

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 18 JAN 1989

1652 to 1657

/ 88(F)

W. P. NO.

Respondent(s)

 v/ε

The Secretary, Ministry of Finance, Dept of Expenditure, New Delhi & another

1. Shri M.S. Nanjundiah
2. Shri E.V. Srinivasan
3. Shri V.M. Gopinatha Rao
4. Shri M.S. Ranganathan
5. Smt A.R. Prapulla
6. Shri G.V. Sundara Ram

8. The Post Master General
Karnataka Circle
Bangalore - 560 001
9. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

(S1 Nos. 1 to 6 -

Section Supervisors
Office of the Post Master General
Karnataka Circle
Bangalore - 560 001)

7. The Secretary
Ministry of Finance
Department of Expenditure
New Delhi - 110 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~/COPY/~~ ~~INTERIM ORDER~~ passed by this Tribunal in the above said application(s) on 16-1-89

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE SIXTEENTH DAY OF JANUARY, 1989

Present : Hon'ble Sri P.Srinivasan

Member (A)

APPLICATION Nos.1652 to 1657/88(F).

1. M.S.Nanjundaiah,
2. E.V.Srinivasan,
3. V.M.Gopinatha Rao
4. M.S.Ranganathan
5. A.R.Prapulla,
6. G.V.Sundara Ram

(Applicants 1 to 6 are working
as Section Supervisors, in
the O/o Postmaster General,
Bangalore-1). ...

Applicants

Vs.

1. The Government of India
Represented by its Secretary,
Ministry of Finance,
Deptt. of Expenditure,
New Delhi -1.

2. The Postmaster-General,
Karnataka Circle,
Bangalore - 1. ...

Respondents

(Sri M.S.Padmarajaiah ... Advocate)

These applications having come up before the Tribunal
today, Hon'ble Member (A) made the following :

ORDER

All the six applicants in this application were pro-
moted from the post of Upper Division Clerk(UDC) earlier
held by them to the Lower Selection Grade (LSG) on different
dates from 27.2.1982 to 23.4.1983. Prior to their promotion
they were drawing special pay of Rs.35/- in the grade of UDC.
Their initial pay on promotion to LSG was fixed without
taking into account the special pay of Rs.35/- being drawn by



P. Srinivasan

them. However, Government by its letter dated 1.9.1987 decided that special pay of Rs.35/- being allowed to UDCs in non-Secretariat Administrative Offices for attending to work of more complex and important nature would be taken into account in fixing their initial pay in the next higher post to which they were promoted provided that the official concerned held the post in which he drew special pay substantively or had held the said post continuously for three years or more. This order was made effective from 1.9.1985 and those promoted as LSG prior to that date were, therefore, denied the benefit of counting of special pay for the purpose of fixing their initial pay in LSG. The contention of the applicants is that they have been discriminated against merely because they were promoted to LSG prior to 1.9.1985 while those promoted on or after 1.9.1985 were being granted the benefit.

2. All the applicants were present in the court when the matter came up for hearing. Shri M.S.Nanjundaiah, the first applicant, submitted that classification of those promoted to LSG prior to 1.9.1985 and after 31.8.1985 was arbitrary and violative of Articles 14 and 16 of the Constitution. He relied on the judgement of Supreme Court in D.S.NAKHARA v. UNION OF INDIA AIR 1983 SC 130.

3. Shri M.S.Padmarajaiah, learned counsel for the respondents strongly opposed the claim of the applicants. The Government of India^M letter dated 1.9.1987 by which special pay of Rs.35/- was to be taken into account for the purpose

P. S. Nanjundaiah

of fixation of initial pay on promotion was issued as a result of arbitration arising out of a dispute between the Government and the Employees. The date from which the new arrangement was to come into force was fixed as 1.9.1985 in conformity with the arbitration award. Thus it was not a date picked out of a hat and Government was justified in denying the same benefit to those were promoted prior to 1.9.1985.

4. I have considered the rival contentions carefully. Whatever the method by which ^{the} decision was taken to count special pay of Rs.35/- for fixation of pay in the higher post, no intelligible differentia is discernible in classifying persons promoted to LSG before and after a particular date. On the ratio of the judgement of the Supreme Court in Nakara's case the benefit of the orders conveyed in Government of India's letter of 1.9.1987 can be extended from that date only but it cannot be confined to those who are promoted on or after that date. That to my mind, would be the only way to interpret Government of India's letter of 1.9.1987 relating to the date from which the orders therein were to ^{become} ~~come~~ effective to avoid the charge of discrimination. For, to hold otherwise would lead to an anomalous situation in which persons promoted later would get higher pay than those who are promoted earlier merely because in the case of the former special pay drawn by them in the lower post is taken into account and this would violate the rule of equality.

5. A question arose as to whether these applications should be rejected on the ground of limitation. Government



for file

of India's letter allowing special pay to be counted for the purpose of fixing initial pay in the higher post was itself issued on 1.9.1987 and received in the office of Respondent-2 on 28.10.1987. The same would have been communicated to the officers in the field on a still later date. The claim of the applicants is founded on this letter. The present applications have all been filed on 7.10.1988 and so should be regarded as well in time.

6. In view of the above discussion and the decision rendered by me in similar circumstances in R.JAGGANNATHAN V. DEPUTY DIRECTOR OF ACCOUNTS, BANGALORE in application No.1116/88, I direct the respondents to fix the initial pay of the applicant in LSG on a notional basis from the dates of their promotion to that grade taking into account the special pay drawn by them prior to their promotion. Actual pay on this basis will however become payable to them only from 1.9.1985 and no arrears will be payable for the period prior to 1.9.1985. The respondents are directed to effect payment of arrears arising out of this order within three months from the date of receipt of this order.

7. The applications are disposed of on the above terms leaving the parties to bear their own costs.

TRUE COPY

sd/-
MEMBER (A)

en.

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

