

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No.373/1986.

1. Shri.D.L.Dighe,
4/42 P&T Colony Gultekadi,
Pune 411 001.
2. Shri R.S.Karve,
Assistant Superintendent RMS
Dadar Sorting Office
RMS Central Sorting Division,
Dadar - 400 014.
3. Shri.D.R.More,
Asstt.Superintendent RMS
AIR PORT SORTING OFFICE
Bombay - 400 099.
4. Shri.M.J.Joshi,
Asstt.Superintendent RMS
North Bombay Sorting Office,
Bombay - 400 093.
5. Shri A.V.Pathak,
Assistant Superintendent RMS
Pune City Sorting Office,
Vishrambagwada,
Pune 411 030.
6. Shri.S.A.Deshpande,
Asstt.Superintendent RMS
Bombay Sorting Division, Bombay-1.
7. Shri.V.N.Thakurdesai,
Asstt.Superintendent RMS
Air Mail Sorting Divn,
Bombay - 400 099.
8. Shri K.V.Kamble,
Asstt.Superintendent RMS
Bombay RMS
New Bombay GPO Bldg, 6th floor,
Bombay 400 001. .. Applicants

V/s

1. The Director General Posts,
New Delhi 110 001.
2. Post Master General,
Maharashtra Circle,
Bombay.
3. Shri S.G.Tiwarkhede,
Asstt.Suptd.RMS,
Nagpur. 446 001. .. Respondents.

Coram: Hon'ble Member(A) Shri L.H.A.Rego

Appearances:

The applicants in person.

Shri.S.R.Atre for Mr.P.M.Pradhan for
the respondents.

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JUDGEMENT (Per Shri L.H.A.Rego)

Dated: 27.8.1987.

These are in all 8 applications, where the main prayer is that the pay of the applicants (designated as A1, A2 etc. in serial order) in the post of Asstt. Superintendent Railway Mail Service (ASRMS, for short) be brought on par with that of Respondent (R)3, their junior, with effect from 11.10.1982 i.e. from the date when he was regularly promoted as ASRMS and is drawing higher pay in that grade, as compared to them. In this respect, they challenge the impugned order dated 17.8.1983 from R.2(Ex.2), rejecting the representation of some of the applicants, to step up their pay on par with R.3, on the grounds that no anomaly had arisen, as a result of fixation of pay under Fundamental Rule (FR) 22C. They also challenge the other impugned order dt.31.12.83, also passed by R.2, rejecting their request, to step up their pay as above, as communicated by the Senior Superintendent RMS Central Sorting Division, Bombay on 28.1.1984 (Ex.F).

2. Concisely, the background to this case, in so far as it is relevant to the issues that need to be resolved, as follows. The applicants as also R.3, entered service in the Postal Department, as Sorting Assistants (SA for short) and in course of time, were promoted as Inspectors Railway Mail Service (IRMS for short), after passing the prescribed competitive examination. The next stage of promotion was that to the post of ASRMS. The pay scales of these three respective posts are as below.

<u>Sr. No.</u>	<u>Category of post</u>	<u>Pay scale (Rs)</u>
(i)	S.A.	260 - 430
(ii)	IRMS	425 - 700
(iii)	ASRMS	500 - 900

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3. The relevant service particulars of these three applicants vis-a-vis R.3, are as under:

	Date of appt. as SA	Date of regular promotion as IRMS	Rank in the Gradation List as IRMS
A-1	15.8.1965	Sept 1974	26
A-2	1.8.1957	March 1972	8
A-3	3.8.1966	Aug 1973	17
A-4	15.5.1959	"	18
A-5	12.9.1962	"	19
A-6	18.12.1965	"	20
A-7	22.2.1954	Dec 1969	5
A-8	02.1.1967	Sept 1974	27
R.3	23.12.1955	Sept 1974	29

4. The applicants state that R.3 is junior to them in the cadre of IRMS, the unit for which is the Circle, covering the entire State of Maharashtra, as can be seen from the Gradation List at Ex.A.

5. R.3 is seen to have been granted officiating promotion in the post of IRMS at Nagpur, in short-term leave and other vacancies as below:

<u>From</u>	<u>Date</u>	<u>To</u>	<u>Period (Days)</u>
1.8.1972		10.2.1974	924
3.3.1974		8.7.1974	128
5.5.1975		22.7.1975	99

6. While serving in Bombay, R.3 is seen to have been similarly given the benefit of officiating promotion in short spells, in temporary vacancies, in the post of ASRMS as under:

<u>From</u>	<u>Date</u>	<u>To</u>	<u>Period (days)</u>
9.11.1976		1.4.1979	144
20.4.1979		16.6.1979	58
17.6.1979		12.3.1980	269
13.3.1980		31.3.1980	19
1.4.1980		11.5.1980	41
12.5.1980		3.6.1980	28
21.7.1980		19.8.1980	30
20.8.1980		31.12.1980	134
1.1.1982		10.1.1982	10
11.1.1982		23.1.1982	13
12.2.1982		13.4.1982	61
14.4.1982		5.7.1982	23
6.7.1982		10.10.1982	97

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7. Annexure I furnishes at a glance, a comparative picture of the details of pay, drawn by the applicants as well as R.3, in the posts of IRMS and ASRMS, for the relevant period. The applicants allege, that R.3 who was junior to them, is drawing significantly higher pay than they, on account of gross violation of the provisions of Rule 50 of the Posts and Telegraphs Manual (PTM, for short) in favour of R.3, to the detriment of the service interests of the applicants, as they have been denied their legitimate opportunity of availing of officiating promotion, in the posts in question, in some of the vacancies, which in fact, were not short-term, as to fall within the maximum limit of 120 days stipulated in Rule 50 ibid.

8. Some of the applicants, had submitted a written representation to R.2, on 6-8-1983, for stepping up their pay, to bring it on par with that of R.3 and the same was rejected by R.2 on 17.8.1983 (Ex.D), on the score, that no anomaly had occurred as alleged by the applicants, as the pay of R.3 was fixed properly and there were no grounds to step up the pay of the applicants under FR 22C as claimed by them.

9. A-1 appealed thereon to R.1 on 12.9.1983, (Ex.E), who turned down the appeal on 31.12.1983 (Ex.F) stating inter alia, that R.3 had availed of officiating promotion, for a period not exceeding 90 days at a time, in Bombay and had officiated ~~as~~ against about 10-12 posts of ASRMS, in the Division, for short durations, on account of which, Rule 50 ibid, was not violated and no anomaly had arisen and the provision of FR 22C had no relevance to their case.

10. Aggrieved thereon, the applicants have approached this Tribunal for redress.

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11. The applicants argued their case in person, while the respondents were represented by their counsel Shri S.R. Atre for his senior Shri P.M.Pradhan. The respondents have filed their reply to the application and the applicants, their rejoinder thereto.

12. Opening their case, the applicants focussed their main thrust, on the fact, that R.3 was given officiating promotion in temporary vacancies, both in the posts of IRMS as well as ASRMS, in gross violation of Rule 50 ibid, as the maximum permissible period of 120 days for such promotion had in some of the spells, ²² had far exceeded this limit, Besides, the Senior Superintendent RMS, was not the competent authority to grant such promotion. They alleged, that thereby some of the applicants were denied legitimate opportunity of such promotion, which would have enabled them derive cumulative incremental benefit in their pay, as in the case of R.3. According to them, R.3 was conferred this benefit, in flagrant violation of Rule 50 ibid and Schedule No.6 of PTM Vol.III (relating to competence of the authority to grant such officiating promotion).

13. In order to help examine the validity of this contention, it would be useful to extract the relevant portion of Rule 50 ibid (Ex.B) and of Schedule No.6(Ex.I) referred to above. The following is the extract.

"50. Transfers of non-gazetted official to fill up temporary vacancies should be avoided whenever practicable. The following procedure should be followed in making arrangements to fill up vacancies of short duration :-

(1) In the cadres in which promotion is made from officials working in the same office or station, officiating arrangements in cases of vacancies of not more than one month's duration may be confined to the officials in the section or branch of the office or in the Sub office where the vacancy occurs even if this involves the supersession of a senior qualified official available elsewhere in the cadre by a junior official who is actually appointed to act.

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(2) In the cadres in which promotion is made from officials working in different ~~xx~~ stations, sub-divisions or divisions in a Circle - destination should be made between.

(a) Vacancies of not more than one month's duration and

(b) Vacancies of more than one month's duration but not ~~x~~ of more than four month's duration.

(i) In the case of (a) the officiating arrangements may be confined to the officials at the station where the vacancy occurs, even if this involves the supersession of a senior qualified official by a junior official who is actually appointed to act. In the case of a station where there are more offices than one each independent of the others, the officiating promotion may, at the discretion of the sanctioning authority be confined to the office where the vacancy occurs.

(ii) In the case of (b) the officiating arrangement may be confined to the officials in the office, Sub-division or Division where the vacancy occurs, on the same condition as in the preceding clause.

(3) In special circumstances in which strict adherence to the above procedure may not be practicable from the administrative point of view, the sanctioning authority may at this discretion, make acting arrangements according to administrative requirements."

SCHEDULE NO.6

SCHEDULE OF ADMINISTRATIVE POWERS OF A SENIOR SUPERINTENDENT AND SUPERINTENDENT, RAILWAY MAIL SERVICE

Nature of Power 1	Extent of power 2	Remarks 3
APPOINTMENTS, PENALTIES AND APPEALS (See Schedule No.1) <u>LEAVE</u>		
1. Power to grant leave to Selection Grade officials and officials of the Inspectors of Railway Mail Service Grade.	May grant leave other than special disability leave not exceeding four months.	Ministry of Finance (Deptt. of Expenditure) Endt.No.7(1) -EIV/58. dated 11-1-1958.

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1A Power to fill officiating vacancies in the selection grades, and the grade of Inspector of Railway Mail Service.	Full powers provided the vacancies are not of more than four months duration.	Government of India P & A Department. Memorandum No.E-202-1/43, dated the 11th August, 1944.

14. It is clear from Rule 50 ibid extracted above, that the duration for grant of officiating promotion to the eligible officials under the terms and conditions specified, therein, should not exceed 120 days (or 4 months). That Rule however states that at the end, that in special circumstances, in which strict adherence to the procedure outlined in this Rule may not be practicable, from the administrative point of view, the sanctioning authority, may at his discretion, make acting arrangements according to administrative requirement. The applicants contended, that according to Schedule No.6 ibid, the Senior Superintendent RMS was competent to grant leave and fill officiating vacancies, only in respect of Selection Grades and the grade of IRMS, for a duration not more than 4 months and therefore, he was not competent to exercise his power, where the vacancy exceeded a period of 4 months. Yet, the applicants asserted, that the Senior Superintendent RMS concerned had exceeded this power, in some cases, in respect of R.3 as could be seen from the details furnished in paras 5 and 6 supra, thereby, depriving the applicants of their legitimate opportunity of availing of promotion in temporary vacancies and of the resultant cumulative incremental benefit in their pay.

15. Before countering this argument of the applicants, Shri Atre at the threshold of the hearing of this case, raised the question of limitation. According to him, the application was barred by limitation, prescribed under Section 21 of the

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Administrative Tribunals Act 1985. He submitted, that if at all, there was any cause of action for the applicants, it arose in 28.1.1984, when the Senior Superintendent RMS Central Sorting Division Bombay, communicated to them, on that date (Ex.F), the decision given by R.2 on 31.12.1983, rejecting the request of the applicants, to step up their pay on par with R.3. Despite this fact, Shri Atre contended, that the application was barred by limitation, as it was submitted to the Tribunal as late as on 28.10.1986 i.e. well over a period of 1 year and 9 months. The applicants are seen to have submitted Miscellaneous Petition No.107 of 1986 on 4.12.1986, requesting for condonation of delay, as some of the applicants were disturbed by rotational transfers and injustice caused to them as regards their pay, was aggravated on acceptance of the recommendations of the IVth Central Pay Commission by the Govt. of India, with effect from October, 1986. This petition dt. 4.12.1986 was apparently before the Tribunal on 16.1.1987, when the matter was heard by a Division Bench and Shri Atre had opposed admission of the application but nevertheless, that Bench admitted the application without reservation, ostensibly condoning the delay in submission of the application, taking into account the circumstances explained by the applicants in their aforesaid Misc. Petition No.107 of 1986. The preliminary objection raised by Shri Atre in regard to limitation therefore, stands negatived in the above context.

16. Shri Atre thereafter sought to repel the contention of the applicants, that the Senior Superintendent RMS concerned had contravened Rule 50 and Schedule No.6 ibid. in granting officiating promotions in short-term vacancies to R.3. He submitted, that R.3 was given the benefit of such promotion in short spells, not exceeding the maximum duration stipulated under the rules. Shri Atre could not however satisfactorily

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explain, the maximum duration of 120 days exceeded in some cases according to the details given in paras 5 and 6 supra. In particular, his attention was drawn to the vacancy of 269 days, arising out of deputation of one Shri P.B.Deo which was a long-term vacancy, and could have been easily foreseen by the administration and the benefit of officiating promotion in that vacancy, given to the eligible persons according to rules. Shri Atre could not convincingly elucidate the matter.

17. Besides, the applicants invited my attention to the O.M.dt.18.11.1971 (Annexure 3), from the Union Ministry of Finance (Dept.of Expenditure), wherein inter alia, it has been stated, that officiating promotions in vacancies of a duration of 45 days or less, may be granted, only in very exceptional circumstances, with the prior personal approval of the Secretary of the Ministry or the Head of the Department concerned. The applicants stated, that in the light of these instructions, the Senior Superintendent concerned had no authority to grant officiating promotion to R.3 in the vacancies referred to in paras 5 and 6 supra. Shri Atre could not effectively counter this submission. It is apparent, that the Senior Superintendent concerned had no competence to grant officiating promotion in the vacancies (in granting) to R.3.

18. When such an advantage conferred on R.3 was patently wrong and against the rules, it does not stand to reason, that the applicants should claim on that wrong premise, parity of pay with R.3, for one wrong does not justify another. The right course of action for the respondents in this case, would be to re-examine strictly, in accordance with the rules and delegation of powers prevalent at the relevant

time as to whether any of the eight applicants, was eligible to be considered for the vacancies in question, and if so, regulate their promotion accordingly and fix their pay notionally, by giving them incremental benefits, strictly according to the above rules, without however giving them arrears of salary on this account, as they did not actually shoulder responsibility in the higher post to which they would have been promoted at the material time.

19. The applicants relied on the following decisions of the Tribunals to help fortify their case. I have gone through each of these decisions but for the reasons stated against each of them, find that these decisions do not squarely apply to the case of the applicants.

(1) M.L.WARULA V. GOI & ORS (ATR 1986 CAT 161 DELHI)

In this case, the application was allowed with a direction, that the pay of the applicant be fixed under FR 27 at Rs.155/. per month w.e.f. 16.8.1962, as in the case of the juniors with all consequential benefits accruing therefrom.

The Tribunal did not however go into the question as to whether the pay of the person at serial nos 2 to 5 was correctly fixed or not, in the light of the Govt.orders in force, but denial of the same benefit to the applicant who was senior to them, was held as patently discriminatory and therefore not sustainable. That Tribunal was not shown, as to how in the case of other persons at serial nos 2,4,5 the anomaly arose as a result of direct application of FR 22C, in fixing the pay of the person at serial no.6 whereas such anomaly does not arise in the case of the petitioner.

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In the instant case, the anomaly in pay in regard to the applicants, has not arisen on account of fixation of pay of R.3 under FR 22(a) (i) or (ii), FR 22C or FR 27, as in WARULA'S case but owing to R.3 drawing a higher rate of pay from time to time, than the applicants, who were senior to him, by virtue of grant of advance increments, for officiating promotion in vacancies granted to him, in some cases, beyond the maximum period stipulated in the Rules, by an authority not competent to do so. WARULA'S case therefore is not identical on all fours with the present case and therefore is of little avail to the applicants

(ii) N.K.BHATT V. UOI & ORS (ATR 1987(1) CAT 572, AHMEDABAD)

This case relates to expunction of adverse remarks against the applicant and deemed confirmation of the applicant, as a result thereof and grant of consequential relief to him, under FR 27, in relation to his junior, who was made to officiate in a higher post, overlooking the applicant. This case therefore has no direct bearing on the instant case.

(iii) B.C.MATHUR V. UOI (ATR 1986(2)CAT 444 DELHI)

This case too has no direct relevance to the present case, the facts and circumstances being different, where the benefit of the concordance table was sought in regard to the respective pay scales in stepping up the pay scales of the applicants.

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(iv) G.K.PILLAI V. UOI (APPLN NO. 156/86 OF THE BOMBAY BENCH).

This case also is distinguishable, in that the applicant was on deputation outside his parent cadre and was given the benefit of promotion by the application of the "Next Below Rule" in respect of spells of 90 days and more, where officiating promotion was granted to the juniors.

20. The tabular statement in para 6 supra is self-explanatory. It shows that R-3 has in the post of ASRMS, enjoyed the benefit of officiating promotion as many as 7 times, over the maximum period of 40 days permissible for a short-term vacancy. In 3 spells out of these, he is seen to have enjoyed this benefit with over 100 days at a stretch and in one case ~~xxx~~ from 17.6.1979 to 11.5.1980, he has hit a record of 329 days at a stretch, falling short of a year by just 6 days.

21. Even in the post of IRMS, R-3 is seen to have enjoyed similar enormous benefit, falling short of 3 years at a stretch by barely 171 days, during the period from 1.8.1972 to 10.2.1974.

22. The applicants allege that grant of officiating promotion to R-3 in such a flagrant manner, over long spells, is violative of Rule 50 of the Posts and Telegraph Manual (PTM for short) Vol. IV (Ex.B) read with Schedule No.6 of the PTM Vol.III (Ex.I), which stipulates a maximum period of 120 days at a time for short-term vacancies and the manner in which, these should be filled in, as also the competence of the authority, who can fill in these posts.

23. From the foregoing, it is apparent, that there is something, which more than meets the eye, in the long spells of officiating promotion taken advantage of by R.3 both in the grade of IRMS as well as in that of ASRMS, leading to an irresistible impression, that R.3 manoeuvred to secure this undue advantage. It is ~~xxx~~ amazing that the Senior Superintendent concerned, glibly approved such promotion in flagrant violation of the rules, exceeding his authority.

24. In para 14 of their reply, the respondents state, that the applicants have not fulfilled the requisite conditions, to justify stepping up of their pay to that of R.3 their junior. They state, that the anomaly in pay between the applicants and R.3, has not arisen as a result of application of FR 22C. According to them, R.3 earned and drew increments by virtue of his officiating in the grade of IRMS, as also in that of ASRMS later and the pay of R.3 eventually came to be fixed on a higher rate as compared to the applicants, on his regular promotion to grade of ASRMS - vide Annexure I for details. The case of fixation of pay of R.3, according to Shri Atre, conforms to condition (c) stipulated in decision (10) of the Govt. of India under FR 22(C). The aforesaid decision (10) of the Govt. of India is reproduced below in toto.

"10. Removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior. (a) As a result of application of F.R.22-C. - In order to remove the anomaly of a Government Servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following condition, namely

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- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R. 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R.27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay.

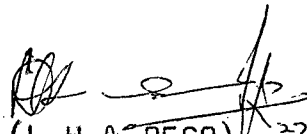
(G.I., M.F., G.M. No.F.2(78).E. III(A)/66, dated the 4th February, 1966.)"

25. The contention of Shri Atre would be valid if the officiating promotions were granted to R-3, strictly in accordance with Rule 50 and Schedule No.6 referred to earlier. However, this does not appear to be so, as explained in paras 20 and 22 supra. If this is the factual position, the situation could be remedied only by undoing the wrong, so that justice is done to the applicants. This can be done by ^{re} ~~serv~~^{ex}ing such of the vacancies, to which R-3 was not entitled under the rules and to deem the applicants to have been considered for the same, if they were eligible under the rules. The applicants however can by no reason, claim parity as regards pay with R-3, when the very basis on which that pay was determined was not in accordance with the Rules.

26. Taking into account all the above facts and circumstances, the following order is passed to meet the ends of justice.

O R D E R

- (1) The respondents will redetermine the pay of the applicants concerned, with effect from 11.10.1982, strictly in accordance with Rule 50 of the PTM Vol.IV read with Schedule No.6 of the PTM Vol.III, if they were eligible to be considered for such of the vacancies in question, in excess of the maximum period prescribed under the said rule, after granting them incremental benefit due to them according to the rules, in respect of posts of IRMS and ASRMS, as the case may be.
- (2) This pay however, would be notionally fixed without giving the benefit of arrears to the applicants concerned, since they did not actually shoulder higher responsibility in the posts in question and therefore they would be deemed to have held these posts notionally, till their pay is redetermined on the above lines. As a result, this may necessitate refixation of pay of R-3 in the respective posts.
- (3) The application is disposed of in the above terms, but with no order as to costs.


(L.H.A. REGO)
MEMBER (A).

27.8.1987