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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 102/95.

Dt. of Decision : 06-06-96.

A. Lakshmana Murthy

... Applicant.

Vs.

1. The Union of India, rep.
by the Chief Post Master General,
Andhra Pradesh Circle, Hyderabad.
2. The Sr. Superintendent of Post
Offices, Chittoor Division,
Chittoor. ..

... Respondents.

Counsel for the Applicant : Mr. Y. Subramanyam for
Mr. K. S. R. Anjaneyulu

Counsel for the Respondents : Mr. N. R. Devaraj, Sr. CGSC.

CORAM:

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

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ORDER

Oral Order (Per Hon'ble Shri R.Rangarajan, Member (Admn.))

Heard Mr.Y.Subramanyam for Mr.K.S.R.Anjaneyulu, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents.

2. The applicant in this CA was appointed as a Postal _____ was later promoted to the higher grades namely LSG on 7-5-79. Two of his juniors Mr.K.Perumal Mudali and Mr.T.V.Chalam empanelled alongwith the applicant for the post of PA were also appointed as Postal Assistant on 10-04-53 and allotted to Guntur Division. They were promoted as LSG Grade-II on 1-6-74 and 14-11-76 respectively. Whereas the applicant was posted to Chittoor Division as a Postal Assistant and other reported juniors were posted to Guntur Division. It is also to be noted that the applicant was promoted to the cadre of LSG later than those reported juniors. At the time when the applicant and his juniors were posted as Postal Assistant in two different division their seniority unit as Postal Assistant was different. But the circle gradetion list for the Postal Assistants of the circle of all division was a common one.

3. Prior to the Supreme Court judgement in Ravi Varma's case (AIR 1972 SC 670), the seniority of the official was reckoned in Ravi Varma's case the seniority principle was reversed and it was held that the seniority should be on the basis of the date of entry into the particular cadre and not on the basis of the date of confirmation. As the applicant had entered as a Postal Assistant earlier to the reported juniors namely Mr.K.Perumal Mudali and Mr.TV.Chalam, his case for seniority as Postal Assistant was re-considered and he was shown senior to Mr.K.Perumal Mudali and TV Chalam on the

basis of the date of entry in the common circle gradation list in view of the Supreme Court direction in the above referred case. This fact has been admitted in the letter of Sr. Superintendent of Post Offices ~~W.E.F. 1-6-74~~ dated 15-10-87 (Annexure-7). It is stated in that letter that the applicant in this OA stands senior to Mr.K.Perumal Mudali. It is further directed in that letter that the applicant should represent his for

Mr.Perumal Mudali to PMG for obtaining necessary instructions in this connection. It is stated by the applicant that inspite of his repeated representations no reply has been given to him in regard to his retrospective promotion on par with his juniors namely Mr.Perumal Mudali and Mr.T.V.Chalam. It is further pointed out by the learned counsel for the applicant that even after his retirement when he represented his case for retrospective promotion he was informed by letters dated 15-10-87 and 16-12-87 (Annexure 9 and 10) that his case is pending with C.C. and therefore he should wait for further communication. But it is the case of the applicant that no decision has been taken in his case for retrospective promotion so far.

4. Aggrieved by the inaction of the respondents in granting him retrospective promotion and pay on that basis he has filed this OA praying for a direction to the respondents to give the applicant the scale of pay of Rs.425-640/- on par with his juniors w.e.f., 1-6-74 on notional basis and re-fix his pay for the purpose of pensionary benefits.

5. The applicant relies on the judgement of the Chandigarh Bench dated 26-10-89(Annexure-16) and the decision of this Bench in OA.No.301/91 decided on 18-01-94 to state that he should be given the same relief as given in those two judgements as he is placed in the same situation as the applicants in those OAs. He further submits that the PMG, Madras circle has granted similar relief to the similarly situated applicants on the basis of the judgement of the Madras Bench of the Tribunal in OA.No. 752/87 and batch.

6. A reply has been filed by the respondents resisting the prayer. The respondents contend that this OA is barred by limitation as he has filed this OA only on 23-1-95 whereas he retired from service in 1989. Further they contended that the applicant had been informed earlier also rejecting his ~~retrospective promotion and pay and allowances.~~

7. From the averments in the reply it is seen that though the applicant requests for retrospective promotion and other consequential benefits no conclusive indication is given that his case has been rejected earlier. It is seen from the letters dated 15-10-87 and 16-12-87 (Annexure 9 & 10) that the case of the applicant for retrospective promotion and payment thereof is still under consideration. Though the learned counsel for the respondents submit that the reply has been given to him no reply has been received. Hence it is to be held that the case is still pending with the respondents for taking a final decision.

8. I have perused the judgement of the Chandigarh Bench of this Tribunal enclosed as Annexure-16. The applicants therein also were shown juniors at the first instant taking the date of their confirmation for determining the seniority; however their seniority were revised on the basis of the date of entry into the cadre in accordance with the Supreme Court judgement in Ravi Varma's case. The applicants in that OA approached the Chandigarh Bench of the Tribunal for similar relief as prayed for in this OA. The Chandigarh Bench after going through the various contentions and relying on the judgement of the Apex Court and the judgement of the Principal Bench in A.K.Khanna & others Vs. Union of India and others came to the conclusion that the applicants' therein are entitled for retrospective promotion on par with their juniors who were earlier promoted on the basis of their date of confirmation earlier to the applicants therein who were confirmed later and fixation of pay and allowances on that basis. This

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Tribunal in OA.No.301/92 (Annexure-15) decided on 18-01-94 had held that the applicant's in that OA who were similarly placed as applicants in the Chandigarh Bench are entitled to the same relief as granted to the applicants in the Chandigarh Bench of the Tribunal. The present case of the applicant is also similar.

9. Initially the seniority of the applicant was fixed based on the date of confirmation. As he was in a different division his reported juniors in other division were confirmed on different dates earlier to the date of confirmation of the applicant herein, probably due to availability of permanent posts in their division. But that seniority list was revised showing the seniority in the circle seniority list on the basis of the date of entry into the cadre. The applicant in this case, because of the revisions of seniority, thus acquired higher status in the seniority list compared to Mr.K.Perumal Mudali and Mr.TV.Chalam. His higher seniority has been admitted by the respondents themselves. Even though he was placed at a higher place in the seniority list vis-a-v-s the other two employees namely Mr.K.Perumal Mudali and Mr.TV.Chalam, his case was not considered at the appropriate time for promotion to the post of LSG when his juniors were promoted to LSG cadre. Hence the applicant's prayer for review needs consideration for promotion on par with his juniors. If he had been promoted in the first instant itself to the higher grade then there should not be any impediment for showing his retrospective promotion on par with his juniors to the higher grade due to the revision of the seniority. There is no whisper also in the reply that this case is not covered by the judgement of the Chandigarh Bench of the Tribunal and the judgement of this Tribunal at Annexure-15 and 16 respectively. In view of the above, it has to be held that the applicant in this OA is also entitled for the same relief as granted to the applicant in the above referred judgements.

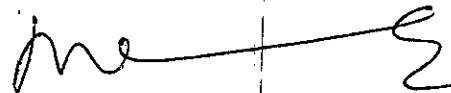
10. A valid contention has been made by the respondents in regard to the bar of limitation. It is a fact that the applicant had retired in 1989. But he filed this OA only on 23-01-95 after a lapse of about 6 years. The reason given is that the applicant being a bit reserved person thought that he will get the necessary relief from the department itself and hence delayed in filing this petition. But it is not a fit reason for not approaching continuous process, in the case of continuing cause this Tribunal is repeatedly holding the view they are entitled for the pensionary arrears from one year prior to filing of this OA. That dictum holds good in this case also. But the respondents in their counter state that the records had been weeded out and hence for dealing this case his service book may not be readily available. But that should not be a reason for a retired employee from getting some extra pension. The Apex Court every now and then directs the lower Courts to consider the case of the retired employee sympathetically and dispose of their cases as quickly as possible. In view of the above, sympathetic consideration has to be given in the present case also in regard to the relief prayed for. The applicant in view of the above circumstances cannot claim the benefits accruing to him due to the retrospective promotion by way of increased commutation, DCRG and Leave encashment etc., due to delayed filing of this OA. To help the applicant to spend rest of his life peacefully it is essential that he should get the some more extra pension to compensate for increased cost of living due to inflation and other causes.

11. In view of what is stated above, the applicant is entitled only for higher pension on the basis of his retrospective promotion and is also entitled for arrears due to higher fixation of his pension from one year prior to filing of this OA. A direction has to be given to pay him higher rate of pension from 23-1-94 (as this OA was filed on 23-1-95).

12. In the result, the following direction is given:-

The promotion of the applicant should be pre-poned to the date of promotion of his juniors namely Mr.K.Perumal Mudali and Mr.T.V.Chalam i.e., 1-6-74 provided he has been promoted to the LSG grade in his turn initially in 1979 at the first instance itself. On the basis of the retrospective promotion his pay has to be notionally fixed in the LSG cadre and his pension also should be ~~notional~~ of superannuation. He is entitled for the higher rate of pension as above from 23-1-94. The arrears from 23-1-94 due to higher fixation of pension should be paid to him within three months from the date of receipt of a copy of this order. He is not entitled for any other arrears.

13. The OA is ordered accordingly. No costs.



(R. Rangarajan)
Member(Admn.)

*Ansawar
6/6/96
24. Registrar (Judge)*

Dated : The 6th June 1996.
(Dictated in Open Court)

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Copy to:-

1. The Chief Post Master General, Union of India, Andhra Pradesh Circle, Hyderabad.
2. The Sr. Superintendent of Post Offices, Chittoor Division, Chittoor.
3. One copy to Sri. K.S.R.Anjaneyulu, advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

24/6/96
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 6/6/96

ORDER/JUDGEMENT

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

IN
D.A. NO. 102/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

No Spare Copy

