

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No.290/90.

Date of Judgment: 1.1.1992.

BETWEEN:

N. Lakshmana Rao

.. .. , Applicant

vs.

Union of India, Represented by

1. Secretary to the Government of India and Director-General, Department of Posts, New Delhi-1.
2. Chief Post Master General, Andhra Pradesh Circle, Hyderabad.

.. .. Respondents

Counsel for the Applicant: Sri K.S.R.Anjaneyulu

Counsel for the Respondents:Sri Naram Bhaskar Rao, Addl.
Central Govt.Standing Counsel.

CORAM:

Hon'ble Shri C.J. ROY, Member (J)

(Judgment of the Single Bench delivered by the Hon'ble Shri C.J.Roy, Member(J)).

This application is filed under section 19 of the Administrative Tribunals Act, 1985 ~~to declare the orders~~ of the Director General of Posts communicated under Chief Postmaster General, Hyderabad letter No.Accts-6/50/87 dated 23-2-90 (Annex.2) as arbitrary, discriminatory, illegal and offending Article 14 of the Constitution of India and set aside the same and to direct the respondents to give the applicant the stepped up pay on a par with his Junior Sri G.L.N.Sastry on the principle decided in similarly placed officials in O.A. 150 of 86 of the Hon'ble Tribunal on 4-6-87 with all consequential benefits and to grant him pension on the basis of his revised pay with effect from 1-8-87 and to pass such other order or orders as are deemed fit and proper in the circumstances of the case.

2. This application is for stepping up of the pay of the applicant. The applicant joined postal department as Clerk in 1948 and was promoted as Inspector of Post offices in 1957. Thereafter he was promoted as Assistant Superintendent of Posts (H.S.G.) and then to the cadre of Postal Superintendent Service Group 'B' on 5-7-73. The applicant has got a grievance that one Sri G.L.N.Sastry (Retd. APMG) was junior to him right from the time both worked in the grades of Clerk. Inspector of post~~sk~~ offices, common HSG/Assistant Superintendent of Posts cadre and also postal Superintendents Service Group 'B'. The pay of said Sri G.L.N.Sastry was fixed at Rs.810/- on 1-3-76 in the scale of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 on the date of his promotion whereas the pay of the applicant was Rs.775-00 on that date. Applicant cites (Annex.3X Lr.No.31-1/74-PE.I dt. 19-6-74) the decision of the Director General to remove anomalies by stepping up the pay of senior officials to the level of junior officers who draw more under the provisions of FR 30 and FR 22(ii) in which certain guidelines have been laid down. As these guidelines were not followed for long time, the applicant submitted a representation ~~before~~ petition dt. 12-6-1987 even before his retirement and after a prolonged correspondence a communication was addressed to him by the Chief Postmaster General vide his letter No.Accts-6/50/87 dt. 23-2-90 (Annex.2X). Hence, he claims that the case is also within limitation.

3. The applicant further claims that it is a case of covered Judgment in O.A.No.150 of 1986 (Annex.4). In another similar case decided by this Tribunal in O.A.No.179 of 1988 also he relied upon wherein the seniors were allowed to get stepping up of pay to the level of juniors with retrospective effect. That decision was handed ^{down} over on 2-12-88. Hence, the applicant is equally entitled for the stepping of his

pay with effect from that date when his juniors were promoted as stated supra.

4. For this the respondents have filed their counter affidavit stating that the applicant is a retired postal employee having retired from the postal Superintendents service Group-B, filed this O.A. after his retirement for stepping up of his pay on par with that of his juniors Sri G.L.N.Sastry with effect from 9-3-1976 in the category of Postal Superintendent Service Group-B. It is also alleged that he was promoted to the Postal Superintendents Service on 5-7-1973, but his junior Sri G.L.N.Sastry was promoted on 9-3-1976. Though Sri G.L.N.Sastry was promoted subsequently after a long gap, his pay was fixed at a higher stage than that of the applicant because from 1-1-1973, the Government has split the erstwhile HSG into HSG.I and HSG.II. Sri G.L.N.Sastry who was in HSG.II was later promoted to HSG.I and from that grade he was promoted to the Postal Superintendents Service in 1976 earning the benefit of pay fixation under FR-22(C) twice, whereas the applicant who was in the erstwhile single grade of HSG was straightaway promoted to the Postal Superintendents Service earning the benefit of pay fixation under FR-22(C) only once. The applicant did not work as HSG-I and he cannot, ~~xxx~~ draw comparison with Sri G.L.N.Sastry's case, and keeping quiet all these years cannot now file this O.A. After his retirement stepping up of his pay cannot be done ~~xx~~ notionally for the purpose of pensionary benefits.

5. I heard both sides, represented by Sri K.S.R.Anjaneyulu learned counsel for the Applicant, and Sri Naram Bhaskar Rao, learned counsel for respondents.

6. The learned counsel for respondents vehemently opposed the application stating that the covered O.A.s are not applicable to the instant case. Learned counsel for respondents Shri N.Bhaskara Rao raised a point of limitation that the cause of action arose only on 4-6-1987. Representation was given only on 12-6-1987 and after 2 years six months viz. 23-2-1990 this case cannot be looked into as barred by limitation. His second contention is that the O.A.No.179 of 1988 dated 2-12-1988 was allowed on the basis of their admission in the counter, that the applicant herein is not similar to that of applicant in O.A.No.179/88. Here there is no admission and that O.A.No.179/88 was simply disposed-of based on O.A.No.150/86 as stated by the learned counsel.

7. He further states that he is already retired in 1987 itself and that after his retirement he has not worked and that he is not entitled to any pay according to citation on no work no pay in AIR 1991 (May-June part). Shri K.S.R. Anjaneyulu, learned counsel for the applicant cites ATR 1988(1) CAT - pg.375 at para-10, Jodhpur Bench; ATR 1990(1), CAT Jodhpur Bench pg.147; and also strongly relied on a case ATR 1989(2) S.C. pg. 335 of S.S.Rathore case. He also cites 1989(9) ATC pg. 49 - Smt.Kamala Devi Vs. Union of India and others, where the administration is capable of taking early decision they should not adopt technical pleas. He states that Shri Chary also retired when his case was allowed (Annex.A-6) Both the applicants in the above O.As. were allowed (FR 22(c)) who were juniors to applicant. They are similarly situated with him and similarly situated persons in the gradation list are not given the benefit. It is hit by decision reported in ATR 1990(1) CAT, Jodhpur Bench pg.147. He claims only the notional benefits based on the stepping up the scale of pay.

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He cites Sri Laxman Das case where similarly situated persons were not given the benefit as it is discriminatory.

8. It is, no doubt, that Sri G.L.N.Sastry and he, are both in similarly situated positions. In Sec.20 of Administrative Tribunals Act it is stated that Under section 20, if a final order has been made by the Government -

"Section 20(2)(a) - if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) - where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired."

On close look, it could be seen that limitation comes also if a final order has been made by the Government. Here, the final order has been made on 23-2-1990. The delay is not that of making of the applicant. The argument that Clause(a) controls Clause - (b) in Section 20 is not sound in my opinion, which cannot be accepted because the word 'or' is used after the conclusion of the word 'Grievance' in Section 20(2)(a). Therefore, both are independent. If an application is made, he can wait for six months and come before us only when there is no final order is not made. But, here the final order has been made on 23-2-1990, and therefore, Sec.20(2)(a) is applicable. If a final order has been made by the Government or competent authority to pass such orders under such rules, or rejecting any appeal preferred or representation made.

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Here the application is finally disposed-of on 23-2-1990. So a final order has been made in this case. When final order has been made, the limitation starts from the date of order. In this light we have to examine Sec.21 of the A.T.Act. Section 21(a) says -

"Sec.20(a) - in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made. "

So, I am firmly of the opinion that Sec.20(2)(a) and Sec.21(a) are homogeneous, to read together, give a correct meaning to the application of limitation. If no final order has been made, then only Sec.21(b) applies. Under the circumstances, I have no hesitation to hold that Sec.21(a) - Read with S.20(2)(a), order dated 23-2-1990 is a final order within the meaning of Section 20(2)(a) and both these sections read together it is clear that the application which was filed on 2-4-1990 is clearly in time. So, I have no hesitation in negating the argument of the learned counsel for the respondents. Besides following the principles laid down and cited by the learned counsel for the applicant. When he is similarly situated as that of Sri G.L.N.Sastry, though he earned two grades, does not make much difference. He is similarly situated to the applicant and applicant cannot be denied the benefit given to his juniors.

9. In O.A.1942/87 reported in ATR 1988 CAT 582, it is held that similarly situated persons not being extended the same benefit is discriminatory. It is also held in 1988 (1) ATLT (SC) 306 that ~~equally~~ placed persons belonging to same class, equal treatment should not be denied without any partiality. In Laxman Das's case also, which is

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reported in 1988(6)ATC 609 it is held that if the applicant waiting for the outcome of the result of a case and then files case for extending the same benefit after exhausting the alternative remedies cannot be denied the same benefits. The question of no work no pay referred to by the learned counsel for the respondents does not arise in this case which is limited to pensionary benefits. Moreover what is asked for is only stepping up of pay without invoking higher responsibilities even while in service. Therefore I direct the respondents to notionally fix up the pay of the applicant by stepping it up on par with Sri G.L.N.Sastri w.e.f. 1-7-76. By this, the applicant will be entitled to ~~only from the date of retirement~~ ^{all} (emphasis supplied) retirement benefits in accordance with the notional pay on the date of retirement arrived at by adding to the notional pay on 1-7-76 all the increments from 1-7-76 till the date of retirement. There will be no interest. The arrears on the above basis shall be paid to him within three months from the date of receipt of this order.

10. The application is disposed-of thus with no order as to costs.

Abdul
(C.J.ROY)
Member (J)

Dated: 18th January, 1992.

S.6/1/92
Deputy Registrar (J)

To avl/

1. The Secretary to Govt. of India and Director General, Union of India, Dept. of Posts, New Delhi-1.
2. The Chief Post Master General, Andhra Pradesh Circle, Hyderabad.
3. One copy to Mr. K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
4. One copy to Mr.N.Bhaskar Rao, Addl. CGSC, CAT.Hyd.
5. One copy to Hon'ble Sri. C.J. Roy, Member (I), CAT.Hyd.
6. One Spare Copy.

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Abdul
6/1/92

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. RAIASHBRAMANTAN M.L.A)

AND

THE HON'BLE MR.

C.J. Roy

M(J)

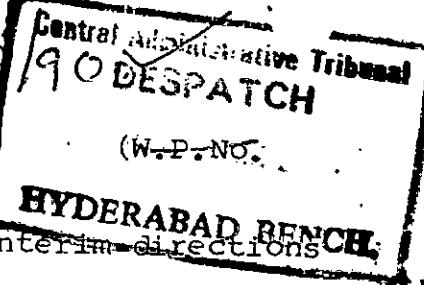
DATED: 1 - 1 - 1992

ORDER/ JUDGMENT:

M.A./R.A./C.A. NO.

O.A. NO.

290



T.A. NO.

(W.P. NO.)

Allowd.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs.

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No stamp on
23/1/92