

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 169/2002

Tuesday this the 25th day of January 2005

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. G. Rajamma W/o P.T. Raju, HSG-II
Postal Assistant,
Internal Cheque Organisation
(Savings Bank), Office of the
Chief Post Master General,
Kerala Circle
Trivandrum
residing at TC 19/1458, Ragam
Thamalam, Trivandrum.
2. R. Radhakrishnan Nair S/o Rajagopalan Nair
HSG-II Postal Assistant
Internal Ceque Organisatiion (Savings Bank)
Office of the Chief Post Master General,
Kerala Circle, Trivandrum
residing at TC 60/3737, Manacaud,
Trivandrum.

Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Assistant Director (Accounts)
Office of the Chief Post Master General
Kerala Circle
Trivandrum-1.
2. Chief Post Master General
Kerala Circle,
Trivandrum.
3. Union of India represented by its Secretary
Government of India
Ministry of Communications
Department of Posts,
New Delhi.

Respondents

By Advocate C. Rajendran, SCGSC

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicants, G. Rajamma and R. Radhakrishnan Nair are Postal Assistants presently working in the office of the Chief Post Master General, Kerala Circle. They are aggrieved by Annexure A1 order of the office of the Chief

Post Master General seeking to recover the overpayments made to them in allowing them the benefit of double option at the time of fixation of pay in application of the TBOP/BCR Scheme extended to Savings Bank Control Organisation (SBCO) w.e.f. 1.8.1991 when they were working as UDCs at that time. The short point to be decided is whether there was indeed a case of double option or reoption in the application of the scheme and if so whether any irregular and unintended benefits accrued to the applicants, which must now be withdrawn by recovery of amounts already overpaid.

2. The TBOP Scheme was extended to SBCO w.e.f. 1.8.1991. Under the scheme, all the existing LDCs/UDCs were required to furnish, within one month, their option under FR 23, according to which they may, retain their old pay in the existing scale of pay which would be personal to such officials and the option once exercised was to be treated as final. The Scheme further provided that the officials who do not opt for their old scales, would be brought over to the grade of Postal Assistants (SBCO) and their pay would be fixed under FR 22 I(a)(2) by treating the posts in the Time Scale as not involving assumption of higher duties and responsibilities. The applicants had not opted to retain their old scale and were hence brought over to the grade of Postal Assistants and their pay was fixed at Rs. 1720 on 1.8.1991 with 1.8.1992 as the date of next increment. They were promoted to the next higher rank under the Biennial Cadre Review Scheme on 1.7.1992 and their pay was fixed at Rs. 1850 on 1.8.1992 allowing them benefit of option under FR 22 I(a)(1). The date of promotion was later preponed to

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1.10.1991, and the applicants were allowed to carry the benefit of fixation already availed without revision. On 1.10.1992, their pay was raised to Rs. 1900 consequent upon earning one increment. By A5 circular it was clarified on 8.8.1995 that pay of officials with service of more than 16 years, but less than 26 years was to be fixed in the scale Rs. 1400-2300 and the pay of officials with more than 26 years of service was to be fixed in the scale of Rs. 1600-2660 if they were otherwise fit. Further, the circular clarified that pay was to be fixed only once in the corresponding scale for which the officials qualify on the basis of their length of service and that two simultaneous fixations giving promotional fixation twice would not be allowed. On receipt of this clarification, the applicants opted retrospectively for TBOP from 1.10.1991 and BCR from 1.10.1992. This was not accepted and one of the applicants approached this Tribunal by OA 851/1997 seeking a declaration to the effect that the applicant was entitled to have her pay fixed as per her option and that the recovery was not justified. The Tribunal disposed of the OA directing the respondents not to make any recovery without issuing a show-cause notice and without considering her representation. A show cause notice was issued to the applicant on 27.8.2001 and the applicant represented raising the following objections:

(i) That she had exercised option for the fixation of pay on promotion to TBOP, under FR 22 I(a)(1) w.e.f. 1.10.1991 and that was not a reoption.

(ii) That her case does not come under the purview of the instructions contained in Directorate letter dated 18.9.2000 as it relates to cases of two promotions under TBOP and BCR before the date of next increment in the lower cadre and that her promotion

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by BCR on 1.10.1991 to a higher grade not being prior to DNI in the lower cadre, she was eligible to exercise split option.

3. These objections were not found justified by the respondents on the following grounds:

(a) When the TBOP scheme was extended to the staff of SBCO with effect from 1.8.91 vide DG(P) letter No. 20-2/88-PE-I dated 26.7.91, these officials who were working as UDC opted to come over to the new scale. Subsequently, they were promoted to the cadre of LSG(TBOP) in the scale of 1400-2300 with effect from 1.8.91. As they accepted the promotion, their pay in the higher scale was fixed with effect from 1.8.91 as specifically provided in Para 2 of the Directorate's letter. As on 1.8.91, their pay was thus fixed @ Rs. 1720/- with DNI on 1.8.92. Later they were given second promotion under BCR scheme with effect from 1.10.91 and their pay was fixed @ Rs. 1850/- with DNI on 1.10.92. While so, the DG(P) New Delhi issued clarification to the effect that the pay of officials with more than 16 years but less than 26 years of service is to be fixed in the scale of Rs. 1400-2300 directly from the UDC scale. Superseding these instructions the Directorate again clarified on 1.12.95 that pay in the LSG cadre may be fixed by application of FR 22 I(a)(1). The officials submitted revised options, opting for TBOP promotion with effect from 1.10.91 i.e. the date on which one more increment was due in the UDC scale, which was allowed by mistake. As the scheme of TBOP/BCR had already come into effect from that date, the reoption was not permissible and this position was later clarified by the Directorate.

(b) Regarding the second point, Directorate's letter NO. 2-18/97-PAP dated 18.9.2000 clarifies that where two promotions namely TBOP and BCR promotions have been allowed before the date of next increment in the lower post of UDC, the pay of the officials on promotion under TBOP cannot be fixed giving the benefit of split option under the saving clause of FR 22 I(a)(1) and pay should be fixed directly under FR 22 (a)(1). Pay fixed twice on the DNI of lower cadre treating the pay fixed in TBOP as notional pay for further pay fixation in the BCR cadre on the same date is not correct. This applies to cases where the DNI and the date of promotion to BCR coincide. If the benefit of split option is allowed in such cases, it would result in the pay fixed twice which is not admissible. In the instant case, the date of promotion both the officials comes before the DNI. This does not imply that when the promotion to BCR takes place on the DNI in the lower cadre, the pay can be fixed twice.

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4. The respondents thus sought to recover Rs. 16,968/- and Rs. 20,036/- from the applicants respectively and the applicants aggrieved by this, are before us in this O.A.

5. We have heard the counsel for the parties and have very carefully examined the comparative statement of fixations produced by the learned counsel for the applicants and the arguments presented by the learned counsel for the respondents. Going back to the Annexure A2 circular dated 26.7.1991 we have noted that both FR 23 and FR 22 I(a)(2) were brought into operation for different purposes. FR 23 option was to allow protection of pay until the next increment was earned in the old scale. The applicants had exercised no such option. There was however an automatic protection available under FR 22 I(a)(2) even though the applicants failed to exercise option under FR 23 provided their pay was fixed at the same stage. But, their pay on 1.8.1991 was fixed in the scale Rs. 975-25-1150-30-1660 as Postal Assistant at Rs. 1660 ie. at a stage higher than what they were drawing (Rs. 1640) in the old scale prior to 1.8.1991. Once the applicants were brought over to the PA scale, the next step was to promote them to the next higher grade (Scale-III) under TBOP by following the promotional procedure in respect of those who have completed 16 years of service by 31.7.1991. Thus, their pay would be fixed at Rs. 1720 by adding a notional increment to Rs. 1660 (pay at PA grade) and fixing at the next higher stage after adding a notional increment. The initial fixation under the scheme was thus correctly done. Direct fixation from UDC scale into LSG by TBOP was not contemplated in the Scheme instructions dated 26.7.1991 (Annexure A2) That came much later by way of

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a clarification on 8.8.1995 (Annexure A5). By that time the applicants had already availed BCR promotion w.e.f. 1.7.1992. BCR promotion itself was antedated by A9 in 1996 to 1.10.1991. When the applicants found that 1.10.1991 was the date on which they would have earned an increment in UDC scale and the direct fixation norm allowed them an opportunity of compounded fixation benefit on 1.10.1991, they opted for it. This according to the respondents amounts to a reoption of which there is no scope as the option to come over to the scheme through the intermediate level of PA(SBCO) has already been exercised on 1.8.1991. The applicants on the contrary argue that the opportunity of direct fixation from UDC to TBOP was made available by the respondents and once this benefit involving application of FR 22 I(a)(1) is allowed, the saving clause that allows protection of incremental benefit by deferment has to follow. The respondents oppose this by stating that this was specifically prohibited as this would lead to unintended compounded benefits when TBOP and BCR would coincide by advancing the date of TBOP to 1.10.1999 and antedating the date of BCR to 1.10.1991. Since the fixation for one who had completed 26 years by 1.10.1991 would attract the benefit of promotional fixation only upon the TBOP fixation of 1.8.1991, it stands to reason that respondents should be wary of allowing deferment of TBOP. But then, can deferment be prevented if 22 I(a)(1) is applied? In other words can 22 I(a)(1) be applied without its proviso or saving clause? We do not see such a possibility as the expression 'shall have the option' dispensable. So, we arrive at a series of inter-related and mutually dependent conclusions:

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(a) By not opting for old scale, the applicants were automatically taken over by the scheme, their pay in PA's grade was fixed, and they were granted Scale III.

(b) This would have been irrevocable, but for the respondent's clarification issued in 1995, from years after the commencement of the scheme that for those who had completed 16 or 26 years of service in the lower grades of SBCO, TBOP/BCR fixation was to be made directly involving promotional benefit under FR 22 I(a)(1) only once. In other words, those who had completed 16 years, but not 26 years would come over to the TBOP scale directly for UDC scale and those who had completed 26 years would come over to the BCR promotional scale directly from the UDC scale. The consequence of BCR promotion date getting antedated to a date that coincided with the incremental date of a TBOP promotee was not contemplated as the decision to antedate BCR promotion was taken in 1996 (A-9).

(c) This resulted in reopening closed fixations. As the applicant's first fixation was warranted and this refixation under FR 22 I(a)(1) brought into operation the saving clause of the Rule. Since the saving clause gives the option, it cannot be taken away by the respondents.

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(d) Once the saving clause is brought into operation, the coincidence of TBOP and BCR promotions falling on the deferred date (1.10.1991) becomes unavoidable and hence the applicant's right to claim compounded benefit. Assuming for a moment that BCR would have come on 1.11.1991, what would have happened? Under the scheme of fixation, the applicants would have derived the benefit of TBOP fixation on 1.10.1991 and would have gone on to avail BCR fixation on 1.11.1991, thereby availing the benefit of FR 22 I(a)(1) in quick succession, once through deferment, and once again through regular application. So, the advantage of double fixation on 1.10.1991, which appears to be an unacceptable proposition, is quite understandable. The respondents were perhaps ill advised in deviating from the scheme format without consulting the Ministry of Finance, but then the benefit would go to the applicants who were legitimately granted the option and the consequential fixation under the Fundamental Rules.

6. In conspectus, we allow the Application and direct the respondents to refund the recoveries made without interest. No order as to costs.

Dated: 25.1.2005

H. P. DAS
ADMINISTRATIVE MEMBER

A. V. HARIDASAN
VICE CHAIRMAN

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