

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 345 of 1996.

Date of Decision: 17/4/01.

Shri Narain Dharma Dandge, Applicant.

Shri D. V. Gangal, Advocate for
Applicant.

Versus

Union of India & Others, Respondent(s)

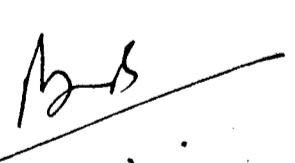
Shri P. M. Pradhan, Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. N. Bahadur, Member (A).

Hon'ble Shri. S. L. Jain, Member (J).

- (1) To be referred to the Reporter or not? X
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X
- (3) Library. X


(B. N. BAHADUR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 345 of 1996.

Dated this Tuesday the 17th day of April, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

Narain Dharma Dandge,
Assistant Post Master,
Head Post Office, Bhusawal.

Residing at - Shivajinagar,
Varangaon - 425 203.

... Applicant

(By Advocate Shri D. V. Gangal)

VERSUS

1. The Union of India through
The Chief Postmaster General,
G.P.O., Bombay V.T.
2. The Postmaster General,
Aurangabad Region,
Aurangabad.
3. The Superintendent of Post Office
Bhusawal Division,
Bhusawal. ... Respondents.

(By Advocate Shri P. M. Pradhan)

ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri Narain Dharma Dandge, seeking the relief from this Tribunal, for refixation of his pay on par with his junior, Shri K. C. Patil, with effect from 01.02.1984. Consequential

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benefits are also sought in terms of arrears, pensionary and retirement benefits, etc. Interest and Costs are also sought.

2. The facts of the case brought forth by the Applicant are that he was appointed as Postal Assistant on 28.04.1961, made permanent on 01.03.1963, passed the Telegraphic (English Course) on 01.05.1967 and was provided the higher pay scale of Rs. 425-640 under the One Time Bound Promotion Scheme on 30.11.1983. The Applicant further states that his pay was fixed under F.R. 22-C at Rs. 485/- per month on 30.11.1983 and was given the next increment on 01.01.1984 when his pay was fixed at Rs. 500/-. The Applicant contends that one Shri K. C. Patil, who is similarly placed as the Applicant (in the manner described in para 4.3) was drawing the same pay as the Applicant on 29.11.1983 i.e. Rs. 468/- per month. It is stated that Shri Patil's pay was fixed at Rs. 500/- on 01.02.1984 (due to fixation under F.R. 22 (A)(1) and refixation under F.R. 22-C). However, the Applicant came to draw Rs. 500/- from 01.11.1984 i.e. several months later. It is his grievance that this anomaly, whereby the Applicant drew less pay than Shri Patil, has continued ever since 01.02.1984.

3. In the further portion of the O.A. the Applicant

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describes how the pay scales/fixation of the Applicant and Shri Patil have progressed, and has annexed a statement at Annexure A-2 in this regard. The consequential grievance in the fixation of pay on promotion to H.S.G.-II is also highlighted in that, the Applicant's pay has been fixed at Rs. 1,900/- on 01.11.1991 and that of Shri Patil fixed at Rs. 1,950/- on 01.02.1992. The position of rules is discussed in the further part of the O.A.

4. The Respondents in the case have filed a Written Statement, resisting the claim of the Applicant and making the point first that Shri K. C. Patil was drawing more pay in view of the fact that he passed the Telegraphic Course and got the benefit of two advance increments at the rate of Rs. 12/- and Rs. 15/- with effect from 01.10.1978 and 03.07.1978 whereas the Applicant had not passed the said course. It is contended that there is no nexus for stepping up of the pay. The law point is also taken to the effect that since the matter pertains to 1978, this Tribunal has no jurisdiction in the matter. The basic contentions made are expounded in the further part of the Written Statement.

5. The Respondents also state that the pay of the Applicant was fixed at Rs. 648/- on 29.11.1983 and the date of increment of Applicant falls in November and of Shri Patil in February. Options given by the officers have been taken into account for pay fixation and these facts are relevant according to Respondents.



6. We have seen the papers in the case, including the statements produced by both sides during arguments, recapitulating the facts in the O.A. in statement form, for the sake of convenience. The arguments made on behalf of Learned Counsels have been taken into account.

7. Learned Counsel for the Applicant, Shri D.V. Gangal, argued the case strenuously, mainly by taking us over the various dates, pay stages and other factual details, as presented in the O.A., as also comparative statement produced during arguments on behalf of both sides. It was stated that both persons came to be appointed on the same scale, and that it was on 30.11.1983 that the figures of pay became different. The Learned Counsel then drew our attention to F.R. 22 (C) to argue his case. Attention was also drawn to page 5 of the rejoinder where an extract of this F.R. is annexed. It was argued by the Learned Counsel for the Applicant that Condition No. 1 and 2 stipulated there were satisfied. It was argued that the Applicant had passed his examination earlier and that the present action amounted to a punishment and that the Applicant has come to face hardship because of the interpretation of the Rules being made.

8. The Learned Counsel for the Respondents rested his case on the Written Statement and made the point that the Applicant had exercised certain options and once an option is exercised, the implementation of that option are obviously deemed to be known to the Applicant and any adverse effect that comes about due to such an option being exercised cannot later be agitated.



9. This is a case where there is no law point involved as such. It is a case of fixation of pay at a distant date, which has now come to affect the Applicant in a cascading manner in a continuing/higher pay scale. The matter is, therefore, to be decided not with reference to any law point or any case law on the subject but on the facts that have been presented to us and obviously, with reference to the rules relating to fixation, etc.

10. We have carefully looked at these facts in the above light and have also considered the arguments made by the Learned Counsels on both sides. We have seen the papers in the case.

11. The first point that emerges is that the junior of the Applicant, Shri Patil, is stated to be drawing more pay due to the fact that he passed the English/Hindi Telegraphic Course and has got the benefit of two advance increments. It is also stated in para 3 of the Written Statement submitted by the Respondents that the Applicant could not pass the said Telegraphic Course and as such, the question of giving him the benefit of fixation does not arise. In this regard, we have seen the rejoinder of the Applicant also where it is stated that the anomaly has arisen on 30.11.1983 and hence "passing of Hindi Telegraphic on 03.11.1985 has no relevance". We do not find any rebuttal of the facts regarding his not passing the relevant course/s as pointed out by the Respondents in the Written Statement.

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12. In the rejoinder as well as on the arguments made on behalf of the Applicant, the Applicant has stated that the date of 30.11.1983 is important. It is seen by the statement that there is indeed a difference of Rs. 2/- in the salary on 29.11.1983 between the Applicant and Shri Patil in as much as the Applicant is shown as drawing the pay of Rs. 468/- and Shri Patil as Rs. 470/-, as gleaned from the table presented at the time of argument by the Respondents and signed by the Superintendent of Post Office, Bhusawal Division. This statement was relied upon by both sides during argument. Now it is stated against the entry of Rs. 470/- that this is because of F.R. 22 (a) (i). On a perusal of the same statement, we find that in August, 1978, indeed Shri Patil has stolen a march over the Applicant due to Advance Increment and that this has come about only because of the increment at the relevant time. It is a well established principle that in case certain increments are given due to passing of examination, etc. to a junior, the stepping up cannot be claimed by the senior. This appears to be the case in the matter before us. We do not subscribe to the contention of the Applicant that the issue of stepping up over Shri Patil as a result of passing Hindi and English Telegraphic Course is not relevant.

13. Once it is difficult to establish as to how the Applicant is to be provided stepping up at the initial stages, the later differences in the pay are the corollary of the earlier gaps and cannot be corrected by judicial determination.

14. In the circumstances of the facts before us, it is difficult to provide the relief that is sought by the Applicant. The O.A. is, therefore, dismissed with no order as to costs.

S.L.JAIN
(S.L. JAIN)
MEMBER (J).

B.N.BAHADUR

17-4-01
(B. N. BAHADUR)
MEMBER (A).

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