

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 93/95  
Transfer Application No.

Date of Decision : 28.6.95

Smt. V.P. Inamdar Petitioner

Shri A.G. Deshpandé Advocate for the  
Petitioners

Versus

Senior Postmaster, Respondents  
Dadar, Bombay and 4 others.

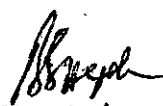
Shri S.S. Karkera for Advocate for the  
Shri P.M. Pradhan respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The 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?

  
(B.S. Hegde)  
Member (J)

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No.93/95

Smt. V.P. Inamdar.

... Applicant.

V/s.

Senior Postmaster  
Dadar, Bombay.

Sr. Superintendent of  
P.O's Bombay City  
East Division  
Bombay.

Chief Postmaster General  
Bombay.

Director General  
Department of Posts  
Dak Bhavan,  
New Delhi.

Secretary  
Deptt. of  
Communications  
Dak Bhavan,  
Government of India,  
New Delhi.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Appearance:

Shri A.G. Deshpande, counsel  
for the applicant.

Shri S.S. Karkera for Shri  
P.M. Pradhan, counsel  
for the respondents.

JUDGEMENT

Dated: 28.6.95

¶ Per Shri B.S. Hegde, Member (J) ¶

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This application was filed under  
Section 19 of the Central Administrative Tribunals  
Act, challenging the impugned order dated 12.1.95  
directing the applicant to refund the excess  
payment made to her of Rs. 5635/-.

The brief facts are: the applicant  
entered the service in the Department of Posts as a  
Time Scale Clerk on 14.6.1953. She became U.D.C. in the

S.B.C.O. wing of the Department of Posts on 19.6.78. She was confirmed as U.D.C. with effect from 1.3.86. The main contention of the applicant is that her pay was not fixed in accordance with Rules, therefore the respondents were wrongly issued the impugned order stating that excess payment was made to her.

Heard counsel for the parties.

During the course of hearing, the learned counsel for the applicant, Shri Deshpande draws my attention to the circular of the Department received on 26.7.91. By which 'One Time Bound Promotion Scheme' introduced by the department was initially made applicable to the Postal Assistant with effect from 13.11.83 and excluded staff of the cadres of Lower Division Clerk/Upper Division Clerk/Drivers. This scheme extended to the staff working in 'Savings Bank Control Organization' in the department of Post for granting the promotion under the scheme with effect from 1.8.91. By this extension it was stated that the posts of L.D.C. (Rs. 950 - 1500) and U.D.C. (Rs. 1200 - 2040) in the Savings Bank Control Organisation and Internal Check Organisation except to the extent LDC/UDCs who remain under the existing scale will be abolished and equal number of Time Scale Postal Assistants (Rs. 975 - 1660) will be created. The remaining posts will however, be converted as Postal Assistants (SBCO) as and when the concerned LDC/UDC ceases to hold that post. All the existing LDCs/UDCs will be required to furnish, within one month their option under FR 23 according to which they may, if so like remain their old pay in the existing scale of pay which would be personal to such officials. The option once exercised will be final. However on replacement of the LDCs and UDCs by Time Scale Postal Assistants (SBCO)

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the existing duties of the LDC/UDC will be performed by the Time Scale Postal Assistants (SBCO) and the senior officials would be required to perform the duties at Present entrusted to UDCs.

The learned counsel for the applicant Shri Deshpande draws our attention to Annexure R III stating that the applicant has given her option for revised scale of pay with effect from 1.1.92 i.e. the date of her increment. She had given her option as per FR 23 proviso which reads as below:

" Provided that he/she may at his/her option retain his/her old pay until the date on which he/she earned his/her next or any subsequent increment on the old scale, or until he/she vacates his/her post or ceases to draw pay on that time-scale. The option once exercised is final."

In the light of the above, since the applicant has opted to retain her old scale until she earn her next increment and whatever pay she was receiving while working as UDC will be protected while switching over to the TBOB scale. The respondents on the other hand contended that as per the said order 'One Time Bound Promotion Scheme, the promotions to be given to the officials those who have completed 16 years of regular service in the cadre of Lower Division Clerk and Upper Division Clerk working in Savings Bank Control Organisation with effect from 1.8.91. According to the said order it was made clear that the officials were supposed to exercise their option as to whether they desire to remain under the existing pay scale of LDC/UDC or opt in the scale of Postal Assistant cadre. It is further contended that the benefit of one time bound promotion scheme was extended to the


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staff of Savings Banks Control Organisation only on the condition that they opt for Postal Assistants (SBCO) cadre from the existing LDC/UDC cadre. Since the applicant had exercised her option as per the scheme and opted for Postal Assistant Cadre (SBCO) she cannot contend now by saying that her pay should have been protected while fixing her pay. Admittedly the applicant was drawing at the stage of Rs. 1920/- in the pay scale of UDC i.e. Rs. 1200 - 2040 and in fact, on changing to the new scheme of one time bound promotion, the applicant's pay should have been fixed at the maximum of time scale of Postal Assistant cadre i.e. Rs. 1660/- + Rs. 300/- personal pay so as to protect her pay scale. Instead the respondents fixed her pay in the scale of Rs. 1660/- and resorted to keeping in view FR 22(i) (a) (ii) thereby contended that under existing provisions of FR 22, no protection to loss of pay permissible under any rule. Thereby her pay was fixed wrongly on 2.10.91 on her promotion under the scheme of one time bound promotion. It is true that the applicant was retired with effect from 31.7.92 and when the new scheme came into force hardly one year left for her superannuation. Nevertheless, it is not open to the respondent to reduce her pay while fixing her pay of exercising the option and switching over to the new scheme. In this connection the learned counsel for the applicant had drawn our attention to FR 9(23) where personal pay means additional pay granted to a Government servant to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure etc.

Since the applicant had put in 39 years of service it is not un-usual that she had retained her old scale till the next increment as required under FR 23.

In the facts and circumstances of the case I am of the view, that it is not open to the respondents to fix the scale to maximum of the scale and not to give personal pay to the applicant which is contrary to the provisions of FR 9(23) and FR 23. The respondents cannot suo moto reduce the pay of the applicant without due process of law. In the instant case by virtue of new scheme TBOP as well as BCR the persons who are completed 16 years of service are automatically to get higher grade. As stated earlier the applicant has completed 39 years of service and her pay fixation to switch over to new scheme, and in the scheme it is made very clear that by retaining to her old pay till the next date of increment and switch over to new scheme is permissible under the law. That being the case, reduction in fixation of the pay scale of the applicant by the respondents is un-warranted. In the circumstances, the recovery initiated by the respondents in the aforesaid impugned order is not called for, especially from the pensionary benefits.

In the result O.A. is allowed. I, hereby quash and set aside the impugned order dated 12.1.95, but no order as to costs.

  
(B.S. Hegde)  
Member (J)