

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.127/2001.

DATE OF DECISION : 22.10.2003

D.S.Banedor ... Applicant.

Shri S.P.Inamdar ... Advocate for
Applicant.

Vs.

Union of India & Ors. ... Respondents.

Shri V.S.Masurkar ... Advocate for
Respondents.

Coram: Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches
of the Tribunal?

✓ 3. Library?

S. B
(S.BISWAS)
MEMBER(A)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.127/2001.

, this the 22nd day of Oct., 2003.

Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

D.S.Banedar,
Sub-Post Master, Shaniwarpeth,
Kolhapur - 416 002. ...Applicant.
(By Advocate Shri S.P.Inamdar)

v.

1. Union of India through
The Chief Post Master General,
Maharashtra Circle,
Mumbai - 400 001.
2. The Post Master General,
Goa Region Panaji,
Panaji - 403 001 (Goa).
3. The Senior Superintendent of Post Offices,
Kolhapur,
Dn. Kolhapur - 416 003. ...Respondents.
(By Advocate Shri V.S.Masurkar)

: O R D E R :

{S.Biswas, Member (A)}

By this application under section 19 of the Administrative Tribunals Act, 1985, the applicant, who entered in the postal department as a Postal Assistant on 21.10.1966 and ultimately at the time of filing this O.A. was promoted and was holding a post in the HSG - I grade, has sought stepping up of his pay on par with his two juniors, viz. N.A.Kher and J.V.Kulkarni, though not impleaded as respondents. The applicant

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has further stated that the said benefit of stepping up of pay on par with junior as admissible vide letter of DG Post dt. 08.02.1996 appended to the O.A. at Annexure - A-2 be directed to be granted. The applicant had made necessary representation seeking stepping up of his pay on par with his aforementioned juniors which prayer has been rejected by the respondent authorities vide letter dt. 28.06.1999 which has also been impugned for quashment and the applicant has further sought direction upon the respondents for necessary stepping up of his salary with consequential benefits.

2. The discrimination as understood and projected by the applicant is briefly this. Though the applicant was appointed to the postal department, on a much later date (21.10.1966) than his juniors, he got faster promotion by passing through competitive exam under 1/3rd quota. He was then elevated to the Lower Selection Grade, later on he was promoted as Assistant Postmaster in the lower selection grade and finally Sub-Postmaster, LSG and HSG - II, HSG - I, when he found that those two juniors of his now in the senior scale are enjoying higher pay fixation in the HSG - II & HSG - I, which is why this O.A. has been filed.

3. Heard the rival counsel and gone through the relevant facts and legal angles involved.

4. The applicant's case in brief therefore is that as on date he being in the HSG - II Grade and HSG - I Grade on different dates is drawing lesser pay vis-a-vis his aforementioned juniors. The applicant has furnished the following flow chart of promotion of self vis-a-vis the alleged

juniors and also similar flow chart of pay fixation on different dates of their upliftment and increments in support of his case:

S1. No.	Name of Official	Date of Entry in the Deptt.	Dt. of Promotion in L.S.G./T.B.O.P.
(1)	(2)	(3)	(4)
1.	D.S.Banedar	21.10.66	17.09.79
2.	N.A.Kher	01.11.62	30.11.83
3.	J.V.Kulkarni	14.07.58	01.12.81

Date of Promotion in B.C.R.	Remarks
(5)	(6)
01.09.89	Regular L.S.G./H.S.G.II
01.10.01	T.B.O.P./B.C.R.
01.10.91	Regular in L.S.G./B.C.R.

D.S.Banedar L.S.G.-1979 Pay from	N.A.Kher One T.B.O.P. 30.11.1983	J.V.Kulkarni L.S.G. 1.12.81
01.09.89 1800/-	01.11.90 -1950/-	01.12.90-1900/-
Off. HSG - II 01.03.90-1800/-	01.10.91 -2000/- (BCR)	01.10.91-1950/- (BCR)
01.09.90-1850/-	01.11.91-2100/-	01.12.91-2050/-
01.09.91-1900/-	01.11.92-2150/-	01.12.92-2100/-
01.09.92-1950/-	01.11.93-2200/-	01.12.93-2150/-
01.09.93-2000/-	01.11.94-2250/-	01.12.94-2200/-
01.09.94-2050	01.11.95-2300/-	01.12.95-2250/-
01.12.95-2100/-		

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5. The applicant's case is that when he is drawing his pay in the higher scale by officiating in the HSG - II w.e.f. 01.09.1989 and his pay was Rs.1800/-, N.A. Kher and HSG - II grade for having got the said upliftment through TBOP or BCR fixation as one time measure on later dates respectively on 01.11.1990 and 01.12.1990 are getting Rs.1950/- and Rs.1900/respectively. This clear advantage in fixation given to his juniors later in time at the time of BCR upliftment than the applicant who has been appointed in this grade since 01.09.1989, all the same is drawing Rs.1800/-, being a senior incumbent. The applicant has further stated that the cumulative effect of this lower fixation sanctioned to benefit the juniors as late as on 01.09.1991 being respectively Rs.2050/- (applicant) Rs.2300/(junior Kher) and Rs.2250/- (Kulkarni). Hence, the disparity is statedly obvious calling for a amelioration.

6. The Learned Counsel for the applicant Mr.S.P.Inamdar has cited several case laws in support of his case and has also pointed out that this apparent discrimination in fixation was taken up with the senior authorities in Goa Region, Panaji, but it evoked no positive response in his favour. He has cited the decision of the Tribunal in S.B.C.O. case (pg. 5, 15 to the O.A.) in his behalf also.

7. The applicant has also brought to our notice a note at page 44-47 Exh. A-14 to his Rejoinder which also shows certain departmental clarification regarding whether special pay, if any, drawn by any increment is to be taken into consideration or not.

8. In disputing the contentions of the applicant, the Learned Counsel for the respondents has contended that the applicant has

made a gross mistake by mis-representing the fixation rules such as FR. 22 (c) to be read with FR. 27 and so on. All stepping up cases are ordained to be guided under the essential principles laid down in these rules which has from time to time expounded and clarified for the purpose of understanding scope of its application.

9. The Learned Counsel for the Respondents Mr.V.S.Masurkar apart from citing a range of case laws including those of Bhoop Singh, S.S.Rathore, L.Chandra Kumar which are high-lighted cases of Hon'ble Supreme Court, has clarified as to what has seemingly caused a legally sustainable pay difference between the applicant who had been officiating at the senior scale from an earlier date (i.e. 01.09.1989), than his juniors who have got this scale due to BCR etc. upliftment by virtue of their length of service, being naturally recruits of 1962 and 1958 batches into the department, whereas the applicant was recruited and had entered the department as late as on 21.10.1966 i.e. about 4 to 8 years later to the alleged juniors. Therefore, by virtue of this length of service even in the lower scales, certain marginal fixation advantages accrue unavoidably. Further, these two juniors who got the BCR upliftment later, on different dates according to their respective length of services on 01.11.1990 and 01.12.1990 with fixation benefit in the grade of HSG - II as stated by the applicant w.e.f. 01.10.1991, got a higher fixation as they were drawing higher pay as a result in the junior scale by virtue of longer stay period in the junior scale reaching probably the maximum plus two advance increments were granted to those junior incumbents vis-a-vis the applicant when they were in

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the lower LSG scale. We are able to see the factual basis of this higher fixation to the juniors more so by his own showing the applicant getting higher scales by competitive or fast merited promotion did not have to mark time in the lower grade for a longer period upto the maximum of the scale. In other words, the juniors got their maximum of the lower scale plus two additional increments which computed into a higher pay input as compared to the applicant, to be added up for fixation to the higher scale. This appears to us both factually and logically correct explanation - nothing illegal is warranted to be read in such mundane passage of officials moving up..

10. The respondent's counsel has further stated that in view of this factual hunki dorithe applicant was informed by the authorities quite correctly as and when he represented and the representation was disposed of as per rules and facts.

11. The respondents have submitted a Government Note No. (22) from Swamy's Compilation - which outlines how and when a case warrants removal of anomaly by stepping up in terms of FR 22(1) (a) (1) as it used to be known as FR 22(c) etc. earlier. Three basic ingredients are incorporated in this stepping up course of action. Those are reproduced below from the said official note :

"(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
(c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

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12. In other words, for claiming stepping up of pay the senior who "have been promoted should be identical and in the same cadre." In our view, and also by his own showing his promotional event is of 1989 attained by normal course of promotional action, whereas, the juniors attained an upliftment to the higher scales by BCR upliftment which is given on the basis of purely length of service. These two, one promotion, another upliftment are not comparable as these two events are of two separate years have given rise to different inputs of pay at different time which are inherent in such cases, to be taken up in respective cases for fixation in higher grade. An altogether different anomalies which are likely to arise when the promotion and scales are identical are considered for stepping up under F.R. 22 C etc. The cases cited by the Learned Counsel for the applicant are quite out of context in our consideration.

13. The Learned Counsel for the applicant has contended in his brief note that vide clarification contained in Communication 2-18/93 dt. 08.08.1995 (Pg. 48 - A 14 to Rejoinder) Special pay is not to be included in fixation. We have looked into this point in the said communication. It runs as follows :

"Whether Special Pay of Rs.70/- to UDC of Circle Office will continue w.e.f. 26.06.1993 - Reply - No."

The word is continue for the future. It does not debar from commuting it for the purpose of pay fixation. Further as cited earlier in para 11 (e) if any junior is drawing higher pay due to grant of advance increment and he gets a higher fixation, there would arise no case of anomaly due to such juniors getting higher fixation.

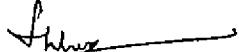
14. The relevant extract of the SBCO case cited at page 15 to the O.A. runs as under :

"The case has been examined in consultation with the Ministry of Finance, Department of Expenditure. It has now been decided that all the officials, such as UDCs in the Circle Office and SBCO, LSG (Both 1/3rd and 2/3rd),

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PO & RMS, Accountants whose seniority was adversely affected by implementation of BCR Scheme placing their juniors in the next higher scale of pay will now be considered for the next higher scale of pay will now be considered for the next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. This will, however, not be applicable to the officials who are senior to these officials brought on transfer under Rule 38, P & T Manual, Volume IV and are placed in the next higher scale of pay by virtue of length of service."

15. The applicant was already in a senior scale since 1989, unlike the ones who were affected by B.C.R. Scheme. The applicant was already in a higher scale by two years in advance. He, in our view, is not covered or ^{similarly} affected by B.C.R. and for reasons already discussed in the foregoing paragraphs we find no merits in the O.A. Accordingly, the application is dismissed as devoid of merits. No costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(S.BISWAS)
MEMBER (A)

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