

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 259 /1996

Date of Decision: 12.9.1996

N.S.Shende

Petitioner/s

Shri S.P.Kulkarni

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri S.S.Karkera for Sh.P.M.Pradhan

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri

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

(2) Whether it needs to be circulated to other Benches of the Tribunal?


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 259/96

Thursday this the 12th day of September, 1996

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

Namdeo Sitaramji Shende
Sub-Divisional Inspector (Postal),
Mahad.
R/at Near Post Office,
At P.O. Mangaon,
Dist. Raigad.

By Advocate Shri S.P.Kulkarni ... Applicant

V/S.

Union of India through

1. Chief Post Master General,
Maharashtra Circle,
Old.G.P.O.Building, 2nd floor,
Near Mumbai V.T., Mumbai.
2. Director General (Posts),
(Ex-Officio Secretary,
Department of Posts),
Ministry of Communications,
20, Ashoka Road, Sanchar Bhavan,
New Delhi.
3. Director of Accounts (Postal),
Nagpur.
4. Superintendent of Post Offices,
Raigad Division,
Raigad, At Alibag, Dist.Raigad.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan, C.G.S.C.

... Respondents

ORDER (ORAL)

(Per: P.P.Srivastava, Member (A))

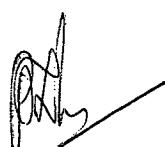
The applicant was appointed in the Postal Department in 1973 in the scale of Rs.260-480. In 1989 the applicant was placed in Grade Rs.1400-2300 under the One Time Bound Promotion Scheme although he continued to work as Clerk. The applicant thereafter appeared in the selection for the post of Inspector of Post Offices and after successfully passing the examination was posted as IPO on 20.4.1991 in the

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Grade of Rs.1400-2300. The applicant was fixed at the rate of Rs.1600/- on his promotion after fixing his pay under F.R. 22-1(a)(i). The respondents thereafter continued to pay him the pay accordingly but changed his pay in terms of letter of the department dated 25.7.1995 at page 32. According to this letter, the department refixed the pay of the applicant at Rs.1520/- from 20.4.1991. This also entailed recovery of Rs.7069/-

2. Learned Counsel for the applicant has argued that the fixation done previously was correct and the reduction in fixation as done in terms of letter dated 28.7.1995 is wrong.

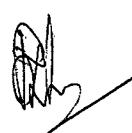
3. The Ld. Counsel for the applicant has further argued that the applicant although was working in the same Grade Rs.1400-2300 as LSG but on promotion to IPO in the same Grade Rs.1400-2300, he was required to hold ~~a~~ post of higher responsibilities. The Ld. Counsel for the applicant has further argued that all the conditions which are laid down for fixation under F.R.22-1(a)(i) are satisfied in his case in as much as that the applicant was holding a substantive post and he was promoted in officiating capacity as IPO and the post to which he was promoted carries duties and responsibilities higher than those attached to the post other than held by him.



4. Learned Counsel for the respondents has argued that the applicant was promoted under One Time Bound Promotion Scheme and was placed in the Grade of Rs.1400-2300 from the Grade of Rs.975-1660 in 1989 and at that time he was given fixation under F.R.22-1(a)(i) and his pay was enhanced in terms of that rule. Now since the applicant has been promoted as IPO but the Grade to which he has been promoted continues to remain the same and therefore the applicant is not entitled to be fixed again under FR.22-1(a)(i) as it will amount to double fixation in the same Grade which is not permitted.

5. Learned Counsel for the respondents relied upon the Circular of the department placed at page 20 of the OA, which is a letter issued by the Govt. of India, Department of Posts, New Delhi No.2-20/95-PAP, dated 31.5.1995 which was circulated on 24.7.1995. The Learned Counsel for the respondents has argued that in this clarification the administration has specifically mentioned that in terms of the Ministry of Personnel, public grievances and pension (Dept. of Personal and Training) notification No. I-10/89-Estt. (Pay) dated 30.8.1989, it is clearly provided that :-

"for the purpose of FR.22, the appointment/posting shall not be deemed to involve the assumption of duties and responsibilities of greater importance of the post to which it is made is on the same scale as the post, other than a tenure post, which the Government servants holds on a regular basis at the time of his promotion or appointment or at a scale of pay identical with it."



In view of this clarification by the Govt. of India Circular quoted above, the applicant could not be entitled to fixation of pay under F.R.22-1(a)(i) as the scale of pay of the post which the applicant was holding and the scale of pay to which he has been promoted are identical and therefore it will be assumed that the post will not carry higher duties and responsibilities.

6. In my opinion, this assumption on the part of the respondent administration that if the scales of posts which the applicant was holding before promotion and the scale of post to which he was promoted are identical then it will be the post with the same responsibility is not correct. The duties and responsibilities are depending on the post and not on the scale. It has amply shown that the duties and responsibilities for the post of IPO are higher than the duties and responsibilities for the post of LSG. The Grade of LSG before the 4th Pay Commission i.e. before 1.1.1986 was Rs.425-640 and the Grade of Inspector of Post Office was Rs.425-700 before 1.1.1986. The promotion from LSG to the IPO entailed fixation under F.R.22(c) which is now F.R. 22-1(a)(i). After the 4th Pay Commission, i.e. 1.1.1986 the scale of pay for both LSG as well as IPO is Rs.1400-2300 but the channel of promotion continues to be same as was before the 4th Pay Commission, i.e. 1.1.1986. As there is no change in the channel of promotion and the responsibilities of the work being done by LSG and IPO, the



only fact that grades are similar cannot result into assumption that there is no higher responsibility when a person is promoted from LSG to IPO.

7. The same issue was also before the Tribunal in a case OA.NO. 2221/89 Ramesh Chand vs. Union of India & Anr. decided on 5.1.1993, wherein also the Principal Bench has held that :-

" It is the responsibility attached to the post which is material and crucial in case of promotion where the posts of feeder category and the post to which promotion is made carry identical scale of pay. In the instant case the post of Inspector of Post Offices carries responsibilities and duties of greater importance than the post of LSG although both the posts carry identical scale of pay. In view of this the petitioner, on promotion to the post of Inspector of Post Offices, would be entitled to fixation of pay with the benefit of F.R.22-C now renumbered as F.R.22(1)(a)(i)."

8. In view of this, I hold that the clarification issued by the Department at page 20, No.2-20/95-PAP circulated on 24.7.1995 is against the provisions of Fundamental rule and is quashed. The letter dated 28.7.1995 at page 32 is also quashed. The applicant would be entitled to the fixation of pay which he has already been granted by the administration previously wherein his pay was fixed at the stage of Rs.1600/- from in the post of IPO. 20.4.1991. The OA. is disposed of with the above directions. There will be no order as to costs.



(P.P. SRIVASTAVA)

MEMBER (A)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO. 02/97 in OA.NO. 259/96

Dated this the 12th day of February 1997

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

Union of India & Ors.

... Applicants (Orig.Respds)

v/s.

Namdeo Sitaram Shende

... Respondents (Ori.Applic)

Tribunal's Order by Circulation

In this Review Petition the petitioners who are the respondents in the original OA, have sought review of the judgement on the ground that the clarification issued by department vide their Circular No. 2-20/95-PAP dated 24.7.1995 is based on F.R. 22(iii). This clause is part of F.R. 22(iii) and is in replacement of old F.R. 30 and therefore the fixation of pay under F.R. 22 is required to be fixed by taking the provisions under F.R. 22 (iii) also into account. The F.R. 22 (III) reads as under :-

" (III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith."

2. The basic assumption in this F.R. which was also produced in Circular dated 24.7.1995 is that if the scales of posts which the applicant was holding before promotion and the scale to which he was promoted are identical, then it will be treated as posts with the same responsibility. This aspect has been discussed in Para 6 of the judgement and it is categorically held that this assumption is not correct.

