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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 236/87

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198

DATE OF DECISION

1-4-1991

V.S. Mahashabde Petitioner

Shri C.B. Kale Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

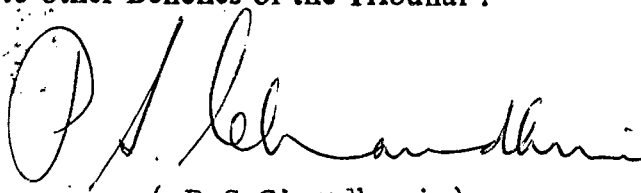
Mr.S.R.Atre for Mr.P.M.Pradhan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?



(P.S. Chaudhuri)
Member(A)

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

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Original Application No.236/87

Vishwanath Shankar Mahashabde,
C6/6-0-3, Himgiri, Sector No.6,
C.B.L., Konkan Bhavan,
New Bombay 400 614

... Applicant

V/s

- 1.Ministry of Communication through
Director General Posts, Dak Tar Bhavan,
New Delhi 110 001.
- 2.Post Master General, Maharashtra
Circle, Bombay 400 001.

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava
Hon'ble Member (A), Shri P.S.Chaudhuri

Appearances:

Mr. C.B.Kale, Advocate,
for the applicant and Mr.
S.R.Atre for Mr.P.M.Pradhan,
Advocate, for the respondents.

JUDGEMENT:

Dated : 1-4-1991

[Per. P.S.Chaudhuri, Member (A)]

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 3.4.1987. In it the applicant, a retired Senior Superintendent of Post Offices, is challenging the order dated 1.12.1977 conveying the decision of the Director General, Posts & Telegraphs that the benefit of pay fixation under the concordance table may not be extended in cases of promotions to posts in the senior time scale (Group A) against short term vacancies/adhoc basis from amongst officers not approved by regularly constituted DPCs. He is also challenging the order dated 29.8.1986 by which he was informed that as he was officiating in

senior time scale on ad-hoc basis due to fort^unitous circumstances in a local arrangement the benefit of concordance table cannot be granted to him prior to 2.5.1983. He has also asked for connected and consequential reliefs.

2. The facts in brief: The applicant joined service in the Postal Department in 1944. He was promoted to the Postal Superintendent Service (Group B) in 1979. By order dated 5.8.1981 he was promoted to officiate in senior time scale of Indian Postal Service (Group A) purely on temporary and ad-hoc basis. He joined this post on 28.8.1981 and continued in the same cadre without interruption till he was appointed on regular basis in the cadre^r by an order dated 11.5.1983. That order dated 11.5.1983 orders that the applicant, along with 15 others, are approved and allotted to the Maharashtra Circle to officiate in senior time scale of Indian Postal Service (Group A) on regular basis. It further orders that these officers will assume and relinquish charge in junior scale of the same station wherever they are working as on 2.5.1983 and then proceed to their senior scale posts. As far as the applicant is concerned the senior scale post to which he was so appointed on regular basis was the same in which he was officiating prior to 2.5.1983. On crossing the age of 58 years the applicant retired on superannuation on 31.10.1983.

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3. It is the case of the applicant that on 28.8.1981, i.e. the date he was promoted to the senior time scale, Group A, he was drawing Rs.1000/- p.m. in the scale of pay Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. It is his further case that according to the normal rules for fixation of pay on appointment to a new post, which involves assumption of duties and responsibilities of greater importance than those attached to the permanent post held by the Government servant, he will draw ^{as} his initial pay the stage of the time scale next above his substantive pay in respect of old post. It is the further case of the applicant that since application of the normal rules for fixation of pay of officers from junior scale Class-I to senior scale Class-I gave rise ^{to} certain anomalies the 3rd Pay Commission recommended inter-alia that the Government may issue special orders to rectify the anomalies. The Government of India issued such orders on 14.11.75 under which a table known as concordance table was prescribed for fixation of pay of the officers promoted from the junior scale to the senior scale and also for officers of Postal Superintendent Service Group-B promoted directly to the senior time scale. It is the further case of the applicant that on promotion directly from Group-B to the senior time scale of Group-A his pay ought to have been fixed first in the ^{i.e.} junior scale of Group-A, notionally at the stage of Rs.1060 in the scale of Rs.700-40-90-EB-40-1100-50-1300,

and thereafter in the senior scale according to the above mentioned concordance table which would have resulted in a fixation of Rs.1250/- p.m. However, his pay was fixed at the minimum of Rs.1100 in the senior time scale of Rs.1100 (6th year under)-50-1600. The pay of the applicant was, however, refixed as Rs.1300/- p.m. with effect from 2.5.1983 on his regular promotion to the senior time scale, Group-A vide order dated 11.5.1983 that we have mentioned earlier. Being aggrieved at this lower pay fixation, ^{the applicant} made a representation dated 20.9.1986 but this was rejected by the impugned letter dated 29.10.1986. Being aggrieved, the applicant filed the present application.

4. The respondents have opposed the application by filing their written statement. We have also heard the arguments of Mr. C.B.Kale, learned counsel for the applicant and Mr. S.R.Atre, holding the brief of Mr. P.M.Pradhan, learned counsel for the respondents.

5. Mr. Kale sought to contend that the applicant's case was justified on the principle of "equal pay for equal work". We do not see how this can possibly apply in the present case. This principle applies to the scale of pay applicable to a particular post. It does not apply to specific pay fixation in the scale. It is quite obvious that new entrants to a particular post will be drawing pay at a lower stage in the time scale of pay than their seniors appointed to that scale before them.

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6. Mr. Kale's second contention was that the applicant had been officiating continuously in the higher post and had been selected regularly for it and promoted against it without any break. He was thus obviously ~~obviously~~ suitable and fit for promotion and should get the benefit, even though not selected, ^{from the date that} ~~that~~ ~~he~~ he had been promoted and that it was no fault of the applicant that the DPC had been held late. We are unable to see any merit in this submission also. The applicant's appointment order dated 5.8.81 clearly indicates that his promotion was purely on temporary and ad-hoc basis. The instructions dated 14.11.75 do not indicate that these instructions would apply for temporary and ad-hoc promotions. The instructions of 1977 which the applicant has now sought to impugn after the passage of more than a decade specifically states that the instructions of November 1975 will not be applicable against short term vacancies.

7. After hearing the learned counsel of both the sides we are satisfied that the whole edifice of the applicant's case has been built on non-existent foundations and all the contentions raised stem from fallacious assumptions. The subject of the circular dated 14.11.75 reads as "Fixation of pay on promotion after 1.1.73 from the revised junior scale Class-I to the senior scale Class-I scale of pay in certain organised Class-I services". It is thus clear beyond

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any ^{doubt} ~~point~~ that it is not applicable in cases of promotion directly from Group-B to senior scale Class-I. The applicant's promotion was from Group-B to senior scale Class-I and, that too, purely on temporary and ad-hoc basis. The circular dated 14.11.75, therefore, does not govern his pay fixation on this promotion. It would not have been applicable even if his promotion had been on regular basis which, of course, it was not. There is no way in which this circular can come to the applicant's aid in respect of pay fixation ^{consequent} to ~~the~~ the order dated 5.8.1981.

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8. Mr. Kale sought to get over this difficulty by relying on two decisions. The first was Vasudeo Digambar Kulkarni v. Union of India - M.P.No.1723/1978 filed in the Bombay High Court. In that case the applicant's prayer regarding pay fixation was allowed. But that case can be readily distinguished from the present one. In that case the petitioner had first been promoted to junior scale Class-I before he was promoted to the senior time scale.

9. Mr. Kale then sought to rely on Jeet Singh & Ors. v. M.C.D. & Ors - AIR 1987 SC 1781. But that case, however, is quite different. It pertains to petitioners who were regularised only after having been in continuous employment for about seven years. In that case it was held that they were entitled to salary and allowances on the same basis as paid to regular and

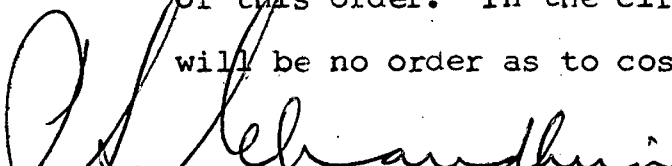
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permanent employees from the date of their continuous employment. It was not at all the case of dealing with fixation of pay on promotion.

10. What the promotion order dated 11.5.83 makes clear is that the applicant was first promoted on regular basis to the junior scale of the Indian Postal Services Group-A and immediately thereafter promoted to the senior time scale of that service. He is, therefore, entitled to have his pay in the senior time scale fixed on that foundation in terms of the orders dated 14.11.75. He does not appear to have made any representation to the authorities in that regard nor is that a prayer before us. We ^{are,} however, ^{to} ~~s~~agine that should the applicant make such a request it will receive due consideration by the authority and that appropriate action will be taken regarding fixation of his pay and retirement benefits.

11. Based on these discussions and analysis we see no merit in the application other than our observations in the immediately preceeding paragraph.

12. We accordingly dismiss this application with a direction to the respondents to consider any representation that might be made by the applicant in terms of our observations earlier within a period of four months from its receipt provided that it is made within a period of two months from the date of receipt of a copy of this order. In the circumstances of the case there will be no order as to costs.


(P.S. Chaudhuri)
Member(A)


(U.C. Srivastava)
Vice-Chairman

1-4-1991