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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 158/2003

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. O.A-158/2003.....Pg. 1.....to 4.....
2. Judgment/Order dtd. 03/12/2004.....Pg. 1.....to 9..... *disposed*
3. Judgment & Order dtd. 16/11/2006.....Received from H.C/Supreme Court
WP(C) pg-1 to 4
4. O.A. 158/03.....Pg. 1.....to 36.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S. *submitted by the respondents*.....Pg. 1.....to 55.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

Obtree Not page- 1

SECTION OFFICER (Judl.)

FROM No. 4. .
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 158 / 03

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Applicants: - A. K. Singh

Respondants: - H. V. I. Fous

Advocate for the Applicants: - Mr. B.P. Bera Mr. D. Bera
Mr. B.K. Talukdar, or Mr. D. Bera

Advocate for the Respondants: - Cafe

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in but not in time Application-Petition is not filed C.F. deposited BO/BO No 7-6-5787/99 4-7-03...</p> <p><u>Dr. Registrar</u></p> <p>Steps taken along with envelops.</p> <p>Notice not yet served on respondent</p> <p>one copy sent.</p> <p>Notice prepared & sent to 15 for filing the Respondent No 1 to 6 by Legal AID. D/No 1590/1595 Did 31/7/03</p>	<p>17.7.03</p>	<p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr N.D. Dayal, Admn. Member.</p> <p>Issue notice to show cause as to why this application shall not be admitt- ed.</p> <p>Also issue notice to show cause as to why the interim prayer as prayed for shall not be granted. Returnable by two weeks.</p> <p>List on 13.8.03 for filing reply to the show cause and admission. No recovery shall be made till 13.8.03.</p> <p>Member</p> <p>Vice-Chairman</p>

13.8.2003

Post the matter on 29.8.2003.

for admission. Endeavour shall be made to dispose of the same at the admission stage. Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents shall obtain necessary instruction on the matter. Interim order dated 17.7.2003 shall continue.

No reply has been filed.

22/8/03

Order dtd. 15/8/03 communicated to the Ranking Council.

18/8

mb

29.8.2003

Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. K.V. Prabhakaran, Member (A).

Vice-Chairman

No reply has been filed.

28.8.03

Respondents have submitted written statement. Mr. B.P. Borah, learned Sr. counsel for the applicant stated that he has received the written statement and prayed for some time to go through the same. Accordingly, the matter is posted for admission on 17.9.2003. Endeavour shall be made to dispose of the same on that day.

1.9.03

W/s filed by

respondents.

mb

17.9.03

Application is admitted. ~~Issue~~ No further notice need be issued.

List on 4.11.2003 for hearing.

Interim order dated 13.8.2003 shall continue.

Pl. simplify order dated 17/9/03.

18/9/03

pg

Order dated 17/9/03 sent to D/S for issuing both the parties.

24/9/03

4.11.03

NO Bench today. Adjourn to 24.11.03.

10/10/03

24.12.03

NO Bench today. Adjourn to 12.12.03.

10/10/03

23.01.2004 Present : The Hon'ble Sri Bharat Bhusan, Judicial Member.

The Hon'ble Sri K.V. Prah-ladan, Member (A).

Mr. B.P. Bora, learned Sr. couns-
sel for the applicant seeks for adjourn-
ment. Not opposed by the respondents.
So, list the matter on 20.02.2004 for
hearing.

K.V. Prah-ladan
Member (A)

Member (J)

The learned advocate
Sri B.K. Talukdar for
the applicant informed
personally that his senior
advocate Sri B.P. Bora is
not yet present on Division
bench as he is not well
to argue the case.

bb

20.2.04 List order Division Bench
is available.

B/D

29.9.04

Heard Mr B.P.Bora, learned Sr.counse-
l and for the applicant and Mr A.Deb Roy,
learned Sr.C.G.S.C for the respondents.
List on 4.10.04 for judgment.

K.V. Prah-ladan
Member

R
Vice-Chairman

pg

4.10.04
Adj'd to 6.10.04.

6.10.2004

List on tomorrow.

K.V. Prah-ladan
Member (A)

R
Vice-Chairman

bb

7.10.2004

List on 17.11.2004 for judgment.

3.12.2004 . . . Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is disposed of. No order as to costs.

[Signature]
Member (A)

[Signature]
Vice-Chairman

Recd by 15/12

[Signature]
13/12/04

17.12.04

*Copy of the
order has been
sent to the office
for info. The doc
to the applicant
by post*

[Signature]

PUC.

Memo No. HC.XXI, 6433-38/R.M. dtd.
21.11.06 from The Asstt. Registrar (3) to
of The Hon'ble High Court.

The order dtd 16.11.06 passed in
WP(C) No. 376/05 may kindly be seen at
PUC.

The applicant Smt A.K. Singh,
The original applicant of OA. 158/03
filed the WP(C) No. 376/05 in the Hon'ble
High Court, Gauhati against the
judgment and order dtd ~~15.8~~ 3.12.04 passed
by this Tribunal in the above mentioned
OA. The Hon'ble Gauhati High Court
upheld this Tribunal's order on
16.11.06 passed in W.P(C) No. 376/05.
Submitted for ^{forward} kind perusal.

At
22/11

At Gauhati
23.11.06
to (3).

~~Dy. Registrar~~

23/11/06
Hon'ble

At Gauhati
22/11/06

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

W. P. (c)

No. 376 of 2005

Petitioner

Petitioner
Shri Awadesh Kumar Singh

Versus

Versus
The Union of India, and ors.

Opposite Party

Appellant Mr. B. P. Borah (Csr. Advocate)
For
Petitioner Mr. B. K. Talukder,
Miss J. R. Borah,
Respondent Mr. J. Borah
For Mrs. S. M. Neog,
Opposite Party

C.G.S.E. } Mr. H. Rahman

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

W.P.(C) No. 376 of 2005

BEFORE
THE HON'BLE MR. JUSTICE D. BISWAS
THE HON'BLE MR. JUSTICE B.D. AGARWAL

16.11.2006

Heard Mr. B. P. Borah, learned Senior counsel for the petitioner. None appears for the respondent Union.

This writ petition has been filed challenging the order passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Appeal No.158/03.

We have perused the impugned judgment and order passed by the learned Tribunal. It appears that the petitioner's prayer for stepping up of his pay with that of his junior has been turned down by the departmental authority on the ground that they do not belong to the same cadre drawing salary in the same scale of pay. It may be mentioned here that at the relevant time of stepping up, the petitioner was working as a time scale clerk whereas his junior Sri D. Dewri was working as a PRI in a higher grade. The learned Tribunal after consideration of the materials on record came to the conclusion that though the writ petitioner was senior to Sri D. Dewri, they were working in two different capacities drawing pay in different scales. The petitioner was drawing his salary in the pay scale of Rs.975/- to 1660/- whereas D. Dewri was drawing his salary in the pay scale of scale of Rs.1400/- to 2300/-.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

The law relating to stepping up emanates from the provisions of FR 22 (C) as in force at that time. The Hon'ble Supreme Court in ***Union of India and another -Vs- Swaminathan (AIR 1997 SC 35554)*** while dealing with a similar question underline the conditions required to be fulfilled for the purpose of stepping up. The three conditions are as follows:

"(a) Both the junior and senior officers should belong to the same cadre and posts in which they have been promoted should be identical in the cadre.

(b) The unrevised and revised scale of pay of the lower and high posts in which they are settled to draw pay should be identical and

(c) The anomaly should be directly as a result of the application of the provision of FR 22(c) now FR 22 (i) (a) (i) in the revised scale.....".

In the factual background of this case and the law as discussed above, we find no scope for interference with the judgment and order passed by the learned Tribunal. Hence, we dismiss this petition.

Sd/-B.D.Agarwal.
JUDGE

Sd/-D.Biswas.
JUDGE

Contd.....

URGENT

BY SPECIAL MESSENGER

Memo No. HC.XXI.

6433-38

/R.M.Dtd.

21-11-06

Copy forwarded for information and necessary action to :-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communications, New Delhi.
2. The Director General, Department of Posts, Government of India, New Delhi.
3. The Chief Post Master General, North East Circle, Shillong.
4. The Director of Postal Services, Nagaland, Kohim.
5. The Chief Accounts officer (IFA), Office of the Chief Post Master General, N.E.Circle, Shillong.
6. The Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati-781005. He is requested to acknowledge the receipt of the following records. This has a reference to his letter no. CAT/GHY/68/2001/Jud1/233. Date-31.3.2005.

Encls.

1. O.A. ¹⁵⁸ 128/2003 Pt. 'A' with original Judgment.

By order

[Signature] 21-11-06
Asstt. Registrar (Judl.)
Guwahati High Court, Guwahati.

[Signature] 21/11/06

M. N. Sarma

N.S.
22/11/06

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A.No. 158 of 2003

DATE OF DECISION 3-12-2004

Awadhesh Kumar Singh.....APPLICANT(S)

Sri B.P.Bora and B.K.Talukdar.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors.....RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE R.K.BATTA, VICE CHAIRMAN

THE HON'BLE MR. K.V.PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether the judgment is to be circulated to the other benches ?
- Judgment delivered by Hon'ble Vice-Chairman

Yes.

Yes.

12

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

. Original Application No. 158 of 2003.

Date of Order : This the 3rd Day of December, 2004.

The Hon'ble Mr Justice R.K.Batta, Vice-Chairman.

The Hon'ble Mr K.V.Prahladan, Administrative Member.

Awadhesh Kumar Singh,
Sub Postmaster, HSG-II,
Mokakchung, Nagaland

...Applicant

By Advocate Shri B.P.Bora and B.K.Talukdar

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Communication,
New Delhi.
2. The Director General,
Department of Posts,
New Delhi.
3. The Chief Postmaster General,
North Eastern Circle,
Shilolong.
4. The Director of Postal Services,
Nagaland, Kohima.
5. The Chief Accounts Officer (IFA)
Office of the Chief Postmaster General,
N.E.Circle, Shillong.
6. The Postmaster,
Kohima Head Post Office,
Kohima.

... Respondents

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

ORDER (ORAL)

R.K.BATTA, J.(V.C)

The applicant was appointed in the cadre of Postal Assistant on 23.3.73. He was promoted on 23.3.89 to Lower Selection Grade of Postal Assistant under Time Bound Promotion Scheme alongwith six others including one Sri Dimbeswar Deori. There is no dispute that the applicant is senior to the said Sri Dimbeswar Deori, who was appointed on 26.3.89, where the applicant was appointed on 23.3.89. The applicant had filed representation to the Director of Postal Services, Nagaland for stepping up of his pay on the ground that the pay of his junior Sri Deori had been fixed at Rs.2640/-, whereas the applicant's

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pay had been fixed at Rs.1440/-. The Director of Postal Services vide order dated 28.2.90 allowed the applicant to draw the pay at Rs.1640/- with effect from 19.4.89, on which date the applicant joined in the cadre of Postal Assistant. The Postmaster, Kohima wrote to the Chief Accounts Officer(IFA) for providing post-facto concurrence in the matter of pay fixation of the applicant. In the said communication the Postmaster informed that the Audit party during internal check/inspection had recorded that the initial pay of the applicant in LSG cadre was fixed at a higher stage but no approval of IFA was recorded in the Service Book. Therefore, it was requested in the said communication that the matter of fixation of pay be regularised by providing financial concurrence of IFA. By letter dated 17/21.8.2000, the Chief Postmaster General informed that the stepping up of pay of the applicant with effect from 19.4.89 was not in order and as such Postmaster, Kohima was advised to cancel the order of stepping up of pay with a direction to recover the over payment made to him as a result of wrong stepping up of pay. The relevant part of the said communication is as under :

"With reference to your office letter referred above, this is to inform that on comparative scrutiny of the Service Books of Shri A.K.Singh, APM Kohima H.O. and Shri Dimbeswar Deori PA, Guwahati the following have come to light.

That, the senior official, Shri A.K.Singh entered the Department as PA with effect from 23.03.73, while the Junior Official entered in the Department as PA with effect from 26.03.73. The pay of both the officials was fixed at Rs.260/- in the scale of Rs.260-480/- with DNI on 1st March each year. The pay of Shri A.K.Singh was subsequently fixed at Rs.9276-8) (i.e.284/-) with an advance increment with effect from 1.3.75 on account of his having under gone the Telegraph Merss Training as reported in your office letter referred above. Copy of the above order is not found enclosed in the Service Book. The same may kindly be enclosed in Service-Book.

The first part of the Service Book of Shri A.K.Singh, APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported to have been wanting may kindly be reconstructed.

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That, the official, Shri Dimbeswar Deori was allowed to officiate as SPM/APM Actt/DPM etc. all along with effect from 4.8.74, but before the eligible period for TBOP scheme, while the senior official Shri A.K.Singh worked simply as T/S Clerk upto the period of eligibility of TBOP scheme. By virtue of officiating capacity the pay of Shri Dimbeswar Deori was fixed at 1640/- on 1.2.89 in the scale of Rs.1400-2300), while the senior official, Shri A.K.Singh was drawing pay at Rs.1390/- with effect from 1.3.89 in the scale of Rs.(975-1660) and at Rs.1440/- with effect from 23.3.89 in the scale of Rs. (1400-2300) in the TBOP scheme, therefore, resulting in drawal of enhanced pay by the Junior Official Shri Dimbeswar Deori. The pay of Shri A.K.Singh was finally stepped up from Rs.1440/- to Rs.1640/- with effect from 19.4.89 vide DPS/Kohima's letter No.B-776/Pt-III dated 28.2.90. The excess pay drawn by the junior official is not due to any application of FR-22(i)(a)(i)."

Accordingly the Postmaster, Kohima issued order dated 3.10.2000 cancelling the stepping up of pay of the applicant from Rs.1440/- to Rs.1640/- and recovery of payment made due to wrong stepping up with effect from 19.4.89 to 30.9.2000 amounting to Rs.85,870/-. The pay of the applicant was also reduced with effect from 1.10.2000 from Rs.6800/- to Rs.6050/-. The applicant challenged the said order by filing O.A.356/2000 before this Tribunal. The said O.A. was disposed of on 6.3.2002 with direction to give post decisional hearing, since no opportunity had been given to the applicant while his pay was reduced. Consequently, the applicant filed representation and the Chief Postmaster General, Shillong vide order dated 8.5.2003 held that the stepping up of pay claimed by the applicant vis-a-vis Sri Dimbeswar Deori was not permissible. It was further ordered that recovery of over drawal of amount will be made in instalments as per rules and will be decided by DPS, Kohima. This order is subject matter of challenge in this application.

2. We have heard learned Advocates appearing on behalf of the parties. Learned Advocate for the applicant had urged before us that the applicant was not afforded any personal hearing and the decision was taken on the representation itself. It is also urged that no cogent reasons have been given for the decision and impugned order dated 8.5.2003 has been passed without adhearing to the principles of natural justice.



Though no ground was taken in the application, yet it was urged before us that the post decisional hearing is in-fact no hearing and for this reliance has been placed on Apex Court decision in H.L.Trehan and others vs. Union of India & Ors., (1989) 1 SCC 764. Reliance was also placed on the case of Bhagwan Sukla vs. Union of India & Ors., AIR 1994 SC 2480. The next contention advanced by learned counsel for the applicant is that the applicant was retained in his previous posting in public interest, whereas Sri Dimbeswar Deori got promotion to officiate in the present grade on account of which the applicant is entitled to stepping up of pay. In this regard, ^{reliance is placed} on an unreported judgment of the Apex Court in M.L.Mahna vs. Union of India & Ors. (Civil Appeal No.1996 (arising out of S.L.P(C) Nos.26584-85 of 1995), a copy of which has been placed before us by the learned counsel for the applicant. In view of the above submissions, it is prayed that impugned order dated 8.5.03 be set aside and the order of recovery be not implemented, since order dated 8.5.03 has also been passed without giving any post-facto hearing as directed by this Tribunal.

3. Learned Sr.C.G.S.C for the respondents urged before us that though in fact the matter stood concluded in view of the findings in para 6 of the order dated 6.3.2002 passed in O.A.356/2000, yet post-decisional hearing was given to the applicant as directed by this Tribunal and the impugned order has been passed after giving post-decisional hearing. It was submitted that the judgment of the apex Court in Union of India and another vs. R.Swaminathan, 1997(7) SCC 690, is a complete answer to the fact situation of the matter under consideration.

4. We have already stated that there is no dispute that the applicant is senior to Shri Dimbeswar Deori. Nevertheless, it is pertinent to note that Sri Deori had officiated in the higher post of Sub Post Master, Assistant Postmaster(Accounts) and Deputy Postmaster continuously with effect from 4.8.74 ~~and~~

and it was by virtue of his officiating in the higher grade/post that he was drawing pay of Rs.1640/- as on 1.2.89 in the scale of Rs.975-1660/- before upgradation under TBOP scheme. On final upgradation under TBOP scheme the pay of Sri Deori was fixed at Rs.1640/- with effect from 1.2.89 in the scale of Rs.975-1660/-. The applicant was however drawing pay of Rs.1390/- with effect from 1.3.89 in the pay scale of Rs.975-1660/- and it was fixed at Rs.1440/- with effect from 23.8.89 in the scale of Rs.1400-2300/- under TBOP scheme. According to the authorities the stepping up of pay of the applicant from Rs.1440/- to Rs.1640/- with effect from 19.4.89 on the representation made by the official had been erroneously done and was not in conformity with FR 22(1) (a) (i). In this respect, the applicant has firstly stated that the applicant was retained in public interest on the same post on account of his being telegraph trained hand and Sri Deori got fortituous promotion to the higher grade. There is no material to substantiate this contention of the applicant that he was retained in the said post on account of public interest. On the contrary, it is stated by the respondents that the applicant on his own volition opted for working as a Signaller and he was imparted training by the department in that field and his place of posting was, therefore, in places where there was no separate telegraph office. Therefore, the unreported judgment of the Apex Court, which was relied upon by the applicant, does not in any manner help him. It was next urged by learned counsel for the applicant that in fact no post-decisional hearing has been given to the applicant on account of which there is fragrant violation of principles of natural justice. We have already noted that the learned counsel for the applicant has also urged before us, after placing reliance in judgment of the Hon'ble Apex Court, that post-decisional hearing in fact is no hearing. The applicant was in fact given show cause notice dated 14.6.02

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to place his case before the authority. The applicant sent a letter dated 10.7.02 pursuant to the said show cause notice stating that he had already submitted representation which is pending and as such the said representation be considered as a reply to show cause notice. It is pertinent to note that in this reply to show cause the applicant had stated that he had pointed out all facts and circumstances in the earlier representation which should be considered as reply to show cause. The applicant never asked for personal hearing. It is now well settled that the scope of hearing would depend upon the rules and regulations applicable in that behalf as also facts and circumstances of the case and as such hearing necessarily need not be personal hearing. The applicant had clearly stated in letter dated 10.7.02 that he had in his earlier representation pointed out all facts and circumstances which should be considered as reply to show cause. In this view of the matter, the contention of the applicant that no personal hearing was given is without any merit. Learned counsel for the applicant also urged that the post-decisional hearing is in fact no hearing and he has placed reliance on judgment of the Apex Court in H.L.Trehan and others vs. Union of India & Ors.(supra). In that case it had been represented on ^{behalf} ~~behalf~~ of CORIL that after impugned circular was issued an opportunity was given to the employees with regard to the alteration made in the conditions of their service by the impugned circular. It was in this context that the Apex Court had made the observations that the post-decisional opportunity of hearing does not sub-serve the rules of natural justice and the authority who embarks upon a post decisional hearing will naturally proceed with a close mind and there is hardly any chance of getting a proper consideration of the representation at such post decisional hearing. In the said case, the post

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decisional hearing was given by the authorities themselves without intervention of the court. In the case before us the post decisional hearing was ordered by this Tribunal. The applicant accepted the said decision and was given opportunity and after availing of the same, he cannot be permitted to turn around and say that the post decisional hearing is not effective. In State of U.P vs. Vijay Kumar Tripathi & another (AIR 1995 SC 1130) ^{it} has laid down that the normal rule is of course, prior opportunity. Nevertheless, it would certainly be open to the competent authority in a given case to provide a post-decisional opportunity instead of pre-decisional hearing. It was further observed that it is upto the competent authority to decide whether in the given circumstances the opportunity to be provided should be a prior one or a post-decisional opportunity. Thus even competent authority can in given circumstances give post-decisional hearing. In the case before us the post-decisional hearing was given by Tribunal which was accepted by the applicant and he made representation by placing all facts before the authority. In fact, the applicant had placed all facts and circumstances before the authorities and after due consideration of the same impugned order dated 8.5.03 was passed giving reasons that Sri Dimbeswar Deori, a junior official to the applicant had been officiating in higher post carrying higher scale of pay continuously till he was promoted to the same scale of pay under TBOP scheme and accordingly his pay was fixed at a higher stage than that of the applicant taking into account his period of officiation. In the said order it was further pointed out that it could not be said that both junior and senior officer belonged to the same cadre at the time of promotion. It was also pointed out that even though the applicant was senior to Sri Deori by 3 days at the time of entry in the department, Sri Deori officiated in a higher scale of pay for quite a reasonable period and he was entitled to higher pay as a result of application of the provisions of FR 22(1) (a) (i). In fact, the case under consideration is squarely

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covered by judgment of the Apex Court in Union of India and another vs. R.Swaminathan (supra). In that case the Apex Court has held as under :

"The difference in the pay of a junior and a senior in the present case is not as a result of application of FR 22(1)(a)(i). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotion he may, because of the proviso to Fr 22(1), have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors.


Government of India, O.M. dated 4.11.1993 also negates the respondents' claim. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to FR 22(1). The employees in question are therefore not entitled to have their pay stepped up under the said Government order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of any anomaly; not is it a result of the application of FR 22(1) (a) (i)."

The matter was threadbare considered by the Apex Court with reference to FR 22(1)(a) (i) which was formerly FR 22(C) and it is in the light of the same that the above decision was rendered by the Apex Court. The Apex Court referred to the 3 conditions and pointed out in the light of the last condition that difference in the pay of junior and a senior in the said case was in fact as a result of application of FR 22(1)(a) (i) and higher pay was received by the junior on account of his earlier officiation in higher post and because of long officiation in higher post he got promotion, which could not be considered as an anomaly requiring stepping up of pay of the senior. The Apex Court also referred to office memorandum dated 4.11.93. The said judgment in our opinion is applicable in all fours to the case under consideration.



5. Regarding recovery ordered by impugned order, it has to be borne in mind that the stepping up of pay was not on account of any misappropriation or fault of applicant, but it was due to erroneous application of Rules by the respondents. The benefit of stepping up is for a period with effect from 19.4.89 till 28.2.90 when the said benefit was withdrawn. In the facts and circumstances, it will be harsh to order the recovery of amount received by the applicant many years ago. We are supported on this count by the Judgment of Apex Court in Sahib Ram vs. State of Haryana and others, 1994(5) SLR 753 and Tej Singh vs. State of Punjab & others, 2003(2) SLR 243 and also in Baldev Singh Bhatia vs. State of Punjab & Ors, 2003(2) SLR 531, which are applicable on all fours to the case under consideration. Hence, order of recovery dated 8.5.2003 is set aside.

In view of the above discussion we do not find any merit in the submission advanced on behalf of the applicant insofar as the order dated 8.5.2003, except to the extent of recovery order, is concerned. The application is accordingly disposed of in aforesaid terms with no order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(R.K.BATTA)
VICE CHAIRMAN

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO ¹⁵⁸ /2003

Shri Awadhesh Kumar Singh.....Applicant
Versus
Union of India & ors..... Respondents

LISTS OF DATES AND SYNOPSIS:

20.11.1989	:	Director of Postal Services, Nagaland, Kohima vide memo No. B-2/Staff/one-promotion/11 dated 20.11.89 published the gradation list who have completed 16 years of regular service
21.11.1989	:	Applicant wrote a letter to the director of Postal Services, Nagaland; Kohima to compare with the scale of pay with his junior
<u>28.2.90</u>	:	The Director of Postal Services, Nagaland, Kohima vide memo No. B-776/PT-III <u>allowed the applicant to draw his pay @ Rs. 1640/- w.e.f. 19.4.89.</u>
17/21-8-2000	:	The Asstt. Postmaster General (A/Cs) NE Circle, Shillong wrote a letter to the Postmaster, Kohima HPO, Nagaland, regarding the stepping up of pay of the applicant
3.1.1998	:	The Postmaster, Kohima Nagaland wrote a letter to the Chief Accounts officer (IFA), NE Circle, Shillong regarding stepping case of the applicant.
17.8.2000	:	The Asstt. Postmaster General (A/Cs) NE Circle, Shillong wrote a letter to the Postmaster, Kohima regarding stepping up of pay of the applicant with his junior
3.10.2000	:	The Postmaster (HSG-II) Kohima Post office wrote a letter to the Asstt. Postmaster General (A/Cs), O/O The Chief Postmaster General, NE Circle, Shillong regarding the stepping up of pay of the applicant
6.3.2002	:	Hon'ble Tribunal's order passed in OA No. 356 of 2000 before the Gauhati Bench
8.5.2003	:	The Chief Postmaster General, NE Circle, Shillong vide memo No. VIG-5/6/00-01 (CAT) dated Shillong the 8.5.2003 intimated the applicant regarding disposal of his representations dated 29.4.02 and 10.7.02.

Filed by
Dibyajyoti Borah
Advocate

22

APPENDIX

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT, 1985

Title of the case : Original Application
No...158.../2003

INDEX

Sl.	Description of documents relied upon	Page No
1.	Application	1-17
2.	Verification	18
3.	Annexure-I (Order dated 20.11.1989)	19
4.	Annexure- II (Representation dated 21.11.1989)	20-21
5.	Annexure-III (Order dated 28.2.90)	22
6.	Annexure-IV (Order dated 17/21-08-2000)	23
7.	Annexure-V (Letter dated 3.1.1998)	24
8.	Annexure-VI (Letter dated 17.8.2000)	25
9.	Annexure-VII-(Order dated 3.10.2000)	26
10.	Annexure-VIII-(Judgment & order dated-6.3.02)	27-34
11.	Anneuxre-IX-(Order dated 8.5.2003)	35-36

Awallesh Kumar Singh

Signature-of-the-applicant

For use in the Tribunal office:

Date of filing:

Or

Date of receipt by post.

Registration No.

Signature of Registrar.

23

Filed by the applicant
through
Dibyajyoti Borah
Advocate
14.7.2003

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI

O.A. NO. 158 /2003

BETWEEN

Awadhesh Kumar Singh, Sub-
Postmaster
(HSG-II), Mokokchung, Nagaland

.....Applicant

AND

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, New Delhi.
2. The Director General, Department of Posts, New Delhi.
3. The Chief Post Master General, North East Circle, Shillong.
4. The Director of Postal Services, Nagaland, Kohima.
5. The Chief Accounts Officer (IFA), Office of the Chief Postmaster General, N.E Circle, Shillong.
6. The Postmaster, Kohima Head Post Office, Kohima.

..... Respondents.

DETAILS OF APPLICATION:

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

The application is directed against the order containing memo No. VIG-5/6/00-01 (CAT) Dated Shillong the 8.5.2003 issued by Chief Postmaster General, NE. Circle, Shillong, respondent No. 3 herein, disposing of the representation of the applicant dated 29.4.2002 and holding that Shri Dimbeswar Deori, a junior official to the applicant had been officiating in higher posts carrying a higher scale of pay continuously till he was promoted to the same scale of pay on promotion under One Time Bound Promotion schemes and holding him to be the senior taking into account the period of officiating. It may be stated that the said order has been passed as directed the Hon'ble Tribunal vide order dated 6.3.2003 in OA No. 356 of 2000 whereby the Hon'ble Tribunal was pleased to direct the respondents to provide a post-facto hearing by giving a opportunity to the applicant to state his case. However, the respondent No. 3, without affording any opportunity of hearing to the applicant, was pleased to issue show cause notice purportedly giving an opportunity by the said notice instead of hearing the case of the applicant.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:

The applicant declares that the application filed is filed within the limitation period as prescribed under section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India with permanent residence in the state of Nagaland and he is also at present serving in the Nagaland Postal Division.

4.2 That the applicant was appointed in the cadre of Postal assistant in Nagaland Postal Division with effect from 23.03.1973 and since then he is continuously serving in the cadre without an interruption or breaking in service. There is also no blemish against the applicant during his service period.

4.3 That the applicant states that after completion of 16 years of continuous and satisfactory service as time-scale Postal assistant, he was promoted to the higher cadre of Lower Selection Grade Postal assistant with effect from 23.03.1989 under the Time Bound One Promotion Scheme by the respondent No. 4, Director of Postal Services, Nagaland vide memo No. B-2/Staff/One-Promotion/II dated 20.11.89. The scale of pay of the Time Scale Postal assistant cadre was Rs. 975-25-1150-EB-30-1660/- and the scale of pay of the promoted post was Rs. 1440-40-1800-EB-50-2300/- as on the date of promotion.

A copy of the aforesaid order dated 20.11.1989 is annexed herewith and marked as Annexure- I.

4.4. That the applicant states that along with him, a junior to the applicant, namely Shri Dimbeswar Deori, Postal assistant, Nagaland Division, was also promoted to the higher cadre namely Lower Selection Grade Postal assistant in the same order dated 20.11.89. It may be stated that the name of the applicant was shown at serial No. 4 of the promotion order dated 20.11.89 whereas the name of the junior namely Shri Dimbeswar Deori was shown at serial No. 5 in the aforesaid order dated 20.11.89. Therefore, as per the aforesaid promotion order dated 20.11.89, the applicant was promoted to the higher grade with effect from 23.03.89 while the junior namely Shri Dimbeswar Deori was promoted to the higher grade with effect from 26.3.89 i.e. three (3) days after the promotion of the applicant.

[4]

4.5 That the applicant states that pay of the applicant in the lower grade in the scale of pay of Rs. 975-25-1150-EB-30-1660/- as on 23.3.89 was Rs. 1390/ while the pay of the aforesaid junior person namely Shri D. Deori was Rs. 1330/- in the same scale as on the same date. Therefore, the pay fixation under FR-22-C was as under:

Shri A.K. Singh (applicant)	Shri D.Deori (Jr. to applicant)
Fixation as on 23.03.89	Fixation as on 23.03.89
(Date of promotion)	(Date of promotion)
Pay in the lower grade- Rs.1390/	Pay in the lower grade- Rs.1330/
Notional increment (+)Rs. 30/	Notional increment (+)Rs. 30/
Rs.1420/	Rs.1360/
Pay due to be fixed at the	Pay due to be fixed at the
Next stage in the highest	Next stage in the highest
Grade= Rs. 1440/	Grade= Rs. 1400/
(Rs. 1400-40-1800-50-2300)	(Rs. 1400-40-1800-50-2300)

4.6 That the applicant states that due to the fact that the applicant being a telegraph trained hand (known as signaller) was always posted in the combined sub post offices with telegraph facilities which are available only in the station where there is no separate telegraph office and accordingly the posting of the applicant to the sub post office was purely in the service interest. The applicant further states that at the same time the junior to him namely Shri D. Deori was posted in the Kohima Head post office and thereby by virtue of his posting in Kohima Head post office Shri Deori got fortuitous promotion in the higher grade as and when there were temporary vacancies in the Lower Selection Grade Postal assistant due to leave, retirement etc. vacancies in the approved Lower Selection Grade. Therefore, counting the service rendered by Shri Deori, in the higher grade prior to his regular promotion to the Lower Selection Grade with effect from 26.3.89, the pay of the said Shri Deori was fixed at the stage of Rs. 1640/- in the scale of pay of Rs. 1400-40-1800-50-2300/-, while the pay of the applicant was fixed at the stage of Rs. 1440/- in the same scale of pay.

4.7 That the applicant states that being aggrieved by the aforesaid pay fixation, the applicant requested the Director of Postal Services, Nagaland, Kohima, for removal of anomaly and stepping up of his pay equal to his junior's pay vide a representation dated 21.11.1989.

A copy of the aforesaid representation dated 21.11.1989 is annexed herewith and marked as Annexure-II.

4.8 That the Director of Postal Service, Nagaland, Kohima after considering the representation of the applicant, vide memo No. B-776/PT-III dated 28.2.90 ordered that the pay of the applicant may be stepped up to the stage equivalent to the junior's pay of Rs. 1640/- under the condition that the benefit would be admissible only with effect from the actual date of joining in the LSG-Cadre.

A copy of the aforesaid order dated 28.2.90 is annexed herewith and marked as Annexure-III.

107-2
4.9 That the applicant states that, as ordered by the Director of Postal Services, Nagaland, Kohima, the applicant was enjoying the benefit granted by the aforesaid order dated 28.2.90 which was cancelled by Chief Postmaster General, NE Circle, Shillong vide memo No. AP/AAO/III/FIXN/95-96 dated 17/21.8.2000 on the ground that the case of the applicant did not come under FR 22-C (now FR-22(i)(a)(i) and ordered for recovery of the payment made to the applicant as a result of such stepping up.

A copy of the aforesaid order dated 17/21.8.2000 is annexed herewith and marked as Annexure-IV.

AS. 107-2
4.10 That the applicant states that the pay of the applicant, as aforesaid, was fixed at par and in reference to his junior Shri Deori and the same was given effect to 19 years back and the applicant was enjoying the benefit without any hindrance

4.11 That the applicant states that while the matter rested as such, suddenly the Postmaster of Kohima Head post office by his letter dated 3.1.98 addressed to the Chief Accounts office (IFA) intimated that the audit party during internal check/inspection found that the pay of the applicant was fixed at a higher stage as per order of the Director of Postal Services, but no approval of the IFA was recorded in the Service Book of the applicant. Therefore, by the said letter, it was requested for post-facto concurrence to regularize the pay-fixation.

A copy of the aforesaid letter dated 3.1.98 is annexed herewith and marked as Annexure-V.

4.12 That the applicant states that after issuance of the aforesaid letter dated 3.1.98, another letter being No. 1-1/5-Book/97-98 dated 9.3.98 addressed to the Asstt. Director (A/Cs), justifying the pay fixation of the applicant and as to how the audit party had taken an erroneous view of the matter, was followed. By the said letter, concurrence of the IFA was sought for. However, the applicant came to know about the issuance of such letter, but the said letter is not made available to the applicant and as such, the Hon'ble Tribunal may direct the respondent to produce the copy of the aforesaid letter dated 9.3.98 before the Tribunal, at the time of hearing of this application.

4.13 That the applicant states that thereafter he came to know by an order dated 17.8.2000 under memo No. AP/AAO/11/FIXN/95-96 issued by Asstt. Post Master General (A/Cs) on behalf of the Chief Postmaster General, the Asstt. Postmaster General has directed Postmaster, Kohima Head post office to cancel earlier pay fixation of the applicant holding that the stepping up of fixation was not in order and that the payment made to him as a result of such stepping up should be recovered.

A copy of the aforesaid letter dated 17.8.2000 is annexed herewith and marked as Annexure-VI.

4.14 That the applicant states that the pursuant to the aforesaid order dated 17.8.2000, the Postmaster of Kohima Head post office intimated the Asstt. Postmaster General (A/Cs) vide letter No. A-1/Pay & Allowance/CORR dated 3.10.2000 about the action taken in the matter. As per the said letter, copy of which has been endorsed to the applicant, the order has been implemented by reducing the pay of the applicant with effect from 1.10.2000 from Rs. 6800/- to Rs. 6050/- and also directed to recover the alleged over payment of Rs. 85,870/-.

A copy of the aforesaid order dated 3.10.2000 is annexed herewith and marked as Annexure-VII.

4.15 That the applicant states that the aforesaid order directing recovery of the pay for alleged over payment to the applicant is wholly arbitrary, illegal and against all cannons of the law in as much as before passing the aforesaid order of recovery of pay from the applicant, he was not given any notice whatsoever and he was also not allowed to place his says in the matter. Further, the pecuniary benefit which was allowed and effected for the last 10 years, would not have been done away with in the manner and method adopted by the respondents by the aforesaid order dated 3.10.2000.

4.16 That the applicant further states that the fixation benefit was extended to the applicant as per the provisions of FR-22-C of the FR-SR by way of removal of anomaly by stepping up of any of senior on promotion drawing lesser pay than his junior. The matter was settled long back by granting the steeping up of pay to the applicant and it was only after 8 years of such stepping up, a point as ^[7]raised regarding the concurrence of IFA for which post-facto approval was sought for, instead of granting such post-factor approval, the fixation benefit granted

to the applicant for the last 10 years has been sought to be taken away by the aforesaid orders.

4.17 That the applicant, being highly aggrieved by the aforesaid orders dated 17.8.2000, he filed an Original Application before the Hon'ble Tribunal which was registered as OA No. 356/2000 stating, inter alia, that the Director of Postal Services, Nagaland, Kohima, who is also the appointing authority to LSG-PA cadre after careful considerations of the applicant's service, was pleased to issue order towards stepping up of the pay of the applicant at par with his junior at the stage of Rs. 1640/ with effect from 19.5.89 and accordingly, his pay was stepped up and fixed at Rs. 1640/- by the Postmaster, Kohima Head post office who is also the Disbursing office. It was further stated that in accordance with Govt. of India, Ministry of Finance O.M. No. F. 2(78)-E. III(A)/66 dated 4.2.66, printed as GIO (10) before FR-22(C) in FR SR (Part-I), the pay of the applicant was fixed at the stage of Rs. 1640/ in the scale of pay of Rs. 1400-40-1800-EB-50-2300/- at par with his junior to remove the anomaly as a result of fixation of pay under FR-22-C and accordingly, the Director of Postal Services, Nagaland, Kohima Passed the order dated 28.2.2000 which fully covered under the said instruction of the Government of India. Therefore, the impugned orders are wholly unsustainable and against the aforesaid instruction dated 4.2.66.

4.18 That the applicant states that in accordance with the aforesaid instruction of the Govt. of India, the stepping up will be subject to the following conditions, namely:-

- (a) Both the senior and junior officers should belong to the same cadre and the same post in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR-22-C.

However, in the instant case, both the applicant as well as his junior Shri Deori belong to the same cadre of Time Scale Postal assistant and, on promotion too, both were promoted to the identical posts of LSG-Pas in the same cadre. The scales of pay of the lower and higher posts were also identical. The anomaly arose due to fixation of pay under FR-22-C in case of junior officer. Therefore, having fulfilled all the conditions, the applicant was entitled to get the benefit of removal of anomaly as envisaged in the aforesaid instruction of the Govt. of India and accordingly, he was granted the benefit of stepping up of pay in reference to his junior's pay in and to that effect orders were passed by the competent authority which can not be interfered with after gap of 10n years and that too with an order of recovery without affording any opportunity to the applicant to place his case.

4.19 That it was also contended before the Hon'ble Tribunal that in the lower cadre such as time scale postal assistants, the pay of the applicant was higher than that of all his juniors including Shri Deori and as such on promotion to LSG-PA cadre, the applicant could not have been placed at the at the disadvantage to draw less pay than his juniors for any reason which is not attributable to the applicant.

4.20 That it was also contended by the applicant that the aforesaid application was decided by the Hon'ble Tribunal vide order dated 6.3.2003 and while deciding the case, the Hon'ble Tribunal has also considered the written statement filed by the respondents who did not dispute the fact that Shri D Deori was junior to the applicant and the pay of both the officers was fixed at Rs. 260/- in the scale of pay of Rs. 260/-480/- at the initial stage. The Hon'ble Tribunal recorded detailed facts and circumstances of the case, after hearing the learned counsel for the applicant, who contended that conferment of higher pay to Shri Deori, who was junior to the applicant, created an

anomalous situation and that anomaly was duly taken care of by the respondents vide order dated 28.2.90 in conformity with FR-22-C now FR-22(i)(a)(i). It was further contended by the learned counsel for the applicant that as per the scheme of the Fundamental Rules, the stepping up pay of the applicant was made in the right direction and the order dated 28.2.90 was arbitrarily cancelled by the impugned order dated 17/21.8.2000 without giving any opportunity to the applicant. The learned counsel for the applicant also cited some decisions of the Apex Court one of which is reported in 1975 SCC 1, another reported in 1989 1 SCC 764 and the other reported in AIR 1994 SC 2480.

That the learned counsel for the respondents referring and relying on the scheme of FR-22 submitted that there was no anomalous situation and therefore the respondent authority fell into obvious error by acting on the representation of the applicant and directing stepping up of pay of the applicant vide order dated 28.2.90. It was further contended by the learned counsel for the respondents that that the said order, admittedly, was without authority, more so, without sanction of the appropriate authority. It was contended that when the mistake was detected, the respondent corrected the same by the impugned order. According to the learned counsel for the respondents, no mistake was caused to the applicant by not giving him any notice, so much so that the initial order conferring the benefit of stepping up of pay itself was illegal and unlawful.

4.21 That the Hon'ble Tribunal after recording the submissions and hearing the parties, relying on a decision reported in AIR 1997 SC 3554, was pleased to hold that stepping up of pay is subjected to the conditions, as indicated in the judgment and order passed by the Hon'ble Tribunal, and therefore, after recording facts and circumstances of the case, the Hon'ble Tribunal was of the view that ends of justice would be met if the respondents

[11]

provide a post decisional hearing by giving opportunity to the applicant to state his says and accordingly directed the respondents to give appropriate hearing to the applicant as early as possible, preferably within three months from the date of judgment and till then, the respondents were directed not to make any recovery from the applicant and make arrangement of recovery from the applicant by instalments thereafter upon hearing the applicant as per law. Accordingly, the Hon'ble Tribunal was pleased to dispose of the case by the aforesaid order dated 6.3.2000.

A copy of the aforesaid judgment and order dated 6.3.2002 passed by the Hon'ble Tribunal is annexed herewith and marked as Anneuxre-VIII.

4.22 That thereafter, the applicant referring to the judgement and order passed by the Hon'ble Tribunal, filed a representation to the Chief Postmaster General, NE Circle, Shillong on 29.4.2002 giving details facts and circumstances of the case and also regarding eligibility of the applicant for getting the stepping up of pay stating, inter alia, that fixation of pay of Govt. servant under FR 22-C and removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior are absolute and no subordinate authority to the Govt of India is empowered to take away the benefits awarded under the above rule read with Govt. of India, Ministry of Finance, O.M NO. F. 2(78)-E. III (A)/66 dated 4th Feb., 1966. Therefore, it was also stated that the applicant can not be denied the benefit of stepping up of pay at the stage of Rs. 1640/- with effect from 26.3.89 i.e. the date of promotion of his junior Shri Deori. Therefore, the applicant by the aforesaid representation requested the respondents for upholding the order for stepping up of pay issued by

the Director of Postal Services, Nagaland, Kohima vide order dated 28.2.90 and also to issue instructions to the Postmaster, Kohima Head post office to regularise the stepping up of his pay with effect from 26.3.89 i.e. the date of promotion of his junior with proper attestation in the Service Book.

The applicant craves indulgence of the Hon'ble Tribunal to produce the aforesaid representation before the Hon'ble Tribunal at the time of hearing of the case.

4.23 That the applicant states that though the Hon'ble Tribunal directed the respondents-authority to give post-facto hearing to the applicant, the Chief Postmaster General, NE Circle, Shillong vide his order containing memo No. VIG-5/6/0-01 (CAT) dated Shillong the 8.5.2003 was pleased to hold that the stepping up of pay of the applicant with reference to his junior Shri Deori was not permissible and accordingly directed the Director of Postal Services, Nagaland, Kohima to dispose of the representation dated 29.4.2002 with an order that stepping up of pay claimed by the applicant with reference to his junior Shri Deori is not permissible and further directed that the recovery would be made in instalments as per rules to be decided by the Director of Postal Services.

A copy of the aforesaid order dated 8.5.2003 is annexed herewith and marked as Anneuxre-IX.

4.24 That the applicant states that the aforesaid order dated 8.5.2003 was passed without affording any hearing to the applicant as directed by the Hon'ble Tribunal by taking into account the representation filed by applicant which was not disposed of by giving cogent reason and as

such, the said impugned order is liable to be set aside and quashed.

4.25 That the applicant further submits that the original order dated 17.8.2000 holding that the stepping up of pay of the applicant way back in 1989 was not in order and directed cancellation of the stepping up of pay and recovery thereof, was passed without affording any opportunity to the applicant in gross violation of the principle of natural justice and respondents have committed the same error again by not giving any post-facto hearing to the applicant as directed by the Hon'ble Tribunal, and as such, it is a fit case for passing an interim order as has been prayed for by the applicant.

4.26 That this application has been filed bonafide and in the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1 That the applicant respectfully submits that the original order passed by the respondent having been passed in gross violation of the principle of natural justice, the Hon'ble Tribunal was pleased to direct the respondent to give post-facto hearing and the same has not been followed while disposing of the representation filed by the applicant, by relying on the judgment and order passed by the Hon'ble Tribunal, the respondents have violated the basic principles of natural justice and as such, the said impugned order is liable to be set aside and quashed.

5.2 That the applicant respectfully submits that the impugned order dated 17.8.2000 as well as 8.5.2003 would not have been passed whereby the pecuniary benefit granted to the applicant for last 10 years was sought to be

withdrawn and recovered from the pay of the applicant would not have been done in such an arbitrary manner without issuing notice to the applicant and without hearing the applicant to place his case.

5.3 That the applicant respectfully submits that the Hon'ble Supreme Court while disposing of a Civil Appeal No. 1996 (arising out of SLP (C) NO. 26584-85) decided on 10.5.96, was pleased to hold that if the junior is promoted much earlier to the senior, who is retained in public interest, the senior is entitled to have his pay stepped up to the level of his junior.

5.4 That the applicant respectfully submits that while issuing the impugned order, the respondents committed error in holding that Shri D. Deori a junior officer to the applicant, was officiating in higher posts carrying a higher scale of pay continuously till he was promoted to the same scale of pay on promotion under One Time Bound Promotion scheme and accordingly his pay was fixed at a higher stage than that of the applicant taking into account the period of his officiation and thereby further holding that it can not be said that both the senior and junior officers belonged to the same care at the time of promotion in as much as the respondents while passing the earlier order dated 20.11.89 themselves decided that both the junior and the applicant have completed 16 years of regular service as on 30.9.99 and accordingly issued the promotion order including that of the applicant and the junior where the applicant has completed 16 years of service as on 23.3.89 whereas the junior Shri Deori has completed completed 16 years as on 26.3.89 and thereby his position was shown as serial No. 5 whereas the applicant's position was shown at serial No. 4, and therefore, the respondents have committed gross error of

law and as such the said impugned order is liable to be set aside and quashed.

5.5 That the applicant respectfully submits that the applicant having enjoyed the benefit of stepping of pay and the position having being continued for last 10 years, the respondents could not have interfered with the same so illegally in the manner as has been done by the respondents in the instant case which is grossly illegal and arbitrary and as such the said impugned order is liable to be set aside and quashed.

5.6 That the applicant respectfully submits that the impugned orders, having been passed in gross violation of rules and principle of natural justice holding the field and so also, the principles of natural justice, are not sustainable and liable to be set aside and quashed.

5.7 That the applicant respectfully submits that in any view of the mater, the impugned orders are liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that there is no other alternative and efficacious remedy except by way of filing this applicant.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicant declares that the matter was filed before this Hon'ble Tribunal which was disposed of vide an order dated 6.3.2002 with a direction that the applicant will be given an opportunity of post-facto hearing by the

respondents. However, no such hearing was given as directed by the Hon'ble Tribunal and accordingly being aggrieved by the said actions of the respondents, the instant application has been filed against the order dated 8.5.2003 giving rise to new cause of action against which no application was filed earlier and no application has been filed before any Bench of the Hon'ble Tribunal and at present no case has been pending before any Tribunal or Court of law.

8. RELIEF SOUGHT FOR:

In view of the facts and circumstances mentioned herein above in paragraphs 4 as well as the grounds above, the applicant prays for the following :

- (i) To set aside and quash the impugned order dated 8.5.2003 passed by the respondent No. 4,
- (ii) To set aside and quash the impugned order dated 8.5.2003 passed by the respondent No. 4 (Annexure-IX),
- (iii) To direct the respondent No. 4 not to implement the order of recovery pending disposal of this application as the earlier order was passed without affording any opportunity of hearing to the applicant and subsequent order was also passed without giving any post-facto hearing, as directed by the Hon'ble Tribunal,
- (iv) Costs of the application, and
- (v) Any other relief or reliefs to which the applicant is entitled to under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

Under the facts and circumstances of the case, the applicant prays for the following interim relief(s):

- (i) To direct the respondents not to affect the order of recovery of pay from the applicant as directed by the respondent No. 4 vide order dated 8.5.2003,
- (ii) To stop the operation of the impugned order dated 8.5.2003 pending disposal of this application.

10. PARTICULARS OF THE IPO:

- (i) I.P.O. No. : 7G 578799
- (ii) Date : 4.7.2003
- (iii) Payable at : Guwahati.

11. LIST OF ENCLOSURES:

As stated in the INDEX.

Verification.....

40
[18]

VERIFICATION

I, Shri Awadhesh Kumar Singh, son of Late Joy Mangal Singh, presently working as Sub Post master (HSG-II), Mokokchung, Nagaland, aged about 53 years, do hereby verify that the contents of paragraphs 4.1, 4.2, 4.6 (part), 4.7, 4.10, 4.15, 4.16, 4.18 (part), 4.19, 4.22, 4.23, 4.24 and 4.26 are true to my knowledge, those made in paragraphs 4.3, 4.4, 4.5, 4.6 part, 4.8, 4.9, 4.11, 4.12, 4.13, 4.14, 4.17, 4.18 part, 4.20 and 4.21 being matters of record are true to my information derived therefrom and the rest are my humble submissions made before this Hon'ble Tribunal that I have not suppressed any material fact.

Awadhesh Kumar Singh

Signature of the applicant.

Date :

Annexure-1

DEPARTMENT OF POST
OFFICE OF THE DIRECTOR POSTAL SERVICE NAGALAND: KOHIMA

Memo No.D-2/Staff/One-Promotion/11 Dated:Kohima the 20.11.89

The following Time-scale PAs and PO&RMS Accountant who have complete/completing 16 years of regular service in the grade by 30.9.99 are hereby promoted to the higher grade carrying the pay scale of Rs. 400/- to 2300/- with effect from the date shown against each name under Time Bound on Promotion Scheme in accordance with D.G. P&T letter no.31-26/83-PR dated 17.12.83 and in respect of the officials against whom disciplinary cases for punishment were pending the promotion will be effects only after the period of punishment are over.

As per instruction laid down in para-8 of Dtes aforesaid letter the promoted officials inter-seniority in the power grade will remain unchanged in the gradation list in their basic cadre.

Name & designation of the officials	date of completing
1. Shri M.U. Ahmed SPM Mon.	-- 27.5.83
2. Shri D.N.K. Sangma SPM Peren	-- 3.2.89
3. Shri S. Boro Offg. DPM Kohima	-- 12.3.89
4. Shri A.K. Singh Offg. ASPM Dimapur-	23.3.89
5. Shri D.Dewri offg. PRI(P) Kohima	-- 26.3.89
6. Shri R.S.Kithan P.A. Wokha s.o.	-- 25.5.89
7. Shri M.R. Choudhury Accountant Kohima	3.7.89

The transfer and posting order of the above promoted officials will be issued separately as per Special point roster and availabilities of LSG Post in the Division.

Sd/-illegible
(N. THADOU)
Director Postal Services
Nagaland : Kohima 797001

Copy to :

1. The Postmaster Kohima
2. The SPMs Mon/Peren/Dimapur/Wokha
3. The officials concerned
4. P.F. of the officials
5. Est, Branch of Divl. Office
6. Spare.

Sd/-illegible
(N. THADOU)
Director Postal Services
Nagaland : Kohima 797001

Certified to be
true Copy.
March
Advocate

- 20 -

Annexure R 2
#6- ANNEXURE II

165

28 NOV 1983

To,
Sri N. Thadou (Director of Postal Services)
Nagaland : Kohima - 797001.

Through Proper channel

Sub:-Junior drawing higher pay than senior

-Prayer for stepping of pay

-Case of Shri A. K. Singh (ASPM Imphur)

Sir,

The following on the subject aforesaid is respectfully submitted in earnest hope and fervent belief that this will receive a sympathetic consideration and elicit a most favourable decision.

(1) That I am senior to Shri D. Deori DPM Kohima HO, but strong enough he is drawing more pay than myself in the scale applicable to LSG officials. In other words, he is drawing Rs.1640/- in the scale pay where as my pay has been fixed only at the stage of Rs.1440/- in the same very scale.

(2) That in this connection, it would be relevant to point out in the list of seniority of PAS, as published from time to time by the division/circle, the name of Sri D. Deori appears just below me but he was an adhoc promotion from time to time at cost of my rightful and legitimate promotion presumably it was for this reason that his pay has been fixed in the LSG at higher rate. It would also be relevant to mention that he was allowed a promotion earlier than me only because I happened to be a signaller and on paucity of signaller, the department did not find in its interest to allow adhoc promotion despite my seniority in the grade and despite my oral and written protest to the competent authority.

(3) That in the context aforesaid it may kindly be appreciated that I had been denied my legitimate claims for officiation in the higher grade the only fault of my being a signaller.

(4) That in the context aforesaid it may kindly be appreciated that I have systematically been denied adhoc officiating promotion to the interest of the department for that there is hardly any possibility of the rules to make me bleed through the nose at this stage when I have not been promoted to LSG cadre.

(5) That I need hardly stress that the rules as constituted on the principles of law and the principles of natural justice so strongly affect the position that I am in more than the pay of the signaller.

certified to be true Copy.
Advocate

ATTEST
(P. Chakraborty)
Sundt. of Post Office for Nagaland

(2) - 21 - Annexure - 2
ANNEXURE: II

(6) That the rules further direct that if for any reason or under any circumstances, the pay of the junior has been fixed at a higher stage of the scale pay, the pay of the senior should suitably be stepped up to compare well with the pay of juniors.

(7) That FR-22 (c) (10), if perused in its correct perspective will confirm my aforesaid contention abundantly. The said FR-22 (c) (10) clearly directs that if as a result of application of FR-22 (c) the pay of a junior in the promotional cadre is fixed at a higher stage than that of his senior on the identical post, the anomaly thus created should be removed by suitably stepping up the pay of the senior to compare well with the pay of the juniors.

(8) That rule 8 of the CCS(RP) rules 1971 had also re-iterated the provisions of FR-22(c) and the 4th pay commission has also made the similar recommendations which have been accepted by the government.

(9) That it pains me immensely that despite the clear provisions, in the rules, my legitimate claims have so far gone in default and my apprehension is that my previous representations in this regard have presumably been cold-stored either in the HO or somewhere else causing needless pecuniary loss to me in the matter of my pay and allowances.

In the circumstances as depicted above I would solicit the favour of your kind but effective personal intervention on my behalf with further prayer that necessary advice/directive be issued to the concerned HO to step up my pay to compare well with my next junior Shri D. Deori for which I shall be grateful.

With regards

Yours faithfully

(A. K. Singh)

ASPM Dimapur

Dated: 24.11.92.....

Certified to be
true Copy.
Advocate

ANNEXURE:- III

44

MEMO NO B-776/PT III DATED: KOHLHA 23/2/90

In suppression of all previous orders and in pursuance of FR -22(10)C(10) and GIMI OM NO F2(73)-3 III (9)/66 dated 4/2/66, Shri A.K. Singh officiating Assistant Sub-Postmaster Dinapur Sub-Post Office is hereby allowed to draw his pay @ Rs 1640/- with effect 19/4/89 (The date of his joining duties in the cadre of Lower Selection Grade).

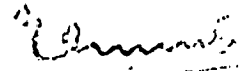
SD/-

Copy to :-


(a) The Head Postmaster Kohlha Head Post Office. for information and necessary action.

(b) The official concerned.

(c to c) Spare.


DIRECTOR OF POSTAL SERVICES:
BAGALAHU : KOHLHA.

Certified to be
true Copy.


Director

- 23 -

ANNEXURE:- IV *Annexure 1/1* **GA**

45

DEPARTMENT OF POSTS, INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL, H.E. CIRCLE, SHILLONG.

- 23 -

To,
The Postmaster,
Kohima H.P.O.,
Nagaland-797001.

No. AP/MO/II/FIXN/95-96

21.04.2000
Dated at Shillong the 17.8.2000.

Subject:- Regarding Stepping up of Pay of Shri A.K. Singh,
APM, Kohima H.O with his Junior, Shri Dimbeswar
Deori, PA Guwahati.

Ref:- Your No. 1-5/Book/97-98 dated 9.3.98.

With reference to your office letter referred above, this is to inform that on comparative scrutiny of the Service-Books of Shri A.K. Singh, APM Kohima H.O and Shri Dimbeswar Deori PA, Guwahati the following have come to light.

That, the Senior official, Shri A.K. Singh entered the Department as PA with effect from 23.03.73, while the Junior official entered in the Department as PA with effect from 26.03.73. The pay of both the officials was fixed at Rs. 260/- in the scale of Rs. 260-180/- with DNI on 1st March each year. The pay of Shri A.K. Singh was subsequently fixed at Rs 276/- (ie Rs. 284/-) with an advance increment with effect from 1.3.75 on account of his having undergone the Telegraph Merger Training as reported in your office letter referred above. Copy of the above order is not found enclosed in the Service-Book. The same may kindly be enclosed in Service-Book.

The first Part of the Service-Book of Shri A.K. Singh, APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported to have been wanting may kindly be reconstructed.

That, the official, Shri Dimbeswar Deori was allowed to officiate as SPM/APM Acctt/DPM etc. all along with effect from 4.8.74, but before the eligible period for THOP scheme, while the senior official, Shri A.K. Singh worked simply as T/S Clerk upto the period of eligibility of THOP scheme. By virtue of officiating capably the pay of Shri Dimbeswar Deori was fixed at 1440/- on 1.2.89 in the scale of Rs (1400-2300), while the Senior official, Shri A.K. Singh was drawing pay at Rs. 1390/- with effect from 1.3.89 in the scale of Rs. (975-1660) and at Rs. 1440/- with effect from 23.3.89 in the scale of Rs. (1400-2300) in the THOP scheme, therefore, resulting in drawal of enhanced pay by the Junior official Shri Dimbeswar Deori. The pay of Shri A.K. Singh was finally stepped up from Rs. 1440/- to Rs. 1640/- with effect from 19.4.89 vide DPM/Kohima's letter No. B-776/Pt-III dated 28.7.90. The excess pay drawn by the Junior official is not due to any application of PR-22(1)(a)(1).

Therefore, stepping up of pay of Shri A.K. Singh with effect from 19.4.89 is not in order. The same should be cancelled and over payment as a result of wrong stepping up of pay should be recovered under intimation to this office and DA(P) Calcutta.

The Service-Book of Shri A.K. Singh APM Kohima is enclosed for further maintenance.

(Darlina)
Asstt. Postmaster General (A/Cs),
Actg Chief Postmaster General,
H.E. Circle, Shillong.

Certified to be
true Copy.
[Signature]
21.04.2000

22-24- (E)
ANNEXURE- V

TO

The Chief Accounts Officer (I.F.A.)
O/O The Chief Postmaster General
North Eastern Circle.
Shillong--- 792001

Subj:- Request regarding concurrence---
Stepping-up case of Shri. A.K. Singh A.P.M

Kohima H.O.

Sir.

While verifying the service book of Shri A.K. Singh A.P.M Kohima HO by the Audit party during internal check inspection. It has been recorded by the Audit party that the initial pay of Shri A.K. Singh in L.S.G cadre was fixed at a higher stage in accordance with D.P.S Kohima memo no. B-76/Part III dt. 24-2-79. However no approval of I.F.A has been found recorded in the service book.

Now, to regularise the pay fixation it is essential to record the financial concurrence of the I.F.A. Therefore, kindly accord the post-ratio concurrence and comment in the office for recording in the service book.

(S. C. PAUL)
POSTMASTER (I.F.A.)
Kohima (NAGALAND)
Postmaster (I.F.A.)
Kohima-797001
Nagaland-797001

Certified to be
true Copy.
Advocate

22-25-
ANNEXURE VI

DEPARTMENT OF POSTS, INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL: N.E. CIRCLE: SHILLONG.

To,
The Postmaster,
Kohima H.P.O.,
Nagaland-797001.

No. AP/AAO/II/FDXN/95-96

21.08.2000
Dated at Shillong the 17.8.2000.

Subject:- Regarding Stepping up of Pay of Shri A.K. Singh,
APM, Kohima H.O with his Junior, Shri Dimbeswar
Deori, PA Guwahati.

Ref:- Your No. 1-5/Book/97-98 dated 9.3.98.

With reference to your office letter referred above, this is to inform that on comparative scrutiny of the Service-Books of Shri A.K. Singh, APM Kohima H.O and Shri Dimbeswar Deori PA, Guwahati the following have come to light.

That, the Senior official, Shri A.K. Singh entered the Department as PA with effect from 23.03.73, while the Junior Official entered in the Department as PA with effect from 26.03.73. The pay of both the officials was fixed at Rs. 260/- in the scale of Rs. 260-480/- with DNI on 1st March each year. The pay of Shri A.K. Singh was subsequently fixed at Rs 9276+8) (ie Rs. 284/-) with an advance increment with effect from 1.3.75 on account of his having undergone the Telegraph Merse Training as reported in your office letter referred above. Copy of the above order is not found enclosed in the Service-Book. The same may kindly be enclosed in Service-Book.

The first Part of the Service-Book of Shri A.K. Singh, APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported to have been wanting may kindly be reconstructed.

That, the official, Shri Dimbeswar Deori was allowed to officiate as SPM/APM Acctt/DPM etc. all along with effect from 4.8.74, but before the eligible period for TBOP scheme, while the Senior official, Shri A.K. Singh worked simply as T/S Clerk upto the period of eligibility of TBOP scheme. By virtue of officiating capacity the pay of Shri Dimbeswar Deori was fixed at (1440/-) on 1.2.89 in the scale of Rs (1400-2300), while the Senior Official, Shri A.K. Singh was drawing pay at Rs. 1390/- with effect from 1.3.89 in the scale of Rs. (975-1660) and at Rs. (1440/-) with effect from 23.3.89 in the scale of Rs. (1400-2300) in the TBOP scheme, therefore, necessitating in drawal of enhanced pay by the Junior Official Shri Dimbeswar Deori. The pay of Shri A.K. Singh was finally stepped up from Rs. 1440/00 to Rs. 1640/- with effect from 19.4.89 vide DPE/Kohimas letter No. B-776/Pt-III dated 28.2.90. The excess pay drawn by the Junior official is not due to any application of FR-22(i)(a)(i).

Therefore, stepping up of pay of Shri A.K. Singh with effect from 19.4.89 is not in order. The same should be cancelled and over payment as a result of wrong stepping up of pay should be recovered under intimation to this office and DA(P) Calcutta.

The Service-Book of Shri A.K. Singh APM Kohima is enclosed for further maintenance.

This is issued in connection with letter D.P.O.
1146/98

(Darhlira)

Asstt. Postmaster General (A/Cs),
Asstt. Chief Postmaster General,
N.E. Circle, Shillong.

Certified to be
true Copy.
Advocate

24-26 - ANNEXURE:- VII

ANNEXURE-7
18/10/2000
10 OCT 2000
Rs. 10/-

DEPARTMENT OF POSTS INDIA

From

POSTMASTER
KOHIMA H.O.

TO:
THE ASSTT. POSTMASTER GENERAL (A/Cs),
O/O THE CHIEF POSTMASTER GENERAL,
N.E. CIRCLE, SHILLONG-793001.

NOTA-1 PAY & ALLOWANCES/CORR

DATED THE 03.10.2000

SUB: Regarding stepping up of pay of Shri A.K. SINGH, then APML Kohima, now SPML Mokokechung S.O. with his junior Shri. Dimbeswar Deori, P.L. Guwahati.

Ref: Your letter No. A.P. & A.C. 11/11/95-96 Dated 21.08.2000.

With reference to your letter noted above, stepping up of pay of Shri A.K. SINGH, SPML Mokokechung S.O. w.e.f. 19.4.89 from Rs. 1440/- to Rs. 1640/- have been cancelled and as a result he was reduced on 1.10.2000 from Rs. 6800 to Rs. 6050 and overpayment made as a result of wrong stepping up of pay w.e.f. 19.4.89 to 30.09.2000 amounting Rs. 85870/- (Eighty five thousand eight hundred seventy) should be recovered from the official. Kindly instruct as to how the assessed amount will be recovered from the official. For favour of your kind information, the pay regulation w.e.f. 19.04.89 and calculation of overpayment is shown in enclosed ANNEXURE-I.

Enclosed: As above

POSTMASTER (HSG-II)
KOHIMA POST OFFICE,

Copy to:

1. The DA(P), Calcutta, for kind information & n/a.
2. The Director of Postal Services/Nagaland with this letter no. B-II Staff Pay & allowances dated 12.9.2000.
3. Shri A.K. SINGH, SPML Mokokechung S.O. for information.

(S.C. PAUL)
POSTMASTER (HSG-II)
KOHIMA POST OFFICE,

Certified to be
true Copy.
Dharah
Advento

For Sri. S.P. Singh Qtr. no-1 Postal Colony Liphist TF-221858

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.356 of 2000

Date of decision: This the 6th day of March 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

Awadhesh Kumar Singh,
Sub-Postmaster (HSG-II),
Mokokchung, Nagaland.

.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Mr B.K. Talukdar

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, New Delhi.
2. The Director General, Department of Posts, New Delhi.
3. The Chief Postmaster General, N.E. Circle, JWF Shillong.
4. The Director of Postal Services, Nagaland, Kohima.
5. The Chief Accounts Officer (IFA), Office of the Chief Postmaster General, N.E. Circle, Shillong.
6. The Postmaster, Kohima Head Post Office, Kohima.

.....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

S.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The applicant was first appointed as Postal Assistant in Nagaland Postal Division with effect from 23.3.1973. In terms of Time Bound ~~One~~ Promotion Scheme in conformity with DG, P&T letter No.31-26783-PR dated 17.12.1983, the applicant alongwith six others were promoted to the higher grade carrying a pay scale of Rs.1400-2300 with effect from 23.3.1989 vide order dated

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true Copy.
A. Barah
Advocate

20.11.1989. By the same order one D. Dewri, officiating PRI(P), Kohima was also promoted. There is no dispute that the applicant is senior to the said D. Dewri who was appointed in the post on 26.3.1989, whereas the applicant was appointed on 23.3.1989. The applicant made an application before the Director of Postal Services on 21.11.1989 for stepping up of his pay on the ground that the said D. Dewri who was junior to the applicant was drawing more than the applicant in the scale applicable to LSG officials. It was contended that the said D. Dewri was drawing Rs.1640/- in the scale pay whereas the applicant's pay was fixed at Rs.1440/- in the very same scale. The applicant submitted several representations before the Director, Postal Services. By order dated 28.2.1990 the applicant was allowed to draw his pay at Rs.1640/- with effect from 19.4.1989 on which date the applicant joined his duties in the cadre of Lower Selection Grade. While things rested at this stage, the Post Master (H.S. G-II), Kohima wrote to the Chief Accounts Officer (IFA) for providing post-facto concurrence in the matter of pay fixation of the applicant. In the said communication the said Post Master informed that while verifying the service book of the applicant by the Audit party during internal check/inspection it was recorded by the Audit party that the initial pay of the applicant in LSG cadre was fixed at a higher stage in terms of D.P.S., Kohima Memo dated 28.2.1990. It was also mentioned in the communication that no approval of the IFA was found recorded in the service book. Accordingly the authority was requested to regularise the pay fixation by providing financial concurrence of the IFA. By the impugned communication

No.....

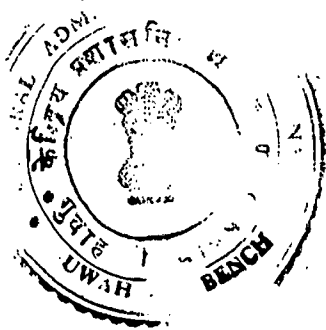
No.AP/AAO/II/FIXN/95-96 dated 17.8.2000/21.8.2000 the Chief Post Master General informed that stepping up of pay of the applicant with effect from 19.4.1989 was not in order and accordingly the Post Master, Kohima H.P.O. was advised to cancel the same and directed for recovery of the over payment made to the applicant as a result of wrong stepping up of pay with intimation to the Office. The relevant part of the impugned communication is reproduced below:

✓ "With reference to your office letter referred above, this is to inform that on comparative scrutiny of the Service-Books of Shri A.K. Singh, APM Kohima H.O. and Shri Dimbeswar Deori PA, Guwahati the following have come to light.

That, the Senior official, Shri A.K. Singh entered the Department as PA with effect from 23.03.73, while the Junior Official entered in the Department as PA with effect from 26.03.73. The pay of both the officials was fixed at Rs.260/- in the scale of Rs.260-480/- with DNI on 1st March each year. The pay of Shri A.K. Singh was subsequently fixed at Rs.9276-8 (ie Rs. 284/-) with an advance increment with effect from 1.3.75 on account of his having undergone the Telegraph Merits Training as reported in your office letter referred above. Copy of the above order is not found enclosed in the Service-Book. The same may kindly be enclosed in Service-Book.

The first part of the Service-Book of Shri A.K. Singh, APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported to have been wanting may kindly be reconstructed.

That, the official, Shri Dimbeswar Deori was allowed to officiate as SPM/APM Acctt/DPM etc. all along with effect from 4.8.74, but before the eligible period for TBOP scheme, while the senior official, Shri A.K. Singh worked simply as T/S Clerk upto the period of eligibility of TBOP scheme. By virtue of officiating capacity the pay of Shri Dimbeswar Deori was fixed at 1640/- on 1.2.89 in the scale of Rs.(1400-2300), while the Senior official, Shri A.K. Singh was drawing pay at Rs. 1390/- with effect from 1.3.89 in the scale of Rs. (975-1660) and at Rs. 1440/- with effect from 23.3.89 in the scale of Rs. (1400-2300) in the TBOP scheme, therefore, resulting in drawal of enhanced pay by the Junior Official Shri Dimbeswar Deori. The pay of Shri A.K. Singh was finally stepped up from Rs. 1440/- to Rs. 1640/- with effect from 19.4.89 vide DPS/Kohima's letter No. B-776/Pt-III dated 28.2.90. The excess Pay drawn by the Junior official is not due to any application of FR-22(i) (a) (i)."



2. Consequently, by order dated 3.10.2000 the Post Master (HSG-II), Kohima Post Office issued an order cancelling the stepping up of pay of the applicant from Rs.1440/- to Rs.1640/- and thereby reduced his pay on 1.10.2000 from Rs.6800 to Rs.6050 and over payment made as a result of wrong stepping up of pay with effect from 19.4.1989 to 30.9.2000, amounting to Rs.85870/- was ordered to be recovered from the official. By the said communication the Post Master sought further instructions as to how the assessed amount was to be recovered from the official. The legitimacy of the aforementioned action of the respondents is thus under challenge in this proceeding as arbitrary and discriminatory.

The respondents in their written statement did not dispute the fact that Dimbeswar Dewri was junior to the applicant and the pay of both the officials was fixed at Rs.260/- in the scale of pay of Rs.260-480/- at the initial stage. Subsequently, however, the pay of the applicant was fixed at Rs.276+8 i.e. Rs.284 with an advance increment with effect from 1.3.1975 on account of the applicant having taken Telegraph Morse Training. Shri Dimbeswar Dewri who was junior to the applicant officiated as SPM, APM (Acct.) and Deputy Postmaster continuously with effect from 4.8.74 before completing 16 years of service for TBOP scheme while the applicant only worked as time scale clerk upto the period of eligibility of TBOP scheme. In view of the fact that Shri Dimbeswar Dewri worked in the officiating capacity in the higher grade/post his pay was fixed at Rs.1640/- on 1.2.89 in the scale of pay of Rs.1400-2300/- while the pay of the applicant who was drawing Rs.1390/- with effect from 1.3.1989 in the scale of Rs.975-1660 and Rs.1440 with effect.....

effect from 23.3.1989 in the scale of Rs.1400-2300 in the TBOP Scheme. Due to drawal of increased pay by the junior official Shri Dimbeswar Dewri, the pay of the applicant was stepped up from Rs.1440 to Rs.1640 with effect from 19.4.1989, on representation, vide DPS, Kohima letter dated 29.2.1990 erroneously which was not in conformity with the application of FR-22(i)(a)(i). The respondents averred that in terms of FR-22(c), amongst others anomaly must arise directly as a result of application of FR-22(c) now FR-22(i)(a)(i) in the revised scale. The applicant was working as time scale clerk and his junior Dimbeswar Dewri was officiating in the posts of APM (Accts.) and Deputy Post Master and was drawing more pay in the lower cadre before promotion to the LSG cadre under TBOP scheme. As such, the difference of pay continued even during pay fixation at the time of promotion under TBOP Scheme automatically and not because of any anomaly in the fixation of pay resulting in the drawal of more pay by his junior Dimbeswar Dewri. In the circumstances the stepping up of pay of the applicant was not justified and on scrutiny the authority detected the irregularity and ordered for recovery of the excess payment made to the applicant.

4. Mr B.K. Sharma, learned Sr. counsel for the applicant, stated and contended that conferment of higher pay to Shri Dimbeswar Dewri who was junior to the applicant created an anomalous situation and that anomaly was duly taken care of by the respondents vide order dated 28.2.1990 in conformity with FR-22(c) now FR-22(i)(a)(i). The learned Sr. counsel submitted that as per the scheme of the Fundamental Rules, the stepping up of pay of the applicant was made in the right direction and the order

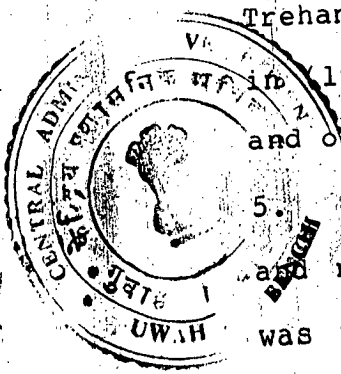
dated.....

dated 28.2.1990 was arbitrarily cancelled by the impugned order dated 17/21.08.2000 without giving any opportunity to the applicant. The learned Sr. counsel for the applicant, in support of his contentions referred to the decisions of the Supreme Court in Divisional Superintendent, Eastern Railways, Dinapur and others Vs. L.N. Keshri and Others, reported in (1975) 3 SCC 1; H.L. Trehan and Others Vs. Union of India and Others, reported in (1989) 1 SCC 764 and Bhagwan Shukla Vs. Union of India and others, reported in AIR 1994 SC 2480.

5. Mr B.C.Pathak, learned Addl. C.G.S.C., referring and relying on the scheme of FR-22 submitted that there was no anomalous situation and therefore, the respondent authority fell into obvious error by acting on the representation of the applicant and directing stepping up of pay of the applicant vide order dated 28.2.1990. The said order, admittedly, was without authority, more so, without sanction of the appropriate authority. At any rate when the mistake was detected the respondents corrected the same by the impugned order. According to the learned Addl. C.G.S.C. no injustice was caused to the applicant by not giving him any notice, so much so that the initial order conferring the benefit of stepping up of pay itself was illegal and unlawful.

6. The matter is no longer res integra. The Supreme Court in Union of India and Another Vs. R. Swaminathan, reported in AIR 1997 SC 3554 stated that stepping up of pay is subject to the following three conditions:

"(a) Both the junior and senior officers should belong to the same cadre and posts in which they have been promoted should be identical in the cadre.



(b) The unrevised and revised scale of pay of the lower and higher posts in which they are settled to draw pay should be identical and

(c) The anomaly should be directly as a result of the application of the provision of FR 22(c) now FR 22(i)(a)(i) in the revised scale....."

✓ In the instant case Shri Dimbeswar Dewri received higher pay on account of his earlier officiation in the higher post because of local officiating promotions. Because of the scheme of the rule he might have earned increments in the higher pay scale of the post to which he was promoted on account of his past service and also his previous pay in the promotional post and that was taken into account in fixing his pay on promotion. The same cannot be treated as anomaly and judged in those circumstances it appears that the earlier order passed by the respondents on stepping up of the pay of the applicant was unjustified. Therefore, the respondents by the impugned order dated 17/21.8.2000 only remedied the situation. It, however, appears that the respondents in adopting this procedure failed to issue prior notice to the applicant before passing the impugned order dated 17/21.8.2000.

7. On the facts and circumstances of the case I am of the view that ends of justice would be met if the respondents provide a post decisional hearing by giving opportunity to the applicant to state his say. The respondents are directed to give an appropriate hearing to the applicant as early as possible, preferably within three months from today. Till then, the respondents are directed not to make any recovery from the applicant and make arrangement of recovery from the applicant by instalments.....

instalments thereafter upon hearing the applicant as per law.

8. The application accordingly stands disposed of. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN



nkm

TRUE COPY

प्रतिलिपि

NS
22/03/02

Section Officer (I),

आयुक्त अधिकारी (प्रशासनिक शाखा)
National Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय
Central Bench, Guwahati
राजधानी न्यायाधीश, गुवाहाटी

HS
22/3/2002

Certified to be
true Copy.
HS
Advocate

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE: SHILLONG

Memo No. VIG-5/6/00-01 (CAT)

Dated Shillong, the 8-5-2003

This is regarding disposal of representation dated 29-4-02 of Shri Awadesh Kr. Singh, SPM Mokokchung, MDG, Nagaland in compliance with the order dated 6-3-02 passed by the Hon'ble CAT Guwahati in OA No. 356 of 2000.

As per the said order, the applicant viz., Shri A.K. Singh has to be provided a post decisional hearing by giving him the opportunity to state his views and until completion of this exercise, no recovery as ordered by Circle Office should be made from him. Accordingly, the applicant was allowed an opportunity through a show cause notice dated 14-6-02 to state his views. In reply to the notice, the applicant submitted a representation dated 10-7-02 along with a copy of his earlier representation dated 29-4-02. I have carefully gone through the representation dated 10-7-02 read with representation dated 29-4-02 submitted by the applicant.

In his representation, the applicant put forward the conditions regulating the stepping up of pay as envisaged in FR-22 (1)(a)(i) which was earlier called as FR-22-C. According to the applicant, following conditions are applicable in his case.

i) Both the senior and junior officers belong to the same cadre and the post in which they have been promoted are identical in the same cadre.

ii) The scale of pay of both the officers are identical.

and

iii) The anomaly caused directly as a result of application of the provision of FR-22-C, now FR-22(1)(a)(i).

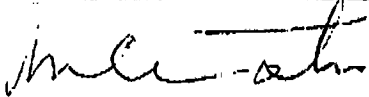
The case in brief is that, the applicant viz., Shri A.K. Singh entered in the Department as Postal Assistant on 23-3-73 and another official viz., Shri D. Deori entered in the Department as Postal Assistant on 26-3-73. Both Shri Singh and Shri Deori got promotion under One Time Bound Promotion scheme to the next higher pay scale of Rs. 1400 to 2300/- with effect from 23-3-89 and 26-3-89 respectively. While the pay of Shri Singh was fixed at Rs. 1440/- on promotion in the next higher scale with effect from 23-3-89 the pay of Shri Deori was fixed at Rs. 1640/- in the same scale of pay on promotion. Shri A.K. Singh was therefore aggrieved and sought for parity by stepping up of his pay to the level of his junior Shri Deori. In support of his claim, he has put forth points as already discussed.

On examination of the relevant records, it is observed that Shri D. Deori, a junior official to the applicant had been officiating in higher posts carrying a higher scale of pay continuously till he was promoted to the same scale of pay on promotion under One Time Bound Promotion scheme and accordingly his pay was fixed at a higher stage than that of the applicant taking into account the period of his officiation. So it can not be said that both the senior and

Certified to be
true Copy.
Advocate

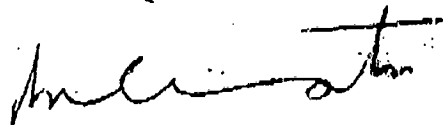
junior officers belonged to the same cadre at the time of promotion. Even though the applicant was senior to Shri Deori by 3 days at the time of entry in the Department, Shri Deori officiated in a higher scale of pay for quite a reasonable time and he was entitled to fixation as per the relevant rules and the anomaly arose not directly as a result of application of the provisions of FR-22-C now FR-22(1)(a)(i). As such the contention of the applicant is not tenable and based on facts. The case has also been got examined thoroughly by the Director of Accounts (Postal) Kolkata who opined vide his DO No. Stepping up/A.K. Singh/D. Deori/IC-2510 dated 20-3-03 that stepping up of pay of Shri A.K. Singh with reference to Shri D. Deori is not permissible.


I, Shri P.K. Chatterjee, Chief Postmaster General, North Eastern Circle, Shillong therefore dispose of the representation dated 29-4-02 and 10-7-02 with the order that stepping up of pay as claimed by Shri A.K. Singh with reference to pay of Shri D. Deori is not permissible. The recovery of over-drawal amounts will be made in instalments as per rules and will be decided by the D.P.S., Kohima.


(P.K. Chatterjee)
Chief Postmaster General,
N.E. Circle, Shillong.

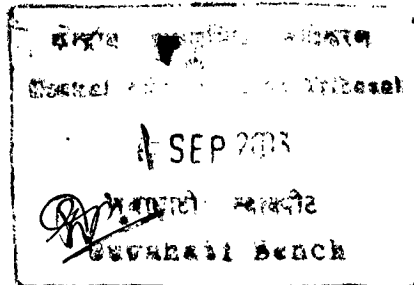
Copy to :-

- 1) Shri A.K. Singh, SPM Mokokchung MDG Nagaland through DPS Kohima.
- 2) The Director of Postal Services, Kohima.
- 3) The Asstt. Director (Accounts), O/O CPMG, Shillong. This refers to his No. AP/AAO/Fixan/95-96/Pt-II.
- 4) The Postmaster, Kohima.
- 5) The Asstt. Director (Staff).
- 6) Spare.


Chief Postmaster General,
N.E. Circle, Shillong.

Certified to be
true Copy.

Advocate

Both copies to be delivered to Mr. S.P. Singh Postal
Colony Qtr. No. 1. Imphal



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 158 OF 2003

Shri Awdesh Kr. Singh.

..... Applicant.

-Vs-

Union of India & Ors.

..... Respondents.

- And -

In the matter of :

Written Statement submitted by
the respondents.

The respondents beg to submit
brief of the case before submit-
ting para-wise written statements
which may be treated as part of
the written statement.

(BRIEF HISTORY OF THE CASE)

Shri A.K. Singh, SPM, Mokokchung MDG and Shri
Dimbeshwar Deori now PA Guwahati were appointed as Postal
Assistant, in Nagaland Postal Division by the Director of
Postal Services, Nagaland, Kohima. The applicant joined as
PA on 23.03.1973 and Shri Dimbeshwar Deori joined as PA on
26.03.1973, and the pay of both the officials were fixed
at Rs. 260/- in the scale of Rs. 260-480/- with next date
of increment on as 1st March of every year. However,

subsequently the pay of applicant was fixed at Rs. 268+ 8 i.e. Rs. 284/- with an advance increment w.e.f. 01.03.1975 on account of having taken Telegraph Morse Training. Further, Shri Dimbeshwar Deori who was junior to the applicant by 3 days officiated as Sub-Postmaster, Assistant Postmaster (Accounts) and Deputy Postmaster continuously w.e.f. 04.08.1974 before completion of 16 years of service. As such by virtue of officiating in higher capacity in the higher grade/post, Shri Dimbeshwar Deori was drawing pay of Rs. 1,640/- on 01.02.1989 in the scale of Rs. 975 - 1,660/- before financially upgraded under TBOP scheme. On financially upgraded under TBOP, w.e.f. 26.03.1989 the pay of Shri Deori was fixed at Rs. 1,640/- in the scale of Rs. 1400-2300/- under relevant rules. While the pay of applicant who was drawing Rs. 1390/- w.e.f. 01.03.1989 in the scale of Rs. 975-1,660/- was fixed at Rs. 1,440/- w.e.f. 23.03.1989 in the scale of Rs. 1,400/- - 2,300/- under TBOP scheme. Due to drawal of increased pay by the junior official Shri Dimbeshwar Deori, the pay of the applicant, ~~the same~~ was stepped up from Rs. 1,440/- to Rs. 1,640/- w.e.f. 19.04.1989 on representation made by the official, vide Director of Postal Services, Kohima letter No. B-776/Pt.III dated 28.02.1989 erroneously, which was not in conformity with the FR 22(1)(a)(i), and the concurrence of the Circle Internal Financial Advisor, Shillong was not obtained, and thus was also lacking in authority.

The following conditions are required to be fulfilled for becoming eligible for stepping up the pay of the senior officer at par with his junior under the provisions of FR 22(c), now FR 22(1)(a)(i) :-

a. Both the junior and senior officers should belong to the same cadre, and the posts in which they have been promoted should be identical and in the same cadre ;

b. The unrevised and revised scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical and

c. The anomaly should be directly as result of the application of the provisions of FR 22(c) now FR 22(1)(a)(i) in the revised scale. For example, if even in the lower post the junior officer was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him, the provisions contained in the decision need not be invoked to step up the pay of the senior officer. Since the applicant was working as time scale clerk and his junior Shri Dimbeshwar Deori was officiating in the post of APM (A/Cs) and Dy. Postmaster and drawing more pay than in the lower cadre before financially upgraded under TBOP scheme, as such this difference of pay continued even during fixation at the time of financial upgradation under TBOP scheme, automatically and not because of anomaly in fixation of pay resulting in drawal of more pay by his junior Shri Dimbeshwar Deori.

Hence the stepping up of pay of the applicant , Mokokchung SO was not found in order after ~~me~~ scrutiny by the Chief Postmaster General, North East Circle, Shillong. This irregularity was detected by the Audit during inspection of Kohima Head Post Office and as such recovery order of excess payment of Rs. 85,870/- was made by the Postmaster, Kohima HO on 03.10.2000.

Similarly, CAT Guwahati bench in its judgement dated 06.03.2002 in OA No. 356/2000 filed by the applicant, held that Shri Deori received higher pay on account of his earlier officia-
tion in the higher post, because of local officiating promotion. Because of the scheme of the rule, he earned increments in the higher pay scale of the post to which he was promoted on account in fixing his pay on promotion. The same cannot be treated as anomaly and the earlier order of respondent No.4 dated 28.02.1990 was not justified and the respondent No.3 by the impugned order dated 17.02.2000 only remedied this situation. Only lacuna or deficiency noticed by CAT was that before resorting to recovery and re-fixation of pay, no prior notice was served on the appli-
cant before passing the order dated 17/21-08.2000.

In this matter, the applicant made an OA No. 356/2000 before the Hon'ble CAT, Guwahati bench and the Hon'ble CAT decided the case on 06.03.2000 giving direction to the respondent to provide a post decisional hearing by giving opportunity to the applicant to state his say. In pursuance to this order, the Chief Postmaster General, N.E. Circle, Shillong allowed an opportunity to the applicant through a show cause notice dated 14.06.2002 asking the applicant to state his views. In reply to

this notice, the applicant submitted a representation dated 10.07.2002 alongwith a copy of his earlier representation dated 29.04.2002 to Chief Postmaster General, N.E. Circle. The Chief Postmaster General (respondent No.3) in consultation with the Director of Accounts (Postal), Kolkata arrived at a decision that the stepping up of pay as claimed by the applicant is not permissible. After carefully going through the representation dated 10.07.2002 and his earlier representation dated 29.04.2002 submitted by the applicant, and taking into account full facts of the case, respondent No.3, passed a speaking order ~~vide Chief PMG, N.E. Circle Memo No. Vig-5/6/00-01 (CAT)~~ vide Chief PMG, N.E. Circle Memo No. Vig-5/6/00-01 (CAT) dated 08.05.2003, which was communicated to the applicant by respondent No.4 vide letter No. B-76 dated 30.05.2003.

Copy of letter dated 08.05.2003 is annexed herewith and marked as Annexure - V and copy of letter dated 30.05.2003 is annexed herewith and marked as Annexure - VI.

✓ The issue raised in the present or previous OA filed by applicant has been adjudicated upon by Hon'ble Supreme Court of India in its judgement dated 12.09.1997, in civil appeal No. 8658 of 1996. In the aforesaid judgement, issue raised was similar and Hon'ble Supreme Court of India held that "the increased pay drawn by a junior because of ad-hoc officiating or regular service rendered by him in the higher post for period earlier than the senior is not an anomaly because pay does not depend on seniority alone nor seniority alone is a criterion for stepping up of pay."

(82)
64

-6-

It was, therefore, decided that the employees were not entitled for stepping up of their pay under FR 22(1) (a) (i) because the difference in the pay drawn by their juniors was not as a result of any anomaly, nor was it as a result of the application of Fundamental Rules 22(1) (a) (i).

Para-wise Comments.

1. That with regard to the statement made in para 1, of the application the respondents beg to state that Hon'ble CAT, Guwahati Bench vide its order dated 06.03.2002 in OA No. 356/2000, directed the respondents "to provide a post-decisional hearing by giving opportunity to the applicant to state his say". Accordingly, a show cause notice was served on the applicant by respondent No.3 on 14.06.2002 to submit his detailed representation to him. In reply to the notice, the applicant submitted representation dated 10.07.2002 along with a copy of his earlier representation dated 29.04.2002. After carefully going through the representation dated 10.07.2002 and 29.04.2002 submitted by the applicant, and considering the full facts of the case, respondent No. 3 disposed of the representation by deciding that stepping of the pay of the applicant with reference to his junior. Shri Deori was not permissible, vide Chief PMG, N.E. Circle memo No. Vig-5/6/00-01 (CAT) dated 03.05.2003, which was communicated to the applicant by respondent No.4 vide letter No. B-76 dated 30.05.2003.

Therefore, the claim made by the applicant that he was not given an opportunity to state his case is not correct and is baseless.

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A copy of letter dated 06.03. 2002 is annexed herewith and marked as Annexure - I.

A copy of letter dated 14.06.2002 is annexed herewith and marked as Annexure - II.

A copy of letter dated 10.07.2002 is annexed herewith and marked as Annexure -III.

A copy of letter dated 29.04.2002 is annexed herewith and marked as Annexure -IV.

A copy of letter dated 08.05.2003 is annexed herewith and marked as Annexure-V.

A copy of letter dated ~~22~~. 30.05.2003 is annexed herewith and marked as Annexure - VI.

2. That with regard to para 2, 3 and ~~xxii~~ 4.1, of the application the respondents beg to offer no comments.

3. That with regard to the statement made in para 4.2, of the application the respondents beg to state that the applicant was proceeded under Rule-16 of CCS (CCA) Rules, 1965, when he was working as the Sub-Postmaster, Dimapur S.O. The charges levelled against him were that he failed to verify the VP articles in deposit with reference to the VP register, which led to loss of Govt. money to the tune of Rs. 26,129.00. On inquiry the charges levelled against him were found true and he was awarded the punishment of recovery of Rs. 4000/- at the rate of Rs. 200/- per month in twenty equal installments vide Director, Postal Services memo No. F-3-3/92-93 dated 29.01.1993 . On appeal to Postmaster General, North East Circle, against the punishment ..

order passed by Director, Postal Services, the punishment was modified to "Censure", vide Chief Postmaster General, North East Circle memo No. Staff/109-1/95 dated 19.10.1995.

Therefore, the contention made by the applicant is not correct.

4. That with regard to para 4.3 and 4.4, of the application the respondents beg to offer no comments.

5. That with regard to the statement made in para 4.5, of the application the respondents beg to state that the contention made by the applicant that his basic pay on 23.09.1989 was Rs. 1,390/- while the pay of Shri Deori was at Rs. 1,330/- is not correct. Shri Deori officiated in higher post involving greater duties and responsibilities, and his basic pay as on 23.03.1989 was Rs. 1,640/- and not Rs. 1,330/- as claimed by the applicant. Therefore, the basic pay of Shri Deori was fixed at Rs. 1,640/-, thereby protecting the pay earlier drawn by him in the officiating capacity.

It is humbly submitted that the initial pay fixed under FR 22(1)(a)(i) shall not be less than the last pay which any official draws when he last held the higher post. Further, the period of officiation (temporary or permanent) counts towards increments in the time scale of pay for the higher post. In other words, the pay of any official who has officiated in a higher post will be fixed taking into account not merely his entitlement on the basis of his notional pay in the pay-scale of the lower post, but also by taking into account the last

drawn by him while he was officiating in the higher pay and also counting the previous periods during which he so officiated for his increments in the higher pay scale.

6. That with regard to the statement made in para 4.6, of the application the respondents beg to state that the applicant at his own ~~xx~~ volition opted for working as a signaller and he was accordingly imparted training by the department in that field and his place of posting was therefore, in places where there was no separate telegraph office.

7. That with regard to paras 4.7, 4.8 & 4.9, of the application the respondents beg to state that Director of Postal Services, Kohima who is the appointing authority of LSG PA who had erroneously stepped up the pay of the applicant of the stage of Rs. 1,640/- w.e.f. 19.04.1989, at par with his junior Shri Dimbeshwar Deori, who was holding higher post and drawing higher pay at the time of promotion under TBOP scheme . As such, the impugned order is not sustainable and is against the provisions of Ministry of Finance OM No. F2(78)-BIII(4)/66 dated 04.02.1966. The stepping up of pay should be done with effect from the date of promotion or appointment of the junior officer and is subject to the following conditions which is not fulfilled by the applicant . Copy of letter dt. 04.02.66 is annexed as Annexure -VIII.

(a) Both the junior and senior officers should belong to the same cadre, and the posts in which they have been promoted or appointed should be identical and in the same cadre.

46
68

-10-

(b) The unrevised and revised scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical and

(c) The anomaly should be directly as a result of the application FR 22(C) later renamed as FR 22(1)(a)(i). In the instant case, the senior officer, the applicant was working as a time scale clerk, whereas his junior Shri D. Deori was officiating as APM (A/Cs) and DPM etc. in the higher cadre in the unrevised scale and was drawing more pay by virtue of officiating in higher post/grade than the applicant. Hence, stepping up the pay of the senior official the applicant was irregular and in contravention with the provisions of FR 22(1)(a)(i).

As soon as this anomaly of irregular stepping up of pay by the Director, Postal Services, Kohima came to the notice of the Chief PMG, N.E. Circle, an order cancelling the erroneous and irregular order of the Director, Postal Services, Kohima was issued.

8. That with regard to the statement made in para 4.10, of the application the respondents beg to state that it is humbly submitted that stepping up of pay was erroneously allowed by respondent No.4, vide memo No. B-76/Part.III dated 28.02.1990. While passing above order, the concurrence of Circle, Internal Financial Advisor (CIFA), North East Circle, Shillong was not obtained, and this order was infructious-right from the beginning. This irregular stepping up of pay came into light during audit inspection of Kohima Head Post Office during 1998 and

this irregular order was subsequently modified in accordance with existing rules, vide Chief Postmaster General, N.F. Circle order No. AD/AAO/II/FIXN/95-96 dated 17/21-08-2000 . The claim made by the applicant that he was allowed to enjoy the benefits of pay fixation at par with his junior, Shri Deori for 19 years is not correct, as irregular pay-fixation was detected in 1998 and sought to be modified in 2000, which could not be effected due to stay order granted by CAT, Guwahati Bench by its order dated 25.10.2002 in OA No. 356/2000. Subsequently CAT, Guwahati Bench disposed off the above OA vide its judgement dated 06.03.2002 (Annexure I), directing the respondent to provide a post decisional hearing by giving an opportunity to the applicant to state his say. Hon'ble CAT, Guwahati Bench was of the considered view that Shri Deori received higher pay on account of his earlier officiation in the higher post because of local officiating promotion, on account of which he earned increments in the higher pay scale of the post, which was taken into account in fixing his pay on promotion. It further held that Director, Postal Services memo No. B-76/Part.III dated 28.02.1990 (Annexure-IX) was not justified and the order dated 17/21-08-2000 (Annexure-X) passed by respondent No.3, remedied the situation.

A copy of the letter dated 28.02.1990 is annexed herewith and marked as Annexure - IX.

A copy of letter dated 17/21-08-2000 is annexed herewith and marked as Annexure -X.

As per directions of Hon'ble CAT, Guwahati Bench

148

-12-

order dated 06.03.2002, a show cause notice was served on the applicant vide memo No. Vig-5/6/00-01 (CAT) dated 14.06.2002 (Annexure-II), giving an opportunity to show cause to the applicant as to why proposed order of recovery arising out of wrong stepping up of pay should not be implemented.

In reply to this notice, the applicant submitted a representation dated 10.07.2002 (Annexure-III) alongwith a copy of his earlier representation dated 29.04.2002 (Annexure-IV) to respondent No.3. After going into full facts and merit of the case, the representation dated 10.07.2002 was disposed of by respondent No.3 vide memo No. Vig-5/6/001-01 (CAT) dated 08.05.2003 (Annexure-V), which was communicated to the applicant by respondent No.4 vide No. B-76 dated 30.05.2003. (Annexure-VI)

9. That with regard to para 4.11, of the application the respondents beg to offer no comments.

10. That with regard to the statement made in para 4.12, of the application the respondents beg to state that a copy of the letter dated 09.03.1998 written by the Postmaster, Kohima H.O. to Assistant Director (Accounts) on audit objection, is placed at Annexure-XI. Vide this letter the Postmaster, Kohima H.O. has merely stated his views on various audit objection, and it was up to the competent authority to decide whether his views were in consonance with existing departmental rules.

11. That with regard to para 4.13 & 4.14, of the application the respondents beg to offer no comments.

12. That with regard to the statement made in para 4.15, of the application the respondents beg to state that it is humbly submitted that since the stepping up of pay by respondent No.4 was irregular and not in consonance with existing rules, the need to issue show cause notice was not felt. However, in pursuance of CAT, Guwahati Bench judgement dated 06.03.2002 in OA No.356/2000 (Annexure-1), a show cause notice was served on the applicant by respondent No. 3 on 14.06.2002 and the applicant in response submitted his representation dated 29.04.2002 to respondent No.3. After going through full facts and merit of the case, the respondent No.3 passed a speaking order vide memo No. Vig/5/6/00-01 dated 08.05.2003 (Annexure-V) which has already been communicated to the applicant by respondent No.4 vide memo No. B-76 dated 30.05.03 (Annexure VI). Thus earlier deficiency of not serving the show cause notice before resorting to recovery stands fulfilled.

13. That with regard to the statement made in para 4.16, of the application the respondents beg to state that it is humbly submitted that stepping up of pay allowed by respondent No.4 in 1989 was issued irregularly in contravention of existing rules which was subsequently detected in 1998 during audit inspection of Kohima Head Post Office and sought to be rectified in the year 2000. Any pecuniary benefit extended to any official on account of irregular pay-fixation cannot be claimed as a matter of right and the Govt. has the right to recover the same, when such irregularities comes to light.

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47

-14-

14. That with regard to the statement made in para 4.17, 4.18, 4.19 & 4.20, of the application the respondents beg to state that as per Govt. of India, Ministry of Finance OM No. F2(78)III(A)/66 dated 04.02.1966, three conditions needs to be ~~fixxx~~ fulfilled for becoming eligible for steeping up of pay of seniors at par with his junior. These are namely :-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identified in the same cadre.

(b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c) The anomaly should be directly as a result of the applications of FR 22(c) renamed later as FR 22(1)(a)(i) in the revised scale. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increment, the above provision will not be invoked to step up the pay of the senior officer.

In the instant case, first two of the conditions are being fulfilled whereas the third condition is not being fulfilled. Higher pay drawn by the junior to the applicant is not directly arising out of application of FR 22(1)(a)(i), as higher pay has become admissible to his junior due to his officiation in the higher post involving assumption of higher degree of duties and responsibilities. In a similar and identical case, Hon'ble Supreme Court of India under civil appellate jurisdiction in Civil Appeal No. 8658 of 1996 vide its judgement dated 12.09.1977 adjudicated that " the increased

pay drawn by a junior because of ad-hoc officiating or regular service rendered by him in higher post for period earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay". Further, in the aforesaid judgement it has decided that the "employees X in question are, therefore, not entitled to have their pay stepped up under the said Govt. order because the difference in the pay drawn by them and higher pay drawn by their juniors is not on account of application of Fundamental Rules FR 22(1 Xa Xi).

15. That with regard to para 4.21, of the application, the respondents beg to offer no comments.

16. That with regard to the statement made in para 4.22, of the application the respondents beg to state that in pursuance to Hon'ble CAT, Guwahati Bench judgement dated 06.03.2002 (Annexure -1), the respondent No.3 served a show cause notice to the applicant to state his views. In response to the show cause notice, the applicant submitted his representation dated 10.07.02 (Annexure-III) and also a copy of his representation dated 29.04.2002 (Annexure-IV) to the respondent No.3. After carefully going through the representation dated 10.07.2002 read alongwith representation dated 29.04.2002. a speaking order was passes by the respondent No.3 vide memo No. VIg-5/6/00-01 (CAT) dated 08.05.2003 (Annexure-V), which was communicated to the applicant by respondent No.4 vide memo No. B-76 dated 30.05.2003 (Annexure-VI).

17. That with regard to the statement made in para 4.23, of the application the respondents beg to state that after carefully going through the representation dated 10.07.2002 read alongwith representation dated 29.04.2002 submitted by the applicant, and considering full facts and merit of the case, respondent No.3 gave his considered decision that stepping up of pay as claimed by the applicant with reference to pay of Shri D. Deori is not permissible. He further directed respondent No.4 to recover the overdrawal amount in instalment as per rules. Thus, it can be seen that the respondent No.4 disposed of the representation dated 10.07.2002 and 29.04.2002 by a speaking order and left the secondary issue of recovery of excess payment made to the applicant and his refixation of pay as per rules to respondent No.4, as respondent No.4 is the immediate superior authority for taking a decision on the matter.

18. That with regard to the statement made in para 4.24 & 4.25, of the application the respondents beg to state that as earlier, adequate opportunity was given to the applicant by serving show-cause notice to the applicant on 14.06.2002 by respondent No.3, in pursuance to Hon'ble CAT, Guwahati Bench directions contained in its order dated 06.03.2000 in OA NO. 356/2000. The applicant submitted his representation dated 10.07.2002 and 29.04.2002 to respondent No.4 and after carefully considering the full facts and merit of the case, the respondent No. 4 gave his decision vide memo No. Vig-5/6/00-01 (CAT) dated 08.05.2003 (Annexure-V) which was communicated to the applicant by respondent No.4 vide memo No. B-76 dated 30.05.2003 (Annexure -VI).

Respondent No.3 passed a speaking order citing adequate reasons for not accepting the say of the applicant vide above mentioned memo dated 08.05.2003. It has been stated out in the speaking order that since Shri D. Deori was officiating in higher posts carrying a higher scale of pay on promotion under one time bound promotion scheme and accordingly his pay was fixed at a higher stage than that of the applicant taking into account the period of his officiations. It was further held that Shri Deori officiated in a higher scale of pay as per the relevant rules and the anomaly arose not directly as a result of application of the provisions of FR 22(C), later renamed as FR 22(1)(a)(i). The matter was also got examined through by the Director Accounts (Postal), Kolkata, who also opined vide his DO No. Stepping UP/A.K. Singh/D. Deori/IC-2510 dated 20.03.2003 that stepping up of pay of applicant with reference to Shri D. Deori is not permissible. The contention made by the applicant vide his representation dated 10.07.2002 and 29.04.2002 was not found tenable and based on facts. Further, as stated earlier, even Hon'ble Supreme Court of India did not find any merit in similar case, as contained in its judgement dated 12.09.1997 in civil appeal No. 8658 of 1996 (Annexure-XII).

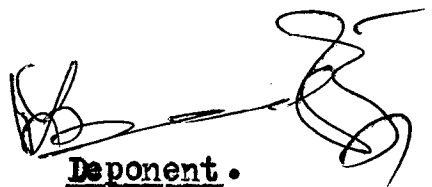
19. That with regard to para 4.26 of the application the respondents beg to offer no comments.

Verification.....

V E R I F I C A T I O N

I, P. Chakraborty, Dy. Supdt. of Post Offices,
Nagaland, Kohima, being authorised do hereby solemnly
affirm and declare that the statements made in paragraphs
2 to 6, 11 to 17, 18 of this written statement are
true to my knowledge, those made in paragraph 7 to 10, 18 being
matters of record are true to my information derived therefrom
and those made in the rest are humble submission before the
Hon'ble Tribunal.

And I sign this verification on this 1st day of
August, 2003 .


Deponent.

19

Annexure - 1

55-
A

To,
The Postmaster General
N.E. Circle Shillong,
Meghalaya - 793001.

(Through Proper channel)

Subj:- SHOW CAUSE NOTICE in respect of order dtd. 6th March 2002
of Hon'ble Central Administrative Tribunal Guwahati.

Ref:- Your kind letter no Vig-5/6/00-01 (CAT) dtd. at
Shillong the 14th June '02.

Respected Sir,

Most humbly and respectfully with reference to
the above, I beg to lay the following for your kind
perusal, sympathetic considerations and judicious actions.

That Sir, on receipt of judgement of Hon'ble CAT
Guwahati, I had already submitted my representation pin-
pointing all facts and circumstances to your kind authority
through DPS Kohima on 9-5-02 vide Kokochung SO registered
letter no 3545 for favourable considerations.

29.4.2002
p 58

Now, your goodself has sought for my reply to the
SHOW CAUSE NOTICE for the same cause and against the said
order of the Hon'ble CAT. In this connection, I beg to
mention that my aforesaid representation, a copy of which
is enclosed herewith, may kindly be considered as my reply
to your SHOW CAUSE NOTICE and your favourable order may
kindly be issued at an early date to avoid my further taking
shelter of higher court for redressal of my grievances.

With kind regards,

Yours faithfully,

AB
A. B. K. Singh
SPM (HSG-II)
Kokochung MDJ - 798601
Nagaland.

Advance copy to:

Shri Tapanneer Salyam, Hon'ble PMG, NE Circle
Shillong for his kind perusal and favourable sympathetic
considerations. A copy of my representation dtd. 9-5-02 along-
with its enclosures are again enclosed herewith.

(Self)

(A. B. K. Singh)
SPM (HSG-II)
Kokochung MDJ
Nagaland - 798601

Amr II

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AB

DEPARTMENT OF POSTS, INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL,
N.E. CIRCLE SHILLONG.

SHOW CAUSE NOTICE

As per the Hon'ble CAT, Guwahati judgement dated 6th March / 2002 in OA No.356/2000, you are hereby given an opportunity to show cause as to why the proposed order of recovery arising out of wrong stepping up of your pay at par with Sri Dimbeswar Dewri with effect from 19-4-1989 should not be implemented. Your reply in writing should reach the undersigned within a period of 15 (Fifteen) days from the date of receipt of this notice.

T/c
(T.PANNEER SELVAM)

No. Vig-5/6/00-01 (CAT) Dated at Shillong the 14th June /2002.

Copy to,

1. Sri Awadhesh Kr. Singh, SPM, HSG-II, PO-Mokokchung, Nagaland (Through DPS Kohima).
2. The Director of postal services, Nagaland Division, Kohima for information with reference to his letter No.B-2/staff/pay-allowances/Ch.II dtd 27th May/ 2002. The copy of this show cause notice addressed to Sri Awadhesh Kr.Singh SPM, HSG-II may kindly be delivered to him under clear receipt and acknowledgement forwarded to this C.O.
- ✓ 3. Office copy.

Postmaster General
N.E.Circle, Shillong.

16/2002

Annexure - B III

The Postmaster General
N.E. Circle Shillong,
Meghalaya - 793001.

(Through Proper channel)

Sub:- SHOW CAUSE NOTICE in respect of order dtd. 6th March 2002
of Hon'ble Central Administrative Tribunal Guwahati.

Ref:- Your kind letter no Vig-5/6/00-01 (CAT) dtd. at
Shillong the 14th June '02

Respected Sir,

Most humbly and respectfully with reference to
the above, I beg to lay the following for your kind
perusal, sympathetic considerations and judicious actions.

That Sir, on receipt of judgement of Hon'ble CAT
Guwahati, I had already submitted my representation pin-
pointing all facts and circumstances to your kind authority
through DPS Kohima on 9-5-02 vide Kokokchung SO registered
letter no 3545 for favourable considerations.

Now, your goodself has sought for my reply to the
SHOW CAUSE NOTICE for the same cause and against the said
order of the Hon'ble CAT. In this connection, I beg to
mention that my aforesaid representation, a copy of which
is enclosed herewith, may kindly be considered as my reply
to your SHOW CAUSE NOTICE and your favourable order may
kindly be issued at an early date to avoid my further taking
shelter of higher court for redressal of my grievances.

With kind regards,

Yours faithfully,

As...
Awachesh Kumar Singh
SPM(HSQ-II)
Kokokchung MDO - 798601
Nagaland.

Advance copy to:

Shri T. Pannier Selvam, Hon'ble PMG, NE Circle
Shillong for his kind perusal and favourable sympathetic
considerations. A copy of my representation dtd. 9-5-02 along-
with its enclosures are again enclosed herewith.

(Self)

(Awachesh Kumar Singh)
SPM (HSQ-II)
Kokokchung MDO
(Nagaland) 798601

Annexure ~~D~~ IV

22

Page 1 of 8

To

Through Proper Channel

The Chief Postmaster General,
North Eastern Circle,
Shillong - 793 001.

Sub: Benefit of stepped up pay to the level of junior promoted to LSG-Cadre in accordance with Govt. instruction under F.R-22.C [now F.R-22.I.(a)(i)] - case of Shri.A.K.Singh, Sub Postmaster(HSG-II), Mokokchung Sub Post Office (Nagaland).

Ref: Hon'ble CAT/Guwahati decision dated 6th March 2002 on O.A.No.356 of 2000.

Respected Sir,

1. As per the directions of the Hon'ble CAT/Guwahati in the above referred judgment and having been aggrieved of the order issued vide C.O/Shillong letter No.AP/AAO/II/FIXN/95-96 dtd 17.8.2000/ 21.08.2000, the undersigned submits the following facts for favour of your kind information that:

- (1). The undersigned was appointed in the cadre of Postal Assistants with effect from 23.03.1973 and since then he has been continuing in service without any break or interruption.
- (2). The undersigned, after satisfactory completion of 16 (Sixteen) years continuous service in the cadre of Time Scale Postal Assistants, was promoted to the higher cadre of Lower Selection Grade Postal Assistant in the scale of pay of Rs.1400-2300/- with effect from 23.03.1989 vide DPS/Nagaland Memo.No.B-2/Staff/One-Promotion/II dated 20.11.89.

- A copy of DPS/Nagaland Memo.No.B-2/Staff/One-Promotion/II dated 20.11.89 is enclosed as ANNEXURE-A/1.

- (3). By the same order mentioned in para-2 above [i.e. ANNEXURE-A/1], one Shri.Dimbeswar Dewri, P.A., Nagaland Division, [by then officiating as PRI(P)/ Kohima] who was junior to the undersigned, was also promoted to the cadre of Lower Selection Grade Postal Assistant but w.e.f. 26.03.89.

23

- (4). On promotion to the higher cadre [i.e. LSG-P.A.], the pay of the undersigned was fixed at Rs.1440/- while the pay of his junior namely Shri.D.Dewri was fixed at 1640/-. So, the undersigned represented his grievance to the Director Postal Services, Nagaland, Kohima for removal of anomaly and stepping up of his pay equal to his junior.

- A copy of representation dated 21.11.89 is enclosed as ANNEXURE-A/2.

- (5). The Director Postal Services/Nagaland, who is the appointing authority for L.S.G-Cadre officials, after considering the said representation, finally ordered vide Memo.No.B-776/PT-III dated 28.02.90 that the undersigned should be allowed to draw his pay at the stepped up stage of Rs.1640/-, equal to his junior, with effect from 19.04.89 (ie. with effect the date of joining in the LSG-Cadre).

- A copy of DPS/Nagaland Memo.No.B-776/PT-III dated 28.02.90 is enclosed as ANNEXURE-A/3.

- (5). The relief granted by the Director Postal Services/Nagaland, as stated in para-5 above, continued till the benefit was unjustly cancelled vide C.O/Shillong No.AP/AAO/II/ FIXN/95-96 dated 17.08.2000/21.08.2000.

- A copy of C.O/Shillong No.AP/AAO/II/FIXN/95-96 dated 17.08.2000/21.08.2000 is enclosed as ANNEXURE-A/4.

- (6). The undersigned, having been aggrieved of the decision of the Circle Office to disallow the benefits to the undersigned with retrospective effect and consequential recovery, approached the Hon'ble CAT/Guwahati through O.A. No.356/2000. The Hon'ble CAT/Guwahati, while disposing of the said application, has ordered that the undersigned should be given a post decisional hearing before effecting any recovery, as ordered in C.O/Shillong No.AP/AAO/II/FIXN/95-96 dtd 17.08.2000/21.08.2000.

- A copy of Hon'ble CAT/Guwahati Order in O.A.No. 356/2000 dated 6th March 2002 is enclosed as ANNEXURE-A/5.

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Page 3 of 8

2. Hence, the undersigned submits the following grounds for favour of your kind consideration that:

(1). The benefit of stepping up of pay is subject to the following three conditions, as laid down in FR-22(I) (a) (i) [earlier FR-22.C]:

(a). Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre;

(b). The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and

(c). The anomaly should be directly as a result of the application of FR-22(C) now FR-22(I) (a) (i). For example, if even in the lower post, the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provision contained in this decision need not be invoked to step up the senior officer.

In this instant case, it may be seen that:

(a). Both the undersigned and his junior, namely Shri.D.Dewri, belonged to the same cadre of Time Scale Postal Assistants and the posts of L.S.G-P.As, in which they were promoted vide DPS/Nagaland Memo.No.B-2/Staff/ One-Promotion/II dated 20.11.89 [enclosed as ANNEXURE-A/1], were also identical in the Same Cadre. Therefore, the first condition is satisfied.

(b). The scale of pay of the lower and higher posts, viz.T/S P.A & LSG-P.A respectively, were also identical in respect of both the undersigned as well as his junior namely Shri.D.Dewri. Therefore, the second condition is also satisfied.

(c). The anomaly between the basic pay of the undersigned and his junior, namely

Shri.D.Dewri, took place directly as a result of the application of the provision of FR-22.C now FR-22(I) (a) (i) as shown below:

The substantive pay of the undersigned in the lower post, viz. Time Scale Postal Assistant, was more than his junior, namely Shri.D.Dewri, as on 26.03.1989 (ie.the date of promotion of the junior).

The substantive pay of the undersigned in P.A-Cadre as on 26.03.89 was Rs.1390/- in the scale of pay of Rs.975-25-1150-30-1660/- while the substantive pay of his junior, namely Shri.D.Dewri, in P.A-Cadre as on 26.03.89 was Rs.1330/- in the same scale of pay. Therefore, the junior never drew pay at a higher rate than the undersigned in the lower post (ie.T/S-P.A) at any point of time.

As per FR-22.C, past services rendered in the same post, either on substantive or officiating capacity, is to be counted for fixation of initial pay in the promoted post. **Therefore, the pay of the said Shri. D.Dewri was fixed at the stage of Rs.1640/- in the LSG-Cadre with effect from 26.03.89 (ie.the date of his promotion) under FR-22.C duly giving him the benefit of officiating appointments in the LSG-Cadre prior to his regular promotion, while the pay of the undersigned was fixed at the stage of Rs.1440/- under the same FR-22.C he did not get any officiating appointment in LSG-Cadre before his regular promotion purely due to exigencies of service.**

Hence, it is undisputable that the pay of both the senior and junior were fixed in accordance with FR-22.C, and the anomaly between the pay was, thus, directly as a result of application of FR-22.C.

Therefore, the third condition is also satisfied.

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Page 5 of 8

Therefore, the undersigned is fully entitled to the benefit of stepping up of pay in accordance with G.I., M.F., O.M.No.F.2(78)-E.III(A)/66 dated 4th February, 1966.

- A copy extract of G.I., M.F., O.M.No.F.2(78)E.III (A)/66 dated 4th February, 1966 is enclosed as ANNEXURE-A/6.

(2). It has been held by the Hon'ble Supreme Court in **M.L.Mahna Vs. Union of India and Others** case vide Civil Appeal No. of 1996 (arising out of S.L.P.(C) Nos.26584-85 of 1995) decided on 10.05.1996 that if the junior is promoted much earlier to the senior, who is retained in public interest, the senior is entitled to have his pay stepped up to the level of his junior.

In this instant case, it may be seen that Shri.D.Dewri was allowed to officiate as SPM/APM(Acctt)/DPM etc., all along with effect from 04.08.74, while the undersigned did not get any such chance. Shri.D.Dewri was given chances to officiate in LSG-Posts by virtue of his postings nearby Divisional Head quarters and Kohima HO, while the undersigned did not get any such chance as because the undersigned, being a trained telegraphist, was posted in sub Post Offices away from the Divisional Head quarters and Kohima HO. The undersigned, being senior to the said Shri.D.Dewri and eligible for availing officiating chances in place of his junior, has already been deprived of the chance to officiate in higher posts and enjoy higher pay, when his junior namely Shri.D.Dewri was granted such chances before being eligible for TBOP-Scheme, purely because of exigencies of service as because the services of the undersigned, as trained telegraphist, were essential in public interest in sub post offices. Therefore, denial of benefit to the undersigned, to have his pay stepped up to the level of his junior, will certainly cause him serious injustice.

- A copy of extract of the judgment of the Hon'ble Supreme Court, in **M.L.Mahna Vs. Union of India and**

Others case vide Civil Appeal No. of 1996 (arising out of S.L.P. (C) Nos.26584-85 of 1995) decided on 10.05.1996, is enclosed as ANNEXURE-A/7.

- (3). It has been held by the Hon'ble CAT/Jaipur Bench in **B.D.Kubba Vs. Union of India and others case** vide O.A.No.420 of 1995 decided on 07.11.96 that stepping up of pay of senior, in view of senior getting lesser pay than junior who got fortuitous promotion, to be allowed.

In may be seen in this case that the anomaly in pay between the senior and the junior occurred as because the junior was allowed to officiate on a higher post before the senior. The Hon'ble CAT/Jaipur Bench, while disposing of the O.A. referred to above, has clarified that the Hon'ble Supreme Court upheld the ruling of the Hon'ble CAT/Chandigarh in Kalyan Singh Kanwar Vs. Union of India decided on 12.12.94 and dismissed the SLP of the Union of India, for awarding the benefit of stepping up of pay of senior in cases where the anomaly occurred due to fortuitous promotion of the juniors. Therefore, applying the above principles, the undersigned is fully within his entitlements to enjoy the benefits of stepped up pay equivalent to his junior namely Shri.D.Dewri with effect from 26.03.1989.

- A copy of extract of the judgment of the Hon'ble CAT/Jaipur Bench in **B.D.Kubba Vs. Union of India and others case** vide O.A.No.420 of 1995 decided on 07.11.96 is enclosed as ANNEXURE-A/8.

- (4). It has been held by the Hon'ble CAT/Calcutta Bench in **Jiban Ranjan Sengupta Vs. Union of India and others case**, vide O.A.No.1115 of 1994 decided on 12.06.1996, that the pay of seniors with reference to that of juniors who got ad-hoc promotion earlier in the exigency of service should be stepped up in cases where their promotions are made on regular basis.

In the case of the undersigned, Shri.D.Dewri who is junior to the undersigned got ad-hoc promotion to LSG-Posts before becoming eligible for TBOP Scheme in the exigency of service and the undersigned also did not get the chances to ad-hoc

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Page 7 of 8

promotion due to exigency of service as the services of the undersigned was essential in the sub post office where telegraph facility was available.

Therefore, the undersigned is very much entitled to the benefit of stepping up of his pay to the level of his junior with effect from 26.03.89 (ie. the date of regular promotion of his junior) as because the undersigned also got his regular promotion with effect from 23.03.89.

- A copy of extract of the judgment of Hon'ble CAT/ Calcutta Bench in Jiban Ranjan Sengupta Vs. Union of India and others case vide O.A.No.1115 of 1994 decided on 12.06.1996 is enclosed as ANNEXURE-A/9.

- (5). It has been held by the Hon'ble CAT/Hyderabad Bench in Smt.N.Lalitha Vs. Union of India case decided on 15.11.1991 that stepping up of pay permissible when junior gets more pay on account of local ad-hoc fortuitous promotion.

The case of the undersigned is also of similar nature and category and as such the benefits of stepping up of pay is very much entitled to the undersigned with effect from the date of promotion of his junior, namely Shri.D.Dewri, with effect from 26.03.1989.

- A copy of extract of the judgment of Hon'ble CAT/ Hyderabad Bench in Smt.N.Lalitha vs. Union of India case decided on 15.11.1991 is enclosed as ANNEXURE-A/10.

- (6). Fixation of Pay of a Government servant under FR-22.C now FR-22(I)(a)(i) and removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior are absolute and no subordinate authority to the Govt. of India is empowered to take away the benefits awarded under the above rule read with G.I., M.F., O.M No.F.2(78)-E.III(A)/66 dated 4th February, 1966. Therefore, the undersigned can not be denied the benefit the stepped up pay at the stage of Rs.1640/- with effect from 26.03.1989 (ie. date of promotion of his junior namely Shri.D.Dewri).

(7).

Even in the cases where the pay of an official is erroneously fixed at a higher stage than his actual entitlement and the erroneous fixation is subsequently revised and re-fixed, recovery is not permissible from the official concerned as because the administrative authorities are responsible for the wrong/erroneous fixation.

Therefore, no recovery can be ordered from the pay of the undersigned even if there is some error in the fixation of his pay due to erroneous fixation of the pay of Shri.D.Dewri and consequential error in the stepping up.

3. Now, therefore, the undersigned most fervently prays before your kindness that:

- (1). The order for stepping up the pay of the undersigned issued vide Director Postal Services, Nagaland vide Memo.No.B-776/PT-III dated 28.02.90 may be upheld with the modified instruction that the stepping up of pay of the undersigned shall be with effect from the date of promotion of his junior, namely Shri.D.Dewri; and
- (2). Instructions may be issued to Postmaster, Kohima HO to regularize the stepped up pay of the undersigned with effect from 26.03.89, i.e. the date of promotion of his junior, with proper attestation in the service book.

Yours faithfully,

Dated, at *Mokokchung*
the 29th April 2002.

K. S. Singh
(A.K. Singh)
Sub Postmaster (HSG-II),
Mokokchung S.O (Nagaland).

An Advance Copy to:

1. The Chief Postmaster General, North Eastern Circle, Shillong- 793 001 for information.

(Self)
(A. K. SINGH)
Sub-Postmaster (HSG-II)
Mokokchung S.O - 798601
(Nagaland)

Annexure D
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12/05

Staff 62
H412

12 MAY 2003
DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE SHILLONG

Memo No. VIG-5/6/00-01 (CAT)

Dated Shillong, the 8-5-2003

This is regarding disposal of representation dated 29-4-02 of Shri Awadesh Kr. Singh, SPM Mokokchung, MDG, Nagaland in compliance with the order dated 6-3-02 passed by the Hon'ble CAT Guwahati in OA No. 356 of 2000.

As per the said order, the applicant viz., Shri A.K. Singh has to be provided a post decisional hearing by giving him the opportunity to state his views and until completion of this exercise, no recovery as ordered by Circle Office should be made from him. Accordingly, the applicant was allowed an opportunity through a show cause notice dated 14-6-02 to state his views. In reply to the notice, the applicant submitted a representation dated 10-7-02 along with a copy of his earlier representation dated 29-4-02. I have carefully gone through the representation dated 10-7-02 read with representation dated 29-4-02 submitted by the applicant.

In his representation, the applicant put forward the conditions regulating the stepping up of pay as envisaged in FR-22 (1)(a)(i) which was earlier called as FR-22-C. According to the applicant, following conditions are applicable in his case.

- i) Both the senior and junior officers belong to the same cadre and the post in which they have been promoted are identical in the same cadre.
 - ii) The scale of pay of both the officers are identical.
- and
- iii) The anomaly caused directly as a result of application of the provision of FR-22-C, now FR-22(1)(a)(i).

The case in brief is that, the applicant viz., Shri A.K. Singh entered in the Department as Postal Assistant on 23-3-73 and another official viz., Shri D. Deori entered in the Department as Postal Assistant on 26-3-73. Both Shri Singh and Shri Deori got promotion under One Time Bound Promotion scheme to the next higher pay scale of Rs. 1400 to 2300/- with effect from 23-3-89 and 26-3-89 respectively. While the pay of Shri Singh was fixed at Rs.1440/- on promotion in the next higher scale with effect from 23-3-89 the pay of Shri Deori was fixed at Rs.1640/- in the same scale of pay on promotion. Shri A.K. Singh was therefore aggrieved and sought for parity by stepping up of his pay to the level of his junior Shri Deori. In support of his claim, he has put forth points as already discussed.

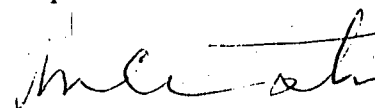
On examination of the relevant records, it is observed that Shri D. Deori, a junior official to the applicant had been officiating in higher posts carrying a higher scale of pay continuously till he was promoted to the same scale of pay on promotion under One Time Bound Promotion scheme and accordingly his pay was fixed at a higher stage than that of the applicant taking into account the period of his officiation. So it can not be said that both the senior and

89

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junior officers belonged to the same cadre *at the time of promotion*. Even though the applicant was senior to Shri Deori by 3 days at the time of entry in the Department, Shri Deori officiated in a higher scale of pay for quite a reasonable time and he was entitled to fixation as per the relevant rules and the anomaly arose not directly as a result of application of the provisions of FR-22-C now FR-22(1)(a)(i). As such the contention of the applicant is not tenable and based on facts. The case has also been got examined thoroughly by the Director of Accounts (Postal) Kolkata who opined vide his DO No. Stepping up/A.K. Singh/D. Deori/IC-2510 dated 20-3-03 that stepping up of pay of Shri A.K. Singh with reference to Shri D. Deori is not permissible.

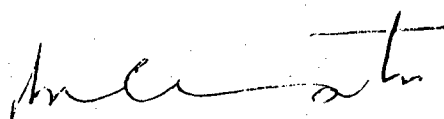
I, Shri P.K. Chatterjee, Chief Postmaster General, North Eastern Circle, Shillong therefore dispose of the representation dated 29-4-02 and 10-7-02 with the order that stepping up of pay as claimed by Shri A.K. Singh with reference to pay of Shri D. Deori is not permissible. The recovery of over-drawal amounts will be made in instalments as per rules and will be decided by the D.P.S., Kohima.



(P.K. Chatterjee)
Chief Postmaster General,
N.E. Circle, Shillong.

Copy to :-

- 1) Shri A.K. Singh, SPM Mokokchung, MDG Nagaland through DPS Kohima.
- 2) The Director of Postal Services, Kohima.
- 3) The Asstt. Director (Accounts), O/O CPMG, Shillong. This refers to his No. AP/AAO/Fixan/95-96/Pt-II.
- 4) The Postmaster, Kohima.
- 5) The Asstt. Director (Staff).
- 6) Spare.



Chief Postmaster General,
N.E. Circle, Shillong.

Annexure - VI

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**DEPARTMENT OF POSTS:INDIA
OFFICE OF THE DIRECTOR OF POSTAL SERVICES
NAGALAND:KOHIMA-797001**

No.B-76

Dated at Kohima the 30.5.03

To,

Shri. Awadesh Kumar Singh
SPM, Mokokchung MDG-798601

Sub:- Regarding disposal of representation dated 29.4.02 of Shri. Awadesh
Kr.Singh, SPM Mokokchung MDG in compliance with the order dated
6.3.02 passed by the Hon'ble CAT Guwahati in OA No. 356 of 2000.

A copy of the Chief Postmaster General, N.E Circle, Shillong letter
Memo No.VIG-5/6/00-01 (CAT) dated 8.5.2003 of the subject matter referred to
above is forward herewith for your information and disposal.

Enclosed -as above.


(Rakesh Kumar)

Director of Postal Services
Nagaland, Kohima-797 001

Copy to:-

The Postmaster, Kohima HPO, he will please refer to the CO letter stated above
and adhered to the instruction contain therein.

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE DIRECTOR OF POSTAL SERVICES
MADRAS: KANINA.

Memo No. P3-7/92-13

At, Kothima, 29-1-1993.

In this office Memo of over number dtd 30-10-92 it was proposed to take action against Shri A.K. Singh Dy SPN Dinapur under Rule 16 of CCS (CCA) Rules 1965. Having found no disposal from this office of the aforesaid memo and also receiving no defence fresh charge sheet was issued on 30-10-92/11-1-93 on the same charge to the said Shri A.K. Singh. The statement of mis-conduct or mis-behaviour framed against the said Shri A.K. Singh is reproduced below:-

Shri A.K. Singh while functioning as Dy. Sub-Postmaster Dinapur S.O. during the period from 14-7-92 to 28-7-92 failed to compute the VP articles in deposit with reference to the entries in the register of VP articles received. A number of VP articles already delivered by the concerned P/A (Shri T. Lushai) was showing as in deposit in the register of VP articles received and the said Shri Singh failed to detect the irregularities resulting in loss of Govt money to the tune of Rs. 26,129/-. Thus the said Shri A.K. Singh violated the provisions of Rule 220 (1) of post and Telegraph Manual Vol-VI Part I.

The said Shri A.K. Singh submitted his defence statement against the charge on 10-1-93 and the same was received by this office on 25-1-93 which is reproduced below:-

Respected Sir,

With reference to your memo cited above the d/t. your humble defendant has the honour to submit the following defence statement for favour of your perusal and favourable orders:-

1. That your humble defendant took over charged of DSPM Dinapur SO w.e.f. 14-7-92 and that the parcel branch (issue and delivery) of the SO was placed under the charge of DSPM according to the memo of distribution of works.
2. That one Shri T. Lushai was the counter clerk of the said parcel branch from a date prior to my resumption of duty as DSPM on 14-7-1992.
3. That your humble defendant tried to verify the number of VP articles shown as in deposit as per VP register by the effort came futile as the dealing assistant (Shri T. Lushai) played tactics and even the defendant was warned for physical assault. The defendant brought to notice of the situation in the said branch to the then SPN (MO-IX) Shri B.K. Das who failed to control or to change the incumbent.
4. That having found no alternative, your humble defendant took a final decision against number of odds such as threatening of life etc. and could verify the actual VP articles lying in deposit and detected a number of VP articles short which were received and delivered at several dates before the defendant resumed as DSPM.

Contd.....2.

34

From the above facts your honour will agree to the facts that - (i) it was the defendant who took risk in the interest of service and detected a great irregularity which started since long and remained undetected by other officials and for which the defendant deserves good recommendations from the higher authorities and (ii) the defendant is being charged for faults committed by other officials before joining his duties as because the most of the amount misappropriated by the principal offender took place prior to 14-7-92, date of joining by the defendant.

5. That Sir, under what circumstances your humble defendant was compelled to report the matter to take necessary actions and to stop further loss to the Govt. for that original statement recorded by him on 7-8-92 may kindly be referred to,

6. That the defendant is more than sure that if your honour could have gone through that statement, surely he would not have been served such a chargesheet, because neither he failed in discharging his duties nor violated any departmental rules and proceedings during the period for which charges have been framed against him and it has been proposed to take action against him under Rule 160 CCS (CCA) Rules of 1965.

Now your humble defendant approaches your honour and request to quash the charges framed against him to meet the ends of natural justice.

In fine, your humble defendant would like to add one more sentence to the fact that a defence statement of your office memo No. P3-17/92-93 dtd 30-10-92 (which was received by him on 16-11-92 has already been submitted on 21-11-92 and despatched under Dinsapur 30 AC No. 3231 dtd 21-11-92 and that it appears, the defendant has been re-chargesheeted under your kind memo No. P3-17/92-93 dtd Koh the 30-10-92 for the same charges before the fact of the earlier charge is yet to be decided.

I have gone through the defence statement of the said Shri A.K. Singh carefully where in he argued that he took over the charge of Dy. SP, Dinsapur on 14-7-92 and tried to verify the number of VP articles shown in deposit. But the efforts were futile as Shri T. Lushai PA played tactics and even that he was warned for physical assault. The statement that the said Shri Singh brought the situation to the notice of the SP (HIO-II) Dinsapur is not based on proof.

While Shri T. Lushai continued to work in VP branch the said Shri Singh could verify the stock of VP articles on 28-7-92. It is therefore, not understood what prevented him from verifying the stock of VP articles during the period from 14-7-92 to 27-7-92. Had he verified the stock of VP articles in deposit in time the misappropriation cases committed by Shri T. Lushai could have been detected and the loss sustained by the Govt. due to misappropriation of values and commission of VP articles by Shri Lushai after 14-7-92 could have been avoided. Hence the charges brought against the officer are found fully proved. However, considering his length of service etc. of the said Shri A.K. Singh, I am taking a lenient view of the case and pass the following orders.

Contd.....3.

Annexure - A III - 65
(35) 27


ORDER

I, Mr. Lalhluo, Director of Postal Services, Nagaland, Kohima punished Mr. A.K. Singh Dy. SPM, Dimapur with recovery of Rupees four thousand in twenty equal installments at the rate of Rupees two hundred per month from his pay and allowances commencing from the month of February 1993.

Sd/-
(LALHLUO)
Director of Postal Services,
Nagaland, Kohima-797001.

Copy to:-

1. ✓ The Postmaster Kohima for information and necessary action.
2. The Dy. (P) Calcutta.
3. The C.P.M.S, 2.7. Dimapur, Shillong w/z to COs No. 144/3/24-2/92-93.
4. Mr. A.K. Singh Dy. SPM, Dimapur.
5. 7. Dy. (P) of the 1st 1st/penal register.
6. Spare.


Director of Postal Services,
Nagaland, Kohima.

(36)

(8) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior.—(a) *As a result of application of F.R. 22-C.*—In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961, drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:—

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R. 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R. 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[G.I., M.F., O.M. No. F. 2 (78)-E. III (A)/66, dated the 4th February, 1966.]

(37)

ANNEXURE:- ☒

67
as

MEMO NO B-776/PT III DATED: KOHLHA 23/2/90

In suppression of all previous orders and in pursuance of FR -22(30)C(10) and GIMI OM NO F2(73)-3 III (9)/66 dated 4/2/66, Shri A.K. Singh officiating Assistant Sub-Postmaster Dinapur Sub-Post Office is hereby allowed to draw his pay @ Rs 1640/- with effect 19/4/89 (The date of his joining duties in the cadre of Lower Selection Grade).

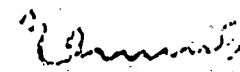
SI/-

Copy to :-

(a) The Head Postmaster Kohima Head Post Office. for information and necessary action.

(b) The official concerned.

(c to c) Spare.


DIRECTOR OF POSTAL SERVICES:
DAGALAND : KOHLHA.

(38) Annexure - X

DEPARTMENT OF POSTS, INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL, N.E. CIRCLE, SHILLONG.

To,
The Postmaster,
Kohima H.P.O.,
Nagaland-797001.

No. AP/AAO/II/FIXN/95-96

Dated at Shillong the 17.8.2000.

Subject:- Regarding Stepping up of Pay of Shri A.K. Singh,
APM, Kohima H.O with his Junior, Shri Dimbeswar Deori,
PA, Guwahati.

Ref:- Your No. 1-5/Book/97-98 dated 9.3.98.

With reference to your office letter referred above, this is to inform that on comparative scrutiny of the Service-Books of Shri A.K. Singh, APM Kohima H.O and Shri Dimbeswar Deori PA, Guwahati the following have come to light.

That, the Senior official, Shri A.K. Singh entered the Department as PA with effect from 23.03.73, while the Junior official entered in the Department as PA with effect from 26.03.73. The pay of both the officials was fixed at Rs. 260/- in the scale of Rs. 260-480/- with DNT on 1st March each year. The pay of Shri A.K. Singh was subsequently fixed at Rs 276/- (ie Rs. 284/-) with an advance increment with effect from 1.3.75 on account of his having undergone the Telegraph Mess Training as reported in your office letter referred above. Copy of the above order is not found enclosed in the Service-Book. The same may kindly be enclosed in Service-Book.

The first Part of the Service-Book of Shri A.K. Singh, APM Kohima, for the period from 23.3.73 to 20.7.76 which is reported to have been wanting may kindly be reconstructed.

That, the official, Shri Dimbeswar Deori was allowed to officiate as SPM/APM Acctt/DPM etc. all along with effect from 4.8.74, but before the eligible period for THOP scheme, while the Senior official, Shri A.K. Singh worked simply as T/S Clerk upto the period of eligibility of THOP scheme. By virtue of officiating capacity the pay of Shri Dimbeswar Deori was fixed at 1440/- on 1.2.89 in the scale of Rs(1400-2300), while the Senior official, Shri A.K. Singh was drawing pay at Rs. 1390/- with effect from 1.3.89 in the scale of Rs. (975-1660) and at Rs. 1440/- with effect from 23.3.89 in the scale of Rs. (1400-2300) in the THOP scheme, therefore, awaiting in drawal of enhanced pay by the Junior official Shri Dimbeswar Deori. The pay of Shri A.K. Singh was finally stepped up from Rs. 1440/- to Rs. 1640/- with effect from 19.4.89 vide DPE/Kohima's letter No. B-776/Pt-III dated 28.2.90. The excess pay drawn by the Junior official is not due to any application of FR-22(1)(a)(1).

Therefore, stepping up of pay of Shri A.K. Singh with effect from 19.4.89 is not in order. The same should be cancelled and over payment as a result of wrong stepping up of pay should be recovered under intimation to this office and DA(P) Calcutta.

The Service-Book of Shri A.K. Singh APM Kohima is enclosed for further maintainance.

This is issued in record with Shri A.K. Singh.

(Darhlira)
Asstt. Postmaster General(A/Cs),
Asstt. Chief Postmaster General,
N.E. Circle, Shillong.

39 Annex XI

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To,

Shri. Niranjan Das,
Asstt. Director (A/Cs)
O/D the Chief Postmaster General
N.E.Circle, Shillong-793001

No:1-1/5-Book/97-98

Dtd. Kohima the 09.03.98

Sub:- Regarding concurrence - Stepping-up case
of Shri. A.K. Singh, A.P.M. Kohima HD.

Ref:- Your office letter no. AP/AO/II/FLXN/95-96
dtd. at Shillong the 11.01.92.

Sir,

With reference to the above the Service book of Shri. A.K. Singh, APM, Kohima HD alongwith certified copy of audit remark and the original copy of the order of the DFS, memo no. B-76/Pt.-III dtd. 28.2.90 are forwarded h/w for according necessary financial concurrence.

As regards fixation of his pay as arrived upon due to stepping-up to the scale of Rs.1640/-, it is seen that the first part of the service book is not available and its whereabouts could not be ascertained. It is learnt that the 1st part of the S/Book was once seized by the C.B.I with HD at Shillong in connection with certain inquiry and thereafter they did not return and reported lost. Hence, the entries whatever made from his date of joining in the department i.e. on 23.03.1973 till 20.07.1976 is not available.

However, it is seen that the Audit during internal check has made two (2) objections i.e.:-

(i) That the official was appointed as T.S. Clerk on 23.03.73 at Rs.260/- of pre-revised scale and thus his pay as on 01.03.74 should have been Rs.268/- with DNI on 01.03.75. In this case it is seen that after entering in the service, the official was deputed for morse telegraph training and on completion he was awarded one advance increment of Rs.8/- w.e.f. 01.03.75 hence alongwith the usual increment of Rs. 8/- which was due on 1.3.74 and again on 1.3.75, the pay of the official was Rs.284/- and the fixation was completely in order. But it is suspected that the Audit while writing the objection might have written erroneously the date 01.03.74 instead of 01.03.75. The copies concerning to deputation and completion of morse training have been obtained from the official and kept in the service book for ready reference.

(ie.) The 2nd objection raised by the Audit is that the official on completion of 16 yrs of service on 23.3.89 was allowed to enjoy the pay of Rs.1440/- with DNI on 01.03.90 though his pay on TEOF should be fixed at Rs.1400/-.

Kohima Hc
21 No. 1026 dtd 10-3-98

As regards stepping up of pay at Rs.1640/- as on 19.04.89 with DNI on 01.04.90 with respect of the pay of Shri.D. Deori, PA who is now transferred to Assam Circle, the necessary order of the then DPS, Kohima had already been furnished alongwith the representation of the official and pernaas nothing more is required to be highlighted as the order of stepping up by the DPS was issued only examining the allegation lodged by the official to the effect that his junior viz. Shri.D.Deori was allowed to officiate and continue in the higher scale ignoring the official's seniority. (A certificate from the then DPS Kohima attached b/w).

It is also requested to kindly convey the approval of the Circle Office for re-construction of the first part of the Service book of the official with the available records, *necessary & otherwise the Service book to be prepared with care.*

Encl:- As above.

Postmaster HSG-II
Kohima NO-797001

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AUDIT REMARK

NO 25. Pay fixation :- Shri Awadhesh Kumar Singh, SPM entered into service as T.S clerk with effect from 23-03-73 in the pre-revised scale of pay rs 260--480. But his pay particulars from 23-03-73 to 20-07-76 is wanting in the service book. On the date of appointment his pay would have been rs 260/i.e minimum of the scale with DNI ON 01-03-74. But it appears from the pay particulars as recorded in the service book on later dates that the official was allowed to draw pay RS 276/ as on 01-03-74 with DNI on 01-03-75 and accordingly on completion of 16 years service on 23-03-89 his pay was fixed at rs 1440/ with D.N.I. on 01-03-1990 though his pay on T.B.O.F should have been fixed at RS 1400/

Moreover, pay of the official was stepped up at RS 1640/ as on 19-04-1989 with D.N.I 01-04-90 with respect to the pay of one Shri D. Deori P.A who is now on deputation to the P.S.D Guwahati. As the service book of Shri D. Deori is not

available in the H.O. the case of stepping up could not be scrutinised. The service book of Shri D. Deori may be called for from the P.S.D Guwahati for scrutiny.

As the case is doubtful one, it may please be got reviewed by circle internal financial adviser on the light of above observation and recovery of over payment of pay and allowances may be made. The regularisation of pay and allowances may also be recorded in the service book under intimation to the D.A. (P) Calcutta.

114
Annexure - XI

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Certified to be true copy
As per [Signature]
..... 1997
Supra (.....)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8658 OF 1996

215411

Reported in
1997 (7) SC
690.

Union of India & Anr.

... Appellants

versus

R. Swaminathan

... Respondent

[With C.A.Nos. 8810, 8690-94, 8731-8777, 8876, 8813, 8680-82, 8684-8686, 8873, 8874, 8778-8800, 8814-8816, 8817-8818, 8875, 10978 of 1996, 8811-8812, 8687, 8730, 8689, 8872 of 1996 689, 690 of 1997, C.A.Nos. 6267-6287 of 1997 (@ SLP(C) Nos. 11886-11887, 13830-13832, 18255, 18903, 20988, 23712, 20488, 24726, 24729, 25067-25068, 25132, 24759, 24238 of 1996, 3117, 2849 of 1997, 17452.. /97 (cc 3258/97), 3796/97]

JUDGMENT

Mrs. Sujata V. Manohar, J.

Delay condoned.

Leave granted in the Special Leave Petitions.

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43

These appeals have been filed from the judgments of different Benches of the Central Administrative Tribunal. The employees who are before us belong to the Departments of Posts and Telegraph and Telecommunications. They can be broadly classified into two categories: those who belong to the Accounts stream and those who belong to the Engineering stream. In the Accounts stream we are concerned with two posts, the posts of Assistant Accounts Officer and the next promotional post of Accounts Officer. In the Engineering stream, there are employees belonging to the Telegraph Traffic Services and employees belonging to Posts & Telegraph Electrical Wing Services. In the Telegraph Traffic Services, we are concerned with the posts of Junior Engineer and the next promotional post of Assistant Engineer. In the stream of Telegraph Traffic Services we are concerned with the posts of Assistant Superintendent, Telegraph Traffic subsequently re-designated as Junior Telecom Officer and the next promotional post of Superintendent, Telegraph Traffic now designated as Sub-Divisional Engineer. In the Posts & Telegraph Electric Wing we are concerned with the post of Junior Engineer and the next promotional post of Assistant Engineer. In C.A. No.8730/96 the respondent was a Junior Stenographer in the National Aerospace Laboratories, Council of Scientific and Industrial Research. The question raised is the same: of Pay fixation on promotion.

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All these appeals and special leave petitions raise a common question relating to interpretation of certain Fundamental Rules which govern the services of all these employees, and certain Government Orders issued in this behalf. The promotees who are respondents in these appeals claim that they are getting in the promotional post less pay than their juniors who have been subsequently promoted to the same post. This is an anomaly which should be removed by stepping up their pay to the same level as their junior from the date he was promoted.

For the sake of convenience we are referring to the facts in Civil Appeal No. 8658 of 1996. The respondent, R. Swaminathan, at the material time was an Accounts Officer with the Madras Telephones. Prior to his promotion as Accounts Officer, he held the post of Assistant Accounts Officer. On his promotion to the post of Accounts Officer on 18.2.1980 his pay was fixed at Rs. 2675/-. One J.N. Misra, who was junior to the respondent, was also subsequently promoted to the post of Accounts Officer. His pay, however, was fixed at Rs. 3125/-. The respondent thereupon filed O.A. No. 1324 of 1993 before the Central Administrative Tribunal, Madras Bench claiming that his pay should be stepped up to equal that of his junior J.N. Misra from the date on which the

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anomaly arose and that he should be paid all arrears arising on account of such re-fixation. The Tribunal by its judgment dated 9.2.1994 allowed the respondent's application on the basis of its earlier decision which is also the subject matter of appeal before us.

Fixation of pay on promotion to a higher post is governed by Fundamental Rule 22(I)(a)(1) which was formerly Fundamental Rule 22-C. It is as follows:

"F.R.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.

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The proviso to fundamental Rule 22 is as follows:

"Provided that, both in cases covered by Clause (a) and in cases..... covered by Clause (b), if he--

(1) has previously held substantively or officiated in

(i) the same post,

(ii).....

(iii).....

(2)

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay.

For the fixation of pay on promotion, therefore, one has to first look at the pay being drawn by the promotee in the lower post. This pay in the lower post must be increased by one increment in that pay-scale. His initial pay in the time-scale of the higher post is fixed at the stage next above this notional pay arrived at in the lower post.

47

The fixation of this pay in the higher post is, however, subject to the proviso. If the person so promoted has earlier officiated in that higher post or substantively held that higher post for short or long duration, then, (1) his initial pay which is fixed under Rule 22(1)(a)(1) shall not be less than the last pay which he drew when he last held the higher post. (2) The period during which he drew that pay on such last and any previous occasions shall count for increments in the time-scale of the pay for the higher post. For example, if other promotee had previously, on various occasions, officiated in that higher post for different periods, and if the sum total of periods for which he so officiated is more than 12 months, he would be entitled to an increment in that higher pay-scale. His initial pay, therefore, on his regular promotion will be fixed, taking into account not merely his entitlement on the basis of his notional pay in the pay-scale of the lower post, but also taking into account the last pay drawn by him while he was officiating in the higher post, and also counting the previous periods during which he so officiated for his increment in the higher pay scale. The Department has also, in this connection, drawn our attention to Fundamental Rule (26) which, inter alia, provides as follows:

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"F.R. 26(a): All duty in a post on a time-scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment."

.....

We are, however, in the present case, concerned basically with Fundamental Rule 22(I)(a)(1) and the proviso to Fundamental Rule 22 because, in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional post for different periods on account of local ad hoc promotions granted to them. This is because the Department of Telecommunications is divided into a number of Circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts in question against short-term vacancies upto 120 days in the event of the regular panelled officers not being available in that Circle. This period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the senior-most official in the Circle is allowed to hold the

49

charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the exigencies of work. This practice, we are informed, has been followed in all Circles in the Department of Telecommunications since 1970. This is because, at times it is not possible to fill up all the vacancies in a particular Circle for various reasons such as non-joining by a particular person, chain promotions or short-term vacancies arising on account of leave etc. It is submitted before us by the Department that it is not always possible to convene the meetings of the departmental promotion committee for filling up all the posts which are only available for short periods on an All India basis because of administrative problems. To fill up this gap, Government has issued instructions from time to time to allow local officiating arrangements in the interest of work. The department has also pointed out that all the aggrieved employees in these appeals have availed of such officiating promotions as and when such occasion arose in their Circle and they were eligible. The juniors, therefore, in each of these cases who have received a higher pay on their regular promotion than the seniors, have received this higher pay on account of the application of the proviso to Fundamental Rule 22.

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According to the aggrieved employees, this has resulted in an anomaly. Government Order bearing No.F.2(73)-E.III(A)/66 dated 4th of February, 1966, has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior. It provides as follows:

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(10) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior.--(a) As a result of application of F.R.22-C.-- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:--

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) the anomaly should be directly as a result of the application of F.R.22-C. For example, if even in the lower post the junior officer draws from time

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to time a higher rate of pay than the senior by virtue of grant of advance increments. The above provisions will be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R. 22. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay.

As the Order itself states, the stepping up is subject to three conditions: (1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts should be identical and (3) anomaly should be directly as a result of the application of Fundamental

Rule 22-C which is now Fundamental Rule 22(1)(a)(1). We are concerned with the last condition. The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule

22(1)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay-scale of the post to which he is promoted on account of his past service and

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also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping of the pay of the seniors.

The Office Memorandum dated 4.11.1993, Government of India, Department of Personnel & Training, has set out the various instances where stepping of pay cannot be done. It gives, inter alia, the following instances which have come to the notice of the department with a request for stepping up of pay. These are:

- (a) Where a senior proceeds on Extra Ordinary Leave which results in postponement of Date of Next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade:
- (b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier. Junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term.

190
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(c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay at par with the junior.

(d)
.....

There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay.

The aggrieved employees have contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post. if such chance of officiation arises in a different Circle. They have submitted that since there is an All India seniority for regular promotions, this All Indian seniority must prevail even while making local officiating appointments within any Circle. The question is basically of

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administrative exigency and the difficulty that the administration may face if even short-term vacancies have to be filled on the basis of All India seniority by calling a person who may be stationed in a different Circle in a region remote from the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the Proviso to Fundamental Rule 22.

The employees in question are, therefore, not entitled to have their pay stepped up under the said Government Order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of any anomaly; nor is it a result of the application of Fundamental Rule 22(1)(a)(1).

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The appeals are, therefore, allowed and the impugned orders of different Benches of the Central Administrative Tribunal which have held to the contrary are set aside. There will, however, be no order as to costs.

.....CJI.
[J.S.Verma]

.....J.
[Sujata V. Manohar]

.....J.
[B.N.Kirpal]

New Delhi:
September 12, 1997



MAILED BY MY PERSON

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6/11/97

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