

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 29 August, 2001

OA No.533/99

G.P.Garg s/o Ram Bhajan Lal Garg r/o 2, Dak Colony, Malviya Nagar, Jaipur, now a days working as Superintendent, R.M.S. 9th Division, Ajmer.

..Applicant

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer.
3. Accounts Officer (Admn.), O/o Deputy Director of Accounts (Postal), Jaipur

.. Respondents

Mr. P.P.Pareek, counsel for the applicant

Mr. D.K.Swamy, proxy counsel to Mr. Bhanwar Bagri, counsel for the respondents

CORAM:

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

Hon'ble Mr.S.A.T.Firvi, Administrative Member

ORDER

Per Hon'ble Mr. S.A.T.Firvi, Administrative Member

Heard the learned counsel on either side at length.

2. Aggrieved by the order of respondent No.3 dated 24.9.1999, by which the applicant's pay has been refixed w.e.f. 15.4.1991 at a lower level, he has filed the present OA.

3. Briefly stated, facts of the case are that the applicant, while working as Assistant Superintendent of Post Offices, was placed in the HSG-I grade by respondents order dated 28.9.1990.

Thereafter he was promoted to Grade 'B' by respondents' order dated

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26.2.1991. He worked in the HSG-I grade from 29.9.1990 to 2.4.1991 and accordingly his pay was fixed in the higher grade of Rs. 2000-3200 at the stage of Rs. 2375/- in September, 1990. Subsequently, on being posted as Deputy Superintendent of Post Offices in Grade 'B' in the pay scale of Rs. 1000-3500 his pay was fixed at the stage of Rs. 2525/-. The applicant has continued to receive his salary throughout thereafter on the above basis. After a lapse of more than 8 years, the respondents, even without putting the applicant to notice, revised his pay to Rs. 2375/- as on 15.4.1991 and for the period upto 31.3.1992. Likewise, his pay has been refixed at Rs. 2450/- for the period 1.4.1992 to 31.3.1993 and so on. In the process the pay of the applicant has been reduced by two stages in the pay scale of Rs. 2000-3500 and similarly in the revised pay scales and consequently the applicant apprehends large scale recoveries in compliance of the impugned order dated 24.9.1999. The contention raised by the applicant is that his pay has been wrongly fixed in accordance with FR 22(I) (a) (1) which reads as under:-

"F.R.(I)....

(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

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more."(emphasis supplied)

4. The respondents, on the other hand, without disputing the facts stated by the applicant contend that the impugned order dated 24.9.1999 has been passed just in accordance with aforementioned FR 22(I)(a)(1). The learned counsel appearing on behalf of the respondents has submitted that the applicant's pay was erroneously fixed by an incorrect application of the provisions contained in the aforesaid FR. According to him, the aforesaid FR clearly provides that where a Government servant holding a post in substantive, temporary or officiating capacity is promoted or appointed in a substantive etc. capacity 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 (emphasis supplied) by an increment at the stage at which such pay has accrued. The post regularly held by the applicant at the material time was that of Assistant Superintendent and accordingly the respondents have, according to the learned counsel, correctly acted in refixing the applicant's pay as in the impugned order.

5. We have given careful consideration to the pleadings of the parties and the arguments made during the course of hearing.

6. It is not disputed that the respondents have reduced the pay of the applicant by the impugned order without giving him an opportunity to state his case. It is also not disputed that, in any case, the applicant cannot be held responsible for fixation of his pay prior to the passing of the impugned order dated 24.9.1999. He had not made any representation in the matter and could not have

misrepresented before the respondents. In-so-far as the fixation of his pay during the period in question is concerned, the respondents must, therefore, own up the entire responsibility in the matter.

7. The learned counsel appearing on behalf of the respondents also submits that the re-fixation of applicant's pay as also of the others was occasioned by the respondents letter dated 28.1.1999 (Ann.F2). By the aforesaid letter, the respondents were asked to review the pay fixation in all such cases. That letter also clearly provided that the audit party had found that the pay of the officers on promotion to Group 'B' had been wrongly fixed on the presumptive pay of HSG-I instead of the substantive pay of ASFOs which was not in consonance with the existing orders. We have perused the aforesaid order and find that there is nothing wrong if the respondents have consequently proceeded to review the applicant's pay. Nothing should have prevented them, however, from putting the applicant to notice before proceeding to pass the impugned order. That having not been done, the impugned orders have been passed, in our view, in breach of the principles of nature justice, and cannot, in the circumstances, be sustained.

8. In-so-far as the applicability of the provisions of FR 22(I)(a)(1) and fixation of pay thereunder is concerned, the learned counsel appearing in support of the OA has correctly placed reliance on the orders passed by the Principal Bench of this Tribunal in similar cases in OA No.786/99 on 13th November, 2000 and in OA No.961/2000 on 1st January, 2001. The earlier decision has been noticed in the latter decision of 1st January, 2001. We have perused the aforesaid order dated 13th November, 2000 which in turn places reliance on the judgment of the Full Bench of this Tribunal in the case of Bajrang Sitaram Wanjale and ors. v. Union of India and ors.

reproduced in 1994 (2) SEI-252 OAI and in which, while commenting on the aforesaid Fundamental Rule, the Tribunal held as follows:-

"..... We have analysed FR 22 (c) and pointed out that once it is established that the Govt. Servant has been appointed or promoted to another post carrying duties and responsibilities of greater importance than those attached to the post actually held by him in a substantive, temporary or officiating capacity on the date of his promotion or appointment, his initial pay has to be fixed taking in to account his pay in the post actually held by him and there is no scope for taking into account the presumptive pay of the post which he did not hold on the date of promotion or appoint...."  
(emphasis supplied)

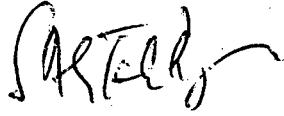
9. In view of the above, the respondents have committed a mistake by refixing the pay as per the impugned order. Two other decisions rendered by the Principal Bench also relied upon by the learned counsel also upheld the same principle, which has been upheld by the Tribunal in the aforesaid cases by relying on the Full Bench judgment. We are, no doubt, bound by the above principle propounded by the Full Bench <sup>and</sup> ~~are~~ accordingly inclined to decide this case by allowing the OA according to the same principle.

10. For all the reasons brought out in the preceding paragraphs, we are inclined to allow the OA on the ground that the respondents have violated the principles of natural justices as also on the ground that the application of FR in question made by them is contrary to what has been upheld by the various Benches of this Tribunal <sup>by</sup> relying on its Full Bench. The OA, therefore, succeeds.

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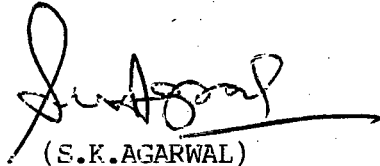
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The impugned order dated 24.9.1999 is quashed and set-aside. The applicant will be entitled to all consequential benefits. No order as to costs.



(S.A.T. RIZVI)

Adm. Member



(S.K. AGARWAL)

Judl. Member