

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.233/11

Thursday this the 24th day of November 2011

C O R A M :

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

G.Gopinathan Pillai,
S/o.K.Gopalan Nair,
Retd. Superintendent of Post Offices,
Kachchh Division, Bhuj, Gujarat.
Residing at Vadakkekara Valia Veettil,
Kala West, Mannadi PO, Pathanamthitta District,
Kerala State – PIN 691 530.Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by
the Secretary to the Government of India,
Ministry of Communications, (Department of Posts),
New Delhi – 110 001.
2. The Director General (Posts),
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
3. The Chief Post Master General,
Gujarat Postal Circle, Department of Posts,
Ahmedabad – 380 022, Gujarat.
4. The Director of Accounts (Postal),
Gujarat Postal Circle,
Department of Posts, Behrampura,
Ahmedabad – 380 022, Gujarat.
5. The Assistant Accounts Officer (Pension II),
Office of the Director of Accounts (Postal),
Gujarat Postal Circle, Department of Posts,
Behrampura, Ahmedabad – 380 022, Gujarat.Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 15th November 2011 this
Tribunal on 24th November 2011 delivered the following :-

ORDER

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

The question arises for consideration in this case is whether the notional pay granted with retrospective effect at the fag end of the career of the applicant should be reckoned to work out the extent of pension payable to the retiring employee.

2. Briefly the facts of the case are as under :- The applicant superannuated as Superintendent of Post/ Offices (Group B) on 31.10.2005. According to him, though he was eligible and suitable for the said post of Superintendent since 2003, the respondents denied fair consideration and empanelment for promotion of the applicant to the said post at par with his juniors. This forced the applicant to move O.A.968/03 which was allowed, vide Annexure A-4 order dated 28.7.2006. The operative portion of the said order is as under :-

"10. We accordingly quash and set aside the Annexure A-11 notification dated 4.8.2003 to the extent it denies appointment to the applicant to officiate on regular basis in Postal Services Group 'B' grade. The respondents 1-4 are directed to hold a review DPC and review the select list for promotion to Postal Services Group 'B' grade on the basis of which Annexure A-11 notification dated 4.8.2003 has been issued and to reconsider the case of the applicant for inclusion of his name in the select list for promotion to the Postal Services Group 'B' grade without regard to Annexure A-3 and A-5 and to include him in the select list on the basis of his seniority and to appoint him to the Postal Services Group 'B' grade over Respondents 7 to 14 with effect from the date of his entitlement, if he is otherwise not ineligible. However, in the facts and circumstances of the present case, no arrears of pay and allowances can be granted to the applicant. The above directions shall be complied with, within a period of three months from the date of receipt of this order. There shall be no order as to costs."

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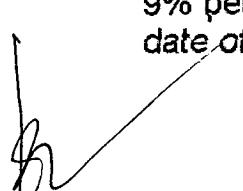
3. As by 31.3.2005 the applicant was promoted as Superintendent of Post Offices and also later on, on 31.10.2005 he superannuated, his promotion as Superintendent of Post Offices prior to his holding the said post with effect from 31.3.2005 was considered as notional. The applicant was promoted to the said post on notional basis from 10.2.2004.

4. For working out the average 10 months pay the respondents had taken into account the pay of the applicant prior to 31.3.2005 without considering the applicant's notional promotion and pay as of Superintendent of Post Offices was taken into account from 31.3.2005 to 31.10.2005. Thus for three months the applicant's pay was taken as of the feeder grade and not as for the post of Superintendent of Post Offices. These three months' pay itself has resulted in the applicant's continuously drawing less pension than his actual entitlement. The applicant has, therefore, made representations and on their being rejected has moved this O.A claiming the following reliefs :-

1. Call for the records leading to the issue of Annexure A-1 to Annexure A-3 and quash the same.

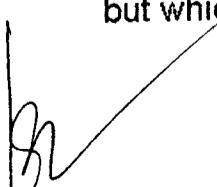
2. Declare that the applicant is entitled to reckon the pay fixed in the promoted post in Postal Services Group 'B' grade for the entire period from 1.1.2005 to 31.10.2005 for arriving at the average emoluments and for calculating the applicant's pension and other terminal benefits and direct the respondents accordingly.

3. Direct the respondents to re-fix the applicant's monthly pension with effect from 1.11.2005 and direct further to grant the consequential benefits including commuted value of pension and other benefits forthwith with interest calculated @ 9% per annum at least for the period from 1.6.2007 up to the date of full and final settlement of the same.



5. Respondents have contested the O.A. According to them, Annexure A-1 order working out the average pay and calculation of pay therein has been worked out strictly in accordance with the provisions of Rule 34 of CCS (Pension) Rules, 1972. Annexure A-2 is in reiteration of the above. Annexure A-3 is the rejection order of the applicant's request. According to the respondents, there is no illegality in the continuation of the pension on the basis of the average actual pay drawn.

6. Counsel for the applicant submitted that the applicant was to be treated as promoted on notional basis in the earlier order dated 28.7.2006 on account of the fact that the applicant by then had superannuated. The specific mention about the non entitlement of the applicant to the actual pay though his promotion is to be treated as notional it would not mean that the pay that should have been drawn by the applicant cannot be taken into consideration for pension purposes. When the applicant had retired by 31.10.2005 and order for conducting review DPC was proposed, the notional pay fixation will be of no use at all as it is not going to entail any monetary benefits to the applicant. Thus the counsel argued that the pay as of Superintendent of Post Offices should have been taken into consideration from the very date the applicant had been promoted after the review DPC. If so, the difference in pay shall be included in the total pay for ten months to work out the average ten months' pay. The mistake committed by the respondents is enlarging the scope of the order of the Tribunal which denied back-wages due to the retirement of the applicant but which has not prohibited notional pay for arriving at ten months average

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pay for the purpose of his pension. Counsel for the applicant also relied upon the earlier decision of the Tribunal in O.A.458/05 decided on 13.2.2007. The said decision contains the following as a part of the order :-

"7. Arguments were heard and documents perused. The applicant retired on 15.1.1998. His pay was revised on notional promotion w.e.f 1.7.1996. His notional pay on the date of superannuation was Rs.7500/- Order for promotion was passed only in 2001. This situation is comparable to the one occurring in terms of Ministry of Deptt. of Expenditure Memorandum dated 28.2.2003 and Office Memorandum No.45/10/98-P&PW(A) dated 17.12.1998 issued by the Department of Pension. In their communication 26th April, 2004 clarification in such a situation has been given as under :-

Point	Clarification
Whether the benefit of higher pay in the upgraded pay scale for calculating pensionary benefits, will be applicable to pensioners retired during 1.1.1996 to 18.2.2003.	Under notional fixation, the pay is actually fixed in higher pay scale from the date of such notional fixation. Increments in the higher pay scales are also allowed but no arrears are payable. Accordingly, the pension of all the pensioners as had retired during 1.1.1996 to 18.2.2003 would have to be fixed as per the upgraded pay scales notionally extended from 1.1.1996. However, no arrears shall be paid and the pension with reference to the higher revised pay scale shall actually be paid only w.e.f 19.2.2003.
Whether revision of pension, this case could be done on the basis of average emoluments notionally drawn during the last 10 months of service under Rule 34 of CCS (Pension) Rules.	Revision of pension is allowed as a special case in relaxation of Rules.

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8. The term emoluments has been defined in Rule 33 of the CCS (Pension) Rules. Rule 34 deals with Average emoluments. By the clarification issued above, Revision of pension is allowed as a special case in relaxation of Rules. Thus when an identical situation as in OM dated 17.12.1998 occurs, such a case also should be dealt with, with the same concessions afforded in the above case. Hence, in the instant case also, the applicant shall be allowed revised pension based on calculation of ten months' average notional pay fixed vide order dated 18.4.2005. However, as in the above case, no arrears of pension would be admissible from 15.1.1998 till 26.7.2001, i.e. the day when the promotion order of the applicant was passed.

9. Coming to the other terminal benefits, i.e. commutation of pension, leave encashment and gratuity, clarification issued as mentioned above reflects that the difference of gratuity on account of revision of pay scales would not be payable nor is leave encashment admissible. Thus, in the instant case also, no such benefits would be admissible.

10. In view of the above, the OA is disposed of with a declaration that the applicant is entitled to have his pension fixed on the basis of the notional fixation of pay as per Annexure A-14 order dated 18.4.2005 and the same is payable w.e.f 26.7.2001, the date of issue of promotion order. Such fixation of pension shall thus be notional for the period anterior to 26.7.2001. Respondents are directed to work out the revised pension and communicate the same to the authorities concerned for disbursement. Detailed calculation sheet shall be made available to the applicant. This drill be performed within a period of two months from the date of communication of this order.

11. No costs."

7. Counsel submits that the above order applies in full force to the facts of the case.

8. Counsel for the respondents reiterated the submissions made in the counter.

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9. Arguments were heard and documents perused. Whenever notional promotion is ordered, the same is on account of the fact that the employee actually did not perform the higher duties. However, such a promotion on notional basis shall have its direct and proximate impact upon the annual increments etc. The applicant had continued for more than one year on the basis of notional promotion in the higher post. Therefore, his increment has been granted from 1.7.2004 as also on 1.7.2005. Had the respondents considered the applicant's case for promotion at par with his junior obviously there would have been no need for the applicant to approach the Tribunal. The Tribunal never put in any embargo in respect of the impact of promotion with retrospective effect at par with the juniors, except that back-wages will not be admissible. The restriction should, therefore, be restricted only up to grant of actual pay and allowances for the period the applicant did not work in the higher post. However, since the notional promotion took into account notional increments also, the applicant is entitled to reckon his ten months average pay taking into account the notional pay arrived at in the post of Superintendent of Post Offices (Group B). Therefore, without any hesitation it can be held that the applicant is entitled to the relief claimed.

10. Accordingly the O.A is allowed. Respondents shall re-calculate the average emoluments due to the applicant for the purpose of working out the pension and disburse the difference in pension within a period of two months from the date of communication of this order. Needless to mention

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that the applicant shall be entitled to revised pension in future as well. This
drill shall be complied with within a period of three months from the date of
communication of this order. No costs.

(Dated this the 24th day of November 2011)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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