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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

08.09.2011

OA No. 235/2008

Mr. C.B. Sharma, counsel for applicant.
Mr. Sumer Singh, proxy counsel for
Mr. Gaurav Jain, counsel for respondent no. 1.
Mr. Mukesh Agarwal, counsel for respondent nos. 2 & 3.

At the request of learned proxy counsel for Mr. Gaurav Jain, counsel for respondent no. 1, put up the matter for hearing on 16.09.2011.

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by
Anil Kumar
(ANIL KUMAR)
MEMBER (A)

1 c. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

16/09/2011

OA 235/2008

Mr. C. B. Sharma, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondent no. 1.
None present for respondent nos. 2 & 3.

Heard.

The O.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

1 c. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 16th day of September, 2011

Original Application No.235/2008

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

N.K.Godha
s/o Shri Raj Mal Godha,
r/o 2238, Chokari Modi Khana,
Maniyaron Ka Rasta, Jaipur,
retired (Voluntarily) from the post of
Accountant, Shastri Nagar,
Head Office, Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary, Govt. of India,
Department of Posts,
Ministry of Communication and Information
Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Senior Superintendent of Post Offices,
Jaipur City Postal Division,
Jaipur

.. Respondents

(By Advocate: Shri Gaurav Jain for resp. No.1)

ORDER (ORAL)

The present OA is preferred by the applicant for seeking writ, order or direction directing the respondents to allow the applicant fixation of pay at the stage of Rs. 1560/- on 9.6.1986 and Rs. 1600/- as on 1.1.1987 at par with Shri N.L.Khandelwal by allowing the stepping up of pay with the further benefit of pay fixation on recommendation of 5th Pay Commission w.e.f. 1.1.1996, with all consequential benefits by quashing letter dated 9.4.2008 (Ann.A/1).

2. The aforesaid relief is claimed by the applicant on the ground that Shri N.L.Khandelwal who was junior to the applicant in Accountant Cadre was fixed at Rs. 396/- plus Rs. 45/- special pay in the scale of Rs. 240-480, but Shri Khandelwal was also due for next higher scale on completion of 16 years service on 30.11.1983 as per One Time Bound Promotion (OTBP) Scheme opted his fixation w.e.f. 9.6.1986 on completion of 3 years service in Accountant cadre. The departmental instructions permit the Accountant to draw old scale with special pay for 3 years and accept the promotion of LSG cadre after completion of 3 years. As such, Shri Khandelwal opted for fixation after completion of 3 years service in accountant cadre i.e. 9.6.1986.

3. After recommendation of 4th Pay Commission w.e.f. 1.1.1986, the pay of the applicant was fixed at the stage of Rs.



1520/- whereas the pay of Shri Khandelwal was fixed at Rs. 1560/-. The applicant requested the respondents that his pay should not be less than his junior Shri Khandelwal but on examination of pay fixation of Shri Khandelwal, the Audit Party was of the view that in the year 1987 the fixation of Shri Khandelwal was not correct and respondents took a decision to withdraw the benefits allowed to Shri Khandelwal. Shri Khandelwal approached the authorities in the department and at last approached this Tribunal by filing OA No.225/96 and this Tribunal vide order dated 3.2.1997 allowed the OA and Shri Khandelwal was allowed the benefit as per his option.

4. The applicant also preferred OA No.139/2001 and the same was dismissed vide order 25.5.2001. This order has been assailed by the applicant by filing DB Civil Writ Petition No. 3645/2001 and the Hon'ble High Court vide its order dated 8.3.2006 after setting aside the Tribunal's order remitted the matter back to the Tribunal to decide the OA of the applicant on merit. The Tribunal decided the matter vide order dated 6.12.2007 with direction to concerned authority to decide the representation. The respondents vide order dated 9.4.2008 rejected the representation of the applicant for stepping up of pay with reference to Shri N.L.Khandelwal retired Postal Assistant working as Accountant in Jaipur City Division on the ground that pay of Shri N.L.Khandelwal was fixed w.e.f.



9.6.1986 as per his option and per direction/decision of CAT, Jaipur dated 3.2.1997. The orders of CAT-Jaipur Bench were issued in case of Shri N.L.Khandelwal which have not been generalized by the Directorate, so stepping up of pay with reference to Shri N.L.Khandelwal cannot be allowed. It is also clarified that the applicant is not senior to Shri Khandelwal, both in Accountant and TBOP cadre. Therefore, he is not entitled for stepping up at par with Shri Khandelwal and with these observations the representation has been rejected.

5. It is not disputed by the respondents that during the year 1987, the Internal Check Party of Postal Accounts objected that the pay fixation of Shri N.L.Khandelwal was irregular on the plea that the order of promotion were effective from 30.11.1983 in the higher scale and at that time he was working as Time Scale Clerk but not holding the post of Accountant and not drawing Special Pay. It was mentioned in the report that fixation of his pay was to be done under the provisions of FR-22 (c) and it was ordered to revise the pay fixation and also ordered for recovery of over payment to him. Accordingly, as per instructions of the Internal Check Party, the pay fixation was modified. Subsequently, Shri N.L.Khendelwal represented against those orders but his representation was rejected by the competent authority.



6. Shri N.L.Khandelwal filed OA No.225/1996 before the Tribunal and vide order dated 3.2.2007, this Tribunal allowed the OA and quashed the orders of the competent authority as well as Para of Audit Inspection Report on Jaipur GPO. This Tribunal directed the respondents to fix the pay of Shri Khandelwal at the appropriate stage as per his option given on 1.6.1986 and to pay arrears, if any, after fixation and further directed not to recovery any amount already paid to him.

7. The respondents further submit that rules stipulate that the benefit of stepping up of pay is only applicable w.e.f. the date of promotion of junior to remove anomaly by stepping up of pay of senior on promotion drawing less pay than his junior under the provision of FR 22 (i)(a)(i) or as a result of FR 22(i)(a)(i) application in the revised scale of CCS (RP) Rules, subject to fulfillment of certain conditions.

It is also submitted that merely placement in higher scale of pay on completion of 16/26 years of service is not promotion like LSG and HSG-II and financial upgradation in the same scale of pay and do not affect the seniority made in the gradation list. TBOP/BCR officials are also eligible for their regular promotion against these norm-based posts (supervisory posts) as per their seniority and fitness in their turn and stepping up of pay of the officials be considered only on regular promotion vis-a-vis to their junior subject to fulfillment of other



conditions as mentioned in FR 22(i)(a)(i) and is not applicable in cases of placement or ad-hoc promotions of junior officials in the higher scale of pay etc.

8. It is also submitted on behalf of the respondents that Shri N.L.Khandelwal was appointed as Time Scale Clerk (now designated as Postal Assistant) cadre w.e.f. 1.6.1966 while the applicant was appointed in the Time Scale Clerk (Postal Assistant) cadre w.e.f. 29.11.1996. Thus, Shri Khandelwal is senior to the applicant in Postal Assistant cadre. Apart from this, the applicant has taken promotion under TBOP scheme w.e.f. 30.11.1983 while Shri Khandelwal has taken his promotion under TBOP scheme being an Accountant getting benefit of special pay of Rs. 90/- per month in his pay fixation as Rs. 1560/- in the pay scale of Rs. 1400-2300. There is no separate cadre or pay scale for Accountant. Thus, the applicant is not entitled for equal pay i.e. Rs. 1560/- on 9.6.1986 and Rs. 1600/- on 1.6.1987. The TBOP is placement and not promotion as per the clarification received from the Directorate, New Delhi vide letters dated 17.5.2000 and 18.5.2005 and so the applicant is not senior in TBOP scale with Shri N.L.Khandelwal.

9. We have thoroughly considered the order passed by this Tribunal in OA No.225/1996 in the case of Shri N.L.Khandelwal. Shri Khandelwal in this OA has claimed the following reliefs:-



- i) That Annexure A-1 dated 12/22.3.96 rejecting the claim made by the applicant and the Audit Inspection Report Annexure A-10 holding the fixation of the applicant as irregular be quashed with all consequential benefits;
- ii) The respondents be directed to fix the pay of the applicant at the appropriate stage in the scale of Rs. 425-640 (Rs. 1400-2300) after counting the special pay towards the fixation as allowed in 1986, or from the subsequent date of completion of three years continuous service as Accountant and as an alternate to restore the pay fixation as allowed in 1986;
- iii) The respondents be further directed to pay arrears etc., after allowing fixation claimed in para 2 above;
- iv) The respondents be directed not to recover any amount already paid to the applicant in the year 1986 and 1987 after a lapse of eight years.

This Tribunal while allowing the OA observed that there is no justification for the respondents to reject claim made by the applicant vide Ann.A/1 and further to revise/modify the fixation of pay of Shri Khandelwal in pursuance of the objection raised by the Internal Check Party of the Postal Accountant vide Annexure A-10. Both the aforesaid orders dated 12/22.3.96 and Para of Internal Check Party Report 1987 of Jaipur GPO did not stand the taste of law and were



accordingly quashed. Consequently while quashing Ann.A/1 and Audit Inspection Report issued by the respondents, the OA was allowed and the respondents were directed to fix the pay of Shri Khandelwal at the appropriate stage as per his option given on 1.6.1986 and to calculate and pay to the applicant arrears etc. and the respondents were further directed not to recover any amount already paid to the applicant during the year 1985 and 1987.

10. Upon perusal of the order of this Tribunal dated 3.2.1997 passed in OA No. 225/1996, it appears that the representation filed by Shri Khandelwal was rejected vide order 12/22.3.96 and respondents in pursuance of the direction issued by this Tribunal extended the benefit in the year 1997.

11. The applicant represented before the respondents only on 29.2.2008 and the same was rejected on 9.4.2008.

The applicant also preferred OA No. 139/2001 and the same was dismissed vide order dated 25.5.2001 by the Tribunal on the ground of limitation having considered the case of Bhoop Singh vs. Union of India, AIR 1992 SC 1414, U.T.Daman and Deav and Ors. V. R.K.Valand, 1996 (1) SCC (L&S) 205 as hopelessly time barred. Since the OA was decided only on the ground of limitation and the Tribunal's order was assailed by the applicant before the Hon'ble high Court, the High Court vide order dated 8.3.2006 remitted the case back for deciding



the case on merit after quashing and setting aside the Tribunal.

12. We have considered the case of the applicant on merit also. As discussed hereinabove, and as claimed by the applicant that he being senior than Shri N.L.Khandelwal, the respondents may be directed to allow the applicant step up of pay at par with Shri Khandelwal.

13. The respondents have rightly demonstrated before us that both the applicant and Shri Khandelwal were initially appointed as Time Scale Clerk (Postal Assistant). The applicant was appointed on 29.11.1966 and Shri N.L.Khandelwal was appointed on 1.6.1966. thus admittedly, Shri Khandelwal was senior to the applicant.

14. We have also considered the order passed by this Tribunal in OA No.225/96 decided on 3.2.1997. The judgment passed in the case of Shri N.L.Khandelwal cannot be said to be *in rem*, since the facts and circumstances in the case of Shri N.L.Khandelwal were altogether different. The benefits which were already extended to Shri Khandelwal were withdrawn on the basis of Audit Inspection Report and since the OA was allowed by this Tribunal after quashing and setting aside the impugned order rejecting representation as well as the Audit Inspection report and the respondents were directed to fix the pay of Shri N.L.Khandelwal as per his option, thus the

(14)

ratio decided by the Tribunal in the case of Shri N.L.Khandelwal is not applicable and thus the judgment rendered by this Tribunal in the case of Shri Khandelwal is a judgment in *persona*. Admittedly, it is also evident from the date of appointment that the applicant was junior to Shri Khandelwal.

15. In view of the observations made hereinabove, it transpires that the applicant cannot claim benefit at par with Shri N.L.Khandelwal. Thus, we find no illegality in the impugned order dated 9.4.2008 (Ann.A/1) so as to require any interference by this Tribunal. Consequently, the OA fails and the same is hereby dismissed with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/