

Central Administrative Tribunal
Jabalpur Bench

OA No.22/06

Jabalpur, this the 15th day of December 2006

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.M.K.Gupta, Judicial Member

S.R.Pandey
Retired Dy Postmaster
R/o Jawaharganj, Ajad Ward
Gaderwara (M.P.)

(By advocate Shri S.Chakravorty)

Versus

1. Union of India through
its Secretary
Ministry of Communication
Department of Posts
New Delhi.
2. The Chief Post master General
Department of Posts
M.P.Circle, Bhopal
3. Sr.Superintendent
Post Office, Division Hoshangabad
Hoshangabad (MP). Respondents.

(By advocate Shri A.P.Khare)

O R D E R (oral)

By M.K.Gupta, Judicial Member

Applicant seeks a direction to respondents to re-calculate his pension and fix it properly as per Rule 34 of CCS (Pension) Rules 1972 and grant him the benefit of commutation, along with arrears of pension and interest, besides costs



2. Admitted facts of the case are that prior to December 1995, he was in the pay scale of Rs.1400-2300/- and as on 31st December 1995, his basic pay was Rs.1800/- in the aforesaid pay scale. Under the scheme of BCR, he was promoted w.e.f. 1.1.96 in pay scale of Rs.1400-2600/- and accordingly his pay was fixed at Rs.1900/-. On implementation of the recommendations of 5th Central Pay Commission (CPC), the scale of Rs.1400-2600/- was revised to Rs.5000-8000/-. He retired on attaining the age of superannuation on 28.2.2005 and accordingly his pension was fixed. The grievance is that his pension ought to have been fixed at Rs.5348/-, instead of 5235/- as reflected vide PPO. Despite representations made in this regard, no needful had been done. He had been compelled to approach this Tribunal. Placing reliance on model table No.19 dealing with existing pay scale of 1400-2600/- and revised pay scale of Rs.5000-8000/- in S-9 category, it was stated that when the applicant's pay was Rs.1900/-, it ought to have been fixed at Rs.5900/- and was rightly fixed.

3. Respondents resisted applicant's claim stating that on the date of his retirement, his pay should have been Rs.7100/- instead of Rs.7250/-. Due to wrong fixation, he was paid over and above to what had been due. However, his pension was correctly re-calculated based on his correct basic pay due to him during the preceding 10 months. Director, Postal Accounts, Bhopal, pointed out the mistake at the time of authorization of pension. Applicant's pay was wrongly fixed w.e.f. 1.1.96 on implementation of 5th CPC. His pay as on 1.1.1996 ought to have been Rs.5750/-, instead of Rs.5900/- fixed earlier.

4. Shri A.P.Khare, learned counsel for respondents pointed out that Government of India's clarification - Rule 7 (4), as reproduced in Swamy's Pay Rules (R-2) was applicable. The said clarification relates to OM dated 15.12.86 and provided that in case of Government servants promoted to a higher post on or after 1.1.86, pay in the revised scale should be fixed with reference to the lower post under the revised pay and then the pay fixed in the revised scale of the higher post under normal rules. Vide communication dated 27th July

2005, Assistant Accounts Officer, Postal Accounts, Bhopal communicated to Senior Superintendent of Post Offices, Hoshangabad Division about the mistake committed by the respondents in pay fixation.

5. We heard learned counsel for the parties and perused the pleadings carefully. The short question that needs consideration is whether the pay of the applicant as on 1.1.96 when he was promoted in the pre-revised scale of 1400-2600/- (revised to Rs.5000-8000/-) ought to have been Rs.1900/-, which was corresponding to Rs.5900/- in revised scale? OR should it have been fixed in terms of Govt. of India, Ministry of Finance OM dated 15.12.86?, as projected by the respondents.

6. To a pointed query raised by this Bench as to whether the OM dated 15.12.86 was mutatis mutandis applicable to pay fixation carried out on or after 1.1.96 on implementation of the 5th CPC, no reply, what to speak of satisfactory reply, came forth. The issue which falls for consideration lies in narrow compass whether pay on the promotional post on 1.1.96 in the pay scale of Rs.1400-2600/-, revised to Rs.5000-8000/-, should have been first determined in the earlier post held in the pay scale of 1400-2300/- or not. It is undisputed fact that every pay commission's recommendation is independent and provides fresh cause of action. From perusal of model table No.19 dealing with existing and revised scales of pay of Rs.1400-2600/-, revised to Rs.5000-8000/- in S-9, it would be clear that if the basic pay as on 1.1.96 was Rs.1900/-, the revised pay should be Rs.5900/-. It is an undisputed fact that the basic pay in the lower post prior to his promotion under BCR scheme as on 31.12.95 was Rs.1800/- in the pay scale of Rs.1400-2300/- under the rules. The said scale of Rs.1400-2300/- was revised to Rs.4500-7000/- and the revised pay of Rs.1800/- would have been Rs.5500/-. On promotion under BCR scheme, in the pay scale of Rs.5000-8000/-, his pay had been fixed at Rs.1900/- after granting one increment of the promotional post. The increment in the pay scale of Rs.5000-8000/- was Rs.150/-. Respondents' contention is that his notional increment

in the promotional post should have been Rs.50/- and therefore his basic pay was Rs.1850/- and it was wrongly fixed at the stage of Rs.1900/-.

7. On a careful consideration of all aspects, we notice that there is no allegation or even suggestion made that O.M. dated 15.12.86 issued in the wake of 5th CPC is mutatis mutandis applicable to pay fixation done on or after 1.1.1996 on implementation of 5th CPC. Similarly, we find that there is no Rule 7 (4) under the CCS (Revised Pay) Rules, 1997. In fact, the reliance placed by respondents is to Govt. of India decision No.4, as reproduced by the Swamy's CCS (RP) Rules, 1997. Similarly, it was neither a suggestion nor stand of respondents that it was the applicant who had been responsible for such wrong fixation, if any. The pay fixation had been done in the year 1997 on implementation of the recommendation of 5th CPC vide CCS (RP) Rules, 1997 and it was disturbed when he was at the verge of retirement. The orders were issued later i.e. in July 2005. It is an undisputed fact the applicant retired on attaining the age of superannuation on 28.2.05. No prior notice or opportunity had been afforded to him prior to taking such prejudicial action. Therefore, we find justification in the contention raised by the applicant that the respondents' action had been violative of principles of natural justice and he has been made to suffer in terms of his pension and pensionary benefits, unjustly. At this belated stage it would be unjust, arbitrary and violative of principles of natural justice to reduce his pension based on revised pay fixation of 'deemed pay', instead of 'pay drawn' preceding 10 months of his retirement.

8. In view of the discussion made above, we find no justification in the respondents' action and its action in fixing the applicant's pay at Rs.5750/- as on 1.1.96 instead of Rs.5900/- and consequently changing his pay from Rs.7250/- as on 28th February 2005 to

Rs.7100/- is quashed and set aside with all consequential benefits. In the circumstances, respondents are directed to release pension and pensionary benefits based on basic pay of Rs 7250/- as on 28.2.05. There shall be no order as to costs

(M.K. Gupta)
Judicial Member

(Dr. G.C. Srivastava)
Vice Chairman

aa.

पूर्णांकन सं ओ/न्या..... जबलपुर, दि.....
प्रतिविधि आयो दिनां
(1) राहित, नं. १०८८, व आर लॉरिएट्ट, जबलपुर
(2) आवेदन नं. १०८८ के काउंसल
(3) प्रतिविधि नं. १०८८ के काउंसल
(4) वंशाल, नं. १०८८ लॉरिएट्ट
सूचना एवं आवधारणा कार्यालय द्वारा
उप रजिस्ट्रार

P. Chakravarty
A2787
APK/Nov, A2730

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