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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**NEW BOMBAY BENCH****O.A. No. 798/88**~~TxxxXXNox~~**198****DATE OF DECISION 17.6.1991****SHRI BHIKAJI GOPAL GHOKHALE Petitioner****Mr. S.R. Atre****Advocate for the Petitioner(s)****Versus****Union of India and others Respondent****MR. P. M. PRADHAN****Advocate for the Respondent(s)****CORAM****The Hon'ble Mr. U.C. SRIVASTAVA, Vice-Chairman,****The Hon'ble Mr. M.Y. PRIOLKAR, Member (A)**

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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 ?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

ORIGINAL APPLICATION NO. 798/88

SHRI BHIAJJI GOPAL GOKHALE
Sub-Postmaster,
Khanbhag Post Office,
Sangli-416416

.... Applicant

V.

Union of India
and others.

CORAM : HON'BLE SHRI U.C.SRIVASTAVA, Vice-Chairman,
HON'BLE SHRI M.Y.PRIOLKAR, MEMBER(A)

Appearance:

Mr. S.R. Atre, Adv. for
Applicant

Mr. P.M. Pradha, Adv.
for the respondents

ORAL JUDGMENT

(PER : U.C.SRIVASTAVA, Vice-Chairman)

DATED: 17-6-1991

The applicant joined the Posts and Telegraph Department as a Junior Clerk in Bombay General Post Office on 2.6.1962 and in 1955 he was confirmed. He sought his transfer under Rule 38 of the Post and Telegraph Manual from Bombay to Sangli which according to him was same circle. His prayer for transfer was accepted and in view of paragraph 38 of the Post and Telegraph Manual, he was placed at the bottom of the seniority list. The grievance of the applicant is that in gradation list the applicant has not been properly placed and further that pay to which he was entitled to, was denied to him, his juniors are drawing more pay. He made representation in the year 1981

which was rejected. Again another representation was made by him in that year which was rejected after waiting for three years. He made yet another representation in the year 1984 that was replied on 24th February 1985. He approached the Tribunal in the year 1988. According to the respondents the applicant has relied on the same departmental circular dated 24th April 1978 regarding preparation of certain gradation list of officials belonging to the cadre of clerks etc. During the period 22.6.1949 to 21st December 1949 one of the pay scales adopted in the same is that the seniority of the persons appointed during this period may be revised except in case of certain category which also includes persons transferred from one circle to another, ~~but the persons transferred from~~ ⁱⁿ the same circle under Rule 38 Post and Telegraph Manual Vol. IV, the seniority of such persons will not ~~be disturbed~~ ^{be disturbed}.

2. From counter affidavit it appears that the Bombay circle was divided into two circles i.e. Bombay and Muffisil and as ~~the~~ such the contention of the applicant is that he was transferred in the same circle and not to a different circle and thus was entitled according to the circular mentioned above, he is entitled for gradation of pay scale, ~~which~~ has been contended on behalf of the applicant that his ~~pay~~ ^{if} scale was not correctly fixed and merely because his juniors were granted advance increments because in fact they have passed Telegraphy in English and Hindi they were sent to work in the account section. He cannot be denied that pay scale which he was entitled to enter on the place and the service cannot be deprived of his right in the matter he cannot be placed in a different pay scale than his juniors. In the counter affidavit it has been stated that so far as juniors are concerned, it has been stated that after coming into force the IV the pay Commission report the applicant did prefer representation, that

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~~his~~ pay scale has not been fixed correctly, but the same did not find favour with the department. As per gradation list Shri B.G.Gokhale stands junior to Shri Govekar. Proviso 2 to Rule 8 of RP 86 will not be applied in case of the applicant for stepping up of rate of increment. Shri I.Y.Mulla opted for accounts line as such the applicant cannot be granted parity with him. There is no denial of the fact that those persons who were junior to the applicant and also earned advance increments were granted to one and that other was senior to accounts line. Yet essential facts remain that they were junior to the applicant while deciding the question of pay scale of the applicant. It appears that the respondents did not take this into consideration. Rule 8 of the revised pay rules, particularly proviso 2 reads as under:

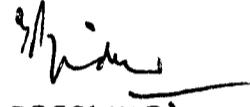
"that the cases other than those covered by the specific proviso, the next increment of a government servant whose, pay is fixed on the 1st January 1986 at the same stage on the one fixed for another government servant junior to him in the same cadre and drawing pay at a lower stage than his in the existing scale shall be granted on the same date as admissible to his junior if the date of increment of the junior happens to be earlier."

3. On behalf of the respondents it is contended that the application is time barred and hence no relief should be given to the applicant. As the applicant faces financial loss, the question of pay scale only survives. The same is a continuous cause of action the applicant has been agitating for the same continuously, though with certain despites.

4. It is a fit case for condonation, of delay. Accordingly, delay is condoned for the reason stated above and the application is allowed in part and the respondents are directed to

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consider the pay scale or the gradation of the application in accordance with the 2nd proviso to Rule 8 extracted above and in the light of observation made in the judgment, and take a decision within a period of 3 months of the date of communication of this order. The respondents shall pass a speaking order on the representation of the applicant treating the same as pending. However, it is open to the applicant to file another representation within a period of 15 days from the date of receipt of the copy of this judgment. That representation shall be decided within a period three months thereafter, by the respondents.


(M.Y.PRIOLKAR)
Member(A)


(U.C.SRIVASTAVA)
Vice-Chairman