

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 4.1.2000

OA No.161/95

1. R.K.Gupta S/o Shri Ishwar Mal Gupta, aged 51 years, resident of 340, Vasundhara Colony, Tonk Road, Jaipur.
2. P.D.Jangid S/o late Shri Chotte Lal Jangid, aged 49 years, resident of 40, Shiva Colony, Tonk Phatak, Jaipur.
3. Deep Chand Sharma S/o Shri Ram Charan Sharma, aged 47 years, resident of 190, Avadhupuri, Jaipur.

.. Applicants

Versus

1. The Union of India through the Secretary, Department of Posts, Government of India, New Delhi.
2. The Director General of Posts India, Dak Bhawan, Sansad Marg, New Delhi.
3. The Senior Superintendent, Railway Mail Service, Jaipur Division, Jaipur.
4. M.P.Tyagi C/o Sub Record Officer, Railway Mail Service, Jhunjhunu.

.. Respondents

Mr. Mahendra Shah, counsel for the applicants

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

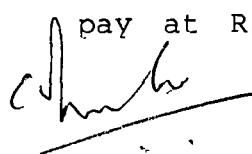
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

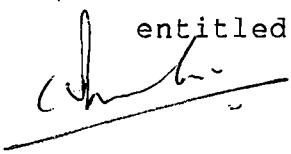
Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicants in this Original Application pray that directions be issued to the respondents to step up their pay at Rs. 1480/- w.e.f. 1.1.1986 and at Rs. 1520/- w.e.f.



1.3.1986 as was done in case of respondent No.4 and others vide order dated 25.7.1994 which came to be passed in OA No.1025/1992 and connected OA No.957/92 filed by Narottam Singh and others, who all were junior to the applicants, with all consequential benefits.

2. Facts relating to the case, as stated by the applicants, are that the applicants had joined the Department of Posts between 2.9.1966 and 20.10.1967 and working as L.S.G. The pay of respondent No.4, Shri M.P.Tyagi who is junior to them was fixed at Rs. 1480/- p.m. w.e.f. 1.1.1986 and at Rs. 1520/- w.e.f. 1.3.1986 by giving him an extra increment whereas that of applicants has been fixed at Rs. 1440/- w.e.f. 1.1.1986 in the pay scale of Rs. 1400-2300. That applicant are senior to Shri Tyagi is evident from the list of incumbents who had completed 16 years of service on 30.11.1983 and Part-B of the list shows Shri Tyagi at Sl.No.137 having completed 16 years on 1.3.1984 whereas Shri Narottam Singh has been shown at Sl.No.135 and applicants have been shown at Sl.Nos. 107, 126 and 130. The said list was placed before the Tribunal in OA No.1025 of 1992 filed by Narottam Singh and others (Ann.A1) and came to be admitted by the respondents and on that basis the OA of Narottam Singh and connected OA of Brijendra Singh came to be allowed on 20.7.1993. The respondents had filed a SLP against this order but with its dismissal, the order attained finality. The Tribunal had, vide its para 5, directed the respondents to release the benefit to those similarly situated; relevant portions have been reproduced at page 5 of the OA. It has been contended on behalf of the applicants that they are admittedly senior to both Shri Tyagi and Shri Narottam Singh and as such they are on higher pedestal and are entitled to have the similar benefits and advantage of the



judgment, meaning thereby that they should get the benefit of stepping up of pay equal to the fixation of pay of Shri Tyagi w.e.f. 1.1.1986. The applicants accordingly made a representation to the Department. Applicant No.1, inter-alia, mentioned (Ann.A1) that he being at Sl.No.204 is senior to Shri Tyagi. Representation was made after the respondents had implemented (Ann.A2) the order of the Tribunal. Applicant No.3 had also sent a notice of demand of justice to respondent No.1 but of no avail. Thus the respondents are discriminating against the applicants in an arbitrary manner that is violative of Article 14 of the Constitution of India.

3. Notice of the OA was served on respondents who have filed their reply, including a preliminary reply against grant of any interim relief, which, in any case, seems to have not been pressed and was not allowed. The applicants have filed a rejoinders, to which an additional reply has been filed on behalf of the respondents. These have been perused.

4. Respondents have basically argued that the case of the applicants is not identical to those of applicants referred to in the earlier OAs. It has been stated that on the other hand the case of another similarly situated employee, Raghuvir Singh Vs. Union of India, was heard and decided by this Tribunal and vide judgment dated 21.9.1993, it was held that the adhoc arrangement of respondent No.3 (respondent No.4 herein) could not be held to be illegal even on merits as 44 officials who were asked for giving their willingness to officiate on adhoc basis and refused to work at places where the said private respondent worked. It was thereupon held in unequivocal terms that the benefit cannot be extended to applicants therein, who had not officiated. Also once the pay

*[Signature]*

of the said respondent got fixed at a higher level, it could also be got fixed at the higher stage in the revised scale after recommendations of the Fourth Pay Commission. It was also contended that the present OA is hopelessly barred by limitation and support has been sought from a judgment of another Bench of this Tribunal in the case of Dwarka Prasad Upadhyaya and Ors. in OA No.1087/92, vide a detailed judgment it dismissed the application on grounds of limitation. Respondents, in view of this judgment, pray that the OA may be dismissed.

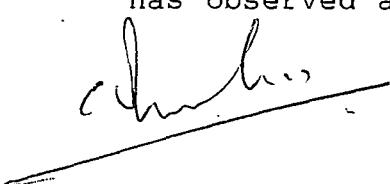
5. The applicants in their rejoinder have reiterated that applicants are similarly placed to those in the case of Narottam Singh in OA No.1025/92 and in that the SLP filed by the official respondents had been dismissed and thereafter the respondents have given the benefit to a number of other employees who had knocked the doors of the Tribunal. It has also been contended that the judgment referred to by the respondents i.e. in the cases Raghuveer Singh and Dwarka Prasad Upadhyaya are not relevant, in the light of judgment given in Narottam Singh's case. It has also been stated that the applicants neither objected nor gave their willingness to officiate on the post of LSG, Jhunjhunu where respondent No.4 Shri M.P.Tyagi had officiated and Shri Tyagi had earned three increments on account of such officiation. The respondents in their reply to the rejoinder have, on the other hand, reiterated their contentions made in their reply and have denied the averments made by the applicants in their rejoinder. It has also been clarified that applicants Nos. 2 and 3, S/Shri P.D.Jangid and Deep Chandra Sharma are not similarly situated as they joined duty in RMS, Jaipur Division under Rule 38 of P&T Manual Vol.IV and as such have become

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junior in the Division and find place in Division Gradation List at Sl.No. 175 and 216 against Sl.No.148 in case of Shri Tyagi (respondent No,4 herein). These two applicants are thus not even senior to Shri Tyagi and not entitled to any relief even on this count. In their additional reply, the respondents have also referred to the case of R.Swaminathan decided by the Apex Court and Government of India OM of 4.11.1993 about which we will have an occasion to refer to shortly.

6. We have heard the learned counsel for the parties and have also examined the material on record carefully.

7. The law in respect of the issue of seniors claiming step-up in their pay simply on the ground of juniors getting a higher pay has moved ahead substantially in the last few years. Firstly, the OM No. 4/7/Estt. (Pay.I) dated 4.11.1993 issued by the Government of India and incorporated below FR 22 as decision No.(26) clarifies the entire matter by laying down the three conditions which need to be satisfied before the pay of seniors can be stepped up and also mentions six situations which will not constitute an anomaly and stepping up of the pay of seniors will not be admissible. Secondly, Hon'ble the Supreme Court of India in D.G. Employees State Insurance Corporation and Anr. Vs. B.Raghava Shetty and Ors., reported in (1995) 30 ATC 313, Union of India and Anr. Vs. R.Swaminathan and Ors., reported in 1997 SCC (L&S) 1852 and Union of India and Ors. Vs. M.Suryanarayana Rao, reported in (1998) 6 SCC 400 has mandated the way the cases of stepping up of pay vis-a-vis their juniors have to be decided. In the Swaminathan's case, the three judges Bench of the Apex Court, has observed as under:



23

"The difference of pay of a junior or a senior in the cases before us is not as a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the post. Because of proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of seniors"

8. We have no reason to disbelieve the official respondents when they state that the private respondent No.4 i.e. Shri M.P.Tyagi had opted for a posting where he appears to have got a local officiating promotion, notwithstanding, the denial of any options having been asked as averred by the applicants in their rejoinder. In fact, even if no options were formally asked, the position does not change materially because even if a junior gets fortuitous local adhoc/officiating promotion from time to time, totalling to a substantial period for enabling him to earn an increment, the senior cannot claim parity once both such junior and senior reach the promotional post on regular basis. In view of the law laid down by the Apex Court, it also does not make any difference if, as stated by the official respondents, applicant No.2 and 3 are actually junior to the private respondent No.4 and the present OA gets reduced to only one



21

applicant. What is more important is that as per the law finally laid down by the Apex Court of the country in this regard, the seniors cannot claim parity in pay with the juniors simply because their junior was getting a pay higher than them.

9. The judgment of Hon'ble the Supreme Court in D.G. Employees State Insurance Corporation (supra) is directly applicable in the present case, as in that case the junior happened to get posted as UDC in-charge of a local office, where seniors were not keen to go and in course of time happened to have worked in the promotion post of Head Clerk for more than three years. The Apex Court held therein that the contesting respondents were not enabled to seek parity with their junior (respondent No.2 therein) for the post of Head Clerk.

10. In view of the above legal position and the facts and circumstances of the case, we find no force in the claim of the applicants and the Original Application is, accordingly, dismissed. Parties to bear their own costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member