

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 280/96 AND 715/97.

Date of Decision: 28.04.1998.

Smt. Prabhavati Joshi & Another. — Applicants

Shri S.P. Kulkarni and Shri B.
Dattamoorthy, — Advocate for
Applicants

Versus

Union Of India & Others, — Respondent(s)

Shri S.S. Karkera for Shri P. M.
Pradhan, — Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri, P. P. Srivastava, Member (A).

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 280/96 AND 715/97.

Dated this Tuesday, the 28th day of April, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Smt. Prabhavati
W/o. Shri V. P. Joshi,
Residing at -
30/425, Lokmanya Nagar,
Navi Peth, Pune - 411 030.

Applicant in
O.A. No. 280/96

(By Advocate Shri S.P. Kulkarni)

V/s.

1. Union Of India through
The Director General (Posts),
Department of Posts (P.A.P),
Dak Bhawan, Parliament Street,
New Delhi - 110 001.

2. The Secretary,
Department of Posts,
Ministry of Communications,
Sanchar Bhawan, 20-Ashoka Rd.,
New Delhi - 110 001.

Respondents in
O.A. No. 280/96.

3. Chief PostMaster General,
Maharashtra Circle,
Old G.P.O. Bldg., 2nd Floor,
Near V.T. Fort, Bombay-1.

(By Advocate Shri S.S. Karkera for
Shri P. M. Pradhan).

ORIGINAL APPLICATION NO.: 715/97

Shri L. V. Jatkar,
S.S. POS (Retired). .. Applicant

Versus

1. Union Of India through
Director General (Posts),
Cum Secretary (Posts),
New Delhi.

2. Chief Postmaster General,
Mumbai.

3. Postmaster General,
Nagpur.

Respondents.

4. Director of Accounts
(Postal), Nagpur

(By Advocate Shri S.S. Karkera for
Shri P. M. Pradhan).

: OPEN COURT ORDER :

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

These are two applications filed by the respective applicants for fixation of pay. The respondents have filed reply opposing the O.A. Since common question arises for consideration, both the O.As. are heard and disposed of by this order. We have heard the Learned Counsels appearing on both sides.

2. In O.A. No. 280/96 the original applicant was Vishwanath P. Joshi, who has since died during the pendency of the O.A. and his wife, Smt. Prabhavati Joshi has come on record. The applicant's case is that, while he was working as Assistant Director of Postal Services he was getting a special pay of Rs. 200/- per month in addition to his scale of pay in the range of Rs. 2000-3500. Subsequently, he came to be promoted by the Senior Superintendent, Railway Mail Services, I.P.S. Group 'A' Post, but while fixing the pay of the applicant on promotion, the department has not taken into consideration the special pay of Rs. 200/- which the applicant was getting in the post of Assistant Director of Postal Services.

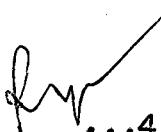
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Similarly, in the other case in O.A. No. 715/97, the applicant Shri L. V. Jatkar, who was working as Assistant Director of Postal Services, Nagpur from 04.03.1991 to 23.05.1994 he was getting a special pay of Rs. 200/- per month. But on his promotion to I.P.S. Group 'A' in the grade of Rs. 2200-4000 his pay was fixed without taking into account the special pay of Rs. 200/- per month which he was getting in the lower post.

That is why both the applicants have approached this Tribunal with these two applications praying for a direction to the respondents to fix the pay of the applicants, on promotion to I.P.S. Group 'A', by taking into account the special pay of Rs. 200/- per month, which they were drawing in the lower post and fixation of pension, etc.

Respondents have filed reply opposing the O.A. and further stating that the application is barred by limitation.

3. We need not consider the question on first principles since the matter is directly covered by a decision of this Tribunal in O.A. No. 107/88 and connected cases (Dr. Madhu Kherdey V/s. Union Of India & Others). In that case, by an order dated 17.03.1994 in identical cases this Tribunal has held that special pay in the lower post of Rs. 200/- must be taken into consideration for fixing the pay of the applicant in the higher post on


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promotion. It is brought to our notice that the respondents filed a S.L.P. in the Supreme Court challenging the judgement of this Tribunal dated 17.03.1994 but the S.L.P. came to be rejected. In our view, the said judgement dated 17.03.1994 squarely covers the point in dispute in the present two O.As. Following the said decision we hold that the respondents are bound to fix the pay of the applicants in the higher grade after taking into consideration the special pay of Rs. 200/- per month which they were getting in the lower post.

4. Now coming to the question of limitation we find that in the first case the applicant's cause of action arose in 1989 when he was promoted and in the second case the cause of action arose to the applicant when he was promoted in 1994. The first O.A. was filed in 1996 and the second O.A. was filed in 1997. In the facts and circumstances of the case, we feel that the applicants should be granted notional benefit from the date of their promotion but arrears to be restricted only to one year prior to the date of application.

5. In the result, both the O.As. are allowed as follows :-

- (i) In O.A. No. 280/96 the applicant is entitled to notional fixation of pay from 03.10.1989 in the light of the observations made in this order but however, the arrears should be restricted to a

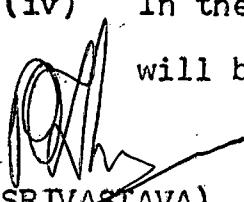
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period of one year ^{from} to the date of filing of the O.A., which was filed on 16.02.1996. The applicant's pension and other retirement benefits shall also be refixed in the light of the observations made in this order.

(ii) In O.A. No. 715/97, the applicant is entitled to notional fixation of pay from 24th May, 1994 in the light of the observations made in this order but however, the arrears should be restricted to a period of one year prior to the date of filing of the O.A. Which was filed on 07.08.1997. The applicant's pension and other retirement benefits shall also be refixed in the light of the observations made in this order.

(iii) The respondents are granted four months time from the date of receipt of this order to comply with the same.

(iv) In the circumstances of the case, there will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

M.P. No. 581/98
for extension
of time to
implement
the judgment
dtd. 23/4/98,
heard on 18.9.98

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1119 Dated: 18.9.98 (37)

Sh. S.P. Kalbavni, Counsel for the
applicant. Sh. S.S. Karve for Sh. P.M.
Pradhan, Counsel for the respondents.
Heard both sides.

Respondents have filed M.P. 581/98
for extension of time to implement
the order of the Tribunal. M.P. is
allowed by extending the time by
three months from today to comply
with the order of the Tribunal.
M.P. 581/98 stands disposed of.

3/9/98
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18.9.98
(D.S. Banerji)
MIA)

for
(R.G. Vaidyanatha)
VC

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dd. 18.9.98
Order/Judgment despatched
to Appellants Legal Aid (P)
on 7/10/98

18.9.98