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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 376 of 1987

DATE OF ORDER: 23.11.1989.

G.R.Srisailam and another

..Applicant

Versus

The Director General of Posts,
Postal Accounts Wing, Dak Bhavan,
New Delhi and another

..Respondents

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For Applicants: Mr.K.S.R.Anjaneyulu, Advocate.

For Respondents: Mr.J.Ashok Kumar, Standing Counsel for
the Department.

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C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY: MEMBER(JUDICIAL)

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(Judgment delivered by Shri B.N.Jayasimha, Vice Chairman)

1. The applicant no.1 is the Circle Secretary, All India Postal Accounts Employees' Association, Hyderabad and applicant no.2 is a Junior Accounts Officer, in the office of the Director of Accounts (Postal), Hyderabad. They have filed this application aggrieved by the orders no. 25.1.76 PA/Adm I/Vol.II/33, dated 1-5-1982 and Order no.8.6.86/PA/Adm I/Vol.IV/KW 14, dated 15-4-1987, rejecting the benefit of enhanced special pay of Rs.35/-.

2. The applicants state that as per the Ministry of Finance letter dated 22-9-1979, sanction was accorded for special pay at the rate of Rs.35/- per month from the

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second year onwards from the date of passing the SAS examination to the auditors awaiting promotion as SAS Accountants. During the first year, after passing the SAS examination, the existing rate of special pay of Rs.20/- per month continued without any change. The benefit of the same was also extended to the officials in the Postal Accounts Organisation as they had passed SAS Part II examination held prior to 1-4-1976 and were awaiting promotion as Junior Accounts Officer (Postal) on 22-9-1979 and who were in receipt of special pay of Rs.20/- per month as per the Director General of Posts, New Delhi letter dated 1-5-1982. In this letter, it is stated that the special pay of Rs.35/- per month from the second year onwards or from 22-9-1979 whichever is later will be admissible only to those officials who are/were already in receipt of the special pay of Rs.20/- per month under the earlier orders dated 3-1-1975, till the date of their promotion as JAO(Postal). They contend that all those officials who were already in receipt of Rs.20/- per month as special pay by earlier order are entitled to enhanced special pay of Rs.35/- per month from the second year onwards till the date of promotion as JAO. The applicants, therefore, seek a declaration that the condition added by the DG posts in his letter dated 1-5-1982 making the special pay applicable only to those awaiting promotion on 22-9-1979 is arbitrary and discriminatory.

3. The applicants further state that some of the officials who were similarly placed as that of the applicants got the benefit even though they passed the SAS Part II examination later and were also promoted later than the applicants. But the applicants could not get the benefit as they passed the SAS Part II examination earlier and were

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promoted earlier to 22-9-1979 notwithstanding the fact that the applicants suffered more. By not extending the benefit to those officials who had been promoted earlier to 22-9-79, x the department has treated them in an unfair and inequitable manner and created an anomalous situation.

4. The affected officials including the applicants submitted representation dated 22-9-1983 to the Director General Posts, New Delhi, stating bringing out this anomaly. They contended that the authorities' stand of getting promotion a day earlier or a day later will permit totally unequal and inequitable treatment in grant of benefit of special pay of Rs.35/- to the officials who are satisfying all the conditions required for the grant of the benefit. They, therefore, contended that the division which classified officials into two classes is not based on any rational principle.

6. The Director General of Posts, New Delhi, through his letter dated 15-4-1987 addressed to the Director of Accounts (Postal) Hyderabad, had conveyed the decision informing that the matter has been considered but could not be agreed to by the Directorate to extend the benefit of enhanced special pay of Rs.35/- per month to the applicants. Aggrieved by this order, the applicants have filed this application.

7. The respondents in their counter say that according to the orders issued in letter no.27023(41) 74-BG.I dated 3-1-1975 of the Ministry of Finance, Government of India, a special pay of Rs.20/- is admissible to those who qualify

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in the SAS Part II Examination and working in the Indian Audit and Accounts Department till they earn promotion As SAS Accountant. These orders were given retrospective effect from 1-1-1973. The special pay is granted as an incentive for qualifying in the SAS examination and it will ~~not~~ be taken into account while fixing pay on promotion as Section Officer as per letter dated 13-2-1976 of the Comptroller and Auditor General of India. This amount was enhanced to Rs.35/- from the second year onwards as per letter dated 22-9-1979 of the Ministry of Finance (Department of Expenditure) and these orders came into effect from 22-9-1979. During the first year, the existing rate of Rs.20/- will continue without any change. The benefit of special pay of Rs.20/- per month under the earlier orders dated 3-1-1975 and the enhanced rate of Rs.35/- special pay contemplated in the orders dated 22-9-1979 has been extended to the officials in the Postal Accounts Organisation, who qualified in the SAS Part II Examination while working in the Indian Audit and Accounts Department and later transferred to Postal Accounts on or after 1-4-1976. The benefit was also extended to the officials of the Postal Accounts Organisation, who passed Part I of the SAS (P&T Branch) examination while working in Indian Audit and Accounts Department prior to 1-4-1976 and subsequently the Junior Accounts Officers Part II Examination held in the P & T Department under the old SAS (P&T) Branch syllabus vide P&T Memo dated 12-8-1983. The intention of the Government in extending the benefit is to compensate the officials, who qualified for promotion as Section Officers/Junior Accounts Officers, but could not be

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promoted even after a year of their, acquiring the qualification for want of vacancies. A few officials of this department who had qualified in SAS Examination prior to 1-4-1976 were promoted between 1-4-1976 and 22-9-1979 i.e. prior to the issue of orders raising the Special Pay of Rs.35/- per month. They had to wait for promotion to the Junior Accounts Officers' cadre for want of vacancies. The Special Pay of Rs.35/- available from the second year could not be extended to them as they had been promoted prior to 22-9-1979, while some others who passed the SAS Examination and promoted after 22-9-1979 derived the benefit under the afore-said orders dated 1-5-1982. It is also admitted that the affected officials had represented to respondent no.1 on this issue for extending special pay of Rs.25/- per month from the second year onwards to those promoted prior to 22-9-1979 notionally upto 21-9-1979 and with actual benefits from 22-9-1979 onwards. While rejecting this representation, it was made clear that anomaly, if any, when seniors promoted before 22-9-1979 and getting less pay than their juniors who were promoted after the said date would be removed. Two such cases came to notice and the anomaly was removed by suitably stepping up the pay of the seniors. There is no such anomaly in the case of applicant no.2.

8. The respondents further contend that the allegations of arbitrariness, discrimination and violation of Articles 14 and 16 of the Constitution of India are baseless and devoid of merits, as the benefit has been given prospectively. It is a well accepted proposition that whenever a concession is extended by the Government from a specified date,

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only those fulfilling the prescribed conditions on or after that date would be entitled. Only those officials who have been promoted as Junior Accounts Officers on or after 22-9-1979 when the orders were issued, could have the benefit. Others who were promoted as JAO's prior to the said date can have legitimate grievance only if they were drawing less pay than their juniors promoted after 22-9-1979. The respondents are prepared to examine and remove anamoly, if any, in/case of seniors promoted as Junior Accts. Officers prior to 22-9-1979.. For these reasons, the respondents oppose this application.

9. We have heard the learned counsel for the applicant and Shri J. Ashok Kumar, learned standing counsel for the department.

10. Shri Anjaneyulu urged that the persons who had passed the SAs Examination prior to 1-4-1976 form one class and they could not be classified into two groups with reference to the issuance of the order dated 22-9-1979 on the ground that of their having been promoted on that date or not. This is a hostile discrimination and should be struck down. He relied upon a decision of the Bangalore Bench in M.S. Nanjundaiah and others versus The Government of India and another/where a similar issue in respect of UDCs of the Postal Department have been raised. He says in that case, the applicants had been promoted from the post of UDC to the post of Lower Selection Grade on different dates from 27-2-82 to 23-4-83. Prior to their promotion they were drawing special pay of Rs.35/- in the grade of UDC. Their initial pay on promotion to LSG was fixed without taking into account the special pay of Rs.35/- being drawn by them. The Government

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by its letter dated 1-9-1987 decided that special pay of Rs.35/- being allowed to UDCs in non-Secretariat Administrative Offices for attending to work of more complex and important nature would be taken into account in fixing their initial pay in the next higher post to which they were promoted provided that the official concerned held the post in which he drew special pay substantially or had the said post continuously for three years of more. This order was made effective from 1-9-1985 and those promoted as LSG prior to that date were therefore, denied the benefit of counting of special pay for the purpose of fixing their initial pay in LSG. The applicants therein contended that they have been discriminated against merely because they were promoted to LSG prior to 1-9-1985 while those promoted on or after 1-9-1985 were being granted the benefit. Applying the ratio of the judgment of the Supreme Court in Nakra's case (D.S.NAKRA V.Union of India - AIR 1983 SC 130), the Tribunal directed that the initial pay of the applicants in LSG should be fitted on a notional basis from the dates of their promotion to that grade taking into account the special pay drawn by them prior to their promotion, and the actual pay on this will however become payable to them only from 1-9-1985 and no arrears will be payable for the period prior to 1-9-1985.

11. On a careful consideration of the submissions made we find that the circulars in question ~~would seek to~~ deny the benefit of granting ^{of} Rs.35/- as special pay for those who have been promoted prior to 22-9-1979. The position

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is as follows:

Persons who passed the SES part II
examination prior to 1-4-1976
and promoted as JAO prior to
22-9-1979

.....Not eligible
to count Rs.35/-
as Special Pay

Persons who passed the SES Part II
examination prior to 1-4-1976 and
promoted as JAO after 22-9-1979

.....Eligible to
count Rs.35/-
as Special Pay

We find that the decision of the Bangalore Bench referred to above, which has followed D.S.Nakara's case would apply to this case also. We accordingly direct the respondents to fix the initial pay of the applicants in the JAO's grade on a notional basis from the date they became eligible to draw Rs.35/- as special pay. Actual pay on this basis will however become payable to them only from 22-9-79. The respondents are directed to effect payment of arrears within 3 months from the date of receipt of this order. The application is disposed of with the above directions. No costs.

B.N. Jayasimha
(B.N.JAYASIMHA)
VICE CHAIRMAN

J.N. Murthy
(J.N.MURTHY)
MEMBER (JUDL.)

DT. 23rd November, 1989.

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S. L. Venkatesh
DEPUTY REGISTRAR. (J) 29/11/89

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To:

1. The Director General of posts (India), postal Accounts Wing Dak Bhawan, Parliament Street, New Delhi-110 001.
2. The Director of Accounts (Postal) Andhra Circle, Abids, Hyderabad-500 001.
3. One copy to Mr. K.S.R. Anjaneyulu, Advocate, 1-1-365/A, Jawaharnagar, Bakaram, Hyderabad.
4. One copy to Mr. J. Ashok Kumar, SC for postal department, CAT, Hyderabad.
5. One spare copy.

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