

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.955/99.

Monday, this the 24th day of April, 2000.

Coram: Hon'ble Shri Justice Ashok Agarwal, Chairman.

R.D.Jadhav,
C-34/3,
Sahar P & T Colony,
Road P.O. Mumbai,
Mumbai - 400 099.
(By Advocate Mr.S.P.Kulkarni) ... Applicant.

Vs.

1. Union of India through
Assistant Head Record Officer,
(R.M.S.) Byculla Sorting,
Jacob Circle, At P.O. Mumbai
through Head Record Officer (RMS),
(Accounts) Mumbai Sorting Division,
G.P.O., New Annexe, 2nd floor, Fort,
G.P.O. Building Campus, Near C.S.T.
C. Rly.
Mumbai - 400 001.
2. Senior Superintendent of R.M.S.,
Mumbai Sorting Division,
Development Bank Building,
near Phule Market (Crawford),
Mumbai - 400 001.
3. Director of Postal Services in
the Postmaster General (City),
Mumbai Region, through office of
Chief Postmaster General,
Mumbai, Old G.P.O. Building, Fort,
At P.O. Mumbai - 400 001.
4. Director of Accounts (Postal)
At P.O. Nagpur - 440 001.
(By Advocate Mr.V.S.Masurkar) ... Respondents.

ORDER (ORAL)

(Per Shri Justice Ashok Agarwal, Chairman)

By the present OA, the applicant impugns an order being
T.C.M. No.29 dt. 8.10.1999 which directs recovery of Rs.45,292/-
from the ^{him} applicant. The aforesaid order is annexed at

Annexure - B to the O.A. By the aforesaid order, payments made to the applicant towards his salary for the period January, 1990 to September, 1999 are sought to be recovered on the ground that excess payment has been made over to the applicant.

2. Applicant entered the Postal Service in Railway Mail Service (R.M.S.) as Sorter on 6.1.1976 in the scale of Rs.975-1600 (old scale). Applicant was appointed as Inspector of ^{of periods} Railway Mail Service (IRM) for several spells, prior to the year 1990. He was drawing pay at Rs.1480/- in the scale of Rs.1400-2300 as on 1.1.1990. While so officiating as IRM, the applicant was regularly promoted as Lower Grade Supervisor in the scale of Rs.1400-2300 vide order dt. 23.1.1990. Applicant was accordingly promoted as LSG while he was officiating as IRM. Applicant has been drawing a sum of Rs.1,480/- in the LSG post. By the impugned order, it is sought to be suggested that the applicant is not entitled to draw the aforesaid salary of Rs.1,480/- during the short spells he was officiating as IRM. The aforesaid order of recovery as earlier stated is impugned in the present O.A.

3. The controversy raised in the present OA, in my view, is covered by a decision of a Full Bench of this Tribunal in the case of Bajrang Sitaram Wanjale and Ors. Vs. union of India & Ors. (1994-1996 A.T. Full Bench Judgments 13), wherein it has been held that when a government servant has been promoted or appointed to another post carrying duties and responsibilities of greater importance than those attached to the post actually held by him in a substantive, temporary or officiating capacity on the date of his promotion or appointment, his initial pay has to be fixed taking into account his pay in the post actually held by him and there is no scope for taking into account the presumptive

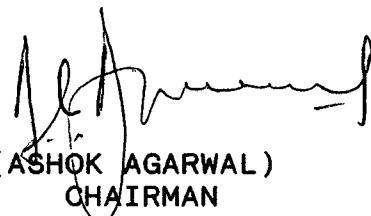
...3.



pay of a post which he did not hold on the date of promotion or appointment.

4. Applicant in the instant case, ^{who} has actually held the post of IRM though temporarily and on officiating basis during frequent spells, is accordingly entitled to be paid the salary which is attached to the said promotional post.

5. Present case is also covered by a decision of this Tribunal in the case of Vinayal Narayan Kulkarni Vs. Union of India & Ors. being O.A. 487/97 and H.N.Saste Vs. Union of India and Ors. being O.A. 321/97 decided by a Division Bench of this Tribunal Shri D.S.Baweja, Member (A) and Shri S.L.Jain, Member(J) on 3.8.1999, wherein the recovery sought to be made from the applicants in the aforesaid OAs in similar circumstances has been quashed and set aside. Aforesaid decisions of the Division Bench, as also the Full Bench is binding upon me. Following the ratio laid down in the aforesaid decisions, I hold that the impugned order T.C.M. No.29 dt. 8.10.1999 at Annexure - B is liable to be quashed and set aside. I direct accordingly. The recovery which has already been made from the applicant is directed to be refunded back to him. Present O.A. is accordingly allowed. However, in the facts and circumstances of the case, there will be no order as to costs.



(ASHOK AGARWAL)
CHAIRMAN

B.