

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 8-12-87

APPLICATION NO 724 /87 (F)

W.P.No. _____

APPLICANT

Shri D.M. Joshi

To

Vs

RESPONDENTS

The PMG, Karnataka Circle & another

1. Shri D.M. Joshi
LHG Sorter
Sorting Division
Hubli Division
Hubli
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 060
3. The Post Master General
Karnataka Circle
Bangalore - 560 001
4. The Superintendent
Sorting Division
Hubli Division
Hubli
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/

~~INTERIM ORDER~~ passed by this Tribunal in the above said application
on 4-12-87.

RECEIVED 9-12-87 *gcm's*

Diary No. 1429/OL/87

In Date: 12-12-87 *B*

Encl: as above.

P. V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

o/c

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated: the 4th day of December, 1987

Before

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

APPLICATION NO.724 OF 1987(F)

D.M.Joshi, S/o M.V.Joshi,
54 years, LHG Sorter,
Sorting Division,
Hubli Division, Hubli. .. Applicant

(By Shri M.R.Achar, Advocate for the applicant)

-vs.-

1. Postmaster General
Karnataka Circle,
Bangalore.
2. Superintendent,
Sorting Division,
Hubli Division,
Hubli. .. Respondents.

(By Shri M.Vasudev Rao, Standing Counsel for Central
Government appeared for respondents)

This application coming on for hearing,
Hon'ble Member(A), made the following:

ORDER

The applicant has challenged the Letter dated
2-7-1987 (Annexure-B) of Respondent(R)-2 informing him
that the decision of the Bangalore Bench of the Central

Administrative



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Administrative Tribunal, in the relevant case, namely, Applications Nos.292 to 295 of 1986, in regard to refixation of pay in the post of Lower Selection Grade('LSG' for short) Sorter, is applicable only to the applicants therein and not to him and prayed that it may be set aside with a direction to the respondents, to extend to him, the same benefit extended to other employees in terms of the judgment of this Tribunal in the aforesaid two applications, along with consequential relief.

2. The following minimal facts give a vista of the case. The applicant entered service in the Postal Department in the Karnataka State as a Sorter on 22-7-1953 on a pay of Rs.60/- per mensem and continued to serve in that capacity till 1-6-1974. The pay scale of this post was Rs.110-4-150-5-175-6-205-7-240 prior to 1-1-1973 i.e., the date from which it was revised as Rs.260-8-300-8-340-10-420-12-480, consequent to acceptance of the recommendation of the Third Central Pay Commission ('TGPC' for short) by the Government of India (GOI, for short) in regard to the revision of pay scales of the GOI employees. While revising the pay scales as above, the GOI had issued instructions, that such of the officials who desired to exercise option in regard to the pay scale, in respect of a post held by them from a date subsequent to 1-1-1973 may do so, in accordance with the provisions of Rule 5 of the Central Civil Services (Revised Pay) Rules, 1973 ('1973 Rules', for short).

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This Rule is extracted below:

"5. Drawal of pay in the revised scales.-

Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed:

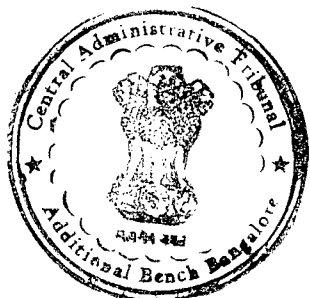
Provided, that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Explanation 1.- The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale.

Explanation 2.- Where a Government servant exercises the option under the proviso to this rule to retain the existing scale in respect of a post held by him in an officiating capacity, for the purpose of regulation of pay in that scale under Fundamental Rule 22 or Fundamental Rule 31, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he hold a lien or would have held a lien had his lien not been suspended."

3. The applicant was working as a Time Scale Sorter and had on 11-7-1974 exercised option accordingly, to

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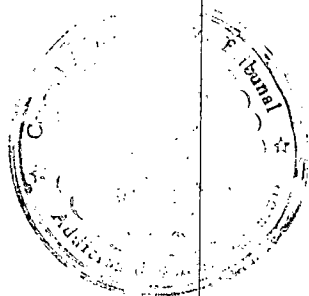
come over to the revised scale of pay with effect from 1-8-1974.

4. He was promoted as Lower Selection Grade Sorter('LSGS' for short) retrospectively, with effect from 1-6-1974 and his pay in this post was fixed at Rs.205/- per mensem in the old pay scale of Rs.110-4-150-5-175-6-205-7-240. The applicant was thus promoted as LSGS, 2 months prior to the date viz., 1-8-1974, when his option to continue in the old pay scale in his substantive post of Sorter was to cease to be valid and he was to have crossed over to the revised scale of pay, in the post of Sorter. The applicant was however eligible for the benefit of fixation of pay under under Fundamental Rule (FR) 22-C on account of assumption of duty of higher responsibility in the post of LSGS.

5. The applicant submits, that his case in regard to pay fixation is squarely governed by the decision of the Division Bench of this Tribunal on 4-11-1986 in Applications Nos.292 to 295 of 1986, as his case is alike in point of facts relating to and the question of law determined in the aforesaid two applications. As his representation in this regard, to the concerned authorities, was not considered favourably, he has approached this Tribunal for redress.

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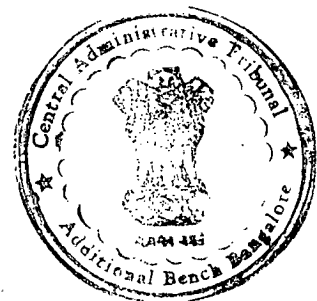
6. Shri M.Vasudev Rao, learned Counsel for the respondents raised ^{at} the outset the question of limitation. He contended, that the pay of the applicant was fixed as long back as in 1973 and a period of nearly a decade and a half had since elapsed and therefore the application was hopelessly time-barred and was not maintainable in accordance with the decision of the Delhi Bench of the Central Administrative Tribunal in AT~~R~~ 1986 CAT 203 (V.K.MEHRA vs. THE SECRETARY, UNION MINISTRY OF INFORMATION & BROADCASTING, NEW DELHI).

7. Shri M.R.Achar, learned Counsel for the applicant, sought to counter the plea of limitation, on the grounds, that the cause of grievance for the applicant had actually arisen on 2-7-1987, when R-2, in flagrant discrimination, had by his communication dated 2-7-1987 (Annexure-B) denied the applicant, the benefit of the judgment of this Tribunal, in Applications Nos. 292 to 295 of 1986 aforementioned, even though the case of the applicant was identical to that of the applicant, in the above four applications. He also pleaded, that the cause of grievance was a recurring one, as it involved fixation of pay.

8. There is force and cogency in the above submission of Shri Achar, which cannot be brushed aside cum grano - salis. Besides, in nearly identical circumstances, it would be invidious and not advance the cause of justice,

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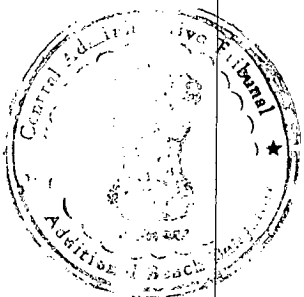


to open its doors to only some, as in the case of the above 4 applicants and close them to others, like the applicant. The cause of grievance for the applicant in this case, actually arose on 2-7-1987, when he was denied by R-2, the benefit of the judgment of this Tribunal in Applications Nos. 292 to 295 of 1986, wherein those applicants, were similarly circumstanced as the applicant in the present case. The plea of limitation raised by Shri Rao is therefore negatived in the light of the above facts and circumstances.

9. I have examined carefully the rival contentions and pleadings and the material placed before me. It is clear from the Explanation to Rule 5 of the 1973 Rules extracted above, that the option to retain the existing pay scale admissible, only in respect of one existing pay scale (emphasis supplied) i.e., for the post actually held by the optee at the time of exercising the option. The applicant opted the old scale of pay viz., Rs. 110-4-150-175-6-205-7-240, on 11-7-1974 in the post of Sorter (held by him at that time) upto 1-8-1974, but he was retrospectively promoted as LSGS, with effect from 1-6-1974, in the revised pay scale of Rs. 425-15-560-EB-20-640 corresponding to the old pay scale of Rs. 210-10-290-15-320-15-425, i.e. on a date antecedent to the date namely, 1-8-1974, when the applicant opted to go over to the revised scale of pay.

10. Shri Achar states, that the pay of the applicant on promotion as LSGS, has been fixed at Rs. 425 plus Rs. 7/- as Personal Pay, per mensem with effect from 1-6-1975.

According



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According to him, the pay of the applicant should have been fixed at Rs.455 per mensem with effect from 1-6-1974, in the light of the judgment of this Tribunal in Applications Nos.292 to 295 of 1986.

11. In order to resolve the tangle ~~could~~ the respondents are directed to comply with the following:

- (i) The applicant should be granted the benefit of the provisions of FR 22(C) on promotion to the post of LSGS with effect from 1-6-1974.
- (ii) The pay of the applicant should first be determined in the old pay scale in the post of Sorter, with benefit of one increment with reference to the pay he was drawing as on 31-5-1974, so as to fix his pay in the post of LSGS with effect from 1-6-1974. If this pay is less than the minimum of the old pay scale prescribed viz., Rs.210-10-290-15-320-15-425 for the post of LSGS, his pay in the post of LSGS would be fixed at the minimum of the pay scale of the post.
- (iii) If however, the said pay is more than the minimum of the old scale of pay prescribed for the post of LSGS, his pay would be fixed at the appropriate stage in that pay scale, as prescribed by the Rules.

(iv)



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- (iv) Since the applicant would be governed by the revised scale of pay with effect from 1-6-1974 in the post of LSGS, his pay in the revised scale in that post, equivalent to his pay in the old scale determined as above, would be fixed with effect from 1-6-1974, as prescribed by the rules.
- (v) The pay of the applicant would be determined yearwise thereafter to date, granting him the increments due in the post of LSGS.
- (vi) The applicant would be entitled to arrears of pay, if any, as a result of ^{the} ~~the~~ fixation of his pay as LSGS, as above.

12. The above directions should be complied with, within a period of 3 months, from the date of receipt of this order.

13. The application is disposed of in the above terms. No order as to costs.



Sd/-
MEMBER(A)

-True copy-

[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 30 JAN 1989

IA IN APPLICATION NO (R) 724 /87(F)

W.P. NO (\$)

Applicant (s)

Respondent (s)

Shri D.M. Joshi

V/s

The PMG, Karnataka Circle, Bangalore & another

To

1. Shri D.M. Joshi
LHG Sorter
Sorting Division
Hubli Division
Hubli
2. Shri M. Madhusudan
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Post Master General
Karnataka Circle
Bangalore - 560 001

4. The Superintendent
Sorting Division
Hubli Division
Hubli
5. Shri M. Vasudeva Rao
Central Govt. Sing Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(*) on 25-1-89.

4 issued
K m l m
30-1-89

o/c

R. V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)



**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

D.M. Joshi

V/s

724/87

The PMG, Karnataka
Circle, Bangalore
& anr

M. Madhusudan

Order Sheet (contd)

M. Vasudeva Rao

Date	Office Notes	Orders of Tribunal
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TRUE COPY

MDA/LNAR

Applicant by Sri Madhusudan
who seeks permission to withdraw
his application with liberty
reserved, either to file a revised
application or a fresh appln.
permission sought for is granted
Application is therefore rejected

Sd/-

MDA/LNAR 25.1.87

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DEPUTY REGISTRAR (JULY 2011)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE