

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.681/2001

Date of Decision: 15.02.2002

<u>Mrs. Medha Ramachandra Deshpande</u>	<u>Applicant(s)</u>
<u>Shri D. Dattamurthy.</u>	<u>Advocate for Applicants</u>
Versus	
<u>Union of India &amp; others</u>	<u>.. Respondents</u>
<u>Ms. H.P. Shah.</u>	<u>Advocate for Respondents</u>

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

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

*Shanta*  
(SMT. SHANTA SHAstry)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 681/2001

THIS THE 15TH DAY OF FEBRUARY, 2002

CORAM:

HON'BLE SHRI JUSTICIE BIRENDRA DIKSHIT, VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHAstry MEMBER (A)

Mrs. Medha Ramachandra Deshpande  
working as BCR Postal Assistant  
Budget Section, C/o Chief  
Postmaster General, Maharashtra  
State, Mumbai-400 001. ... Applicant

By Advocate Shri D. Dattamurthy.

Versus

1. Union of India  
through the Director General,  
department of Posts, (PE Section)  
Dak Bhavan, Sansad Marg,  
New Delhi-110 001.
2. The Chief Postmaster General,  
Maharashtra Circle-II floor,  
Old CGO Buildings, Mumbai.
3. The Director of Accounts (Postal)  
Nagpur-440 001. .. Respondents

By Advocate Ms. H.P. Shah.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The issue for consideration in the present OA is whether the pay is to be protected of the applicant, who was transferred at her own request to a lower post.

2. The brief facts of the case are that the applicant who was working as Senior Accountant from 01.4.1987 sought a transfer consequent upon her marriage, under rule 38 of the P & T Manual Volume IV vide

applications dated 15.7.1991 and 11.10.1991. Accordingly, the applicant was transferred vide memo dated 17.8.1992 of the Respondent No.2 i.e. Chief Post Master General, Maharashtra Circle II. The applicant was working in the office of the Director of Accounts, Postal Accounts, Nagpur. The applicant was transferred as UDC in the scale of Rs.1200-2040. According to the applicant, since there was no post of Senior Accountant or equivalent post and the only post available was in the cadre of UDC, she was transferred to the post of Junior Accounts cadre. Thereafter, the applicant joined on 03.9.92. Before her posting on reversion, the applicant was drawing basic pay of Rs.1600. On being posted on reversion, her pay was fixed at Rs.1410/- vide letter dated 22.7.93. Initially it was fixed at Rs.1600/- on 01.9.1992 in the scale of Rs.1200-2040 and the applicant had drawn the pay at Rs.1600/- per month upto 31.5.93. But, thereafter, from June, 1993 her pay was reduced to Rs.1410/-, According to the applicant without any show cause notice or otherwise. the applicant represented against the aforesaid pay fixation on 20.7.93, which was replied to under letter dated 22.7.93 intimating to her that the pay of the applicant fixed at Rs.1410/- was found correct and a sum of Rs.4995/- paid in excess was sought to be recovered from the applicant in 10 instalments of Rs.500/- each. The applicant preferred a further representation on 11.8.93. Again reply was given to her on 06.10.93 stating that

...3.

prior to her transfer, she was holding the post of Junior Accountant in the scale of Rs.1200-2040 and she was only officiating as Senior Accountant in the scale of Rs.1400-2600. Since she was reverted to the post of Junior Accountant on her transfer, only the pay in the substantive cadre needed to be protected. Further representation made on 11.10.94 was also rejected on 30.01.1995. The applicant kept making representation thereafter, also but all were rejected. Being aggrieved, the applicant has approached this Tribunal.

3. The case of the applicant is that before being posted to Bombay, she was drawing the higher pay. Since her transfer was under FR 15 and Rule 38 of the P & T Manual Volume IV her pay should have been protected under FR 22 (1) (a) (ii) read with FR 22 (1) (a) (iii). According to her fixing pay at a lower stage is without basis. The applicant is required to pay an amount of Rs.82724/- as excess payment made to her. Further, the applicant contends that she was promoted to the post of Senior Accountant on introduction of 80:20 scheme, she was promoted on regular basis and would have continued to hold that post had she not sought a transfer under Rule 38. The reduction of pay is therefore, unjustified.

4. The respondents oppose the claim and submit that their action is perfectly in order. The applicant is not entitled to any pay protection as she had sought

the transfer on voluntary reversion. More over according to the terms and conditions of her transfer at her own request communicated vide office memorandum dated 22nd June, 1992 the applicant was to sever all connection with the parent department. So also she will not ask for repatriation to parent department, she would be deemed to be a new recruit in the unit to which she is posted, but she will not claim past service for any purpose other than retirement benefits, her pay will be fixed as per provisions contained in FR SR on the subject. The movement to the next unit of the Chief Postmaster General, Maharashtra Circle will be at her own request. She was required to give an undertaking accepting the terms and conditions mentioned above. Therefore, the applicant cannot claim any pay protection. More over she was reverted to the post of Junior Accountant before transferring her.

5. The applicant while insisting on her pay protection has relied on certain judgments of this Tribunal in the case of Nalinikant Sahoo Vs. Union of India & Others in OA No.742, 743, 744, 745, 746, 792, 793/95 and 195/95 decided on 12.8.96 by the Cuttack Bench of the Tribunal. The Tribunal held that when an employee is transferred to another post on his own request by accepting bottom seniority, higher pay drawn by him in the division from where he was transferred must be protected even if he was holding the higher post

on adhoc basis. In that case the applicants were temporarily promoted officials as Assistant Station Master in the scale of Rs.1400-2300 on adhoc basis while working in the Divisional Personnel Officer, Chakradharpur's office in 1984. They were transferred to Khurda Division on their own request by accepting bottom seniority in the initial grade of Rs.1200-2040. The contention therein was that the applicant held higher post at Chakradharpur on adhoc basis and therefore, the last pay drawn by them could not be protected. The Tribunal allowed the claim of the applicants and directed the respondents to promote the applicant's pay as per the last pay certificate issued by their respective division. The applicant also relied on another similar case decided by Jodhpur Bench of the Tribunal. This OA No.152/96 in the case of Krishna Gopal Mishra Vs. Union of India & Others was allowed and it was held that the applicant was entitled to protection of pay that he drew on the post of Storeman in the scale of Rs.800-1150 on his appointment as Carriage Cleaner in scale of Rs.760-950. The applicant has produced another judgment of the Madras Bench of the Tribunal wherein the facts are similar to the facts in the case of the applicant. The Madras Bench decided OA No.1123/2000 in the case of G.Ramanathan Vs. Union of India & Others vide their order dated 29th August, 2001. In this case, the applicant while working as Junior Accounts Officer had sought for a transfer to Madras on

his own request to the substantive post of Senior Accountant. The request was conceded, but the applicant was not given any pay protection of the pay drawn by him in the higher post of Junior Accounts Officer. The Bench held that the applicant shall be entitled to pay protection as envisaged under FR 22 (1) (a) (ii) read with FR 22 (1) (a) (iii).

6. The learned counsel for the respondents, however, stood firm on the stand that no protection can be granted in the applicant's case as a contrary judgment has been given by the Supreme Court in the case of Comptroller & Auditor General & Others Vs. Farid Sattar 2000 SCC (L&S) 440. The head note of the judgment is as follows:

Pay - Fixation of - Unilateral transfer of a type not contemplated by Fundamental Rules - In such a case, held, pay has to be fixed under the terms and conditions of the transfer and not necessarily by Fundamental Rules - Written request of respondent, an officiating Senior Accountant working in the office of Accountant General (A&E) for transfer to another State was granted subject to the conditions that (i) in the transfer would be unilateral and not mutual, (ii) he would have to tender technical resignation from the existing post, (iii) on transfer, he would be appointed to the lower post of accountant as a direct recruit with bottom seniority, and (iv) he would have to forego the benefit, if any, of passing any departmental examination while in the higher post - Respondent joined the post of Accountant in the new State accordingly - In such circumstances the respondent's pay in the new post, held was to be fixed with reference to the lower pay scale without any reference to

pay drawn by him in the higher post - Hence, CAT rightly rejected his claim to the protection of the pay drawn by him in the higher post Further held, neither FR 22 (I) (a) (2) nor 22 (I)(a)(3) was attracted in such a case Fundamental Rules 22 (I)(a)(3) & (3) and 15 Applicability of FR 22(I)(a)(2) & (3).

7. In this case the applicant had joined the post of Accountant on transfer in a new State of Sikkim while he was officiating as Senior Accountant. The Supreme Court has observed that no unilateral transfer is contemplated under FR. What is contemplated is the transfer on written request under FR 15, but if such a unilateral transfer is not contemplated under FR, it is not necessarily to be governed by FR, but by the terms and conditions of such unilaterial transfer. FR 22(I) (a)(2) apply where there is an ordinary transfer, which is not byway of reversion to a lower post and in such a case, the pay of an employee on transfer to a new post has to be protected. FR 22(I)(a)(3) is applicable where an employee is transferred to a new post on his own request under Rule 15(a) and further in such a transfer no reversion is involved. In such a transfer to a new post the maximum pay in the time scale of the transferee is required to <sup>be</sup> draw the maximum as his initial pay. That is not the case here. The respondent on his own volition sought transfer on certain terms and conditions accepted by him. The respondent ought to have tendered technical resignation from the pre-transferred post with a view to join the lower post as a direct recruit and was rank junior to the juniormost employee in the cadre of Accountant. He was also required to forego any

benefit of passing any departmental examination while working in the higher post. In such a situation, the pay of the respondent had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post since he was to be considered as a direct recruit in the lower post.

8. The learned counsel for the respondents submit that the applicant's case is similar and therefore the Supreme Court judgment being binding, the applicant is not entitled to pay protection. Having severed all connection with the parent department, the applicant was treated as new recruit and therefore, she cannot claim the benefit of the earlier post held by her. The respondents, therefore, are of the view that applicant's case has no merit.

9. The learned counsel for the applicant, however, tried to distinguish the judgment of the Supreme Court on the ground that the applicant was transferred under Rule FR 15 read with Rule 38 of the P & T Manual Volume IV. Therefore her case cannot be compared with that of the case of Farid Sattar (supra) decided by the Supreme Court. In her case, FR 2 (I)(a)(2) read with FR (I)(a)(3) is clearly applicable as has been held by the Madras Bench in the case of G. Ramanathan (supra) and therefore, she is entitled for the benefit of pay protection. The applicant has also argued that no doubt

she was officiating in the post of Senior Accountant, but she had already been working there for five years. Therefore, it cannot be said that it was not a regular promotion. Unlike in the case of Farid Sattar (supra) she had not tendered any resignation. In the terms and conditions of her transfer also it has been clearly stated that her pay shall be fixed according to FR SR. Applicant's case is thus on <sup>a</sup> different footing than that of the appellant in the judgment of the Supreme Court.

10. We have heard the learned counsel for the applicant as well as respondents. In our considered view, the judgment of the Madras Bench of the Tribunal in the case of R. Ramanathan squarely applies in the applicant's case. As rightly pointed out by the learned counsel for the applicant, the case relied upon by the respondents i.e. Comptroller & Auditor General of India Vs. Farid Sattar is clearly distinguishable. The applicant in the present case did not tender any resignation nor was her transfer not contemplated under FR 15 and therefore, the aforesaid judgment of the Supreme Court cannot be said to be applicable in the present case. We are inclined to follow the judgment of the Madras Bench of this Tribunal. Even the ground that the applicant was not holding the post of Senior Accountant substantively does not hold good in view of the judgment in the case of Nalinikant & Sahoo & Others cited earlier by the applicant. Therein, it was only an

adhoc promotion. In view of this the OA succeeds and we direct the respondents to protect the pay of the applicant in the post of Senior Accountant, which she was holding prior to her reversion and transfer to Bombay. The recovery of alleged excess amount had already been stayed on 24.10.2001. In case, however, any recovery has been made in the past, the same should be refunded to the applicant. We therefore, quash and set aside the impugned orders dated 11.8.2000, 18.9.2000, 30.3.2001 and 12.9.2001.

11. In the result, the OA is allowed. We do not order any costs.

Shanta F

B. Dikshit

(SMT. SHANTA SHAstry) (BIRENDRA DIKSHIT)  
MEMBER (A) VICE CHAIRMAN

Gajan

dt:15.2.2002  
Order/Judgement despatched  
to Applicant/Respondent(s)  
on 21.2.2002.

BR  
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