9 and to set aside the same

ii) to issue appropriate direction or order directing the respondents to permit the applicant to continue to draw the pay in the post of Inspector of RMS as he was drawing on 31.7.1995 fixed in accordance with the provisions of FR 22-c/FR 22 I(a)(1) with annual increments, ignoring Annexure A6 and A9

(iii) to issue appropriate direction or order directing the respondents to refund the amount being the difference on deduction of pay effected from the month of August 1995 and not to make any deduction of pay on the basis of Annexure A6, A7 and A9

(iv) to issue appropriate direction or order directing the respondents not to recover the amount of Rs. 2723/- pursuant to annexure A6 and A9

v) to grant such other reliefs which this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case and

vi) to award costs to the applicant.

23. The applicant was promoted to Lower Selection Grade under TBOP scheme with effect from 10.2.91 by A-1 memo dated 7.3.91. On being declared selected in the Departmental Competitive Examination by A-3 order dated 30.3.94 he was posted to officiate as Inspector of RMS Marketing and Speed Post, Kochin Foreign Mail Sorting Office. His officiating pay was fixed under FR 22(I)(a)(1) at Rs. 1600/- as the pay drawn by him in LSG was Rs. 1520/-. On successful completion of Induction Training he was promoted to the Inspector cadre and he was posted as Inspector of RMS Calicut 1st Sub Division, Kannur on 28.9.94. On regular promotion to the cadre of Inspector of RMS, applicant's pay was fixed at Rs. 1600/- and was increased to Rs. 1640/- with effect from 1.3.95. Applicant claimed that his pay was reduced to Rs. 1560/- for the month of August, '95 without notice and assigning any reason. He submitted A-5 representation dated 19.9.95. He was transferred and posted as Inspector RMS Operations, Kochi Sorting air on and from 9.10.95. By A-6 memo dated 22.1.96 issued by first respondent that an amount of Rs. 2723/- had been paid in excess due to fixation of pay under FR 22(I)(a)(1) while working as Inspector RMS from 31.3.94 to 31.7.95 and that it was proposed to recover the excess payment from the pay of the applicant from January, 1996. In A-6 reference to A-7 letter dated 31.5.95 of third respondent is also given. Applicant filed A-8 representation dated 13.2.96 which was replied by A-9 dated 4.3.96 by first respondent.

Aggrieved applicant has filed this O.A. seeking the reliefs stated earlier. The grounds advanced by the applicant are similar to those in O.A. No. 126/97.

24. We have already held that the letter dated 31.5.95 of the Director General, Postal Department (Annexure A-7 in this O.A.) did not call for interference by this Tribunal and that an LSG Sorting Assistant was not eligible for pay fixation under FR 22 I(a)(1) on appointment as Inspector of RMS. The only question to be examined is whether there is violation of principles of natural justice (i) in reducing the pay of the applicant from August, 1995 and (ii) in effecting recovery of over-paid amount of Rs 2723/- From A-6 letter dated 22.1.96 we find that DG's letter dated 31.5.95 was communicated to the applicant vide endorsement No. J/101/Rlgs dated 19.6.95. Applicant also admits the same in A-5 representation. Therefore we hold that the applicant was put on notice about the reduction in pay which was effected only from August, '95.

25. We find from A-6 dated 22.1.96 that it was a proposal to recover the excess payment from the pay of January, '96. But no recovery was effected. Applicant filed A-8 representation dated 13.2.96 which was replied by A-9 on 1.3.96. Thus, we do not find any substance in this ground of violation of principles of natural justice advanced by the applicant. We do not find any infirmity in A-6 and A-9 as they are issued pursuant to A-7 and A-7 had been upheld by us.

26. In the result this O.A. fails and accordingly we dismiss the same with no order as to costs.

27. The applicant in this O.A.- a Sorting Assistant appointed as Time Scale Sorter on 19.11.1974. He passed the Post Office and Railway Mail Service Accountants' Examination held on 28th and 29th April, 1983. By A-1 memo dated 13.10.83, applicant was promoted to the cadre of Accountant and posted as Accountant, Divisional office, Calicut. While so, applicant qualified in the departmental competitive Examination for appointment to the cadre of Inspector of RMS and underwent practical training. Applicant was posted to officiate as Inspector of RMS for different spells from 9.12.85 to 21.1.86, 6.2.86 to 20.2.86, 21.2.86 to 5.3.86, 6.10.86 to 30.10.86 and 31.10.86 to 7.11.86. Applicant was promoted to the cadre of LSG Accountant in RMS on adhoc basis by A-4 order dated 2.12.86 and posted as LSG Supervisor (Accounts) Head Record Office, Calicut which post he joined on 9.12.86. On his promotion to the cadre of LSG Accountant, the applicant was allowed to draw Rs. 1480/- as officiating pay. Applicant was posted to officiate as Inspector of RMS 'CT' 2nd Sub Division with effect from 19.12.86 by A-5 memo dated 23.12.86. Applicant officiated as Inspector of RMS from 19.12.86 to 7.1.87 and his officiating pay was fixed at Rs. 1480/-. He officiated as Inspector of RMS for different spells from 8.1.87 to 23.1.87, 2.2.87 to 21.2.87, 20.7.87 to 27.9.87, 6.10.87 to 4.11.87, 16.11.87 to 30.11.87, and 7.12.87 to 28.4.88. During the last spell his officiating pay was fixed at Rs. 1520/-. He was promoted to the cadre of Inspector of RMS and allotted to Calicut Region by A-5 order dated 26.4.88 by the second respondent. He held different posts since then. He was further promoted as Assistant Superintendent, RMS in May, 1992. He was served with A-10 memo dated 29.11.95 in which reference was made to DG, Posts' A-11 letter dated 31.5.95. It was stated therein that there was no question of fixation of pay under FR 22-C for promotion

from LSG (TBOP) to IRM cadre as the same did not deem to involve assumption of duties of greater importance and any promotion from LSG to IPO on or after 1.1.86 was ipso facto null and void. It was also stated in A-10 that an amount of Rs. 21,280/- would have to be recovered from the applicant as over-paid pay and allowances for the period from 12/86 to 11/95 and that his pay on promotion as Asst. Superintendent of RMS Calicut Railway Mail Service/IIB was fixed as Rs. 1700/- with effect from 2.12.1992 with DNI to Rs. 1760/- with effect from 1.12.93. It was also stated that the excess amount paid to the applicant was proposed to be recovered from the pay and allowances from the salary for the month of December, 1995 onwards. Applicant filed A-12 representation dated 4.12.95. He was given A-13 reply dated 22.9.97. Aggrieved by A-10, A-11 and A-13 order applicant has filed this O.A. seeking the following reliefs:

- i) to call for the records relating to annexure A-10, A-11 and A-13 and to set aside the same.
- ii) to issue appropriate direction or order directing the respondents to permit the applicant to continue to draw the pay already fixed in accordance with the provisions of FR 22(c)/FR 22(I)(a)(1) with effect from 1.1.86.
- iii) to issue appropriate direction or order directing the respondents not to reduce the pay of the applicant in the cadre of Inspector of RMS and Assistant Superintendent of RMS and also not to recover any amount towards overpaid pay and allowances on the basis of Annexure A-10 as confirmed in Annexure A-13.
- iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case and
- v) to award costs to the applicant.

Apart from the grounds similar to the ones raised in O.A. No. 112/97 and O.A. No. 126/97 applicant has raised the following specific ground in this O.A., under para 5(B):

The applicant was not promoted to Lower Selection grade cadre on regular basis. The applicant was promoted to the cadre of Lower Selection Grade as per Annexure A-4 on adhoc basis. In Annexure A-4 it has been clearly recited that the above promotion is purely temporary and on adhoc basis and will not confer on him any claim for regular absorption in that grade. It has been further ordered that the service rendered on adhoc basis will not count for seniority in the grade or for promotion to the next grade. It follows that the applicant was promoted to the cadre of Inspector of RMS not from the Lower Selection Grade cadre but from the cadre of Accountant which carried lesser scale of pay than that of the cadre of Inspector of Railway Mail Service.

We have already held in O.A. No. 126/97 that in terms of FR 22 and the ratio laid down by the Hon'ble Supreme Court in Ashoke Kumar Banerjee's case on appointment from a post in LSG to Inspector both in the same scale of Rs. 1400-2300 fixation of pay under FR 22(I)(a)(1) is not attracted after 1.1.86 and the letter dated 31.5.95 of DG, Postal Department (A-10 in that O.A. and A-11 in this O.A.) did not call for any interference by the Tribunal. As regards the above quoted ground raised by the applicant we find that by the applicant's own averment in the O.A. he was promoted to the cadre of LSG Accountant in RMS as LSG Supervisor (Accounts), HRO, Calicut on 9.12.86 and his pay was fixed at Rs. 1480/- On 19.12.86 he was posted to officiate as Inspector of RMS. According to the respondents on his promotion as LSG supervisor (Accounts) the applicant's pay was fixed at Rs. 1400/- with effect from 9.12.96 and on his posting as Inspector, Railway Mail Service his pay was fixed under FR 22(c) with reference to his pay in

the post of Lower Selection grade Supervisor and his pay on 7.12.87 was Rs. 1520/-. From the averments of the applicant in the O.A. and the respondents in the reply statement it is clear that the applicant's pay in grade was fixed twice in grade Rs. 1400-2300 under FR 22(C) once on his promotion Accountant to LSG Accountant and again from the cadre of LSG Accountant on appointment as Inspector RMS Otherwise the applicant's pay would not have reached the stage of Rs. 1480/- by December, '96 when he was posted as Inspector, RMS. Hence we reject this ground advanced by the applicant.

28. As regards the ground of violation of principles of natural justice advanced by the applicant we find that even though A-10 dated 29.11.95 was issued to the applicant proposing to recover the overpayment made from 12/86 to 11/95 and refixing the pay on promotion as ASRM as Rs. 1700/- with effect from 1.12.92, on A-12 representation dated 4.12.95, A-10 appears to have not been acted upon. This is evident from A-13 letter dated 22.9.97. As requested by the applicant in A-12, the case had been taken up with the Directorate and Chief PMG and after examination the applicant had been replied by A-13 letter dated 22.9.97. Under these circumstances we do not find any force in this ground of violation of principles of natural justice and not getting an opportunity to present his case.

29. We do not find any infirmity in A-10 and A-13 as they are issued pursuant to A-11/which had been upheld by us.

30. In the result we find that the applicant is not entitled for the reliefs sought for. Accordingly we dismiss this O.A. with no order as to costs.

31. Summarising the three Original Applications viz. O.A. No.112/97, 126/97 and 1361/97 stand dismissed with no order as to costs as stated above under the respective Original Applications.

Dated the 10th day of November, 2000.

Sd/-
(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

kmn

List of Annexures referred in this Order

O.A. 126/97

A1- True copy of the order No. B 34/TBP/90-91 dated 31.12.90 of the 1st respondent.

A-2 True copy of the order No. B.33 dated 28.12.92 of the 1st respondent.

A-3 True copy of the letter No. Rectt/4843/93 dated 28.4.94 of the 3rd respondent.

A5 True copy of the memo No. ST/18/3/94 dated 21.12.95 of the 3rd respondent.

A6 True copy of the order No. B.33 dated 22.12.95 of the 1st respondent.

A7 True copy of the letter No.G-1 dated 3.1.96 of the Inspector of RAilway Mail Service, Trivandrum 2nd Sub Division, Tiruvalla

A-8 True copy of the representation dated 6.2.96 of the applicant to the 4th respondent.

A-9 True copy of the Memo No.J/55-PA/96 dated 11.7.96 of the first respondent.

A-10 True copy of the letter No. 2-20/95-PAP dated 31.5.95 of the 5th respondent.

A-11 True copy of the letter No. 2534/A2/245/FP dated 7.11.96 of the 2nd respondent.

A-12 True copy of the representation dated 7.11.96 of the applicant to the 3rd respondent.

A-13 True copy of the representation dated 7.11.96 of the applicant to the 1st respondent.

A-14 True copy of the letter No.J/52/16/96 dated 27.12.96 of the 1st respondent.

O.A. 112/97

A1 True copy of the memo No. R-142 dated 7.3.91 of the 1st respondent.

A3 True copy of the memo No. B-102 dated 30.3.94 of the 1st respondent.

A5 True copy of the representation dated 19.9.95 of the applicant to the Superintendent RMS CT Division, Calicut.

A6 True copy of the letter No. J/103/ dated 22.1.96 of the 1st respondent.

A7 True copy of the letter No. 2-20/95-PAP dated 31.5.95 of the 3rd respondent.

A-8 True copy of the representation dated 13.2.96 of the applicant to the 1st respondent.

A-9 True copy of the letter No. J/103 dated 1.3.96 of the 1st respondent.

O.A. No.1361/97

A1 True copy of the Memo No. B-36/Act dated 13.10.83 of the Superintendent , RMS, CT Division Calicut.

A4 True copy of the order No. ST/120-17/83 dated 2.12.86 of the Postmaster GEneral, Kerala Circle, Trivandrum

A5 True copy of the Memo No. F/CT 31 dated 23.12.86 of the Superintendent , RMS CT Division, Calicut.

A-10 True copy of the order No. A&P/51-1/91 dated 29.11.95 of the 1st respondent.

A-11 True copy of the letter No. 2-20/95-PAP dated 31.5.95 of the 3rd respondent.

A-12 True copy of the representation dated 4.12.95 of the applicant to the 1st respondent.

A-13 True copy of the order No. A&P/41-1/91 dated 22.9.97 of the 1st respondent with covering letter No. A&P/90-TFR/CT/95 dated 4.7.96

CERTIFIED TRUE COPY

Date

Deputy Registrar