

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

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O.A.539/97 &  
O.A.817/97.

Dt.of Decision : 21.6.99

K.Himamappa

.. Applicant in OA.No.539/97.

T.Yadaiah

.. Applicant in OA.No.817/97.

Vs.

1. The Union of India rep. by its Secretary & D.G. (Posts), Dept. of Posts, Min. of Communications, Dak Bhavan, New Delhi.
2. The Director of Accounts (Postal), Andhra Circle, Dak Sadan, Abids, Hyderabad-500 001. .. Respondents in both the OAs.

Counsel for the applicants : Mr.B.S.A.Satyanarayana (Both the OAs)

Counsel for the respondents : Mr.V.Vinod Kumar, Addl.CGSC for OA.No.539/97.

Mr.V.Rajeswara Rao, Addl.CGSC. for OA.No.817/97.

CORAM:-

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

COMMON ORDER

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J))

Heard Mr.B.S.A.Satyanarayana, learned counsel for the applicants in both the OAs, Mr.V.Vinod Kumar, learned counsel for the respondents in OA.539/97 and Mr.V.Rajeswara Rao, learned counsel for the respondents in OA.817/97.

2. Since common questions of facts and law arise in these OAs, they are clubbed together heard and are being disposed of by this common order.

3. The applicant in OA.539/97 was appointed as LDC w.e.f., 19-05-1960 in the office of the R-2. He was promoted as Junior Accountant in the year 1968. He was promoted as Sr.Accountant w.e.f., 19-09-79 vide memo No.157/Admn.I/SA dated 21-09-79 (Annexure-2) and his pay was fixed in the scale of pay of Rs.425-640/- at Rs.545/- P.M. The applicant submits that while the pay scale of the applicant was brought to Rs.425-700/- the existing functional selection grade was converted into non-functional selection grade vide memo No.139-1/79-PA/Admn.I/1281 dated 16-1-80 (Annexure-4 page-10) w.e.f., 1-8-76, without any request from the applicant. In the said memo dated 16-1-80 it was also stated that this was a promotion on the basis of seniority-cum-fitness and on the revision of pay scale, no recovery of over payment should be made.

4. Consequent upon the recommendation of the 4th Central Pay Commission, the selection grade in Group-C and Group-D posts were abolished vide memo No.7(51)/E.III/86 dated 14-5-87 (Annexure-4(B) Page-12) and the applicant was allowed to continue to draw the pay in the corresponding revised scale

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recommended by the pay commission. Thus he was brought on to the scale of pay of Rs.1400-2600/- . He continued to work as non-functional non-selection grade Senior Accountant in the ordinary grade.

5. While he was working as such, a scheme was devised by R-1 as per his letter No.37(8)/87/PA-Admn.I/III dated 11-08-1987 (Annexure-5 page-14) upgrading 80% of the posts of the Junior Accountants as Senior Accountant (functional) after observing due process of promotion. The applicant was promoted as Sr.Accountant (functional) under the above scheme vide memo No.144/Admn.I/EA.II/Re-structuring dated 31-10-88 (Annexure-6 at page-18) the promotion was given retrospectively from 1-4-87. The applicant was not a party to the OA.95/91 nor in OA.1068/95 which were unsuccessfully fought by the respondents. While the respondents abruptly withdrew the benefit of pay fixation under FR 22 (1)(a)(1) [old FR 22 C] arbitrarily, consequently his pay was revised on 28-08-96 from Rs.2,050/- to Rs.1,950/- retrospectively as on 1-4-87. <sup>W.E.F.</sup> The applicant retired from service on 31-08-96. His pension and bensionary benefits affected substantially.

6. The applicant in OA.817/97 was appointed as UDC on 31-08-1966 in the office of the R-2. He was promoted as Sr.Accountant in the year 1979. His pay was fixed in the scale of Rs.425-640/- at the stage of Rs.488/- vide Memo No.17/Admn. II/EC IV/SAD dated 8-8-79 (Annexure-2 at page-10). While he was working he was brought to the scale of pay of Rs.425-700/- the existing functional selection grade post was converted into non-functional selection grade vide memo No.139-1/79-PA Admn.I/1281 dated 16-1-80 w.e.f., 1-8-1976. He submits that this was brought without any request from him.

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7. Consequent upon the recommendation of the 4th Central pay commission, the selection grade posts in Group-C and Group-D were abolished vide memo No.7(51)/  
(B) E.III/86 dated 14-5-87 (Annexure-4 at page-12) and the applicant was allowed to continue to draw the pay in the revised pay scale of pay of Rs.1400-2600/-.

8. While so, a scheme was devised by R-1 vide letter No.37(8)/87/PA-Admn.I/III dated 11-8-87 (Annexure-5 at page.No.14) upgrading 80% posts of the Junior Accountants as Sr.Account (Functional) after observing due process of promotion. The applicant was also promoted as Senior Accountant (functional) under the above scheme vide Memo No.144/Admn.I/EA II/Re-structuring dated 31-10-88 (Annexure-6 at page-17) and his promotion was retrospectively given from 1-4-87.

9. While so, the respondents with-drew the benefit of fixation of his pay under FR 22 (1)(a)(1) and thereby reduced his pay from Rs.2420/- to Rs.1800/- retrospectively w.e.f., 1-4-87. The applicant retired from service w.e.f., 30-4-97. His pension and pensionary benefits reduced substantially.

10. Hence, the applicants have filed this OA for the following reliefs:-

a) Declare the action of the respondent as initiated by R-2 vide his memo dated 29-8-96 and memo dated 17-6-97 as illegal, arbitrary and void and inconsequence.

b) Set aside the impugned order contained in Memo No.112/Admn.II/SA IV/PF/KH dated 29-8-96 and Memo No.66/Admn.II/SA IV/TY dated 30-4-97 and Memo No.146/Admn.II/SA V/TY dated 17-6-97 and inconsequence.

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c) Direct the R-2 to refix the pay of the applicants at Rs.2,540/- and Rs.2,400/- as on the date of superannuation as it would have been but for the arbitrary reduction by R-2.

d) Refix the pension of the applicants at Rs.1,255/- and Rs.1,118/- per month and release the withheld amount of Rs.20,363/- and Rs.24,127/- of D.C.R.G. and also pay the difference of original commuted value of pension and revised commuted value of pension amounting to Rs.2,260/- and Rs.2,159/- and other consequential benefits with interest.

11. The respondents have filed their reply stating that as per the P&T Board memo No.139-1/79/PA-Admn.I/12/81 dated 16-1-80, revised the pay scale of Sr.Accountants from Rs.425-640/- to Rs.425-700/- with retrospective effect i.e., from 1-8-76. With the above upgradation of the scale, the then existing functional selection grade was converted into non-functional from the date of effect of the revised scale i.e., from 1-8-76. The said OM provided that in respect of the persons, who are promoted to selection grade on or after 1-8-76 and whose pay fixation was done with reference to FR <sup>22</sup> ee (c) their pay should be refixed and regulated as follows:-

"The pay shall be fixed at the same stage at which the pay was drawn in the ordinary grade if there is such a stage in the scale of pay of the selection grade or at the next higher stage, if there is no such stage.".

Further they relied upon the O.M.No.139-1/79-PA/Admn.I/465 dated 8-10-82 (Annexure-R-2) which provided an option under FR 23 to the officials of Postal Accounts Organisation appointed as Senior Accountants (selection Grade in Junior Accountant) during the period from 1-8-76 to 15-1-80 for retaining the old scale of pay of Rs.425-640/- until the date

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on which he has earned the next or any subsequent increment or until he vacates his post and ceases to draw his pay in the time scale.

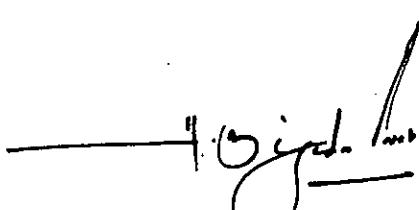
12. Thus, their submission that withdrawal of the benefits of fixation of pay of the applicants under FR 22 (1)(a)(1) was justified.

13. The learned counsel for the applicants relied upon the decision of the Bangalore Bench of this Tribunal in OA.No. 179/98 and batch decided on 30-12-98. These two cases are covered by the decision of the Bangalore Bench of this Tribunal.

14. The learned counsel for the respondents relied upon the decision of the Hon'ble Supreme Court. That decision was also taken note of by the Bangalore Bench of this Tribunal.

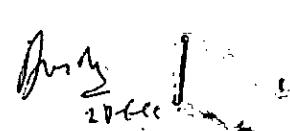
15. Hence, withdrawal of fixation of pay of the applicants under FR 22(1)(a)(1) was not justified. Hence, the impugned decision and the consequential refixation of pay of the applicants which have been challenged are all quashed. The fixation of pay made earlier to the impugned decision shall stand restored. The applications are accordingly allowed. If any recovery has already been made in pursuance of the impugned orders, the same shall be refunded within three months from the date of receipt of a copy of this order. There will be no order as costs.

  
(B.S.JAI PARAMESHWAR)  
MEMBER (JULD.)

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMN.)

Dated : 21.6.1999.

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D.P.T.