

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

10

O.A. No. 315/96
T.A. No.

199

DATE OF DECISION 3-12-1999

Bhagirath Petitioner

Mr. K.L.Thawani Advocate for the Petitioner (s)

Versus

Union of India and Ors. Respondent

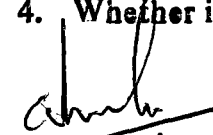
Mr. M.Rafiq Advocate for the Respondent (s)

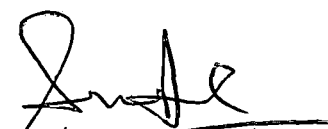
CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? X
2. To be referred to the Reporter or not ? *Yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? X


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member

Date of order: 3-12-1999

OA No.315/96

Bhagirath S/o Richpalram working as Sub-Divisional Inspector, Nawalgrah,
District Sikar.

.. Applicant

Versus

1. Union of India through the Secretary to the Government of India,
Department of Posts, Ministry of Communications, New Delhi.
2. The Director General, Department of Posts, Dak Bhawan, New Delhi.
3. Chief Postmaster General, Rajasthan Circle, Jaipur.
4. Postmaster General, Rajasthan Western Region, Jodhpur.
5. Superintendent of Post Offices, Jhunjhunu Division, Jhunjhunu.

.. Respondents

Mr. K.L.Thawani, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

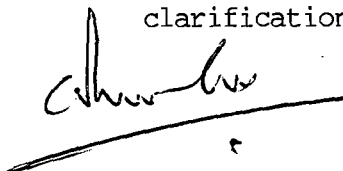
Hon'ble Mr.S.K.Agarwal, Judicial Member

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

ORDER

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

In this Original Application, applicant Shri Bhagirath prays that order at Ann.A1 which is a general circular regarding fixation of pay on promotion from Lower Selection Grade Postal Assistant (for short LSG) to Inspector of Post Offices (for short, IPO) cadre and Ann.A2 which is a clarification on the same subject be quashed and further that the respondents

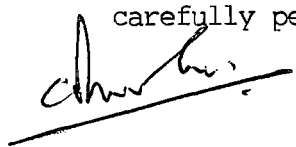


may be directed to fix the pay of the applicant in the cadre of IPO by giving benefit of FR 22-C (now FR 22(I)(a)(1)).

2. The facts of the case as stated by the applicant are that the applicant was appointed as Postal Clerk in 1965 and promoted to LSG in 1982. He was further promoted as IPO in January, 1987. Prior to 1.1.1986 the scale of pay of LSG was Rs. 425-640 whereas that of IPO was Rs. 425-700 and since the maximum grade of IPOs pay scale was higher, that post was treated as carrying duties and responsibilities of greater importance and consequently the pay on promotion to IPO was fixed under the provisions of FR 22(I)(a)(1). Further, Postal Assistant (erstwhile Postal Clerk) as well as LSG were both feeder posts to the cadre of IPOs. After the recommendations of the Fourth Pay Commission various grades including the grades of LSG and IPO as mentioned were amalgamated and a new grade of Rs. 1400-2300 was created. On his promotion to the IPO, the respondents did not give him the benefit of FR 22-C stating that the grades of LSG and IPO were now identical. The applicant made representation (Ann.A4) and his representation was rejected.

3. In their reply the respondents have contested the case and stated that the applicant's representation was decided by the Director General (Posts) on 27.5.1992 and communicated to the applicant on 11.6.1992. The applicant remained silent for about four years thereafter and cannot now be allowed to challenge the action of the answering respondents at this belated stage. The applicant has been working as IPO since 7.1.1987. After revision of pay w.e.f. 1.1.1986 the pay scales of LSG and IPO have been made identical and in view of this, the applicant's pay was fixed at the same stage of LSG on appointment on the post of IPO. The benefit of FR 22-C [now FR 22 (I)(a)(1)] in fixation of pay on promotion to the cadre of IPO was thus rightly denied to him.

4. We have heard the learned counsel for the parties and have also carefully perused the records.



13

5. The case of the applicant is basically anchored on the plea that the post of IPO carries higher duties and responsibilities and, therefore, the applicant's pay on promotion to the post of IPO should be fixed under FR 22(I)(a)(1). In this connection, it has been argued that right till 1.1.1986 the post of LSG was a feeder to the post of IPO because apart from maximum of IPO pay scale is little higher than that of LSG it was accepted that IPO does carry higher duties and responsibilities than LSG. On the other hand, it has been argued on behalf of the respondents that since the pay scales of both LSG and IPO have become identical w.e.f. 1.1.1986 on the basis of recommendations of an expert body like Pay Commission, the benefit of pay fixation under FR 22(I)(a)(1) cannot be extended to the applicant.

6. The applicant has based his case on three judgments of various Benches of this Tribunal:

(i) In 1993(2)SLJ (CAT) 95, Ramesh Chand Vs. Union of India and Anr., the question was whether the benefit of FR 22(I)(a)(1) was available on promotion from LSG to Inspector and the case was, therefore, fully identical to the case in hand. In that case since there was no specific denial to the petitioner's contention that the post of Inspector carries higher responsibilities and duties, the OA was allowed. Some precedences were also quoted when on promotion to IPO, the person was given benefit of FR 22(I)(a)(1). It was, therefore, held that the petitioner in that case was entitled to the benefit of FR 22(I)(a)(1) on his promotion to the post of IPO.

(ii) In 1993 (2) SLJ (CAT) 305 Dhyaneswar Nandanwar Vs. Union of India and Ors., the question was identical but the posts were of Sorting Assistant (LSG) and Inspector, Railway Mail Service. In that case also the Fourth Pay Commission had recommended identical pay scales for both the posts. However, in view of the fact that the post of Inspector Railway Mail Service is a promotional post and

Chandra

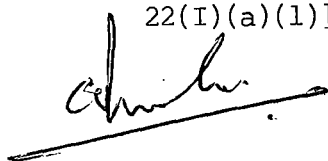
14

the post of Sorting Assistant is a feeder cadre, it was held that the post of Inspector, Railway Mail Service, carries higher responsibilities and, therefore, FR 22-C [FR 22 (I)(a)(1)] was applicable.

- (iii) In OA No.599/95, Bhim Singh Meena Vs. Union of India and Ors. decided by this Bench of the Tribunal on 18.12.1996, the issue was identical and the OA was allowed but primarily on account of the fact that the DG (Posts) letter dated 31.5.1995 which was referred to by the respondents in that case was not shown during the hearing and it was stated that in the absence of the said letter it was not possible to make any comment with regards to its contents and on consideration of all the facts and circumstances of the case, the action of the respondents in lowering the pay of the applicant and ordering recovery (after having fixed his pay by giving benefit of FR 22(I)(a)(1) was set-aside.

7. The learned counsel for the respondents has cited following two cases in support of his contentions:

- (i) (1992) 19 ATC 686, V.K.George Vs. Union of India and Ors. The case is related to applicant having been promoted from Stenographer Special Grade to the post of ITO. In that case also on the recommendations of the Fourth Pay Commission, both the posts were placed in the same pay scale. However, the Central Board of Direct Taxes had decided that the two posts would be treated as equivalent. There was nothing to show that this decision of the Pay Commission or that of the Board was made with extraneous consideration. In such circumstances, it was held that the applicant's pay could not have been fixed under FR 22-C [now FR 22(I)(a)(1)].



(ii) In (1998) 5 SCC 242, Union of India and Ors. Vs. Ashoke Kumar Banerjee, Hon'ble the Supreme Court after examining the provisions under FR 22(I)(a)(1) held that "for the applicability of FR 22(I)(a)(1), it is not merely sufficient that the officer gets promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post".

8. In deciding the present controversy we have to come to a conclusion whether FR 22(I)(a)(1) is applicable to the case in hand as has been prayed by the applicant. For the sake of convenience FR 22(I)(a)(1) is reproduced below:

"FR 22.(I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more."


The judgment of the Apex Court in Union of India Vs. Ashoke Kumar

Chandra

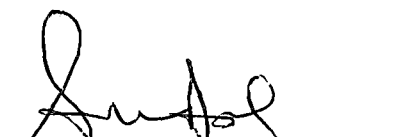
16

Banerjee (supra) has conclusively expounded the two requirements which are necessary before the benefit of FR 22(I)(a)(1) can be extended. It was observed that it is not merely sufficient that a person gets promotion from one post to another involving higher duties and responsibilities but he must move from a lower scale attached to the lower post to a higher scale attached to a higher post. In the present case, even if, for the sake of arguments, it is accepted that the post of IPO enjoins higher duties and responsibilities than LSG, the other condition that the person should move from a lower scale attached to a lower post to a higher scale attached to a higher post is not satisfied. No document has also been produced before us by the applicant which will indicate that the Department has held that the post of IPO carries higher responsibilities and duties than LSG and it is undisputed that the post of IPO does not carry a pay scale that is higher than the post of LSG Postal Assistant. The cases cited on behalf of the applicant are of no help to him in view of the fact that law regarding application of FR 22(I)(a)(1) in respect of persons enjoying identical pay scales but claiming that they have been promoted to a post having similar pay scale but carrying higher duties and responsibilities has now been crystallised by Hon'ble the Supreme Court of India in its judgment in the case of Union of India Vs. Ashoke Kumar Banerjee (supra). It is, therefore, clear that both the requirements which need to be satisfied as per the judgment of the Apex Court in Union of India Vs. Ashoke Kumar Banerjee (supra) are not met and, therefore, the prayer of the applicant is not sustainable.

9. In view of above, we are of the considered opinion that FR 22(I)(a)(1) is not applicable in the case of the applicant and the prayer cannot be allowed. The Original Application is accordingly dismissed with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member