

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 112 of 2000

Dated this 02nd the day of May, 2003

Balkrishna Udebhanji Narnaware

Advocate Shri S.P.Kulkarni

- For the Applicants

VERSUS

Union of India & others

Shri V.S.Masurkar

Advocate for Respondents

CORAM : Hon'ble Shri A.S.Sanghvi - Member (J)
Hon'ble Shri Shankar Prasad - Member (A)

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? Yes
- (iii) Library ? Yes

(Shankar Prasad)
Member (A)

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O.A. 112 of 2000

Coram: Hon'ble Mr.A.S.Sanghvi - Member (J)
Hon'ble Mr.Shankar Prasad - Member (A)

Balkrishna Udebhanji Narnaware,
S/o Udebhanji Zibal Narnaware,
aged 51 years,
Sub Divisional Inspector (Postal),
Gargoti, District Kolhapur.
R/o Gargoti, Taluka-Gargoti,
District Kolhapur.
(By Advocate Shri S.P.Kulkarni) - Applicant

Versus

1. Union of India
through Chief Postmaster General,
Maharashtra Circle,
Old C.P.O. Building, 2nd Floor,
Near Central Railway, Fort,
Mumbai.
2. Postmaster General,
Goa Region,
at P.O.Panaji.
3. Senior Superintendent of
Post Offices, Kolhapur Division,
at Kolhapur - 416 003.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (J) -

Aggrieved by the order dated 13.8.1999 rejecting his representation dated 26.12.1998 the Applicant has preferred the present O.A.

2. The case of the Applicant in brief is that hee was appointed as a Clerk in the scale of Rs.975-1660/- (pre-revised Rs.260-480). He was given in situ promotion on 8.6.1987 in the scale of Rs.1400-2300/-. He was thereafter given a local

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officiating promotion as Complaint Inspector in the same scale of Rs.1400-2300/- on 23.11.1990 but his pay was not fixed under FR 22-C (now FR 22 (1) (a) (I)). He was subsequently promoted as Sub Divisional Inspector (Posts) from 3.6.1991 on regular basis. This has resulted in denial of legitimate fixation of pay.

C.A.T., Mumbai Bench, in OA 259 of 1996 (N.S.Shinde Vs. CPMG, Maharashtra Circle) has following the Principal Bench decision in Ramesh Chand Vs. Union of India held that pay has to be fixed under FR 22-C again on the second occasion. His case is on identical footing.

He filed the representation dated 26.12.1998 in the light of these asking for proper fixation of pay in Sub Divisional Inspector (Posts) grade citing this and other judgments.

The further case of the Applicants is that non-fixation of pay gives rise to a continuous cause of action.

He has accordingly requested for proper fixation of pay w.e.f. 23.11.1990.

3. The respondents have accepted the facts of the case. They have, however, asserted that in view of the Apex Court decision in the case of Union of India Vs. Ashok Kumar Bannerjee,

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1998 (2) SC SLJ 41 the case has been correctly decided. The Department of Posts following this decision and decision of OA 951 of 1998 of Hyderabad has issued general instructions.

The further case of the Respondents is that the Apex Court in the case of E.Param Shivam and others Vs. Union of India, 2002 (5) SLR 307, has overruled the decision in MR.Gupta's case and therefore the case is barred by limitation.

4. We have heard the learned lawyer on behalf of both the parties. The basic question is as to whether an employee who is initially given in situ Time Bound Promotion and is subsequently promoted to a functional is entitled to fixation of pay under FR 22 (I) (a) (i) on one or both the occasions. If he is entitled to such a pay fixation on one occasion only then on which of the two occasions.

5. A perusal of the CCS (Revised Pay) Rules would indicate that the number of pay scales in the Grade D, Grade C, and Grade B are as follows:

Grade	Pre-revision	Post Revision
Gr D	03	03
Gr C	15	08
Gr B	04	03

(including one
new Schemes)

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Every pay Commission tries to rationalise the number of pay scales and so has also the present Pay Commission. The number of scales has come down from 22 to 14. The number of pay scales between promotional post/selection grade post and the basic grade post would have accordingly come down. It is therefore possible that the scale in which Time Bound In situ promotion is given and functional promotion is given may become identical.

6. Para 2 (g) of Government of India, Ministry of Finance O.M.No.10 (1)/III/88 dated 13.9.1991 as reproduced in Swamy's Compilation of FR/SR (1999 Edition) is as follows:-

"Even though promotion under the Scheme (Career Advancements of Groups 'C' & 'D' employees get at least one promotion in their service career which is in situ, may not involve assumption of higher duties and responsibilities, the benefit of FR 22 (I) (a) (i) will be allowed while fixing pay on promotion as a special dispensation. However, such benefit will not be allowed again at the time of functional promotion to the same scale."

7. Paragraph 9 of conditions of benefit under ACP Scheme, reads as follows. These conditions are an annexure to DOPT's O.M. No.35034/1/97-Estt(D) dated 9.8.1999.

"On upgradation under the ACP Scheme, pay of an employee shall be fixed under FR 22 (I) (a)(i) subject to a minimum financial benefit of Rs.100/- (Rupees One hundred) as per DOPT OM No.1/6/97-Pay-I dated 5.7.1999. The financial benefit allowed under the ACP Scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade.

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The Apex Court in the case of Union of India & others V. Ashoke Kumar Banerjee, 1998 (2) SC SLJ 41 was considering the following question:

"The point for consideration is whether the respondent who was drawing Rs.1640-2900 as Junior Engineer and who on completion of 15 years service as Junior Engineer was given benefit of FR 22(1)(a)(i) in the Asstt. Engineers' scale of Rs.2000-3500 as per OM (A)-11014/91 dated 22.3.1991 with effect from 1.1.1991 is again entitled on regular promotion as Asstt. Engineer on 1.8.1991 to benefit of the same FR 22 (1)(a)(i)?

The Apex Court answered it in the following terms:

"8. In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs.2000-3500/- when he is promoted on 1.8.1991 as Assistant Engineer. This is because as on 1.8.1991, he is not being fitted into the "time-scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22 (1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says:

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more".

9. Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on the basis of the same FR then he would be getting more than his seniors, who might have got benefit of the FR 22 (1)(a)(i) only once. Such an anomaly was not obviously intended by the FR.

8. The Ministry of Finance, Department of Expenditure is the nodal department for expenditure, policy of the Government of India including expenditure on personal policies of the Central Government. The Department of Personnel is the nodal department for laying down the personal policies of Government of India as has been indicated, in paras 6 and 7 above, both of these departments have categorically answered the questions raised in para 4 as follows:-

(a) In case of such employees, the pay fixation under FR 22 (1)(a)(i) is available only on one occasion; and

(b) That such fixation will be made at the time of Time Bound Promotion/Upgradation under ACP Scheme.

The Apex Court in its decision recorded in para 8 above, have also stated that such fixation shall be available only on one occasion and that giving such benefits on both the occasions might create anomaly vis-a-vis the seniors, which is not obviously intended.

9. It is however seen that two trends of decisions are available. CAT Mumbai Bench in OA 259/96 was considering a matter in which the employee who had received Time Bound Promotion, was subsequently promoted as Inspector of Post Offices and on such promotion, the pay was fixed under FR 22 (1)(a)(i).

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The department revised his pay in view of Department of Personnel and Training instructions of 1989 circulated vide Department of Posts letter dated 24.7.1995. The Tribunal following the decision of the Principal Bench in OA 2221/89 (Ramesh Chand Vs. Union of India) allowed the application of the affected person and restored his pay.

10. On the other hand there is a decision of the Hyderabad Bench in OA 951 of 1998, which following the Apex Court decision held that as LSG Accountant and the APM (Accounts) are in the same scale of pay, therefore, in the light of the decision in the case of Ashoke Kumar Banerje (supra) the application was disallowed.

11. Thus, we have two decisions of co-ordinate Benches on this issue.

12. The Apex Court in the case of K.Ajit Babu and others Vs. Union of India & others, 1997 SCC (L&S) 1520 held as follows:-

"6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either

agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of the earlier decision in disposing of the later application. The larger Bench can overrule the view taken in the earlier judgment and declare the law which would be binding on all the benches (see John Lucas)."

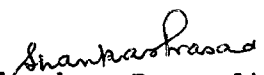
13. A question therefore arises as to whether a reference to Full Bench would be warranted if there is a decision of the Apex Court during the intervening period. A Full Bench of the C.A.T. in the case of K.Ranganathan and others Vs. The Accountant General (Accounts and Entitlements) Karnataka and others, CAT (F.B.) Vol. II page 28 has held as follows:-

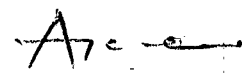
"Article 141 of the Constitution provides that the law declared by the Supreme court shall be binding on all courts within the territory of India. The Central Administrative Tribunal is a court within the meaning of Article 141. Though this article does not expressly include the tribunals and the authorities functioning in the country, the law declared by the Supreme Court is binding on all of them. It is law of the land. Article 141 of the Constitution recognises the "law of binding precedents" in our country. This has origin in the Anglo-Saxon or English doctrine of precedents and has become a feature of our judicial system and the Constitution."

14. As the Apex Court has pronounced on this matter, the same has become the law of the land. The subsequent co-ordinate Bench has disagreed with the ratio laid down by earlier Benches in view of the Apex Court decision. The earlier view is impliedly overruled by the Apex Court. Thus this is not a case warranting reference to Full Bench following the decision of Apex Court in K.Ajit Babu's case (supra).

15. It is not the case of the Applicant that the benefit of pay fixation under FR 22 ((a) (i), formerly FR 22-C, was not given at the time of his Time Bound Promotion. It has therefore to be presumed that he would have received such a benefit in terms of the instruction. If that be so the Applicant is not entitled to a fixation for the second time in accordance with the Apex Court judgment.

16. In view of this there is no merit in the OA. The same is accordingly dismissed. There will be no order as to costs.


(Shankar Prasad)
Member (A)


(A.S. Sanghvi)
Member (J)

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