

Central Administrative Tribunal
Ernakulam Bench

.....

Date of decision .. 17.12.1990

PRESENT

Hon'ble Shri S.P.Mukerji, Vice Chairman

And

Hon'ble Shri A.V.Haridasan, Judicial Member

I. Original Application No.299/90

1. E.M.Raghava Kurup
2. P.Ramankutti Nair ... Applicants

Vs.

1. Union of India represented
by Secretary, Ministry of
Communications, New Delhi.
2. The Director General (Posts)
New Delhi.
3. The Chief Post Master General
Kerala Circle, Trivandrum. Respondents

M/s M.R.Rajendran Nair &
A Rajeswari ... Counsel for the applicants

Mr. T.P.M.Ibrahim Khan ... Counsel for respondents

II.Original Application No.345/90

1. Meenakshi Sundaran S.
2. M. Govindan Nair
3. N.K.Sreedharan Nair ... Applicants

Vs.

1. Union of India represented
by Secretary, Ministry of
Communications, New Delhi.
2. The Chief Post Master General,
Kerala Circle, Trivandrum.
3. The Director General (Posts)
New Delhi. Respondents

Mr. M.R.Rajendran Nair Counsel for the appli-
cants.

Mr. T.P.M.Ibrahim Khan Counsel for respondents

1. Whether Reporters of Local papers may be
allowed to see the Judgment? *Yes*
2. To be referred to the Reporter or not? *Yes* ...2
3. Whether their Lordships wish to see the fair
copy of the Judgment? *No*
4. To be circulated to all Benches of the Tribunal? *No*

O R D E R

(Shri S.P.Mukerji, Vice Chairman)

Since common questions of law, facts and reliefs are involved in these two cases they are disposed of by a common judgement as follows:

2. The applicants in these two cases are permanent Postal Superintendents Service Group 'B' officers who have completed 7 years of service as Group 'B' officers. Their next promotion is to Group 'A' of the Indian Postal Service. This service consists of two grades--Junior Time Scale in the revised scale of Rs. 2200-4000 and Senior Time Scale in the revised scale of Rs. 3000-4500.

In accordance with Rule 20 of the Indian Postal Service (Group 'A') Rules, 1987 a copy of which is placed at Annexure-II in OA 299/90, appointment to the Junior Time Scale in the Service shall be made by selection on merit from amongst officers regularly appointed to the Postal Superintendent's Service Group 'B' with three years regular service in that grade, on the recommendation of a duly constituted Departmental Promotion Committee and in consultation with the Commission. For appointment to the Senior Time Scale, Rule 20 reads as follows:

"Appointment to the Senior Time Scale in the Service shall be made by promotion of officers in the Junior Time Scale with Four years regular service in that grade in the order of seniority subject to the rejection of the

unfit on the recommendations of a duly constituted Departmental Promotion Committee. Provided that officers of the Postal Superintendents' Service Group 'B' who are on the approved list for promotion to the Junior Time Scale and have rendered not less than 7 years total approved service in Group 'B' or higher posts may also be appointed to such posts in an officiating capacity on the basis of seniority as a purely temporary measure till such time officers of the Junior Time Scale are available for regular promotion to the Senior Time Scale."

3. The grievance of the applicants in these ^{two} ~~2~~ cases is that even though they have been appointed as Assistant Post Master General or Senior Superintendent of Post Offices which are borne in the Senior Time Scale of the Indian Postal Service, by the impugned orders these posts held by them have been downgraded to the Junior Time Scale of Rs. 2200-4000 and they have been denied the Senior Time Scale of Rs. 3000-4500 attached to these posts even though they had completed 7 years of service and were eligible for appointment to these posts borne in the Senior Time Scale of the Indian Postal Service. Even though their argument is that irrespective of their date of completion of 7 years of service in Group 'B' cadre they should be given the pay of the posts in the Senior Time Scale of the Service, they have prayed that if that is not

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possible they should be given the Senior Scale of the Service at least from the date in 1989 or so when they completed 7 years of service as Group 'B' officers.

Their further contention is that there is no provision in the Rules for downgrading the Senior Time Scale ^{posts} to the Junior Time Scale and the number of posts in the Senior Time Scale cannot be converted into Junior Time Scale when their numbers have been fixed by statutory rules.

They have also protested against ^{the respondents} not filling up ^{of} the Group 'A' posts both in the Junior and Senior Time Scales when vacancies existed and thus denying them the promotion legitimately due to them.

4. The respondents have stated that even though the applicants have been regularly promoted to Group 'B' posts they were promoted to the Junior Time Scale of Group 'A' on ad hoc basis and because of ^a dearth of officers to fill up the Senior Time Scale posts in Group 'A', the latter were downgraded to the Junior Time Scale and the applicants posted to these posts on an ad hoc basis. They have argued that the applicants were not eligible to be promoted to the Senior Time Scale of the Postal Service as even though they had completed 7 years of service in Group 'B' they were not in the approved list for promotion to the Junior Time Scale. As regards not holding the meetings of the Departmental Promotion Committee in time from year to year, they have stated that collection of Confidential Reports and consultation with the UPSC took

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some time. The Departmental Promotion Committee met in March 1989 for filling up 37 vacancies in the Junior Time Scale of 1987. Some of the applicants had by then retired and some others have been regularly promoted to the Junior Time Scale. According to the respondents, since the Senior Time Scale posts held by them ^(the applicants) had been downgraded, they are not entitled to the Senior Time Scale of pay. They have, however, conceded that "pursuant to the direction of the 2nd respondent on 25.11.88, the Department issued instructions on 2.2.89 to stop downgradation of the posts and authorising Heads of Circles to order ad hoc promotions in exceptional cases."

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The number of posts in the Junior and Senior Time Scales of the Indian Postal Service ^(Group A) has been indicated in Schedule-II to the Indian Postal Service (Group A) Rules, 1987 at Annexure-II of OA 299/90. These Rules admittedly are statutory rules and accordingly the number of Senior Time Scale posts could not be changed without amending the Rules by the competent authority. The Post Master General, therefore, cannot, by downgrading the Senior Time Scale posts to the Junior Time Scale, reduce the ^{statutory} number of Senior Time Scale posts and increase the ^{statutory} number of Junior Time Scale posts which have statutorily fixed. The illegality of such downgrading was appreciated by the Department of Posts which directed the

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Post Master General in its letter dated 7th October, 1988 (Annexure-VI in OA 299/90) "not to implement any such instructions regarding the downgradation of the posts."

The respondents also have conceded in the counter affidavit that the Department of Posts issued instructions on 2.2.89 to stop downgradation of the posts but authorising Heads of Circles to order ad hoc promotions in exceptional cases which meant that ad hoc promotions could be made but the pay scale of the posts cannot be downgraded for ad hoc promotees.

6. In Dr. (Mrs.) Prem Lata Choudhari V. Employees State Insurance Corporation [ATR 1988(1) CAT 196],ⁱⁿ the^h Principal Bench of this Tribunal presided over by Hon'ble Shri K. Madhava Reddy, Chairman as he then^h was, speaking for the Division Bench,^h observed as follows:

"It is well settled that among persons appointed to a post carrying a particular scale of pay and discharging the same duties and responsibilities attached to that post, no distinction can be made in the matter of pay and allowances merely on the ground that some are temporary or ad hoc or officiating and others are appointed on regular basis. The principle of equal pay for equal work is so well entrenched in service jurisprudence that it is too late in the day to dispute that proposition." (emphasis supplied)

and directed that -

"Since the applicants are discharging the same duties and responsibilities as are discharged by regular Insurance Medical Officers Grade II, they would be entitled to the same pay scale i.e. Rs. 700-1300 and allowances and also to the same benefits of leave, maternity, increment on completion of one year and benefit of their service conditions."

7. Even in the case of casual labourers who are not holding any posts, the Supreme Court in Daily Rated Casual Labourers employed in P&T Department through Bharatiya Dak Tar Manch Vs. Union of India, AIR 1987 SC 2342, held that denial of minimum pay in the pay scales of regularly employed workmen to casual labourers amounts to exploitation of labour and that classification of employees into regularly recruited employees and casual employees rendering the same kind of service which is being rendered by the regular employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres would not be tenable.

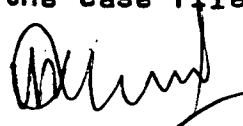
8. In the celebrated judgement, the Supreme Court in Surinder Sing & another Vs. Chief Engineer, CPWD and others [1986 (1) SCALE] held that daily rated workers are entitled to the same wages of permanent employees employed to do identical work.

9. In Bhagawan Das & others Vs. State of Haryana and others [1987 (3) SLJ SC 93] the Supreme Court further held that mode of recruitment was immaterial for granting equal pay for equal work.

10. In view of the aforesaid rulings, we have no hesitation in concluding in this case that merely because the applicants had ^{not} been included in the approved list for promotion and merely because they were promoted to the Senior Time Scale on an ad hoc basis, they cannot be denied the pay scale of the posts ^{statutorily borne on} held in the Senior Scale of the Postal Service. The contention of the

respondents that the applicants were given the Senior ^{feeder} Scale posts because of ^p dearth of eligible officers in the Junior Time Scale goes to show that the applicants were called upon to discharge the same duties in the Senior Scale posts to which they were promoted on an ad hoc basis as were to be discharged by the regularly appointed incumbents. The principle of ad hoc appointment being inferior to regular appointment may be valid in the matter of ^{not-} reckoning service for seniority but is not valid for ^{denying} ~~granting~~ equal pay for equal work.

11. In the conspectus of facts and circumstances, we allow both these applications, set aside the impugned ^{and to the extent} orders by which the posts held by the applicants in the ^{Time} Senior Scale of the Postal Service were downgraded and direct that the applicants shall be paid pay and allowances in the pay scale attached to the posts in the Senior Scale of the Postal Service so long as they held the same. Arrears of pay and allowances should be paid to them within a period of two months from the date of communication of this order. There will be no order as to costs. A copy of this order may be placed on both the case files.


(A.V. Haridasan)
Judicial Member


17.12.90.
(S.P. Mukerji)
Vice Chairman

17.12.90