

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION

:

18.12.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.335/89

E.J Pylee

.. Applicant

v.

1. Deputy Director of Accounts(Postal)
Kerala Circle,
Trivandrum-695010.
2. The Chief Post-master General,
Kerala Circle,
Trivandrum-695 033.

.. Respondents

Applicant in person

Mr.P.Santhalingam, ACGSC

.. Counsel for the
respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 7.6.1989 the applicant who has been working as Deputy Superintendent of Post Offices Calicut Division under the Chief Post Master General, Kerala Circle has prayed that the impugned order dated 22.2.1989 denying him the benefit of pay fixation by his notional appointment to the Higher Selection Grade (HSG-I) should be set aside and that his pay in PSS Gr.B should be refixed on the basis of his proforma promotion. He has also prayed that the impugned order dated 11.10.88 at A-11 should be modified granting him proforma promotion from 15.3.87 to 31.3.88. The brief facts of the case are as follows.

2. The applicant was appointed as Inspector of Post Offices in 1965 and promoted as Assistant Superintendent of

Post Offices (Rs. 1640-1900) in 1980. The Assistant Superintendents are eligible to be promoted to the Gazetted Group B Postal Superintendents Service in the revised scale of Rs. 2000-3500. Between the ASPO and the Group B grade, there is an intermediate grade of Higher Selection Grade (HSG) post Master in the scale of Rs. 2000-3200^{and} 50% of these HSG posts are filled from the Inspector's cadre and 50% from the Ministerial cadre. An ASPO can also be promoted by selection direct to Group B grade also. The applicant who was promoted as ASPO in 1980, was promoted to the HSG grade at Alwaye on 1.9.86 and continued in the post till 29.3.87. In March, 1987 the Post Master General transferred the HSG post allocated to the Inspector's cadre, from Alwaye to Alleppey and the Alleppey HSG post meant for the Ministerial cadre was transferred from Alleppey to Alwaye along with a Ministerial cadre officer. Since the applicant belongs to the Inspector's cadre and since he was not transferred along with the HSG post to Alleppey and ^{not} could be accommodated to the HSG post at Alwaye which could be ^{only} manned by the Ministerial cadre officer, he had to be reverted as ASPO, Alwaye on 29.3.87. He continued as ASPO upto 24.6.87 when he was promoted direct to Grade B post as Superintendent of Post Offices, Quilon Division. He continued to officiate as Superintendent till 15.12.87 when he was reverted back as ASPO.

22

He continued as ASPO again till 1.3.88. He was again promoted to Group B post of SPO, Kasaragod and then as Deputy Superintendent of Post Offices ^(Group B) on 21.3.88. He was regularised in the Grade B cadre vide the order dated 9.2.88 with effect from 13.4.88. His grievance is that by being promoted direct on 24.6.87 and again on 1.3.88 from ASPO's grade to Group B cadre without being first promoted to the HSG grade, his pay in the Group B cadre had to be fixed with reference to his pay as ASPO in the scale of Rs.1640-2900, whereas his junior who was promoted later than him to Group B cadre from the intermediate HSG grade ~~that~~ ^{of} Rs.2000-3200, got more pay in the Group B grade. The applicant represented on 15.2.88(A5) that a post of HSG Post Master, Palghat was vacant and an official junior to him was officiating in the post and therefore he should be given first promotion to the HSG grade before he joined the Group B post of SPO, Kasaragod. His representation remained unresponded and accordingly under the telegraphic direction of the respondents he joined as SPO, Kasaragod on 23.2.88. On 11.3.88 he again represented that both his senior as well as junior ^{were} ~~are~~ getting higher pay in the Group B grade through their promotion from the intermediate grade of HSG. When nothing happened, he sent another representation dated 11.4.88 which was turned down on 11.5.88(A-9). The applicant filed an appeal(A-10) on 28.7.88 to the PMG and ultimately the PMG issued the order at A-11 dated 11.10.88 giving him

12

proforma promotion to HSG grade on adhoc basis from 1.7.87 to 11.1.88. These dates did not coincide with the dates of his first promotion from ASPO to SPO on 24.6.87, nor the second promotion from ASPO to SPO, Kasaragod on 23.2.88. In any case even during this period of proforma promotion, his pay in the Grade B cadre was not revised because of the objections raised by the Accounts Officer at A-13 questioning why the promotion was made ^{to HSG grade} on an adhoc basis during the period when he had already been officiating in Class II post. A copy of this letter was not even endorsed to the applicant but on the basis of this objection raised, respondent 1 intimated the applicant on 22.2.89 at A-14 that his proforma promotion to HSG-I on a notional basis will not help him in pay fixation but "your right to hold HSG-1 post has been secured by this appointment. In case you find that any of your juniors are getting more pay than you, on the ground that such juniors were promoted to PSS-II after their promotion to HSG-I, you may have a case for stepping up of your pay as provided in the rules". Based on this communication the applicant submitted a representation (A-15) pointing out that his junior Shri E.N.Sivaramakrishnan was drawing a pay of Rs.2750/- in Grade B cadre whereas he was drawing only Rs.2600/- with effect from 1.5.1988. His representation that his pay should be stepped up to that of his junior at Rs.2750/-

52

with effect from 4.4.1988 was turned down at A-16 on the ground that his junior was actually holding HSG-I post immediately prior to his promotion to Class II grade while the applicant never held any post in HSG-I grade. The applicant's contention is that his direct promotion from ASPO to Class II cadre should not be a valid reason to deny him the benefit of higher pay which his juniors are enjoying because of their staggered promotion from ASPO to HSG and then to Class II post. He has further argued that having been granted even the benefit of HSG promotion on a notional basis, he cannot be denied the benefit of pay fixation in Group B post on the basis of his proforma pay in HSG grade. He has also indicated that one of his juniors had been given HSG promotion from 15.3.87 to 31.3.88 and accordingly his proforma promotion to the HSG grade should cover the entire period from 24.6.87 to 23.2.88 falling between two consecutive promotions from ASPO to Group B cadre given to him. The respondents have stated that the applicant was promoted to Group B cadre on 24.6.87 and 23.2.88 direct without passing through the HSG grade, hence the question of fixing his pay in Group B cadre on the basis of his imaginary pay in the HSG grade does not arise. They have rejected the applicant's claim for being continued in the HSG grade at Alwaye even after 29.3.87 by stating that the HSG post at Alwaye was shifted in the public interest from the Inspector's category

to the Ministerial category and the applicant cannot claim continuance in the HSG grade after 29.3.87 as he belongs to to the Inspector category. They have also referred to the provisions of F.R 31(2) and F.R 22(C) to indicate that the proforma promotion to the HSG grade ^{from a date} after he had already been promoted to Group B post cannot give him the benefit of refixation of pay ^{in Group B post} on the basis of the HSG grade.

3. We have heard the arguments of the ^{applicant in person and the} learned counsel for the respondents and gone through the documents carefully. We feel that if the applicant had been found meritorious enough to be promoted direct from the ASPO's grade to the Gazetted ^{and} cadre ^{why} his junior had to pass through the intermediate grade of HSG, the meritorious candidate should not suffer in pay fixation ^{while} and the less meritorious ^{junior} candidate ^{is} allowed to draw more pay on his subsequent promotion to the Gazetted cadre than the pay of his more meritorious senior. The inequity of a junior getting higher pay on the basis of the pay drawn by him in the Selection Grade while his senior who was promoted to the same grade from the regular grade earlier draws lesser pay was recognised by the Govt. The Government of India considered the contingency of this inequity arising when a Selection Grade is introduced between ^{an} ordinary grade and the next higher grade. They have found that a senior person working in the ordinary grade who was promoted to the higher grade before the Selection Grade was introduced at the intermediate level may be drawing less pay in the higher grade than a junior who is promoted

later to the higher grade from the intermediate Selection Grade. His pay in the intermediate Selection Grade being higher at the time of his promotion than the pay of his senior in the ordinary grade when the senior also was promoted to the higher grade before the Selection Grade was introduced, the junior's pay under F.R 22-C could be higher than the pay of his senior. This was for no fault of the senior except that when he was promoted to the higher grade, there was no Selection Grade. To remove this anomaly the Government of India issued instructions in Department of Personnel & A.R's O.M No.4(3)-82/Estt. (P.1.) dated 15th February, 1983. Extracts from this order have been quoted in Government of India's orders below F.R 22-C at page 101-102 of Swamy's Compilation of F.R.S.R(Part I General Rules) Ninth Edition. The relevant extracts are quoted below:-

"(f) As a result of introduction of Selection Grades in Groups 'C' and 'D' cadres - Cases have come to notice where a senior Government servant promoted to a higher post before the introduction of non-functional selection grade draws less pay than his junior who is promoted to a higher post later, after having been appointed in the selection grade.

" 2. In order to remove the above anomalies, it has been decided that in such cases the pay of senior employee in the higher grade may be stepped up to make it equal to the pay of the junior person, subject to the fulfilment of the following conditions:

" (i) The scale of pay of the lower post (ordinary grade) and higher post in which both junior and senior are entitled to draw pay should be identical.

" (ii) The senior employee should have been eligible for appointment to selection grade but for his working in the higher post on or before the date on which the junior was appointed to the selection grade.

80
" (iii) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding selection grade in the higher scale at the time of his promotion to the higher grade.

" 3. The orders re-fixing the pay of senior employees in accordance with the provisions of this O.M. should be issued under F.R.27 and the next increment of the senior employee be drawn on completion of the required qualifying service with effect from the date on re-fixation of pay.

" 4. The stepping up should be done with effect from the date of promotion of the junior employee to the higher grade but the actual benefits would be available from the date of issue of these orders or date of anomaly, whichever is earlier".

2
4. We feel that the spirit of the aforesaid instructions applies with greater force in the instant case before us where the applicant by dint of his merits was promoted direct from ASPO to Gazetted cadre, while his junior had to pass through the intermediate Higher Selection Grade.

5. In the facts and circumstances we allow the application to the extent of directing the respondents that the pay of the applicant in the PSS Grade B cadre between 24.6.87 and 15.12.87 and ^{from} 23.2.88 onwards should be stepped ² up to make it equal to the pay of his junior with effect from the date of promotion of the junior to the Group B grade provided the higher pay of the junior ^{accrued} ~~was~~ directly _{fr} as a result of his holding the HSG post at the time of his promotion to the Group B cadre. In the circumstances of the case there will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN