

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 29 August, 2001

OA No.2/2000

S.N.Basanwal s/o Shri Bishanlal Basanwal r/o Baswa District Jaipur,  
now a days working as Superintendent of Post Offices, Churu.

..Applicant

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Ministry of Communication, New Delhi.
2. The Chief Post Master General, Rajasthan Southern Region, Ajmer.
3. Deputy Director of Accounts (Postal), Jaipur

.. Respondents

Mr. R.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.Rizvi, Administrative Member

ORDER

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

Heard the learned counsel on either side at length.

2. Aggrieved by the order of respondents dated 9.12.1999, by which the applicant's pay has been refixed w.e.f. 30.6.1990 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 8.2.1990. Thereafter he was promoted as Assistant Director, Postal Services by

respondents' order dated 12.6.1990. He worked in the HSG-I grade from 8.2.1990 to 12.6.1990 and accordingly his pay was fixed in the higher grade of Rs. 2000-3500 at the stage of Rs. 2525/- w.e.f. 30.6.1990 to 31.5.1991. Subsequently, revised pay scales were introduced with effect from 1.1.96 in the grade of Rs. 7500-12000 and, in due course, w.e.f. 1.6.1999 onwards the applicant's pay became Rs. 9750/- p.m. The applicant's submission is that w.e.f. 1.6.99 the respondents have incorrectly refixed the pay of the applicant as Rs 9500/- in place of Rs. 9750/- p.m. Thus after a lapse of 9 years, the respondents have issued the impugned order Ann.A/1 by which the applicant's pay has been reduced to begin with, from Rs. 2525/- to Rs. 2375/- as on 30.6.1990 and from Rs. 2600/- to Rs. 2450/- on 1.6.91 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 9.12.99. 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

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him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more."(emphasis supplied)

4. The respondents, on the other hand, without disputing the facts stated by the applicant contend that the impugned order dated 9.12.1999 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, in any case, the applicant cannot be held responsible for fixation of his pay prior to the passing of the impugned order dated 9.12.1999. He had not made any representation in the matter and could not have misrepresented before

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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 refixation of applicant's pay as also of the others was occasioned by the respondents letter dated 28.4.1999 (Ann.R2). 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 ASPOs 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.

8. In-so-far as the applicability of 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) SBI-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 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 aforesaid principle propounded by the Full Bench and are accordingly inclined to decide this case in the same terms by allowing the OA.

10. For all the reasons brought out in the preceding paragraphs, we are inclined to allow the OA 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 by relying on its Full Bench. The OA, therefore, succeeds. The impugned order dated 9.12.1999 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