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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

Original Application No.1283/95

Dt. of decision: 17.4.96

Between:

1. R. Rama Rao
 2. R. Venkata Ramudu
 3. M. Pullaiah
 4. M. Guravaiah
 5. Syed Imam
 6. B. Narayana Swamy
 7. G. Mukteswar Rao
 8. P. David
- .. Applicants

and

1. Secretary,
Department of Posts, New Delhi.
 2. The Chief Post Master General,
A.P. Circle, Hyderabad.
 3. The Post Master General,
A.P.S.R., Kurnool.
 4. The Post Master General, A.P.Northeastern Region,
Visakhapatnam.
 5. The Superintendent of Post Offices,
Kurnool Division, Kurnool.
- .. Respondents.

COUNSEL FOR THE APPLICANTS : SHRI K.S.R. ANJANEYULU

COUNSEL FOR THE RESPONDENTS: SHRI K. RAMULU

Coram:

HON'BLE SHRI H. RAJENDRA PRASAD : MEMBER (A)

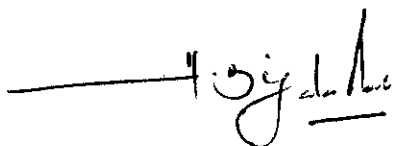
O.A.No.1283/95

JUDGEMENT

(AS PER HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (A))

The applicants in this case were promoted as Inspector of Post Offices between 1987 to 1995, on the basis of departmental competitive examinations, they had earlier been promoted from their original substantive posts of Postal Assistant/Clerk, Savings Bank Control Organisation, under the Time-Bound One Promotion Scheme introduced by the Department in 1983, and their pay had been duly fixed under the provisions of FR 22-C, since renumbered as FR 22 a(i). On their promotion to the cadre of Inspector, the pay was again refixed under the same FR.

In May, 1995, the Department issued a circular letter (No.2-20/95-PAP, dt.31-5-1995;Annexure I) containing certain instructions/clarifications as regards the fixation of pay on promotion from LSG to IPOs cadre. Consequent on receipt of this letter, certain amounts, held to be paid in excess of their entitlements, are sought to be recovered from the applicants. In a few cases such recoveries have already been ordered.



2. The recovery of these amounts is questioned in this OA on the following grounds:

(i) the order regarding the retrospective refixation of pay, which operates adversely against them, is arbitrary;

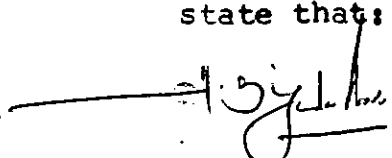
(ii) the order of promotion to a promotional post, based on the result of a competitive examination;

(iii) the promotional post of Inspector involves the discharge of greater and higher responsibilities ^{than} the ones in the Lower Selection Grade earlier held by them, and from which they were promoted; and

(iv) although the pay scales of LSGPA and the Inspectors are identical, the nature and scope of the functions of the two posts are distinct and dissimilar, with the latter requiring functions of a definitely higher order.

3. Based on the above arguments, the applicants pray for setting aside the impugned order (Annexure-1) and to direct the respondents to stop the contemplated recovery from their pay of the alleged excess payments made to them.

4. The Respondents in their counter-affidavit state that:



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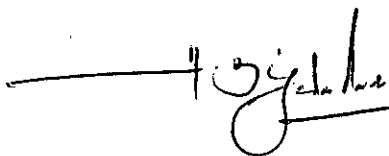
- a) where the IV Pay Commission recommended identical pay-scales for two posts, — "one being promotion to another" — these posts are to be treated either as having merged in one another, or as being equivalent;
- b) the posts of Inspectors do not involve any higher responsibility;
- c) the pay scales of LSG and Inspectors are identical, even though the selection to the latter posts are through a departmental competitive examination. Hence no pay-fixation under FR 22(c) is warranted and is required to be withdrawn if already granted erroneously.

5. Three short questions come up for consideration in this case. These are;

1. Is the selection and appointment of Inspectors the result of a "promotion"?
2. Does the post of an Inspector require the incumbent to discharge duties and responsibilities of a higher order notwithstanding the identity of the revised scales of LSGPAs/Inspectors?
3. Is the proposed action of recovery and the orders issued, or contemplated, by the respondents in this regard sustainable in law?

The answers to these questions would determine the outcome of the case.

6. The first two of the three questions have already been settled decisively by this Tribunal. The following observations and conclusions arising out of cases of this nature are relevant in this context:



(32)

A: OA 367/1990 (Dhyaneswar Nandanwar Vs. UOI & Ors),
(1993) 24, Administrative Tribunals Cases 660 (Jabalpur):

" The basis for the Pay Commission to grant the same scale of pay is that the duties of these posts are broadly comparable supervisory duties. Notwithstanding the fact that the two posts carry comparable supervisory duties, one post may carry higher responsibility than the other. This aspect has not been dealt with by the Pay Commission and nor it was required to do so.

Still, however, the question whether the post of Inspector, RMS, is a post carrying duties and responsibilities of greater importance has to be answered specifically...

The post of Sorting Agent, LSG, is an operative job while the post of Inspector, RMS is more or less an executive job. An Inspector, RMS has got a right of inspection. The Sorting Assistant, LSG, has no power to inspect. The Inspector, RMS, has got a right to enquire into the conduct of other subordinates while the Sorting Asst., LSG has no such power. Above all, it would appear that in the hierarchy of posts available in the Postal Department, an Inspector, RMS, is entitled for promotion to a higher gazetted post while there is no promotional avenue open in the cadre of Sorting Assistant, LSG, to a Gazetted Post. The Sorting Assistant, LSG, has to move step by step. He has to be appointed as Inspector, RMS, in the first instance. Thereafter on his turn he can get an appointment to a gazetted post. Therefore, in the very nature of things it is not difficult to conclude that the post of Inspector, RMS, is a post carrying higher responsibility. The scale of pay is one of the important criteria to determine the higher or lower post. All the same the identical scale of pay of both the posts cannot be made the sole ground for rejection of the claim of the applicant. The Fourth Pay Commission recommended identical pay scale for both the posts on the analogy that both the posts carried comparable supervisory duties. It may be

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true. Still it is possible that the supervisory duties attached to the post of Inspector, RMS, may be higher in nature than the post of Sorting Assistant, LSG. The very fact that the post of Inspector, RMS, is a promotion post and the post of Sorting Assistant is a feeder cadre gives an indication that the post of Inspector, RMS, is a post carrying higher responsibility. In the opinion of the Tribunal the fact that the post of Inspector, RMS, is a selection post should put an end to the controversy. The object of the rule-making authority appears to be sort out grain from chaff. Thus, persons are appointed to the post of Inspector, RMS, by process of elimination on the basis of competitive examination. Consequently, the Tribunal is of the opinion that the post of Inspector, RMS, is a post carrying higher responsibility and, secondly, the pay fixation under FR 22-C has been rightly done by the department. "

B. O.A.2221/89 (Ramesh Chand Vs. UOI & Anr, (1993)

24 Administrative Tribunals Cases 193 (Principal Bench, Delhi);

"The claim of the petitioner is that the post of the Inspector carries responsibilities and duties of greater importance than those attached to the post of LSG and, therefore, he should be given the benefit of notional fixation of pay in the scale by adding one increment (FR 22-C) on promotion as Inspector of Post Offices from the post of LSG even though the scale of pay of LSG and Inspector of Post Offices is identical viz. Rs.1400-2300, w.e.f. 1-1-1986...

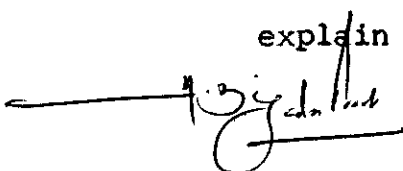
Prior to the implementation of the pay scales of the Fourth Central Pay Commission the petitioner was clearly entitled to the benefit of FR 22-C as the pay scales were different for the post of Postal Assistant, LSG, and the Inspector of Post Offices. The posts of

Postal Assistant and LSG, however, continued to remain as the feeder categories for the post of Inspector of Post Offices even after 1-1-1986. Further the method of recruitment to the post of Inspector also continues to be by selection through a departmental competitive examination. It is obvious that the post of Inspector of Post Offices carries responsibilities and duties of greater importance than the post in LSG, which was a non-functional grade given to the Postal Assistant. There is also no specific denial from the respondents that the responsibilities and duties of the post of Inspector of POs are broadly comparable to those of the Postal Assistant/LSG."

Further comment is unnecessary and it can be safely held that (a) a definite and undeniable promotion is involved on the appointment of a Postal Assistant (LSG) as Inspector of Post Offices; and (b) the duties of an Inspector of Post Offices call for the responsibilities of a higher order than those expected of a Postal Assistant (LSG).

7. As regards the legal validity of the contemplated action of the respondents, it has been a settled and long-accepted position of law that --

a. The principles of natural justice are seriously violated if any administrative action, designed to or resulting in the deprivation of a vested civil right of an official, is initiated or enforced without a proper notice to him and without affording an opportunity to the affected party to explain his stand-point;



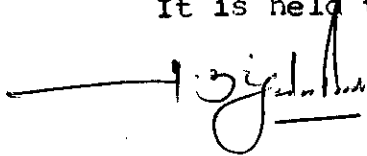
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- b. No recoveries can be enforced in cases where the initial action of conferring a monetary benefit ^{on} an official was the result of an administrative action of the departmental authorities long after such benefit was originally conferred on him.

The departmental authorities are doubtless free to correct genuine administrative errors and initiate rectificatory action to correct the mistakes. It does not seem, however, that the intended action in this case is by way of rectifying a bonafide genuine or inadvertent error. It springs from a fresh interpretation of a FR and ^{the} facts pertaining to a right of the applicant in the context of the said FR. In this view of the matter, no new or impermissible interpretations can be allowed to be imparted to the question of the applicants' pay fixation, behind their back and without proper notice, to their disadvantage.

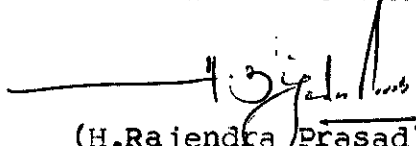
8. In the light of the discussions in the preceding paragraphs, the ^{impugned} action, already taken or now contemplated by the respondents, cannot be upheld from any view-point. The applicants have unambiguously established their claim which, moreover, is supported by the earlier verdicts of this Tribunal. The O.A. is, therefore allowed.

It is held that the pay of the applicants earlier fixed



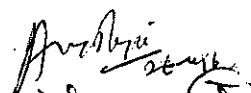
under the provisions of FR 22-C, (since renumbered FR 22 a(1)(a), on their promotion to the cadre of IPOs, was correct and does not warrant change. There is no scope or justification for recovering any part of the amount(s) already paid to them on this score, and the respondents are directed not to initiate or pursue any action to effect such recovery. If any recoveries have been ordered and made prior to the filing of this O.A., or during its pendency, the same shall be refunded to the concerned applicant within ninety (90) days of the receipt of a copy of this order.

Thus the O.A. is disposed of. No costs.


(H. Rajendra Prasad)
Member (A) 17 APR 96.

Dt. _____

kmv


Dy. Registrar (J)

Contd...

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D.A.NO.1283/95

Copy to:

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New Delhi.
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A.P.Circle, Hyderabad.
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A.P.S.R., Kurnool.
4. The Postmaster General,
A.P.Northern Region,
Visakhapatnam.
5. The Superintendent of Post Offices,
Kurnool Division,
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

H. Ajindia Presiding
THE HON'BLE SHRI R. RANGARAJAN : MIA)

DATED: 17-6-96

ORDER/JUDGEMENT

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

IN

B.A.NO. 1283/95

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