

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 385/86

Mr. Rewa Dayaram Warke
Head Sorting Assistant,
Airport Sorting Office (Fgn),
Bombay 400 099.

APPLICANT

V/S.

The Postmaster General
Maharashtra Circle
Bombay 400 001.

2. Director General (P&E)
Department of Posts,
Sanchar Bhavan,
New Delhi 110 001

RESPONDENTS

CORAM: Hon'ble Member (A) J G Rajadhyaksha

APPEARANCE :

Applicant in person

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

Judgment

Dated : 28.1.1988

(PER : J G Rajadhyaksha, Member(A))

The applicant filed this application under Section 19 of the Administrative Tribunal Act, 1985 on the 31st October, 1986. He was a Head Sorting Assistant and his grievance is that his pay on promotion to the Lower Selection Grade (L.S.G.) Accountant in accounts cadre w.e.f. 27.10.1980 had been incorrectly fixed under FR. 22(a)(ii) and not under FR. 22 C. The respondents have resisted the application saying that the application was barred by limitation. Secondly, they pointed out that since the promotion of the applicant to the cadre

of L.S.G. Accounts was not treated as one involving higher duties and responsibilities, his pay had rightly to be fixed under FR.22(a) (ii) and not under FR.22 C. They therefore, state that the application deserves to be dismissed on both the counts.

2. The applicant has submitted an application for condonation of delay while filing the main application. The reasons given by him are that he was being posted from place to place between 1985-86. His sister was suffering from Cancer and she expired in August, 1985 and only with the acceptance of the recommendations of the IVth Pay Commission the injustice that occurred to him aggravated. In the circumstances, the delay in filing the application is hereby condoned, though Mr. Atre opposed the condonation of delay.

3. The facts briefly are that the applicant joined service with the Department as a Sorter in 1957 in the time scale of Rs.60-110, which was later revised to Rs.260-480 from 1973. Since the applicant was getting Special Pay of Rs.45/- he did not have any special grievance as such. On 27.10.1980 he was promoted as L.S.G. in the Accounts cadre and his pay was fixed under FR. 22(a) (ii). His pay at that stage was Rs.444/- plus special pay of Rs. 45/- total Rs.489/-. On fixation of his pay under FR.22(a) (ii) the pay was fixed at Rs.485/- plus Rs.4 as personal pay to protect the pay that he was already drawing viz. Rs.489. The applicant's case is that strictly speaking all promotees should have got advantage of fixation of pay under FR.^{22C}~~22(a) (ii)~~ as the promotion did involve higher responsibility on par with other LSG personnel. The applicant's case also is that ..3

he had given an option in 1980 for the new scale and admits that though there is no provision for revocation of an option once given, he had applied for cancellation of the earlier option and there had been no reply to it. He pointed out that in the revised scale there was no promotional avenue according to orders issued by the DGP&T on 24.2.1981. Since however, the applicant has now actually been promoted to Higher Selection Grade (H.S.G.) this order is ineffective. By the operation of the respondents' various orders he has suffered a loss of one increment of Rs.15 p.m. every year. The applicant produces a copy of a judgment given by the Bangalore Bench of the Central Administrative Tribunal in the case of one Shri M.K.Patwari, Assistant Post Master (Accounts) on 11.12.1986 and argues that the facts of that case are absolutely parallel to his own case and therefore, he should get benefit of FR.22 C on the same lines and his pay should be fixed accordingly in the L.S.G. cadre. He also alleges that his seniority had been lost because of the operation of the order and since on 24.2.1981 the new scale became defunct, he automatically stood reverted to the old scale and, therefore, his pay fixation should be properly done.

4. Mr.S.R.Atre, the learned advocate for the respondents argues that the applicant had exercised a conditional option. Between 1979 and 1981 the position was that applicant had opted for the new scale and was getting his pay in the new scale. The new scale became defunct in 1981. Upto that date applicant was getting pay in the old scale. After 21.12.1979, he got pay in the new scale of Rs.380-620. When the cadre became defunct in 1981, applicant as well as others remained in the new scale as there was no question of their

reverting to the old scale of Rs.260-480. He argued that on promotion as Accountant the pay is required to be regulated according to the scale in which the incumbent was drawing pay. Therefore, applicant got pay based on Rs.260-480 by applying FR.22 (a) (ii) and he was given special pay of Rs.45/- p.m. A promotee to the L.S.G. from the time scale alone could get advantage of FR. 22 C. In applicant's case application of FR.22C is not permissible. Mr. Atre also adds that the applicant had passed the examination for P.O. and R.M.S. Accountants and had, therefore, got the time scale and special pay of Rs.45 even as a Sorter. When the new scale was introduced, the special pay was done away with. On promotion, the old time scale plus special pay could be counted under FR. 22 for pay fixation. In the new scale there is no special pay. The question of applying FR.22 C did not therefore arise at all.

5. I have heard both the sides and I have perused the records. Ex.'A' at page 11 are orders dt. 12.3.84 in the case of fixation of pay of the applicant as L.S.G. (Accounts). It says that his pay came to be fixed in the L.S.G. cadre under the existing orders dt. 10.11.1978 and that scale was not defunct on the date of his promotion to L.S.G. on 27.10.1980. Therefore, the officials' pay would have to be regulated under the 10.11.78 orders only. It is added that since the scales were not identical the question of stepping up applicant's pay to be on par with his juniors' pay did not arise at all. The applicant had been representing against what he felt was injustice, but there has been no redressal because of the reply given on 12.3.1984.

6. Also on record is a copy of the order dt.10.11.78 which is alleged to have introduced this element of injustice into the case of the applicant. These orders says that

"with revision of the pay scales a separate cadre of P.O. and R.M.S./D.T.O./C.T.O. Accountants in the pay scale of Rs.380-620 has been formed. The pay of the existing incumbents shall be fixed on the analogy of FR.22 (a) (ii) read with Audit instructions below FR.22 treating the special pay now being drawn as part of basic pay. The pay of the future appointees to these posts from clerical cadre shall be fixed under FR.22 C. The existing incumbents shall be provided with an option under FR.23 which shall be exercised within 3 months from the date of issue of the orders. If no option is exercised within the stipulated date, the official shall be deemed to have automatically elected for the new pay scale w.e.f. 1.11.1978 and his pay will be fixed as indicated in para 3 above. The President is further pleased to decide that the pay of P.O. and R.M.S./D.T.O./C.T.O. Accountant in the revised pay scale of Rs.380-620 on their appointment to the post of L.S.G. Accountants shall be fixed on the analogy of FR.22 (a) (ii) treating the appointment as not involving higher duties and responsibilities".

The orders dt. 24.2.1981 have also been brought on record. In effect the orders says as follows :

"The existing incumbents in the pay scale of Rs.380-620 the option to retain that defunct scale under FR.23 and added that they would not be eligible for promotion to any higher post in the general line. If no option is exercised within the stipulated date, the official shall be deemed to have automatically elected for the pay scale of Rs.260-480 plus special pay and their pay will be fixed as under : The individual should opt for the pay scale with special pay for ..6

promotion to higher posts in the normal channel of promotion as were available before the issue of O.M. dt. 10.11.1978."

The pay of the existing incumbent ~~on~~ the pay scale of Rs.380-620 may be fixed in the pay scale of Rs.260-480 at a stage as would have been arrived at had they initially continued in the pay scale of Rs.260-480. To the stage so arrived at the special pay of Rs.45 per month only may be allowed. When the pay so fixed plus the special pay of Rs.45 falls short of the pay drawn in the scale of Rs.380-620, the difference may be allowed as personal pay to be absorbed in future increases of pay. The special pay of Rs.45 p.m. referred to in para 2 is in lieu of higher scale of pay. The pay of P.O. RMS/DTO/CTO Accountants in the prescribed scale of Rs.260-480 plus special pay of Rs.45 on promotion to L.S.G. may be fixed under FR. 22 C." Mr. Atre has produced at Ex.'H' attached to the reply a letter dt. nil March, 1979 clarifying how the conditions of service P.O. and R.M.S. Accountants should be regulated on their becoming a separate cadre. It is doubtful if these instructions which ^{here} ~~then~~ applicable would be of any use now since that cadre has been rendered defunct and it has again become possible for the incumbents to opt for the old scale.

7. The applicant has produced an option exercised by him, it reads as follows :

"D.G.P &T New Delhi Commn No. 31-31/74-PE-I, dt. 10/11/78 I, Shri R.D.Warke hereby elect to continue on the existing scale of pay of my substantive post mentioned below until :-
the date of next increment i.e. 21/12/79.
the date of subsequent increment raising my pay to Rs.444/-

I vacate or cease to draw pay in the existing scale from 21/12/79.
existing scale 260 to 480."

The applicant had also applied for a cancellation of this option by his letter dt. 21.11.79. Ex.B to the application.

8. The position therefore is that the applicant who joined service in 1957 opts under orders dt.10.11.78 for the new scale from 21.2.1979 i.e.the date on which his next increment fell due. According to this option the applicant would be drawing pay in the scale of Rs.380-620 instead of in the old scale of Rs.260-480. In the old scale he was entitled to a special pay. In the new scale he would lose it. The fact, however, remains that though the orders say that the post of L.S.G. Accountant is not treated as one involving higher responsibilities and is not therefore, a promotional post, the orders appointing personnel to that scale are worded as "promoting the incumbents to the L.S.G. Accountants' posts". In other words, it is a promotion and a promotion must necessarily involve higher duties and responsibilities and in the normal course FR. 22 C should be attracted for fixation of the applicant's pay on promotion to L.S.G. Accountant. I would, with approval, quote the judgment given by the Learned Members of the Central Administrative Tribunal at Bangalore Bench.

"A plain reading of FR 22-C reveals, that regardless of the nature of tenure of the post held by an incumbent, if he is promoted or appointed to a post (again regardless of its tenure) carrying duties and responsibilities of greater importance than those attached to the post held by him earlier, he would be

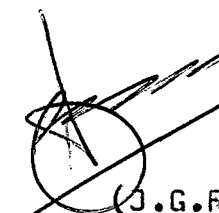
eligible for incremental benefit in the fixation of his pay in the latter post. The respondents have stated in para 3 (a) of their statement of objections, that the applicant was promoted to the post of LSG Accountant in the month of September 1979. It is natural to infer that the post of promotion invariably carries duties and responsibilities of greater importance than the post from which the incumbent is promoted. In the course of the hearing we came to know that a LSG Accountant is required to supervise work of a larger complement of staff under him than in the case of an Accountant, the nature of accounts work involved is more complex and the workload too is heavier as compared to the post of Accountant. If that be so, we see no reason as to why the applicant should be denied the benefit of FR.22 C on his promotion to the post of LSG Accountant. Besides, the pay scale of Rs.425-640 of the post of LSG Accountant, is not identical to the pay scale of the post of Accountant (both revised and unrevised) as both the initial as well as the terminal stages are distinctly higher.

We are, therefore, of the view that the applicant is entitled to the benefit of FR. 22 C in the fixation of his pay from the date of his appointment to the post of LSG Accountant."

The case of the applicant being identical, these observations apply to him in toto.

9. In the circumstances of this case, therefore, I feel that the applicant deserves to be granted the reliefs that he seeks. Therefore, the application is allowed. The respondents are directed to fix the pay of the applicant by granting him benefit of FR.22 C from the date of his appointment to the post of LSG Accountant.

*Delivered in open Court
today*


(J.G. RAJADHYAKSHA)
Member (A)