

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.808/96 & O.A. 809/96

FRIDAY this the 4th day of APRIL, 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

(1) D.M.Vidwans,
7, Lavira Park Lane,
Near Karve Statue,
Near Bus Terminus,
Kothrud,
Pune - 411 029

.. Applicant in
O.A. 808/96

(2) Vidyadhar Vasudeo Apte,
101-103, Trimbak Ashish
P&T Employees Co-op Hsg.Scty.,
Plot No;26,
Manpada P.O.,
Dombivli - 421 204

.. Applicant in
O.A. 809/96

By Advocate Shri B.Dattamoorthy

-versus-

(1) Union of India
through
Director General,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.

(2) Chief Postmaster General,
Maharashtra Circle,
Old G.P.O Bldg., IInd Floor,
Mumbai - 400 001.

By Advocate Shri S.S.Karkera

.. Respondents

--: O R D E R :- (ORAL)

(Per M.R.Kolhatkar, Member(A))

As in these two OAs the facts are identical and the relief is claimed based on the judgment of this Tribunal in O.A. No.107/88 decided on 17-3-1994 (Dr.Madhu Kherdey vs. Director of Accounts(Postal), Nagpur,) the same is being disposed of by common judgment. The material dates to the extent necessary are referred ^{to} at appropriate place.

2. The applicant in O.A. 808/96 worked as Asstt. Director, Postal Service for a period of 3 years, 7 months and 2 days as per details given below :

Asstt. Director, Postal Life Insurance	1-1-83 to 10-4-83
Asstt. Director, Wireless	11-4-83 to 30-4-83
Asstt. Director, Accounts	1-5-83 to 31-5-83
Asstt. Director, Postal Life Insurance	1-6-83 to 10-5-85
Asstt. Director, Regional Office, Nagpur	1-10-85 to 24-12-86
Period worked	3yrs 7 months 2 days

The said post carried a special pay of Rs.100/- per month upto 31-12-1985 and the special pay was enhanced to Rs.200/- per month from 1-1-1986. On his promotion to Junior Time Scale of the Indian Postal Service w.e.f. 26-12-1986 this special pay, however, was not taken into account for fixation of his pay. The applicant has retired on 31-3-1989. His grievance is that the special pay referred to above, ought to have been taken into account for fixation of his pay and consequential fixation of his pension and the same has not been done. According to the applicant his case is fully covered by the decision of this Tribunal in O.A. 107/88 referred to above and he is entitled to the relief of refixation of his pay and pension with retrospective effect even at this stage. O.A. has been filed on 12-8-1996.

3. In O.A. 809/96 the facts are that the applicant worked as Asstt. Director Postal Services in Circle Office from 4-6-1982 to 29-6-1986 i.e. for a total period of 4 years and 26 days. This post carried a special pay of Rs.100/- per month upto 31-12-1985 and Rs.200/- per month from 1-1-86.

Applicant was promoted to Junior Time Scale of the Indian Postal Service in the scale of Rs.2200/- to Rs.4000/- on 30-6-1986. He retired on 30-9-1988.

The grievance of the applicant is that the special pay referred to above ^{was} not taken into account for the pay fixation at the time his promotion

to the post of IPS which is also not reflected in his pension fixation. The applicant therefore claims relief of retrospective and fixation of pay ~~re~~-fixation of pension after taking into account the element of special pay.

O.A. has been filed on 12-8-1996. In both the cases the representations of the applicants based on the decision of this Tribunal in O.A. 107/88 has been turned down on the ground that the request is not governed by the existing rules on the subject.

4. I may first of all consider as to what was decided by this Tribunal in O.A.107/88. In that case the Tribunal found that the special pay introduced in 1950 was continued by Revised Pay Rules, 1960 and was in lieu of higher scale of pay. The Tribunal referred to the decision of the Jabalpur Bench of this Tribunal in Tr.A, 2/86 decided on 8-10-1986 in V.K.Dhir vs. U.O.I. The Tribunal rejected the contention of the respondents that special pay was given on account of special responsibility. It is also noted ^{of the Tribunal} the judgment of the Hyderabad Bench in O.A. 354/89 delivered on 14-3-1990 and considered the same as per-incurium especially because the judgment of the Jabalpur Bench ^{judgment} was a division bench and Jabalpur Bench decision was backed by reasons whereas the decision of the Hyderabad Bench did not carry conviction. On enquiry we are given to understand that the official

respondents had gone in SLP against the judgment in O.A.
107/88
/ to the Hon'ble Supreme Court but the same was
dismissed. The particulars, however, are not readily
available.

5. The learned counsel for the respondents has contended that both the OAs are barred by limitation. The cause of action if any arose to the applicant at the time they were promoted to the IPS in 1986 whereas the OAs have been filed in 1996 and the same are hopelessly barred by limitation. Counsel for the applicant however invites my attention to the judgment of the Supreme Court in M.R.Gupta vs. U.O.I. & Ors., 1995(2)S.C.S.L.J 337. In para-6 of the judgment the Hon'ble Supreme Court observed that "the claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules." I am inclined to agree with the ratio of M.R.Gupta's case referred to above. The present O.A. cannot be dismissed at the threshold on the ground of limitation and I am required to consider it on merits.

6. Learned counsel for the applicant has also invited my attention to the Full Bench Judgment of the Tribunal in C.S.Elias Ahmed and Ors. Vs. U.O.I. & Ors., reported at (1991-1993) A.T.F.B.J. 45/ (Kalra's edn.) In this judgment the Tribunal

quoted the relevant observation of the Tribunal rendered in O.A. 322/88 and 488/87(Madras Bench) that "it is a well established principle that any benefit accruing out of a judicial decision, has to be uniformly made applicable even to those employees who have not chosen to approach the Tribunal." In C.R.Rangadhamaiah and Ors. vs. Chairman, Railway Board, New Delhi & Ors., (1994)27 ATC(FB) 129 the Full Bench spelt out the implications of the judgment in rem, relying on definitions given in Black's Law Dictionary (5th Ed.)^{and} Halsbury's Laws of England, 4th Ed. It was noted in para 13 of the judgment that Judgment in rem is: "An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal having competent authority." In my view there is no doubt that the judgment of this Tribunal in O.A. 107/88 is a Judgment in Rem in the sense it lays down that the special pay drawn by Asstt. Director Postal Service is in-lieu of higher pay and it is not special pay attached to the post because of arduous nature of duties.

7. The next contention of the counsel for the respondents is that so far as the applicant in O.A. 808/96 is concerned, the minimum period of three years is not fulfilled inasmuch as the applicant having worked in a position carrying special pay for a period of two years four months and 7 days was transferred to Buldhana and thereafter he was again re-transferred to Nagpur in a position carrying special pay where he worked for about one year two months. According to him, therefore applicant in O.A.808/96 ~~xxxxxx~~ does not fulfill the condition of having worked for three years continuously

for his special pay being treated as part of pay. To this, counsel for the applicant has invited my attention to Appendix-8 of Swamy's Compilation of FR & SR and in particular Govt. of India order No.28 and note (3) therein reproduced at page 542 which reads as below :

"Note 3. In partial modification of the provisions of para (a)(ii) above, it has been decided that even in cases where the special pay in lieu of a higher scale of pay has been drawn in the same post for broken periods, the benefit of special pay being treated as part of basic pay on promotion to a higher post will be admissible provided the total of the broken periods put together is not less than three years."

It would appear that if the spell worked by the applicant in O.A.808/96 first in Bombay and thereafter in Nagpur is taken into account the same works out to more than three years and is thus covered by note-3 Govt. of India order No.28.

8. I am, therefore, of the view that the applicants in these two cases are entitled to the relief sought by them. Counsel for the respondents would argue that the reliefs are vague inasmuch as they entirely rely on the reliefs analogous to those of applicant in O.A.107/88. That may be so but these relief are required to be read along with the basic representations made by the applicants which have been rejected and in the context of the facts which have been noticed above. This technical contention of the counsel for the respondent is rejected.

9. Counsel for the respondent further argues that even assuming that the delay is condoned and pay fixation is allowed, pension fixation cannot be permitted in view of statutory provisions of Rule 33 & 34

of CCS Pension Rules. Rule 33 refers to Emoluments and Rule 34 refers to Average Emoluments. In my view this objection is of no consequence because in terms of the judgment the emoluments drawn by the applicants have to be recalculated and they are required to be treated as emoluments for purposes of both Rules 33 and 34.

10. In the light of above discussion I am inclined to allow the QAs and dispose of the same by passing the following order :

ORDER

- (i) The pay fixation of Shri D.M.Vidwans applicant in O.A. 808/96 has to be made w.e.f. 26-12-1986 taking into account the special pay drawn by him in earlier position of ADG HQ.
- (ii) The pay fixation of Shri V.V.Apte applicant in O.A. 809/96 be made w.e.f. the date of promotion viz. 30-6-1986
- (iii) On the basis of this pay fixation the fixation of pension may also be done from the date of superannuation viz. 31-3-89 and 30-9-1988 respectively.
- (iv) So far as payment of arrears are concerned the same may be confined to one year prior to the date of filing of the respective QAs;
- (v) QAs are disposed of in these terms with no order as to costs.

M

MEMBER(A)

Signature 8/1/86