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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

* * *

O.A. 574/90

Dt. of Decision : 9.12.93

Shaik Mahabooob

. . Applicant.

Vs

1. Secretary to the Government of India
and Director-General, Department of
Posts, New Delhi - 1.

2. Chief Postmaster General,
Andhra Pradesh Circle,
Hyderabad.

. . Respondents.

Counsel for the Applicant : Mr. K.S.R. Anjaneyalu

Counsel for the Respondents: Mr. N.R. Dena has case.

CORAM:

THE HON'BLE JUSTICE SHRI V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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J U D G E M E N T

(As per Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman)

This Application was filed praying for stepping up of the pay of the applicant with that of his junior Shri G.L.N.Sastry who was promoted ^{to} Postal Superintendent Service (PSS) Group B on 1-3-76, as the pay of Shri G.L.N.Sastry was fixed at Rs.810/- on such promotion while the pay of the applicant who was promoted to PSS Group B on 7-6-73 was Rs.740/- on 1-3-76.

2. The facts which give rise to this O.A. are as under:

The applicant joined service as a clerk in the Postal Department in 1948 and he was promoted as Inspector of Post Offices in 1958. Shri G.L.N.Sastry joined service as clerk in the Postal Department subsequent to 1948. The applicant was promoted to the post of Assistant Superintendent of Post Offices (ASPO) on 6-6-72 while Shri G.L.N.Sastry was promoted as HSG-II on 15-3-73 and as ASPO on 21-7-75. While the applicant was promoted to PS₃ Group B on 7-6-73, Shri G.L.N. Sastry was promoted to PSS Group B on 1-3-76. The

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pay of the applicant and that of ~~the~~ Shri G.L.N.Sastry on relevant dates upto 1-3-76 are as under:

Date/ Period	Applicant		Shri GLN Sastry	
	Cadre	Pay	Cadre	Pay
26-8-58	I.P.O.	Rs.160/-	P.A.	Rs.92/-
6-6-72	Common cadre as PO/HSG	Rs.365/-	IPO	Rs.350/-
1-1-73	-do-	Rs.625/-	IPO	Rs.580/-
(Pay scale revised on the recommendation of III Pay Commission)				
1-2-73	Common HSG/ASP	Rs.625/-	IPO	Rs.600/-
7-6-73	PSS Gp.B	Rs.680/-	Common HSG/ASPO	Rs.630/-
1-6-74	-do-	Rs.710/-	-do-	Rs.650/-
21-7-74	-do-	Rs.710/-	ASP/HSG.I	Rs.700/-
1-6-75	-do-	Rs.740/-	-do-	Rs.725/-
1-3-76	-do-	Rs.740/-	-do-	Rs.810/-

3. The applicant pleaded that when he noticed the anomaly ⁱⁿ of pay, he made a representation in June 1980 and then he was informed by PMG Hyderabad ^{by} letter No.ACI/6-58/80 dated 26-10-81 that the Writ Petition No.4109/79 filed by Shri G.L.N.Sastry and others praying for counting their service from an earlier date was pending, and the applicant was advised to wait till the disposal of that writ petition. The same was transferred to this Hyderabad Bench and registered as T.A.No.8/86 and it was dismissed on 3-9-86. Thereon ^{after} the applicant submitted his representation on 16-2-88 requesting the concerned authority to fix his

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pay on par with that of Shri G.L.N.Sastry by giving benefit of FR-22/C. The applicant retired from service on 30-4-88. The Director General of Posts by letter dated 28-11-89 rejected the request of the applicant and the same was intimated to the applicant on 2-1-90 and this O.A. was filed on 16-7-90. This O.A. was filed praying for stepping up of his pay with that of his junior Shri G.L.N. Sastry as on 1-3-76 and for consequential benefits of arrears of pay, etc.

4. The anomaly had arisen as H.S.G. was bifurcated into two grades HSG-I and HSG-II by proceedings No.31-1/74-PE-I dated 19-6-74 of D.G., P&T, New Delhi and the same was given effect from 1-1-73. The applicant who was promoted to HSG on 6-6-72 and thus before 1-1-73, was placed in HSG-I in the scale of Rs.550-900, while Shri G.L.N. Sastry was promoted to HSG-II on 15-3-73 as by then the HSG-II had come into existence. While the next promotion from HSG-I is to PSS Group B, the promotion from HSG-II is to HSG-I. Thus, while the applicant got the benefit of FR-22/C only once, that is at the time of promotion to PSS Group B, Shri G.L.N.Sastry got the benefit of FR 22-C twice, that is, once on promotion for from HSG-II to HSG-I, and the second time at the time of promotion from HSG-I to PSS Group B. Thus even though the applicant got promotion to PSS Group-B earlier to Shri G.L.N.Sastry, still his pay on 1-3-76 in the PSS Group B was only Rs.740/- while on that date the pay of Shri G.L.N.Sastry was fixed at Rs.810/- on his promotion to PSS Group B.

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5. As nothing can be attributed to the applicant for the above pay anomaly, the applicant is entitled to stepping up of his pay on 1-3-76, urged Shri K.S.R. Anjaneyulu, the learned counsel for the applicant. Government of India, Ministry of Finance OM No.F.2(78)-E.III(A)/66 dated 4-2-66 is also referred to for the applicant to claim the stepping up.

6. The contentions for the respondents are two fold: (i) When the stepping up was claimed from 1-3-76 this O.A. was filed in 1990 and thus, more than 14 years after the cause of action had arisen and accordingly this claim has to be disallowed on the grounds of limitation and laches. Further the notional pay for the 10 months before the date of retirement cannot be considered for calculating the pension. Thus when this O.A. was filed after retirement of the applicant, he is not entitled to any monetary benefit in pension. (ii) While the applicant was promoted to the PSS Group-B after working only in HSG Group-I, Shri G.L.N.Sastry worked both in HSG-II and HSG-I before he ~~has~~ got promotion ^{to} in PSS Group-B, it cannot be stated that both worked in the same category and as such the applicant is not entitled to the benefit of stepping up.

7. We will ~~at~~ advert to the second point first. Till 1-3-73 there was only one HSG category, and the applicant was promoted to HSG when there was only one category in that cadre. But when the turn for promotion of Shri G.L.N.Sastry, who was admittedly junior to the applicant, to HSG had come, it was bifurcated and thus his promotion was to the lower category of HSG

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cadre (HSG-II) while those who were promoted to HSG prior to 1-1-73 were placed in HSG higher category (HSG-I). Thus, it is not a case where the applicant and Shri G.L.N.Sastry worked in two separate seniority units. In view of the later bifurcation, Shri Sastry had to work both in HSG-II and HSG-I while the applicant who was promoted before the bifurcation, had not the necessity to work in HSG-II. So it cannot be stated that the applicant and Shri G.L.N.Sastry had come to PSS Group-B from two different ~~traces~~ ^{streams}. The ~~trace~~ ^{stream} from which they had come was the HSG, and as the same was bifurcated by the time Shri Sastry was promoted to HSG, his promotion was only to HSG-II while the applicant was already in HSG-I. Thus, this contention is bereft of any force.

8. OM No.F.2(78)-E.III(A)/66 dt.4-2-66 of Ministry of Finance, Govt. of India which was issued in regard to stepping up in case of pay anomaly ^{and it} is as under:

" Removal of anomaly by stepping up of pay of Seniors on promotion drawing less pay than his junior:

(a) As a result of application of FR 22-C - In order to remove the anomaly of a Govt. servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Govt. servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

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- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay. "

The applicant herein satisfies all the conditions referred to in the aforementioned OM dated 4-2-66. As such there is force in the contention for the applicant that he ~~was~~ ^{is} entitled to stepping up of his pay on 1-3-76 ^{as per} to be on par with that of Shri G.L.N.Sastry.

9. ~~The~~ ^{has} next point that ~~is~~ ^{is} to be considered is with regard to limitation and laches. The claims in regard to fixation of pay or stepping up are ~~in~~ ^{having} continuing ~~cause~~ cause of action. This Hyderabad Bench is entertaining such claims on the ground of continuous cause of action even though the earlier cause of action had arisen ^{for the first time} a number of years back; but the monetary benefit is limited from one year prior to the filing of the O.A.

10. Further in this case the applicant submitted representation as early as in 1980, and then he was informed that he could agitate about the same after Writ Petition No.4109/79 filed by Shri G.L.N.Sastry and others was disposed of. When the said Writ Petition (TA 8/86) was dismissed on 3-9-86, the applicant submitted his representation on 16-2-88,

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and thus even before his retirement, and he was ultimately informed on 2-1-90 that his request was rejected. Thus, it is not a case where the applicant kept quiet for a period of 14 years.

11. As already noticed, the applicant submitted representation on 16-2-88, that is even before his retirement, requesting for stepping up. When the rejection of the same was informed on 2-1-90 this O.A. was filed on 16-7-90. As this O.A. was filed within time after the rejection of the latest representation, we feel it an appropriate case to order monetary benefit in regard to stepping up from 16-2-88 and in the circumstances it is not just and proper to limit the monetary benefit from one year prior to filing of this O.A.

12. This is not a case of ordering notional pay by giving promotion with retrospective effect. As we held that the applicant is entitled to stepping up he is entitled to stepped up pay from 1-3-76 in the various categories in which he worked till the date of his retirement. But the monetary benefit for the period prior to 16-2-88 is disallowed on the ground of delay in approaching this Tribunal. As such we direct that stepped up pay even for the ~~period~~ ^{has to} remaining ^{be} taken for calculation of pension. // Hence the respondents are directed to step up the pay of the applicant as on 1-3-76 so as to be on par with that of Shri G.L.N.Sastry, the junior of the applicant and on that basis the arrears of salary from 16-2-88 till the date of retirement of

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(V. Neeladri Rao)
Vice-Chairman

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 9-12-1993

ORDER/JUDGMENT:

M.A/R.A/C.A.No.

O.A.No.

in
574/90

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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