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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH  
J A I P U R.

ORIGINAL APPLICATION NO. 480/1995 Date of Order: 2.8.96

A.S.Tyagi : Applicant

Vs.

1. Union of India through the Secretary to the Government of India, Department of Posts, Govt. of India, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.

: Respondents

Mr.S.K.Jain, counsel for the applicant  
Mr.M. Rafiq, counsel for respondents

CORAM:

HON'BLE SHRI RATANPRAKASH, MEMBER (JUDICIAL)

O.R.D.E.R

(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein, Shri A.S.Tyagi has filed this application under Section 19 of the Administrative Tribunals Act, 1985 to direct the respondent department of Posts, Government of India to step up the pay of the applicant to the stage of his junior person Shri G.P.Garg and equal to his pay being fixed at higher stage with a further direction to pay him higher pay fixation from the date his junior Shri G.P.Garg was paid alongwith arrears of salary and other allowances etc. He has also claimed interest @ 24% p.a. on the arrears claimed as above.

2. Facts which are largely not in dispute are that the applicant who was appointed in the

respondent Department of Posts on 1.12.1962 whereas one of his junior Shri G.P.Garg was appointed on 2.7.1964. The applicant was promoted as Inspector of Post Offices on 1.3.1974 on permanent basis and Shri Garg was appointed substantively on the said post on 1.3.1975. He was further promoted on the post of ASPO on 7.12.1993 on an initial pay of Rs.625/- whereas Shri Garg was appointed as ASPO on 13.12.1994 with initial pay of Rs.625/-. It has further been averred by the applicant that in the seniority list/gradation list of Assistant Superintendent of Post Offices issued on 18.2.1988 (Annexure A-2) his name appears at serial No.59. Further more in the seniority list for the post of Superintendent as on 1.4.1995 the applicant has been shown at serial No.369 on which post he joined on 13.11.1990 and Shri G.P.Garg has been shown at serial No.377 who joined on 15.5.1991. It is the grievance of the applicant that inspite of Shri G.P.Garg being junior to the applicant Shri Garg was allowed promotion in SSC Gr.I in the capacity of Post Master, Shastri Nagar Post Office, Jaipur during the period from 2.9.1990 to 1.4.1991 while the applicant being senior was not given this promotion. This proforma promotion given to Shri Garg exhibiting it as local arrangement being contrary to the provisions of Articles 14 & 16 of the Constitution of India and arbitrary in nature has resulted in causing great loss to the applicant, since on 1.4.1995 the applicant's basic pay has been Rs.2675/- but that of Shri Garg at

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Rs. 2825/- . His representation dated 20.7.1994 made to the respondent department having gone futile and having been rejected by Communication dated 16.11.1994 (Annex-A-1), he has been constrained to file the aforesaid application to the claim the aforesaid relief.

3. The respondents have opposed this application by filing a detailed reply to which the applicant has filed a rejoinder and also an additional affidavit. The stand of the respondents has been that since by virtue of Directorate's order dated 28.7.1994 the post of HSG I belonging to IPOs Cadre Line Officials can be filled up by promotion of an official working as ASPOs within the same division if the vacancy is of less than 120 days duration, there is no illegality or irregularity in the official arrangement made in favour of Shri G.P. Garg who was the senior-most ASPO in the Jaipur City Division. The grievance is without any foundation and the OA deserves rejection; more so when none of the spell exceeded 120 days at a stage.

4. I heard the learned counsel for the applicant as also for the respondents and have examined the record in great detail.

5. The learned counsel for the applicant in support of his arguments urged that he being senior in the Circle Gradation List and having been not offered promotional post, there was no

justification for the respondents to fix a higher pay of Shri G.P.Garg. It has also been contended that the circular-letter dated 28.7.1994 (Annex.A-4) does not apply in the instant case as the duration for which Shri Garg was allowed to work on the promotional post exceeded 120 days. The learned counsel for the applicant has also argued that it is now the settled position of law that if there is a dis-parity of pay between a junior and senior person because of adhoc promotion of the junior or any other reason than reduction of pay of the senior person as a disciplinary proceedings, the senior person is entitled for step-up of his pay vis-a-vis his junior. In support of his argument, the learned counsel for the applicant has relied upon the decisions of Hyderabad Bench of the Tribunal in the case of N. Lalitha Vs. Union of India, 1992 (19)ATC 569; Anil Chandra Dass Vs. Union of India, 1988 (7) ATC 224; P. Gangadhar Kurup Vs. Union of India, 1993 (I) ATJ 165 of the Ernakulam Bench as also another decision of the Ernakulam bench in K.Krishna Pillai Vs. Union of India, 1994 (26) ATC 641. The learned counsel for the applicant has also drawn attention to a decision of this bench of the Tribunal in the case of M.L.Goyal Vs. Union of India and others (CA No.637/94 decided on 9.8.1995). On the basis of the above citations, it has been vehemently argued that allowing higher pay to the junior of the applicant is violative of not only the Article 14 of the Constitution but also of Article 16 of the Constitution of India and that the

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impugned order Annexure A-1 dated 15.11.1994 rejecting his representation dated 20.7.1994 cannot stand the test of law. It has, therefore, been urged that the reliefs claimed in the OA be accorded to the applicant.

6. On the contrary, the argument of the learned counsel for the respondents has been that since any one of the spells of adhoc arrangement has not exceeded 120 days, the benefit of promotion given to Shri Garg is within four corners of the circular letter of the Directorate dated 28.7.1984 and there has been no irregularity or infirmity in this regard. It has also been urged that Shri Garg was the senior-most ASPO in Jaipur Division and hence he was rightly promoted and that the applicant is not entitled for any relief.

7. I have given anxious thought to the able arguments addressed on behalf of both the parties. It may be stated at the out-set that in the matter of fixing higher pay on account of fortuous promotions given to the juniors, the law has come to a stage of finality. Right from the decision of the Hyderabad bench of the Tribunal in M.Lalitha's case (supra) and that in the case of Anil Chandra Das's case (supra) against which the Union Government went in appeal to the Hon'ble Supreme Court by way of filing an SLP No.13994/91 against the decision of Calcutta Bench of the Tribunal, the view of the

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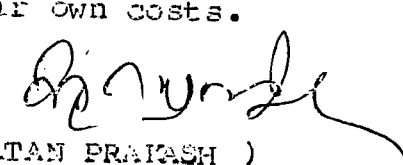
Calcutta Bench of the Tribunal was affirmed and is being followed consistently by all other benches of the Tribunal including that of Ernakulam Bench in K.Krishna Pillai's case reported in 1994 (26)ATC 641 and O.P.Gupta Vs. Union of India and others, decided by Chandigarh Bench of the Tribunal reported in 1995 (31)ATC 84. This view has also been adopted by the Principal Bench of the Tribunal in the case of K.K.Shardwaj Vs. Union of India (CA No.732/92) and Calcutta Bench of the Tribunal in Baidyanath Bandopadhyay's case. It is thus settled that incase a junior receives an adhoc promotion or receives special pay yet in all cases except where reduction is by way of disciplinary proceedings, a senior is entitled to have his pay stepped-up to the level of pay received by his junior due to fortuous circumstances. In the instant CA also, it is undisputed that Shri G.P.Garg has been junior to the applicant Shri A.S.Tyagi. The applicant was never offered the post of promotion. The adhoc or the so-called local arrangement also exceeded the maximum duration of 120 days as envisaged under the circular dated 28.7.1984. Extending of higher pay to the junior merely on the plea that in his division Shri G.P.Garg was senior-most SPO cannot be sustained in the eye of law; more so when in the Circle Gradation List at both the levels i.e. of ASPO and the seniority list of office of the Postal Services Group 'B' as on 1.1.1995 (Annex.A-3) Shri A.S.Tyagi has been senior and he was never offered the promotional post.

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8. In view of above discussion, I am of the considered view that the order dated 16.11.1994 (Annex.A-1) rejecting the representation of the applicant dated 20.7.94 cannot be upheld. The applicant is entitled for stepping up of his pay to the level of his junior Shri G.P.Garg.

9. Accordingly, while allowing this OA, the respondents are directed to step up the pay of the applicant Shri A.S.Tyasi to the same level as that of Shri G.P.Garg, the junior to the applicant from a date one year prior to the filing of this OA which is 11.10.1994 and to issue necessary orders alongwith arrears of salary and other allowances from the said date. The respondents should comply with the above directions within a period of four months from the date of communication of copy of this order.

10. In the facts and circumstances of this case, no interest shall be payable on the arrears. Both the parties shall bear their own costs.

  
(RATAN PRAKASH )  
MEMBER (J)