

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 20/99

Date of Decision: 2/8/99

shri A. W. Joshi

Applicant.

shri B. Dattamoorthy

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

shri V. S. Masurkar

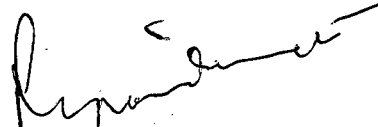
Advocate for
Respondent(s)

CORAM:

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

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

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


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO;20/99.

DATED THE 2nd DAY OF AUGUST,99.

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

HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

A.W.Joshi,
Retired, senior Superintendent of Post Offices,
Pune City East Division,
Pune,
residing at 3/16, Anandnagar,
Paud Road, Kothrad,
Pune-411 029. ... Applicant.

By Advocate Shri B.Dattamoorthy.

v/s.

1. Union of India,
Through Director General,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.
2. Chief Postmaster General,
Maharashtra Circle, II floor,
G.F.O.Building,
Mumbai - 400 001. ... Respondents.

By Advocate Shri V.S.Masurkar

I ORDER I I ORAL I

I Per Shri R.G.Vaidyanatha, Vice Chairman I

In this application, the applicant is seeking proper fixation of pay and consequential enhancement in the Pension and other consequential benefits. Respondents have filed reply opposing the application. After hearing both counsel, we are disposing of the OA at Admission stage since point involved is short.

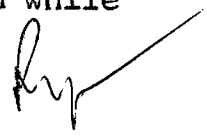
2. The applicant retired as senior Superintendent of Post Offices on 14/6/90 (taking voluntary retirement). He was earlier working as a Group 'B' Officer and came to be promoted to Officer Group 'A' from 10/7/86. But



while working as Group 'B' Officer, he was getting special pay, the applicant's grievance is that the said special pay has not been included while fixation of his pay on promotion to Group 'A' post and hence the applicant has approached this Tribunal for the reliefs mentioned above.

3. The respondents in their reply have mainly contended that the application is barred by limitation, delay and laches. That though the applicant retired on 14/6/90 he never raised this matter except by making a representation as late as on 29/9/98. It is admitted in some other earlier OAs, the Tribunal had held that special pay should be taken into consideration for fixing of pay in the promotional post and that the applicant is not entitled to the reliefs prayed for in particular it is contended that the applicant is not entitled to get the benefit of special pay while fixation of his pay on promotion.

4. As far as the point on merits is concerned, we need not consider the questions on First principles since the matter is covered by number of decisions of this Tribunal. In particular we have a judgement of Division Bench of this Tribunal dated 17/3/94 (at page-15 of the paperbook) which is an identical case pertaining to postal department where it has been held that special pay of Rs.200/- per month in the ~~feeder~~ cadre must be taken into consideration on promotion to higher grade. Same view has been taken in a judgement dated 28/4/98 in OA-280/98 by a Division Bench to which one of us was a party (R.G.Vaidyanatha) where also it has been held that the special pay should be taken into consideration while



fixing pay in the promotion post and consequent fixation of pension. Therefore, on merits the applicant is entitled to the prayer of getting the benefit of special pay for fixation of pay on promotion and subsequently while fixing his pension.

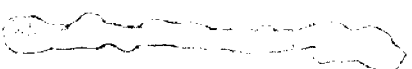
5. But the applicant must satisfy the Court about the limitation. The learned counsel for respondents contended that the original cause of action arose in 1986 and subsequently in 1990 when applicant retired by taking voluntary retirement and therefore the claim cannot be pressed at the far end of 1998. He has also referred to number of decisions of Supreme Court on the point that limitation cannot be extended merely on the ground that there are judgements of Courts/Tribunals subsequently. On this principle, there cannot be any dispute at all. The decisions referred to in para-5 of the reply clearly says that the limitation mentioned under section-21 of Administrative Tribunals Act is very strict and it cannot be extended merely on the ground of some subsequent judgement of Tribunals or Courts. But in our view, it is not a case where section-21 of Administrative Tribunals Act is applicable in view of M.R.Gupta's case (1995(31) ATC-186) fixation of pay is a continuing cause of action and same principle can be extended to fixation of pension therefore fixation of pension being a continuous cause of action. Thus, there is no question of section-21 of ATA being applied in this case. In our view, the claim being based on a running cause of action as held by Supreme Court in MR Gupta's case, then there is no difficulty to hold that applicant can maintain the present



application for fixation of proper pension. In MR Gupta's case, no doubt in the end the Supreme Court has observed that the question of limitation will have to be considered regarding arrears and decided in accordance with law. Therefore applying MR Gupta's case we feel that fixation of proper pension cannot be barred by limitation since it is a running or continuing cause of action.

6. In view of above reasoning we hold that the applicant's pay should be fixed notionally from 10/7/86 after taking into consideration special pay of Rs.200/- drawn in the lower post. After fixing the pay of the applicant notionally on 10/7/86, the pension should be notionally fixed on the same line as on 14/6/90, when the applicant retired from service by taking voluntary retirement. On the same basis, the pension should be notionally fixed from time to time and it should be fixed as on 1/1/99. Though the OA was filed on 18/12/98, for the purpose of calculation where fixation of pay is concerned, the date be taken as 1/1/99. In the fact and circumstances of the case, particularly since it is a case of voluntary retirement and representation was made only in September, 98 we are not inclined to grant any pay or arrears of pay and pension to applicant. We are granting notional fixation of pay to applicant from 10/7/86 and notional fixation of pension upto 1/1/99, the respondents shall pay the pension prospectively from 1/1/99 and onwards.

7. In the result, the OA is disposed of at the admission stage with direction to respondents to fix the pension of the applicant as on 1/1/99 in the light of the



observations mentioned in para-6 above and it is made clear that no arrears shall be paid up to 1/1/99. and benefit is granted only prospectively from 1/1/99. The respondents should comply with this order within four months from the date of receipt of copy of this order. In the facts and circumstances of the case, there will be no orders as to costs.

B. N. Bahadur

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

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

abp.