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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1482/95/199

Date of Decision: 31-3-1997

Baburao Shankar Dhuri

Petitioner/s

Mr. S. P. Kulkarni

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors

Respondent/s

Mr. S. S. Karkera for Mr. P. M. Pradhan

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri

Hon'ble Shri

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

M.R. Kolhatkar
(M.R. KOLHATKAR)
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 1482/95

pronounced this the 31st day of March 1997

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Baburao Shankar Dhuri,
Waradkar Chawl,
Swadeshi Mills Road,
Chunabhatti, Sion,
Mumbai - 400 022.

By Advocate Shri S .P.Kulkarni .. Applicant

-versus-

1. Union of India
through
The Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Bldg., 2nd Floor,
Mumbai - 400 001.

2. The Secretary,
Department of Posts,
Ministry of Communication
Dak Bhavan,
New Delhi - 110 001.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan .. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

In this O.A. the applicant is challenging the fixation of pay in terms of the orders relating to implementation of the TBOP /BCR scheme in the administrative offices of the Postal Department. The applicant was promoted as UDC on 2-4-1980 and superannuated on 31-10-1994. Prior to his superannuation he opted to come under TBOP/BCR scheme the same having come into force w.e.f. 26-6-1993. According to para 3.7 of the scheme, the UDCs who are drawing pay more than the maximum of the time scale pay (Rs.975-1660) and who opt for Postal Assistants' Cadre(C.O) to get the benefit of Time Bound One Promotion Scheme will have their pay fixed at the maximum of the time scale of pay without any protection of the loss of pay already drawn. According to para 3.12 of the scheme officials

who have completed 16 years of service will be eligible for promotion to the next higher grade of Rs.1400-2300 and officials who have completed 26 years of service would be eligible to the next higher grade of Rs.1600-2660. According to para 3.11 the special pay of Rs.70/- p.m. being paid to UDCs stands withdrawn from the date of introduction of this scheme. The applicant opted for this scheme and according to applicant his pay ought to have been fixed as under :

(I) IN LSG GRADE(Rs.1400-40-1800-50-2300)

Rs. 1660/-	Notional substantive pay
+ Rs. 30/-	Notional substantive increment
+Rs. 70/-	Substantive special pay drawn
<u>Rs. 1760/-</u>	<u>Total</u>

Pay to be fixed at Rs.1800/- i.e. next grade of LSG Cadre

(II) IN HSG GRADE-II(Rs.1600-50-2300-60-2660)

Rs. 1800/-	Deemed notional substantive pay
+Rs. 50/-	Deemed notional substantive increment
<u>Rs. 1850/-</u>	<u>Total</u>

Pay to be fixed at Rs.1900/- i.e. next grade in HSG-II Grade.

2. However, the department issued a clarification on 8-8-1995, which is to be seen at page 18. This clarification related to pay fixation taking into account the stages involved and the special pay. Under clarification No.2 the query was replied as below :

<p>"2. Whether the officials who have completed 26 years on the date of implementation of the scheme will be given two simultaneous fixations one to Rs.1400-2300 and then another to Rs.1600-2660 or only one fixation to the Rs.1600-2660 grade</p>	<p>No. The pay will be fixed only once in the corresponding scale for which the officials qualify on the basis of their length of service.</p>
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3. Clarification No.9 reads as below :

How will the pay of officials who are drawing more than Rs.1660/- with special pay of Rs.70/- and who have also completed 26 years of service in basic cadre to be fixed in HSG.II scale. This point has been raised by West Bengal Circle because of CAT Calcutta bench in its judgment dated 5-3-93 on O.A. No.533/92 has ordered that special pay in respect of UDCs in Circle Office will be taken into account for the purpose of fixation on promotion.

This OA and CAT judgment have got nothing to do with TDOP scheme for administrative offices as CAT orders were issued before the scheme was implemented. Thus, under no circumstance, the special pay of Rs.70/- is to be taken into account while fixing the pay of the officials under TDOP/BCR scheme as the scheme is optional for Grade 'C' staff of Administrative Offices.

4. According to the applicant in view of the clarification subsequently issued the pay of the applicant was fixed directly in HSG Gr.II as below:

Rs. 1680	Pay drawn on 25-6-93
Rs. 40	Substantive increment
<u>Rs. 1720</u>	Total

Pay to be fixed at Rs.1750/- i.e. the next stage in HSG-II Grade(1600-50-2300-60-2660)

5. Subsequently the respondents gave a clarification on 1-12-1995, at page 42, which in para-2 states as below :

(a) LDCs/UDCs of these offices with 16 years or more service may directly be placed in the scale of Rs.1400-2300 after selection process of a duly constituted DPC is completed. The pay in such cases (1) in the scale of Rs.1400-2300 may be fixed by application of FR-22/C(now called FR 22(I)) (a)(1)

(b) The special pay drawn by the UDCs posted against identified posts will not be taken into account for the purpose of fixation of pay. However, if in the pay fixed in accordance

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with the formulation as in (a) above, there is a drop of emoluments, the drop may be protected by grant of special pay.

6. According to the applicant this clarification benefits the comparatively senior people, ^{effect of} ~~and has the~~ giving some relief but not completely and it has the effect of depriving the applicant of certain benefits which will have permanent ^{impact} on his pensionary benefits. In terms of this clarification as stated by the respondents in their written statement at page 6 the pay of the applicant as on 1-6-94 will be fixed ~~at~~ as below :

	<u>U.D.C.</u>	<u>Postal Asstt.</u>	<u>LSG</u>	<u>HSG .II</u>
26-6-93	1680	1660	1720*	1800
+	70SP			with DNI
				1-6-94

*this will be refixed as below:

26-6-93	1680		
+	70		1750
			with DNI
			1-6-94 Rs.1800/-

7. The contention of the applicant is that the DBOP scheme came into force in July, 1993 and the clarifications issued in August, '95 and December '95 cannot take away the vested benefit of the applicant. According to him this clarifications cannot affect the fact that in terms of note (d) below Govt. of India decision No.29 under FR-22 it has been enjoined that special pay should be taken into account for purpose of fixation of pay. Note 'D' reads as below :

"(d) The special pay of Rs.35/-p.m. has been doubled in the revised scales of pay consequent on the recommendations of the Fourth Pay Commission. The question arose whether in the

revised scales of pay, the special pay of Rs.35/- or double the amount should be taken into account for fixation of pay on promotion in the next higher grade with effect from 1-1-1986. The matter has been considered and it has been decided that for Upper Division Clerks in the non-Secretariat Administrative Offices who are in receipt of special pay of Rs.70/-p.m. in the revised scales of pay and are promoted to next higher grade, the special pay of Rs.70/- shall be taken into account for fixation of pay on promotion subject to the conditions in Order (29)(b) above."

The note(d) above refers to conditions in 29(b) and the conditions in 29(b) are as below :

(b) Pursuant to the Award of the Board of Arbitration, it has been decided that Rs.35/- per month paid to UDCs as special pay under Ministry of Finance (Department of Expenditure) O.M. No.F.7(52)-E.III/78. dt. 5-5-1979 (G.I. Order (24) above) shall be taken into account for fixation of pay on promotion subject to the conditions

(i) that the incumbent is a substantive holder of the post to which the special pay is attached;

OR

(ii) that the incumbent on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.

According to the applicant by means of the clarificatory orders the respondents cannot take away the statutory rights vested under FR and SR. In this connection applicant also relies on the decision of Calcutta Bench of the Tribunal in the case of Calcutta Customs Employees' Association and others vs. U.O.I. & Ors. (1993)24 ATC 350. This was a judgment delivered on 30-9-1992. The head note of the same reads as below :

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Pay - Pay fixation - Counting of special pay-
Special pay of Rs.35p.m. granted to UDCs of
non-Secretariat offices for performing
complex and arduous duties - According to
general orders of Govt. of India, such
special pay not to be taken into consideration
while fixing pay on promotion - However, Govt.
issuing instructions based on award of
Board of Arbitration that such special pay
could counted for fixation if either the
employee was holder of a substantive post to
which special pay was attached or if incumbent
worked on special pay post continuously for
three years on the date of his promotion-
Employees represented by applicant association
belonged to later category - Held, entitled to
counting of special pay for fixation of pay on
promotion.

8. The applicant has^{also} relied on several judgments
in his support which stated that a vested right cannot be
taken away by making amendments of the rules with
retrospective effect vide judgment in the case of
Ex-Capt. K.C.Arora and another vs. State of Haryana
and Others.(1984)3 SCC 281. The applicant also relies
on Tara Singh and Others vs. State of Rajasthan
and Ors.(1975)4 SCC 86 in which it was laid down
that although Government cannot supersede statutory
rules by administrative instructions yet if the rules
framed under Article 309 of the Constitution are
silent on any particular point, the Government can
fill up gaps and supplement the rules and issue
instructions not inconsistent with the rules
already framed and these instructions will govern
the conditions of service. In T.R.Kapur and Ors.
vs. State of Haryana and Others, 1986(Supp)SCC 584,
it was laid down in para 16 that benefits acquired
under the existing rules cannot be taken away by an
amendment with retrospective effect, that is to say,
there is no power to make such a rule under the

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proviso to Article 309 which affects or impairs vested rights.

9. The applicant has cited certain other judgments which however are not relevant.

10. Respondents have opposed the O.A. According to the respondents TBOP/BCR is a self contained scheme and the applicant had the option not to be covered by this scheme. Applicant chose to be governed by this scheme. Therefore, the relevant rules and guidelines issued by the Govt. department would apply to his case and the clarifications under Govt. of India Order No.29 under FR 22-C are not applicable to his case. According to respondents so far as ~~the~~ taking into account of the special pay is concerned, the subsequent clarification dt. 1-12-1995 protects the applicant from drop in emoluments and his pay has to be fixed at Rs.1800/- as on 1-6-1994 as against Rs.1750/- earlier. The prayer of the applicant therefore ^{for} refixation of his pay by fixing his pay twice under FR-22-C also after taking into account the special pay of Rs.70/- is not sustainable in the light of the rules.

11. The reliance placed by the applicant on the various Supreme Court judgment regarding vested rights to get the special pay of Rs.70/- does not appear to be well conceived nor ^{can} ~~is~~ the judgment of the Calcutta Bench of the Tribunal delivered in 1992 prior to the implementation of the TBOP scheme from ~~July~~ 1993 be invoked in aid by the applicant. A perusal of the scheme shows that the special pay of Rs.70/- paid to the UDCs stands ~~withdrawn~~ ^{date of} from the introduction of the scheme. In the case of Customs department which was before the Calcutta Bench of the Tribunal there was no TBOP scheme. Therefore the decision of the Calcutta Bench

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does not apply to the facts of the case. Similarly the clarifications under the Govt. of India's instruction No.29 under FR 22-C have no applicability to the facts of the present case and it cannot be said that the clarification about special pay given by the Department of Posts is in derogation of the statutory rights of the applicant accrued under the FRs. It merely confirms what was part of the scheme. However, there appears to be substance in the contention of the applicant that the clarification given by the department that applicants who have completed 26 years of service may be allowed to opt only for once whereas the employees who have not completed 26 years of service would be able to opt twice. It has been pointed out by the applicant that an official who completed 25 years 11 months and 29 days on 26-6-1993 and falls one day short as on 26-6-93 would get two pay fixations including one in LSG cadre on 26-6-93 but those who enter the HSG cadre directly would get only one pay fixation and to this extent there is an iniquity. The employees of the Postal Department to whom the scheme is applicable and who completed 16 to 26 years belong to a homogenous and uniform class and they cannot be broken up into two arbitrary classes one completing 26 years on the prescribed date and another not having completed 26 years on the prescribed date. The original scheme did not envisage any such differentiation and the clarification subsequently given that pay may be fixed only once in the corresponding scale for which the officials qualify on the basis of their length of service is clearly in derogation of the nature and logic of the scheme. This clarification contained in circular dt. 8-8-95 is liable to be quashed and set aside. Consequently applicant is entitled to

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refixation of the pay as if this clarification did not exist. Respondents are directed to re-fix the pay of the applicant in terms of this direction and give him all consequential benefits including arrears of pay if any one year prior to the ^{date of} filing of the O.A. viz. 12-12-1994 and also refixation of his pension and ^{full} arrears of pension and other pensionary benefits.

12. O.A. is disposed of in these terms.

There will be no order as to costs.

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M.R. Kolhatkar
(M.R. KOLHATKAR)
M(A)