

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 520/1998

DATE OF DECISION: 25/10/2004

G.A.Kshirsagar & others

- Applicant

Shri S.V.Marne

Advocate for  
Applicant/s

Versus

Union of India & others

- Respondents


Shri V.S.Masurkar

Advocate for  
Respondents

CORAM:

Hon'ble Shri A. K.Agarwal - Vice Chairman  
Hon'ble Shri S.G.Deshmukh - Member (J)

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

  
(A.K.Agarwal)  
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Dated this *Monday* the *25<sup>th</sup>* day of October, 2004

Coram: Hon'ble Shri A.K.Agarwal - Vice Chairman  
Hon'ble Shri S.G.Deshmukh - Member (J)

O.A.520 of 1998

1. G.A Kshirsagar
  2. Shriram Bapurao Jadhav
  3. Annasaheb Laxman Shende
- (All the three applicants  
are serving as Sorting Assistants  
under the Superintendent, RMS,  
B.M.Division, Miraj, District Sangli,  
Maharashtra)

(By Advocate Shri S.V.Marne) - Applicants

Versus

1. Union of India  
through the Secretary,  
Postal Department, New Delhi.
2. Post Master General,  
Goa Region, Panaji, Goa.
3. Superintendent, RMS Service,  
B.M.Division, Miraj,  
District Sangli,  
Maharashtra.

(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

(Per: A.K.Agarwal - Vice Chairman)

This OA has been filed by the applicants G.A.Kshirsagar and 2 others seeking direction to the respondents for paying them salary at par with their juniors. The case of the applicants is that although they are senior to 11 Sorting Assistants (in short 'SAs') in the department, yet they are getting less salary than them.

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2. The learned counsel for the applicants mentioned that the Postal Department had advertised the posts of Sorting Assistants on 4.12.1981 and after due process, seven persons were selected. All the three applicants of this OA were among those seven. The applicants along with the other selected candidates were sent for training at the Postal Training Centre, Vadodara w.e.f. 6.9.1982. However, after completion of training only three were appointed against regular vacancies. As per the admission made by the respondents in their written statement, the applicants were selected in 'B' list in reserved training pool of first-half of 1982 recruitment. It was decided to engage them as short-duty Sorting Assistants. Thereafter recruitment for the second-half of 1982 year was made and 11 selected candidates were appointed as regular Sorting Assistants vide three separate orders dated 25.8.1983, 1.10.1983 and 2.12.1983.

3. The learned counsel for the applicant contended that before giving regular appointments to the candidates selected in the recruitment of the second half of 1982, the persons waiting in the reserved list of first-half of 1982 should have been given regular appointment. He said that the three applicants were ultimately appointed as regular Sorting Assistants vide order dated 10.1.1985. The learned counsel further mentioned that all the three applicants have also been granted seniority over the 11 persons appointed later on. However, since regularisation of the

applicant is being counted from 10.1.1985, while the 11 candidates selected for the second half of 1982 have got appointments from 1983 they are getting a higher salary. He said that the main relief sought by the applicants in this OA is for getting salary at least at par if not higher than what is being drawn by their juniors.

4. The learned counsel for the respondents mentioned that the applicants have been appointed as regular SAs w.e.f. 15.1.1985 as per the availability of vacancies. As far as seniority is concerned this has been given to them above the candidates of second-half of 1982. The fixation of pay has been done strictly in accordance with the rules. Since their regular appointment came into effect from a later date they are drawing comparatively lower salary. He said that giving them the benefit of seniority does not mean that they should also be fixed at a higher salary. On this issue the learned counsel for the respondents has relied upon a ruling of the Apex Court in the case of Union of India Vs. R. Swaminathan and others, 1997 SCC (L&S) 1852 wherein it has been held that seniors are not entitled to stepping up of their pay with reference to their juniors if the juniors were rightly given higher pay in accordance with FR 22 (I) (a) (1). The learned counsel for the respondents also mentioned that the applicants were appointed in the year 1985 and have filed this OA in 1988 which is very much beyond the period

of limitation provided under section 21 of the Administrative Tribunals Act, 1985. The learned counsel for the respondent drew our attention towards the written statement filed by the respondents on 9.9.2004 wherein necessary conditions for stepping up of pay of seniors have been discussed. He said that as per letter dated 4.11.1993 the three requisite conditions laid down by the Hon'ble Supreme Court for stepping up of pay under FR-22 are not fulfilled in this case. He reiterated that it is well established that seniority alone is not the criteria for allowing stepping up of pay.

5. The learned counsel for the applicants submitted that though the applicants have been declared senior but their appointment is counted from the year 1985. Thus, for the purpose of eligibility for next promotion, the length of service as SAs would be less than their juniors who were appointed in 1983.

6. MP 536/04 was filed for condonation of delay by the applicant on 29.7.2004. It is mentioned in the MP that there is only a short delay of about nine months in filing this OA and this may be kindly condoned. The respondents, in reply to this MP have mentioned that seniority has been given to the candidates over the second half of 19<sup>th</sup> 82 and their names have been arranged accordingly in each gradation list issued since 1.7.1987 from

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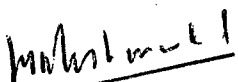


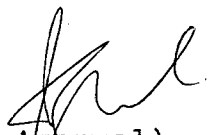
time to time. Hence, the contention of the applicant that they came to know about their seniority on 20.3.1997 should not be accepted.

7. After hearing both the counsel and going through the material placed on record, we find that the relief claimed in the OA is for stepping up of pay vis-a-vis their juniors. The applicants have mainly based their claim on the ground of seniority. There is no dispute that the pay fixation has been done in accordance with the provisions of FR 22 (1) (a) as per the ratio laid down by the Apex Court in the case of R.Swaminathan (supra). Stepping up of pay cannot be granted on the basis of seniority alone, if otherwise, the pay fixation has been done in accordance with the rules.

8. We are of the view that this OA has not been filed within the limitation period prescribed under the Administrative Tribunals Act, 1985. The contention of the applicants that they were unaware of the seniority list published from 1.7.87 onwards and came to know about their seniority only on 20.3.1997 ~~is~~ cannot be accepted. Further on merit also, this OA deserves to be dismissed.

9. In view of the contents in the above paras, this OA is dismissed. No order as to costs.

  
(S.G. Deshmukh)  
Member (J)

  
(A.K. Agarwal)  
Vice Chairman