BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NOS. 487/97 & 321/97

Tuesday this the 3rd day of August,1999

CORAM: Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

OA.NO. 487/97

Vinayak Narayan Kulkarni,
Office Assistant,
O/O the Superintendent
Railway Mail Service,
B.M.Division, MIRAJ. ... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

Union of India through

1. Superintendent of Railway Mail Service, "B.M." Division, At P.O.MIRAJ-416 410.

2. Secretary, Department of Posts, (D.G.Posts), Ministry of Communications, Govt. of India, Dak Bhawan, Asoka Road, New Delhi.

3. Chief Postmaster General, Maharashtra Circle, Old G.P.O. Building, 2nd Floor, near CST, Central Railway, Fort, Mumbai.

4. Director of Audit & Accounts (Postal), (Internal check-on H.R.O. R.M.S., B.M.Division, Mar-April,1994), NAGPUR. ... Respondents

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

.. 2/-

OA.NO. 321/97

H.N.Saste,
Sub-Divisional Inspector (Postal),
Udgir Sub-Division,
UDGIR- 413 517. ... Applicant

By Advocate Shri B.Dattamurthy

V/S.

1. Union of India through
Director General,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.

2. The Chief Postmaster General,
Maharashtra Circle,
Mumbai.

3. Director of Accounts (Postal),
NAGPUR.

4. Supdt. of P.O.s,
Osmanabad Division,
OSMANABAD. ... Respondents

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

ORDER (ORAL)

(Per: Shri D.S.Baweja, Member (A)

OA.NOs. 487/97 & 321/97 are being heard together and are being disposed of by a common order as the facts and the reliefs prayed for are identical and the same question of law is involved in both the OAs.

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2. The brief facts of the OAs. are as under :- OA.NO. 487/97 :- The applicant was appointed initially as Sorting Assistant. Subsequently, the applicant was promoted under "One Time Bound Promotion" Scheme to the next higher scale of Rs.1400-2300 after completion of 16 years of service in Lower Selection Grade (LSG). While the applicant was working as LSG Sorting Assistant, Superintendent of Railway Mail Service, Respondent No. 1 called for the applicants to work as Inspector of Railway Mail Service (I.R.M) on adhoc basis. The applicant submitted his willingness for the same and was selected to officiate as Inspector of Railway Mail Service I.R.M. from 2/3.5.1991. Thereafter, he was reverted back to his post of LSG Sorting Assistant from 15.6.1993. The pay of the applicant in the post of I.R.M. was fixed at Rs.1520/- giving the benefit of pay fixation under F.R.22(1)(a)(i). The applicant thereafter also earned increments when he was reverted back to his post of Sorting Assistant. However, as per the report of Internal Check of the Audit brought on record at Annexure-'A-1' page 14, it was brought out that since the appointment as I.R.M. from LSG is in the same scale of pay, FR.22-I (a) (i) will not be applicable and therefore pay fixation allowed to the applicant is not admissible. Subsequent to this audit report, the Department of Posts vide O.M. dated 6/12.6.1995 also clarified that benefit

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of pay fixation under F.R. 22-I (a) (i) will not be admissible in case of posting to another post in the same grade. In view of this report of the audit, the recovery of Rs.5158/- being excess payment has been made from the applicant. Feeling aggrieved by this action, the present OA. has been filed by the applicant seeking the following reliefs :- (a) The applicant has sought quashing of the orders at A-1 (i) & (ii) and A-1(iii). (b) to direct the respondents to refund the amount of Rs.5158/- in one lump-sum to the applicant with interest of 12% p.a.

OA.NO. 321/97 :- The applicant joined as a Postal Assistant on 4.3.1974 and thereafter he was promoted under the Time Bound Promotion Scheme to Lower Selection Grade (LSG) from 4.3.1990 as Postal Clerk. While working as LSG Postal Assistant, the applicant appeared for the competitive examination for Inspector of Post Offices in the scale of Rs.1400-2300. The applicant was selected in the same and was posted as Inspector of Post Offices on 1.4.1990. His pay was fixed at Rs.1600/- with reference to his pay of Rs.1520/- being drawn by him in LSG in the identical scale of Rs.1400-2300. In this case also, based on the report of the Audit as well as the O.M. dated 30.5.1995 issued by the Department of Post, the fixation of pay allowed to the applicant on promotion as Inspector of Post Offices by applying F.R.22-I(a)(i)

has been disallowed and recovery of Rs.9701/- has been started from June,1996 onwards. Feeling aggreived by the recovery and/re fixation of his pay, the present OA. has been filed on 18.3.1997 seeking the reliefs as under :- (a) to declare that the appointment of the applicant on promotion from the post of LSG Postal Assistant - time bound one promotion to the post of Sub-Divisional Inspector from 1.4.1990 as carrying assumption of duties and responsibilities of greater importance justifying the application of the provisions of F.R.22-I(a)(i). (b) to set aside the O.M. dated 31.5.1995. (c) to direct the respondents to refund the recovery of Rs.9701/- . (d) to direct the respondents to refix the pay of the applicant by applying the provisions of F.R.22-I (a)(i).

3. In both the OAs. the respondents have filed the written statement. The respondents have justified their action stating that action has been taken as per the rules laid down in the O.M. dated 31.5.1995 and posting as Inspector from the post of Lower Selection Grade does not involve any higher responsibility.

4. The applicant in OA.NO. 487/97 has filed a rejoinder reply. However, the applicant in OA.NO. 321/97 has not filed any rejoinder reply.

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5. Heard the arguments of Shri S.P. Kulkarni and Shri B.Dattamurthy, learned counsel for the applicants in OA.NO.487/97 & OA.NO.321/97 respectively. On behalf of respondents Shri S.S. Karkera for Shri P.M.Pradhan argued in both the cases.

6. During the arguments, the learned counsel for applicants in both the OAs. brought out that the issue under challenge in both the OAs. has been already decided in the judgement of this Bench in the case of Namdeo Sitaramji Shende vs. Union of India & Ors. on 12.9.1996 in OA.NO. 259/96. A copy of this order has been brought on record in OA.NO. 487/97. On going through this order, we observe that issue under challenge in the present OAs. is the same which has been decided in OA.NO. 259/96. The respondents have placed reliance on the O.M. dated 31.5.1995 for dis-allowing the fixation of pay on posting as Inspector and this O.M. has been set aside by the Bench in this order. In addition to this order, reliance has been also placed on the order of the Jabalpur Bench of the Tribunal in the case of Dhyaneshwar Nandanwar vs. Union of India & Ors., 1993(2) CAT SLJ 305. In this case also the same issue was involved and the Tribunal has held that the applicants on being posted as Inspector of Post Offices are entitled for fixation of pay by

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applying the provisions of F.R.22-I (a) (i). It is further noted that in OA.NO. 259/96 the reliance has been also placed in the earlier judgement of Principal Bench in the case of Ramesh Chand vs. Union of India & Anr., OA.No. 2221/89 (1993 (2) CAT SLJ 95). Keeping in view what is held in the cited orders, we need not go into the issue on first principles as the matter under challenge in these OAs. is squarely covered by the ratio of these orders. We are in respectful agreement that what is held in these orders and hold that the action taken by the respondents in dis-allowing fixation of pay to applicants in both the OAs. under F.R.22-I (a) (i) is not sustainable.

7. In the result of the above, both the OAs. are allowed. The recovery made from the applicants in both the OAs. s ll be refunded in one lump sum. Further, in respect of OA.NO. 321/97, the pay of the applicant will be restored back which had been allowed by applying F.R.22-I(a)(i). The compliance of the order to be done within a period of three months from the receipt of a copy of this order. No order as to costs.

(S.L.JAIN)
MEMBER (J)

(D.S.BAWEJA)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Review Petition No. 47/99 and 48/99 in
ORIGINAL APPLICATION NO:321/97 and 487/97

TRIBUNAL'S ORDER DATED:22.3.2001

Applicants by Shri B. Dattamurthy (OA 321/97) and Shri S.P. Kulkarni (OA 487/97). Respondents by Shri S.S. Karkera for Shri P.M.Pradhan.

Arguments heard. The bench has pronounced the order on 3.8.1999. According to the respondents copy of the order was received on 30.8.1999. The Review Petition has been filed on 29.10.1999. There is no application for condonation of delay and there is also no cause for condonation of delay. The Review Petition has to be filed within 30 days from the date of receipt of copy of the order. The Review Petition is barred by time. Hence, is liable to be dismissed and is dismissed accordingly. No costs.

(Ms.Shanta Shastry)
Member(A)

(S.L.Jain)
Member(J)

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dl-22/3/01
order/Judgement despatched
to Applicant/Respondent (s)
on 2/4/01