

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 441/94

Date of Decision: 1-7-99

V.G.Nanajkar

Applicant.

Shri B.Dattamoorthy

Advocate for  
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri S.S.Karkera

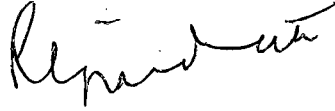
Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S.Baweja, Member(A).

- (1) To be referred to the Reporter or not? No
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No

  
(R.G.VAIDYANATHA)  
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.441/94.

PRONOUNCED, this the 1st day of JULY 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member(A).

V.G.Nanajkar,  
C/o. B.Dattamoorthy,  
Advocate,  
47/4, Asmita,  
Tarun Bharat Society,  
Chakala,  
Bombay - 400 099.

... Applicant.

(By Advocate Shri B.Dattamoorthy)

V/s.

1. Chief Post Master General,  
Maharashtra Circle,  
Bombay - 400 001.
2. Union of India through  
Secretary, Department of Posts,  
Ministry of Communication,  
DAK Bhavan, Sansad Marg,  
New Delhi - 110 001.

... Respondents.

(By Advocate Shri S.S.Karkera)

: O R D E R :

{Per Shri Justice R.G.Vaidyanatha, Vice-Chairman}

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The point involved is a short point viz. whether the applicant is entitled to the salary of Senior Time Scale in the grade of Rs.3000-4500 in the circumstances alleged in the O.A.? To answer this question, only few facts are necessary which are all admitted and undisputed.

The applicant was a Group 'B' Officer in the Postal Department. By Order dt. 14.10.91, he came to be promoted to the Junior Time Scale in Group 'A' Service. He was posted as Senior Superintendent (RMS), Bhusaval by order dt. 14.10.1991. It appears the said post was of Senior Scale in Group 'A', but the order of posting dt.14.10.1991

...2.



says that applicant is promoted to the Junior Time Scale in Group 'A' and posted in that post of Senior Superintendent by down-grading the said post. The applicant worked in that post from 12.11.1991 till 1.10.1992 when he retired from service by taking voluntary retirement.

Applicant's case is that he is entitled to the salary of Senior Time Scale in Group 'A' for the said period since the said post was of a Senior Time Scale Post and it could not have been down-graded by the Chief Post Master General, since he had no power to down-grade the said post.

3. The respondents contention is that the applicant was promoted to Junior Time Scale and since there were no available officers of Senior Time Scale, he was posted to that post by down-grading the post to that of a Junior Time Scale and hence the applicant cannot get the Senior Time Scale pay.

4. The main contention of the learned counsel for the applicant is that the Chief Post Master General <sup>who</sup> has issued the order dt. 14.10.1991 was not competent and had no power to down-grade the post from Senior Time Scale to Junior Time Scale. He has relied on two decisions which no doubt supports his case.

The first case is an unreported Judgment of Ernakulam Bench dt. 17.12.1990 in O.A. 299/90 and 345/90. No doubt, the Ernakulam Bench has observed that the Chief Post Master General has no such powers to down-grade the post. Further in that case it <sup>is</sup> was seen that the applicants in those cases had put in 7 years of service in Group 'B' and hence were qualified and eligible to be promoted in the Senior Time Scale. In view of these two reasons applications were allowed holding that the applicants should get the Senior Time Scale Pay.

In the second case which is also an unreported Judgment of the Bangalore Bench dt. 22.1.1998 in OA 468/97, by following the above decision of Ernakulam Bench, it was held that C.P.M.G. has no power to down-grade the post and hence the applicant who worked in that post is entitled to a senior time scale of pay.

The learned counsel for the applicant, therefore, submitted that in view of these two decisions the applicant is entitled to get Senior Time Scale of pay. His argument appears to be attractive, but on deeper scrutiny and examination of the rules and available materials on record we find that the present case can be distinguished on facts.

5. No doubt, in the present case also the down-grading order is issued by the C.P.M.G. But, the respondents have placed on record a Government decision communicated to all the Heads of Postal Circles All Over India by letter dt. 9.2.1989 (Ex. R-1 attached to the written statement). It is a letter written by the Ministry of Communications, Department of Posts, of the Government of India. The relevant portion in the letter is as follows :

"The matter has been further examined and it is is decided that the Divisions which have been down-graded may be subsequently upgraded by PMGs depending on availability of eligible officers."

Therefore, this letter gives power to the Post Master Generals to upgrade and down-grade posts depending upon administrative exigencies.

The Recruitment Rules are at pages 20 to 34 of the paper book produced by the applicant. It no doubt says that the number of posts are statutorily fixed in Schedule-I. The number of posts in Senior Time Scale is shown as 227 and number of posts in Junior Time Scale is shown as 97. The learned counsel for the applicant's contention is that this

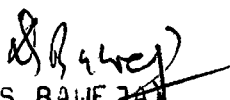
There is one more reason in support of our conclusion. Applicant was promoted as a Junior Time Scale Officer under the impugned order. He has to work for four years in that cadre to get promotion as a Senior Time Scale Officer. <sup>He</sup> ~~The~~ could not get double promotion at one single stroke from Group 'B' to Junior Time Scale and on the same day to Senior Time Scale. One has to have minimum 7 years service in Group 'B' or 4 years in Junior Time Scale of Group 'A', to get into Senior Time Scale of Group 'A'. Unless the applicant is promoted as Senior Time Scale Officer or at least he must have the eligibility of either 7 years in Group 'B' or 4 years in Junior Time Scale to go into Senior Time Scale, he cannot get the benefit of Senior Time Scale pay. If we give a direction to the Administration to pay Senior Time Scale pay to the applicant that will be in violation of and contrary to the Recruitment Rules viz. the Indian Postal Service (Group 'A') Rules, 1987. It is well settled that Courts or Tribunals should not give any direction contrary to the Recruitment Rules.

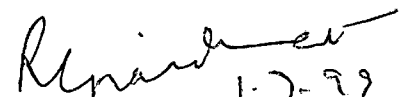
It may be in those two Judgments, the orders of the Government authorising the CPMGs to effect changes in the strength of the cadre were not produced and therefore those Benches took the view that the order of CPMG downgrading the post was not valid. But, in the present case there is evidence on record to show that CPMG has been empowered for downgrading or upgrading in pursuance of the statutory power of the Government under Rule 3(4) of the Recruitment Rules.

7. In service law downgrading a post or upgrading a post is well known. The Competent Authority can pass an order by downgrading or upgrading the posts. In such a case the Officer who is promoted to a particular cadre will get the pay to which he is entitled to. Applicant was promoted to Junior Time Scale and therefore he is entitled to

Junior Time Scale pay wherever he works. The applicant cannot get double promotion at single stroke and cannot get the pay of Senior Time Scale when he was promoted as a Junior Time Scale Officer. Hence, in the circumstances, the stand of the Administration is perfectly justified and the applicant cannot get the pay scale of Senior Time Scale.

8. In the result, the application fails and is hereby dismissed. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER(A)

  
1-7-79  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN

B.