

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA 380/94.

Dt. of Order: 20-12-94.

M.S.Kameswar Rao

... Applicant

Vs.

1. The Director General,
Department of Posts,
New Delhi.
2. The Post Master General,
A.P.Eastern Region,
Vijayawada.
3. The Senior Superintendent of
Post Offices, Prakasam Division,
Ongole.

... Respondents

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Counsel for the Applicant : Shri K.Venkateswara

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CESS

CORAM:

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

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

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A.380/94

dt. of Order 20-12-94

(Order passed by Hon'ble Justice Shri V.Neelamraju Rao,
Vice-Chairman).

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While the applicant was promoted as I.P.O. on regular basis on 27-4-76, his junior Sri B.Siva Prasad Rao was promoted as I.P.O. on regular basis on 30-5-76. Sri Siva Prasad Rao was promoted as Asst. Superintendent of Post Offices (ASP) on ~~the~~ ^{said} adhoc basis on 18-11-85 and later on his service in the cadre was regularised. But the applicant was regularly promoted as A.S.P. on 18-6-86 by proceedings No. ST/3-1/XII dt. 8-5-86.

While the applicant is at Sl.No.4, Sri B.Siva Prasad Rao is ~~providing date S.S.P.~~ at Sl.No.6 in the said ~~order~~. Thus Sri Siva Prasad Rao was junior to the applicant even in the cadre of A.S.P.

2. The revised pay-scales had come into effect on 1-1-86. Both the applicant and Sri Siva Prasad Rao opted for revised pay-scales with effect from 1-1-86 in the regular cadre of I.P.O. The applicant opted for the pay-scale of ASP as on 18-6-86, the date of his promotion to the said post. Sri Siva Prasad Rao opted for the pay-scales in the cadre of ASP from the date of his next increment in the cadre of ASP.

3. The pay of the applicant as on 1-11-86 was Rs.1,820/- while it was Rs.1,940/- in regard to Sri B.Siva Prasad Rao.

4. It is not the case of the Respondents that in November 1985, the adhoc promotion as ASP was offered to the applicant and then he declined and as such it had become necessary to offer it to Sri Siva Prasad Rao, who was junior to the

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applicant.

5. But the contentions for the Respondents are three fold :

(i) the applicant had not chosen to make any request to the competent authority to promote him as ASP on adhoc basis, when it was offered to Sri Siva Prasad and hence the applicant is not entitled to claim stepping up; (ii) the anomaly had arisen as the applicant had chosen to give option to the revised pay scales as on 1-1-86 while Sri Siva Prasad opted for the same from the date of his next increment. When the applicant had not exercised the option even though he was free to opt for it, he could not claim stepping up merely on the ground that his junior got higher pay when the latter exercised the option to come over to the revised scales from the date of his next increment and (iii) the application has to be dismissed being barred by limitation.

6. When the competent authority had not offered adhoc promotion to the applicant before offering it to his junior and when the same resulted in anomaly, the competent authority cannot turn round and say that the employee is estopped from claiming stepping up when his action, which is not in accordance with rules, resulted in anomaly. It is not fair and just if the senior is paid less than the pay of the junior. Hence it is held that it would be equitable to raise the pay of the senior to that of junior, whenever the pay of the junior is found higher to the pay of the senior. Further it would be violative of Article 14 of the Constitution of India as it is unfair to give lower pay to the senior while the junior is given higher

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pay when in the lower cadre senior was getting more pay than that of junior. When it is a question of justness and fairness, an employee can claim such a benefit so long as he is not at fault. Hence it is held that if the senior declined the adhoc promotion where by the competent authority was constrained to offer the same promotion to his junior which may result in the higher pay to the junior than the pay of the senior, the latter, i.e. the senior is not entitled to the benefit of such stepping up of pay.

7. At times senior employee may not be bold enough to make a representation to the competent authority while his junior was promoted on adhoc basis. Hence we feel that merely because the senior had not made any representation when a junior was promoted on adhoc basis, he should be deprived of even the benefit of stepping up. It may be noted that so long as the junior works on adhoc basis he gets pay higher than the pay of senior, and for that period the senior cannot have any claim of stepping up, i.e. stepping up will arise only in the case where both the junior and senior work in the same cadre. If the senior had not chosen to make representation when the junior was given adhoc promotion, he was being deprived of the difference of pay for the period for which the junior works on adhoc basis. But as some of the employees hesitate to raise objection when the junior was promoted on adhoc basis, we feel, as already observed, that it is not just and proper to xxxx xxxx xxxx

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deny the benefit of stepping up pay on the ground that they have not protested when the junior was promoted on adhoc basis.

8. Further there may be cases where the competent authority may offer the adhoc promotion to the junior when the senior was at a ~~distance~~ place. The same thing happened in this case for the vacancy in the post of A.S.P. had arisen in Srikakulam, in which district Sri Siva Prasad Rao was working as I.P.U., while the applicant was then working as I.P.U. in Ongole District. In such cases the senior may not be even knowing that the junior was promoted on adhoc basis. For that reason also we feel that it is not fair to hold ^{ITC} the applicant should be denied the stepping up of pay merely on the ground that he had not protested when Sri Siva Prasad Rao was promoted on adhoc basis.

9. The anomaly of a junior getting higher pay than the pay of the senior in the revised pay scales may arise for more than one reason. One of the reasons is that the junior might opt for the revised pay scales from the date of his next increment, while the senior may opt for it from the date on which the revised pay scales had come into effect. Ofcourse, the anomaly might not have arisen if the senior also opted for the revised pay scales from the date of his next increment. But still it is a case of an anomaly which had arisen as option was given to the employees to come over to the revised pay scales either on the date of next increment or on the date

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on which the revised pay scales ^{had} come into effect. There is nothing to indicate that merely because the senior had not chosen to come over to the revised pay scales from the date of next increment, he is not entitled to stepping up, when the pay of junior was found to be higher, as that junior opted for revised pay scales from the date of next increment.

10. It may not be known as to whether the applicant would also have opted to come over to the revised pay scales from the date of next increment if he too was given a ^{sub} promotion before the revised pay scales had come into effect. Hence this contention ^{of} the Respondents has to be negatived.

11. Stepping up of pay is a continuing right. In all such cases, other than with regard to All India Cadre, this Bench is limiting the monetary benefit from one year prior to the date of filing of the Original Application. Hence even in this case, the monetary benefit of stepping up has to be limited from one year prior to the filing of this Original Application.

12. In the result, the applicant is entitled to the benefit of stepping up from 1-11-1986, so as to have the pay ^{of A.S.P;} ~~equal~~ to that of Sri Siva Prasad Rao in the cadre/ but the

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monetary benefit is limited from 1-4-1993 (this Original Application was filed on 23-3-1994). No order as to costs. /

CERTIFIED TO BE TRUE

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Date..... Court Officer 6/5/95
Central Administrative Tribunal
Hyderabad Bench
Generalized

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To

1. The Director General, Dept.of Posts, New Delhi.
2. The Postmaster General, A.P.Eastern Region, Vijayawada.
3. The Senior Superintendent of Post Offices, Prakasam Division, Ongole.
4. One copy to Mr.K.Venkateswar Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.OGSC. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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