

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.30/2000

Thursday, this the 11th day of July, 2002.

CORAM

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

K.S. Viswanathan, S/o K. Sankara Pillai,
Superintendent of Post Offices,
Mavelikkara.
Residing at 'Parvathi Nivas',
Pallikkara, Thiruvalla.

Applicant

[By Advocate Mr M.R. Rajendran Nair]

Vs.

1. Assistant Director (Staff),
Office of the Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum.
3. Union of India represented by the
Secretary to Government of India,
Ministry of Communications,
New Delhi.

Respondents

[By Advocate Mr S.K. Balachandran, ACGSC]

The application having been heard on 21.3.2002, the
Tribunal delivered the following order on 11.7.2002.

O R D E R

HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant had earlier filed O.A.50/97 before this Bench of the Tribunal seeking a declaration that he is entitled to be promoted to Higher Selection Grade I (HSG-I, for short) and get his pay fixed accordingly and further promotion to Group 'B' and also a direction to the respondents to promote him to HSG-I, fix his pay and then fix his pay on promotion to Group 'B'. This Tribunal allowed the O.A. declaring that the applicant is entitled to be promoted to HSG-I with effect from 6.3.96 and get his pay fixed accordingly and further promotion



to Group 'B'. The respondents were directed to promote him to HSG-I with effect from 6.3.96 with consequential benefits as per order dated 11.8.99 (Annexure A-2). The 1st respondent as per letter No. ST/V-64 dated 9.11.99 informed the applicant that he is not entitled to any financial benefit by way of fixation in HSG-I with effect from 6.3.96 since the pay scales of ASPOs and HSG-I have been merged to one scale, i.e. Rs.6500-10500 with effect from 1.1.96. This contention was not taken by the respondents while defending O.A.50/97. Further, this contention is not sustainable in the face of FR 22(I)(a)(1).

2. Aggrieved by the impugned order dated 9.11.99 (Annexure A-1) passed by the 1st respondent, the applicant has filed this O.A. seeking the following reliefs:

- "i. To quash Annexure A1.
- ii. To direct the respondents to fix the pay of the applicant on promotion to HSG-I with effect from 6.3.1996 and further re-fix his pay on promotion to Group 'B' reckoning the pay fixed on promotion to HSG-I.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant; and
- iv. Grant the costs of this Original Application."

3. Respondents have filed a detailed reply statement contending that the applicant was promoted to the present cadre of Postal Service Group 'B' as per Directorate's order No.9-29/95-SPG dated 3.11.95, but the promotion could be given effect to only after 6.3.96 due to the currency of a punishment upto 6.3.96. After 6.3.96, the applicant was promoted to the cadre of Postal Service Group 'B' direct from the cadre of Assistant Superintendent of Post Offices as per the said order dated 3.11.95. A Departmental Promotion Committee was held on

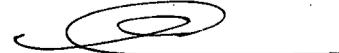


12.8.94 to consider the fitness of Assistant Superintendent of Post Offices for promotion to the cadre of HSG-I and the name of the applicant was also considered, but he was not found fit for promotion at that time as an inquiry under Rule 14 of CCS (CCA) Rules, 1965 was pending against him. However, after the expiry of the penalty period, he was promoted.

4. Applicant filed O.A. 50/97 before this Bench of the Tribunal seeking the relief of his promotion to HSG-I and subsequent benefits which was allowed of by this Tribunal as per order dated 11.8.99 declaring that the applicant is entitled to be promoted to HSG-I with effect from 6.3.96 with consequential benefits. As per FR 22 (III) no pay fixation under FR 22(I)(a)(1) is permitted where the pay scale of the post from which an official is promoted and the scale of pay attached to the post to which he is promoted are identical. The applicant could not be granted any financial benefits by way of fixation of pay due to the unification of the pay scale of Assistant Superintendent of Post Offices and HSG-I into a single scale consequent on the implementation of the Revised Pay Rules, 1997. Accordingly, the applicant was informed of the position that he is not entitled to any financial benefits by way of pay fixation in HSG-I. As per CCS (Revised Pay) Rules, 1997, which came into effect from 1.1.1996, the erstwhile pay scale of Rs.1640-60-2600-EB-2900 in respect of Assistant Superintendent of Post Offices and of Rs. 2000-60-2300-75-3200 in respect of HSG-I were merged into a single scale of Rs.6500-200-10500. Prior to the unification of the pay scales in this manner, promotion from Assistant Superintendent of Post Offices to HSG-I was considered as involving higher responsibility, the pay scale in respect of



the latter posts being higher than that of the former post. Therefore, the benefit of fixation of pay under FR 22(I)(a)(1) was given to the officials promoted from Assistant Superintendent of Post Offices to HSG-I. But FR 22 (III) contains the provision that where pay scales in respect of two posts are identical, one will not be considered as having higher responsibility than the other for the purpose of pay fixation under FR 22(I)(a)(1). Thus with effect from 31.1.96 it was not possible to give the benefit of pay fixation to the officials of Assistant Superintendent of Post Offices cadre who are posted to HSG-I posts. As per letter No.44-11/98-SPB-II dated 6.5.98 (Annexure R-1), the Director General of Posts, New Delhi had directed that promotions shall not be ordered from one post to another post having identical scale of pay. Though the applicant was due for promotion from the post of Assistant Superintendent to HSG-I prior to his promotion to Postal Service Group 'B', he could not be promoted as such due to the pendency of the penalty. However, promotion to Group 'B' post was implemented on the expiry of the penalty on 6.3.96. There was no scope for promotion to HSG-I as the applicant was already promoted to the still higher post of Postal Service Group 'B'. According to statutory orders [FR 22 (III)] it has become difficult to give the financial benefits by way of an additional fixation of pay in HSG-I and thus Annexure A-1 was issued. The applicant was aware of the notification dated 30.9.97 relating to CCS (Revised Pay) Rules, 1997 and merger of the pay scales of Assistant Superintendent of Post Offices and HSG-I into a single scale. The merger of the pay scales came into effect from 1.1.96 and hence the respondents could not give any monetary benefits to the applicant. FR 22 (III) is very clear 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, 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. For the applicability of FR 22(I)(a)(1) it is not merely sufficient that the officer gets promotion from one post to another involving higher duties and responsibilities, but another condition must also be satisfied i.e., he must be moving from a lower scale attached to the lower post to the higher scale attached to a higher post. In this case, there is no fulfillment of such a condition. In the circumstance, it was not possible for the respondents to promote the applicant to HSG-I from 6.3.96 which is the same scale of pay with effect from 1.1.96.

5. Respondents have filed another additional reply statement reiterating the same points and produced a copy of the judgment dated 12.9.97 passed by the Hon'ble Supreme Court in Civil Appeal No.8658 of 1996 (Annexure R-3) and letter No.4-23/2000-SPB.II dated 26.6.2001 issued by the Director General of Posts (Annexure R-4).

6 We have heard the learned counsel for the applicant and respondents and perused the documents and materials on record and given due consideration for the pleadings and arguments advanced by the learned counsels. The learned counsel for the applicant submitted that the applicants immediate junior P.Chandrakumar was promoted on 28.11.95 as per order dated 13.1.97 (Annexure A-3) passed by the 1st respondent by which juniors to the applicant were given HSG-1 pay fixation so also



Annexure A-4 dated 3.11.95 evidencing his eligibility for higher promotion. Learned counsel further submitted that O.A 50/97 was disposed of on 11.8.99 whereas the revised pay rules were published on 30.9.97 and if at all there is any merger took place the respondents should have contended that no fixation will be available as such. Therefore, having suffered with the adverse decision which has become final, now the respondents cannot over reach the decision of this Tribunal and they are bound by Annexure A-2 order.

7. The respondents counsel on the strength of the additional reply statement submitted that Shri. Chandrakumar officiated continuously from 10.2.95 in HSG-1 post till his regularization in PS Group 'B'. From 28.11.95 the vacancy in which he was working became regular and his promotion to HSG-1 was ordered from that date as per Annexure A-3. The applicant was not considered for ad hoc appointment on the DPC held on 12.8.94 and 2.12.94 found him not fit for promotion. P.Candrakumar was drawing higher scale of pay by virtue of his adhoc promotion. Merely his junior draws higher pay in HSG-1, as he was not found fit for HSG-1 promotion by a duly constituted DPC as disciplinary proceedings for major penalties under Rule 14 of CCS (CCA) Rules, 1965 was pending against him.

8. The first ground on which the applicant seeks for relief sought for through this O.A. is that O.A. 50/97 was filed by the applicant was disposed of by this Tribunal and that the respondents had every opportunity to bring to the notice of this Tribunal the fact that the pay scales of ASPO's and HSG-I had been merged. According to him they could have very well contended that under such circumstances, no benefits



would be available. Having not done so, they had suffered an adverse decision and the said decision had become final. So they could not overreach the decision of the Tribunal by saying that there was a merger and therefore no benefit of fixation would be available. We find that in para 6 of the order dated 11.8.99 in O.A. 50/97 this Tribunal held as follows:

"Accordingly, the application is allowed declaring that the applicant is entitled to be promoted to Higher Selection Grade-I with effect from 6.3.96 and get his pay fixed accordingly and further promotion to Group-B and directing the respondents to promote him to Higher Selection Grade-I with effect from 6.3.96 with consequential benefits. No costs."

From the above, it is seen that this Tribunal had only declared that she would be entitled to be promoted to HSG-I with effect from 6.3.96 and his pay should be fixed accordingly. Whether the pay should be fixed under FR 22(1)(a)(1) or other relevant provisions, etc. had not been stated. According to the respondents since the pay scale of HSG-I and ASPO had been merged to one scale i.e., Rs. 6500-200-10500 with effect from 1.1.1996, the official would not be entitled to any financial benefits by way of pay fixation with effect from 1.1.96. Even if it is accepted that the respondents had not brought to the notice of the Tribunal regarding the two posts having the same pay scale when O.A. 50/97 was pending before this Tribunal that by itself, in our view, would not make the applicant eligible for fixation benefit when he is moving from one post to another, both posts having the same pay scale with effect from 1.1.1996. The applicant would be entitled to pay fixation only in accordance with Fundamental Rules. FR 22(III) very clearly says that where two pay scales are identical there will be no assumption of higher duties and responsibilities.



9. The applicant's plea that as per FR 22 (I)(a)(1) fixation is dependent not on the pay scales attached to the post but on the nature of duties and responsibilities and so long as the nature of duties and responsibilities of the post to which moved is higher, the applicant could not be denied the benefit of fixation of pay under FR 22 (I)(a)(1). This plea goes counter to what had been held by the Hon'ble Supreme Court in the case of Union of India & Others Vs. Ashoke Kumar Banerjee (1998 (5) SCC 242). Hon'ble Supreme Court in Union of India and Others vs. Ashoke Kumar Banerjee (1998 (5) SCC 242) held:

"...For the applicability of 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 that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post..."

On the basis of the above we are of the considered view that the above ground have no force.

10. We also find substance in the respondents' plea that the reply statement in O.A.50/97 was filed by them on 21.2.97 and the Revised Pay Rules 1997 were issued only much later. In the rejoinder filed, the applicants has not made any remark on this point.

11. The next ground advanced by the applicant is that his junior Shri. Chandrakumar was drawing a higher pay than him. There is no dispute that the applicants' promotion was delayed because he was undergoing a punishment during the period. Had he not been undergoing the penalty he would have been promoted prior to his junior. Under such circumstances, we are of the



view that stepping up of pay is not admissible as pleaded by the respondents relying on the judgment of the Hon'ble Supreme Court in the case of Union of India and Another Vs. R. Swaminathan (Annexure R-3). There is no illegality, discriminatory or violative of Articles 14 & 16 of the Constitution in passing Annexure A-1 impugned order. Therefore, we are of the view that the O.A. deserves to be dismissed holding that the applicant is not entitled for the reliefs sought for.

12. Accordingly, we dismiss the Original Application. There will be no order as to costs.

Dated the 11th of July, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

APPENDIX

Applicant's annexure

- A-1 Copy of the order No. ST/V-64 dated 9.11.99 issued by the 1st respondent to the applicant.
- A-2 Copy of the final order dated 11.8.99 in O.A.50/97 of this Tribunal.
- A-3 Copy of the Memo No. ST/2-2/96 dated 13.1.97 issued by the 1st respondent.
- AN-4 Copy of the order No. 9-29/95-SPG dated 3.11.95 issued by the 3rd respondent.

Respondent's annexure



- R-1 Copy of letter No.44-11/98-SPB-II dated 6.5.98 issued by Director General Posts, New Delhi.
- R-2 Copy of the proceedings of the DPC No.18 dated 12.8.94.
- R-3 Copy of the judgment dt. 12.9.97 by the Hon'ble Supreme Court of India in Civil Appeal No.8658 of 1996.
- R-4 Copy of the letter No.4-23/2000-SPB.II dated 26.6.2001 issued by the Director General of Posts.