

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 8-12-03.

Original Application No.152/2003.

Mahendra Kumar Bari S/o Shri Makhan Lal Bari, aged about 35 years, resident of Ward No.42, Near Kajla Sadan, Nawalgarh Road, Sikar and presently working as Wireman (Electrical) Office of Superintendent of Posts Offices, Sikar Postal Division, Sikar 332001.

Applicant.

v e r s u s

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi 110 001.
2. Post Master General, Rajasthan, Western Region, Jodhpur.
3. Superintendent of Post Offices, Sikar Postal Division, Sikar 332 001.

... Respondents.

Mr. C. B. Sharma counsel for the applicant.
Mr. N. C. Goyal counsel for the respondents.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The grievance of the applicant in this case is that he is entitled for higher pay scale to the post of Wireman (Electrical) and inspite of the fact that the controversy as regard to higher pay scale/correct pay scale to the post of Wireman has been resolved by various orders of this Tribunal and upheld by the Hon'ble High Court and thereafter by the Apex Court,

no such benefit has been extended to the applicant. Rather the respondents have rejected the claim of the applicant in that behalf vide impugned order dated 23.12.2002 (Annexure A-1). The applicant has prayed for quashing the impugned order Annexure A-1 with a further prayer that the respondents be directed to treat the applicant at par in the matter of pay and allowances with their counter parts working in the same department and directions be issued to the respondents to allow the pay scale of Rs.950-1500 w.e.f. 28.04.1995 and further corresponding scale w.e.f. 1.1.1996 with all consequential benefits including arrears of pay & allowances after due fixation.

2. The facts of the case are that the applicant was initially appointed as Wireman vide memo dated 28.04.1995 in the pay scale of Rs.825-1200. It is ~~is~~ further case of the applicant that in the year 1980 the appointments were allowed to certain candidates on the post of Wireman in various Postal Division of Rajasthan Circle and they were allowed the pay scale of Rs.210-270 instead of correct scale of Rs.260-350. Thereafter on the recommendations of 4th Pay Commission, the scale of Rs.210-270 was revised to corresponding scale of Rs.825-1200 instead of Rs.950-1500 (260-350) and some candidates were allowed appointment in the scale of Rs.260-350 in Kota and Sawaimadhopur Postal Division.

3. It is further alleged that the respondents made

ul

an attempt to reduce the pay scale of Wireman of Kota and Sawaimadhopur Postal Division to place them in the scale of Rs.210-270 instead of 260-350, so they approached the Tribunal against the action of respondents department and this Tribunal allowed the OA in the case of Rajendra Kumar and Ramswaroop vide order dated 15.02.1993 and 12.03.1993 in the case of Hans Lal Kalwar holding that applicants are entitled to the pay scale of Rs.260-350, copy of these orders have been placed as Annexure A-3 and A-4. It is further pleaded that similarly situated employees working on the post of Wireman (Electrical) approached this Hon'ble Tribunal at Jaipur and Jodhpur Benches and their applications have been allowed holding that correct pay scale of Wireman is Rs.260-350 and thereafter Rs.950-1500 after the recommendations of the 4th Pay Commission. In Para 3 (iii) of the OA, the applicant has mentioned the names of five such OAs which have been allowed by Jaipur and Jodhpur Benches of this Tribunal and copy of such orders has also been annexed with the OA as Annexure A-5 to A-9. It is further alleged that the order dated 25.04.2000 passed by the Hon'ble Jodhpur Bench of the Tribunal was challenged before the Hon'ble High Court of Rajasthan, Jodhpur, and the applicant therein also challenged the said order for modification for entire arrears, which were restricted to 3 years by the Jodhpur Bench of Hon'ble Tribunal. The Hon'ble High Court of Rajasthan, Jodhpur, vide order dated 23.02.2001, upholding the decision of the Hon'ble Tribunal, Jodhpur Bench, directed the respondents to pay the

entire difference in the pay scale from the date of initial appointment. The matter was carried out further by way of appeal by the respondents before the Apex Court. The Apex Court vide order dated 01.03.2002 uphold the decision of the Hon'ble Tribunal and limited the arrear for 3 years by modifying the order passed by the Hon'ble High Court of Rajasthan, Jodhpur. The copy of the judgement passed by the Hon'ble High Court of Rajasthan, Jodhpur Bench, as well as the judgement rendered by the Apex Court in appeal against the order of the Hon'ble High Court has been annexed as Annexure A-10 and A-11 respectively. The applicant has also placed on record the copy of the order dated 02.12.2002 passed by the Hon'ble High Court of Jaipur Bench dismissing the Writ Petition arising out of the order dated 11.04.2002 passed by the Hon'ble CAT Bench, Jaipur, in the case of Jagdish Narain Gupta, thereby holding that " Once this decision was there which has been confirmed by the Supreme Court also, the similarly situated persons should have been given the benefit by the petitioners themselves. But the Union of India has acted contrary to what it is expected and desirable by the founding father of the Constitution from it. It is not expecting from a welfare State, a State for peoples and by the peoples. The Officers of the Union of India are to take care that the poor employees are not unnecessarily dragged in the litigation."

4. Further contention of the learned counsel for the applicant in this case is that the action of the

respondents in denying the pay scale of Rs.950-1500 to the applicant is contrary to the provisions of Article 14, 16, 21 and 300-A of the Constitution of India whereas the similar benefit has been extended to the person similarly situated, more particularly when the respondents themselves has implemented the order passed by this Tribunal in other cases and denying the same to the applicant.

5. Notice of the application was given to the respondents. Respondents have filed the reply. The fact that benefit of pay scale of Rs.950-1500 instead of Rs.825-1200 was given to the employees on the basis of the judgement rendered by the different benches of the Tribunal as affirmed by the Apex Court has not been denied. It is further submitted that the applicant was appointed on the post of Wireman at Sikar w.e.f. 28.04.1995 in the pay scale of Rs.825-1200 which has been clearly shown in the appointment letter Annexure A-1. At present the applicant is in the pay scale of Rs.2750-70-3800-75-4000 which is revised pay scale of Rs.825-1200 by the 4th Pay Commission. Though the applicant is pleading that his appointment should have been in the scale of Rs.950-1500 instead of Rs.825-1200 but the applicant at the time when he joined this department has not made any grievance regarding the grant of scale of Rs.825-1200 and as such he cannot challenged the scale at this belated stage.

6. We have heard the learned counsel for the

parties and perused the documents placed on record.

7. It is not disputed and cannot be disputed that the point in issue has been decided by a number of judgements rendered by this Tribunal as well as the decision of the Apex Court. In the case of UDI vs. Raja Ram & Ors., the Apex Court has upheld the decision rendered by the Jodhpur Bench ~~and held~~ that High Court ought not to have granted full arrears of salary and should have limited the same for a period of three years preceding the date of the respective applications filed before the Tribunal. This Tribunal in OA No.108/2001 decided on 11.04.2002 in the case of Jagdish Narayan Gupta vs. UDI & Ors. where the applicant has also prayed that the respondents be directed to allow the pay scale of Rs.260-350 w.e.f. 27.05.80, 950-1500 w.e.f. 1.1.1996 and further corresponding scale w.e.f. 1.1.1996 with all consequential benefits including arrears of pay & allowances after due fixation, allowed the application of the applicant and it was held that the applicant shall be entitled to the pay scale of Rs.260-350 and to equivalent pay scale, effective from time to time, right from the date of his appointment. In that case also, the applicant was initially appointed in the scale of Rs.210-270. The matter is clearly covered by this judgement as well as the judgement of the Hon'ble Tribunal, Jodhpur Bench in OA No. 165/96 which was decided on 24.02.2002 and the decision was affirmed by the Hon'ble ^{Apex} Court in SLP NO. 11283-11284/2001 dated 01.03.2002, whereby the Hon'ble Apex Court has

10

made the following observations :-

"Inasmuch as the tribunal has followed its earlier order in the matter and it is now brought to our notice that in similar matters the orders made by the Tribunal has been given effect to, no useful purpose will be served in interfering with the order made by the tribunal as affirmed by the High Court except to the extent to state that the High Court ought not to have granted full arrears of salary and should have limited the same for a period of three years preceding the date of the respective applications filed before the Tribunal. Subject to the modification made above, this Special Leave Petition stands dismissed."

8. In view of what has been stated above, we are of the view that the applicant in the present case is also entitled to the pay scale of Rs.950-1500 and to the equivalent pay scale effective from time to time from the date of his appointment.

9. Learned counsel for the applicant submits that he is entitled to the difference in the pay scale as arrear for a period of three years preceding the date of application as was awarded by the various Benches of the Tribunal as well as upheld by the Apex Court in the case of UOI vs. Faja Ram & Ors., which has been reproduced above.

10. On the other hand, learned counsel for the respondents has vehemently argued that the cause of action arose in the year 1965 when the applicant was

appointed in the pay scale of Rs.825-1200 w.e.f. 28.04.1995 and the present application has been filed in the year 2003 after a lapse of more than 8 years. As such the application is time barred and cannot be entertained and in any case the applicant is not entitled to any back wages. So far as the question of limitation is concerned, suffice it to say, that the Hon'ble Supreme Court in the case of M. L. Gupta vs. Union of India AIR 1999 SCC 669 has held that fixation of pay is a continuous cause of action. At this stage, it would be relevant to extract Para 5 of the judgement as follows :-

"Where the employee's grievance was that his fixation of initial pay was not in accordance with the Rules, the assertion being of continuing wrong the question of limitation would not arise. So long as the employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the Rules. It is no doubt true that if the employee's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs."

11. Similarly the Full Bench decision of this Tribunal in the case of G. Narayana & Ors. vs. Union of India decided on 18.6.1993 F.B. Judgement No. III 216, in para 5 has made the following observations :-

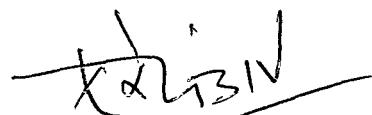
"If we take a view different from the one taken by the Hyderabad Bench it would result in two different principles operating in the matter of upgradation of similarly situate personnel. If the respondents contention is accepted it would lead to a very awkward situation of one set of employees of the DRDO being governed by one set

of principles and another set of employees being governed by different set of principles even though they are all similarly situate and governed by the same Recruitment Rules and common seniority lists. The Tribunal should not bring about a situation where it gives conflicting directions to the same party. Certainly and consistency are certainly great values cherished in the administration of justice. As acceptance of the contention of the respondents would lead to conflict of directions to the same organisation it would not be in consonance with justice to take a different view from the one taken by the Hyderabad Bench of the Tribunal."

12. In the light of law laid down by the Hon'ble Supreme Court in the case of M. L. Gupta and also drawing assistance from the directions of the Full Bench referred to above, we held that where the delay can be a factor for considering grant of arrear, the claim of the applicant for ^{equity} of treatment with identically situated colleague in the same cadre deserve to be granted. We accordingly, directed the respondents to fix the pay of the applicant notionally on the higher pay scale of Rs. 950-1500 w.e.f. 28.04.1995 up to 31.12.1995 and in the revised corresponding pay scale w.e.f. 01.01.1996. The actual financial benefit of the revised pay fixation would, however, be available to the applicant only w.e.f. 06.04.2002 which is one year prior to filing of the present OA on 07.04.2003. ^{Arrears of} back wages has been restricted only to one year prior to the filing of OA keeping in view the fact that the limitation prescribed under the Administrative Tribunals Act, 1985, for filing the OA is one year and also that the applicant has approached this Tribunal after a lapse

of about 8 years. The respondents shall carry out the directions of the Tribunal as soon as possible and in any case not later than 3 months from the date of receipt of a copy of this Order.

13. The Original Application is finally disposed of with no order as to costs.


(A. V. BHANDARI)

MEMBER (A)


(M. L. CHAUHAN)

MEMBER (J)