

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of August, 2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

ORIGINAL APPLICATION No.203/2007

Vijay Kumar Choudhary,
s/o Shri Laxmi Lal,
r/o 3/140, Ganesh Talab,
Behind Modi College,
Kota, presently working as
Sub-Post Master (HSG-II),
Vigyan Nagar, Kota

..Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through Secretary to the Govt. of India,
Department of Posts,
Ministry of Information Technology,
Dak Bhawan,
New Delhi.
2. Post Master General,
Rajasthan Southern Region,
Ajmer.
3. Senior Superintendent of Post Offices,
Kota Postal Division,
Kota.
4. Post Master,
New Grain Mandi,
Kota.

... Respondents

(By Advocate: Shri Gaurav Jain)

ORIGINAL APPLICATION No.209/2007

Bhagwan Das
 s/o Shri Udai Ram,
 r/o 3-C-50,
 Mahaveer Nagar-III,
 Kota, presently
 working as Assistant Post Master,
 Kota City (Under New
 Grain Mandi Head Post Office,
 Kota.

..Applicant

(By Advocate: Shri C.B.Sharma)

Versus

5. Union of India
 through Secretary to the Govt. of India,
 Department of Posts,
 Ministry of Information Technology,
 Dak Bhawan,
 New Delhi.

6. Post Master General,
 Rajasthan Southern Region,
 Ajmer.

7. Senior Superintendent of Post Offices,
 Kota Postal Division,
 Kota.

8. Post Master,
 New Grain Mandi,
 Kota.

... Respondents

(By Advocate: Shri Gaurav Jain)

O R D E R (ORAL)

By this common order we propose to dispose of
 these OAs as common question of facts and law is
 involved.

In these OAs the applicants have prayed for common relief, which is reproduced hereinbelow:-

- i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to allow pay and allowance as per fixation allowed in the year 1996 i.e. Rs. 6050/- as on 1/1/1996 and further Rs. 7700/- as on 1/1/2007 by quashing memo dated 28/5/2007 (Annexure A/1) with the show cause notice dated 14/3/2007 (Annexure A/2) with all consequential benefits.
- ii) That the respondents be further directed not to recover any amount on account of so called excess payment and allow the applicant to draw his pay at the stage of Rs. 7700/- as is being drawn with yearly increments till retirement and to extend benefits on the same.
- iii) That the respondents be further directed to allow next higher scale of Rs. 1660/- - 2600/- under BCR Scheme with effect from 29/1/1995 instead of 1/7/1995 by modifying memo dated 15/9/1995 in respect of the applicant (Annexure A/4) with all consequential benefits of due fixation of pay and arrears of pay and allowances.
- iv) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- v) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicants were initially appointed as Time Scale Clerk (Postal Assistant) in the department of Posts. They were granted financial upgradation to the next higher scale of service and thereafter they were further placed into next higher scale under BCR w.e.f. 1.7.95 after completion of 26 years of service. On account of placing under BCR scheme pay of both the applicant was fixed at Rs. 1850/- w.e.f. 1.7.95. On

the recommendations of the 5th Pay Commission their pay was revised as Rs. 6050/- in the pay scale of Rs. 5000-8000 under the CCS (Revised Pay) Rules 1997 w.e.f. 1.1.1996. On account of observations made by the Audit Party, the applicants' pay was fixed at the stage of Rs. 5900/- w.e.f. 1.1.1996. Being aggrieved by the action of the respondents, the applicants files OA No.19/2003 and 574/02. The said OAs were allowed vide order dated 27.2.2004 by a common judgment, (Ann.A9) on the ground that the impugned order has been passed without following the principles of natural justice. Pursuant to the decision rendered by this Tribunal, the respondents again issued a show-cause notice and after considering the reply of the applicant, have passed separate impugned order dated 28.5.2008 (Ann.A1) thereby holding that the pay of the applicants is to be fixed at the stage of Rs. 5900/- w.e.f. 1.1.1996 instead of Rs. 6050/- with date of next increment w.e.f. 1.1.1997 and to recover over payment of pay and allowances. It is these orders, which are under challenge before this Tribunal.

3. Notice of these applications were given to the respondents. The respondents have justified their action in the reply.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The learned counsel for the applicants submits that even if the stand of the respondents is accepted that pay of the applicants is erroneously fixed as on 1.1.1996, even then the impugned order cannot be sustained on another ground. For that purpose, the learned counsel for the applicant while drawing our attention to prayer clause 8(iii) has argued that the applicants were allowed higher scale under BCR scheme w.e.f. 1.7.1995 whereas the applicants have completed 26 years of service as on 29.1.95 and, as such, they were entitled for reifixation of their pay in the higher pay scale of Rs. 1660-2660 under BCR Scheme w.e.f. 29.1.1995 instead of 1.7.1995. In case the pay of the applicants is fixed w.e.f. 29.1.1995, in that eventuality, their pay in the revised pay scale as on 1.1.1995 will come to Rs. 6050/- instead of Rs.5900/-. As such, the question of refixation of pay and recovery of pay and allowances does not arise.

6. We see considerable force in the submissions made by the learned counsel for the applicants. The matter on this point is on longer res-integra and the same is covered by the decision of the Full Bench, Chandigarh of the Tribunal in the case of Piran Dutta & 25 others vs. Union of India & Ors., reported in 2005 (1) ATJ 430. The question which was placed before the Full Bench was as follows:-

"Whether the benefits under BCR Scheme dated 11.10.91 are to be granted from the date one completes 26 years of satisfactory service.

OR

From the crucial dates of 1st January or 1st July as the case may be, which is based on the Biennial Cadre Review of posts to be placed against such identified for upgradation from these crucial dates each year as per subsequent clarifications."


The question was answered as follows:-


"The benefit under the Biennial Cadre Review Scheme dated 11.10.91 has to be granted from the date one completes 26 years of satisfactory service."

The view as taken by the Full Bench has also been affirmed by the Division Bench of the Hon'ble High Court. Thus, in the light of the decision rendered by the Full Bench in the case of Piran Dutta (supra) and in view of the decision rendered by the Hon'ble High Court of Rajasthan, Jaipur Bench in DB Writ Petition No. 5574/2001 decided on 19.04.2005, the applicants are entitled to grant of higher pay scale under BCR w.e.f. 29.1.1995 instead of 1.7.1995. As such, Ann.A4 dated 15.9.1995 is required to be modified to the aforesaid extent i.e. preponement of the date of increment under BCR w.e.f. 29.1.1995 instead of 1.7.1995. Based on this, the respondents shall work out the pay to which the applicants shall be entitled as on 1.1.1996. Further, whether on account of re-fixation of pay in the manner suggested above, re-fixation of pay and recovery as per Ann.A1 is still required to be effected and if so, respondents shall in that eventuality pass reasoned and speaking order. Till

such exercise is not undertaken, the respondents are restrained to proceed further in the matter pursuant to impugned order Ann.A1.

7. With these observations, both the OAs are disposed of with no order as to costs. Needless to add that in case the applicants are still aggrieved, they will be at liberty to file substantive OAs.


(B.L. KHATRI)
Administrative Member


(M.L. CHAUHAN)
Judicial Member

R/