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25.08.2009OA No. 490/2008 with MA 264/2009

Mr. C.B. Sharma, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

MA 264/2009

This MA has been moved by the respondents for taking additional affidavit on record.

In view of the averments made in the OA, the same is allowed. The additional affidavit annexed with this MA shall form part of the main OA.

The MA is disposed of accordingly.

OA 490/2008

Heard learned counsel for the parties.

For the reasons dictated separately, the OA is disposed of.

(B.L. KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 25th August, 2009

ORIGINAL APPLICATION NO. 490/2008

CORAM:

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

Shiv Narain Chaturvedi son of Shri Tapi Lal aged about 59 years, resident of 5, Vinayak Complex, Dada Bari Extension, Kota. Presently working as Sub Post Master, Dada Bari Sub Post Office, Kota.

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Offices, Kota Postal Division, Kota.
4. Post Master, New Grain Mandi, Kota.

.....RESPONDENTS

(By Advocate : Mr. Gaurav Jain)

ORDER (ORAL)

The grievance of the applicant in this case is that he has put in 26 years of service as on 23.01.1995, as such he was entitled to grant of BCR scale on the completion of 26 years of service with effect from 23.01.1995 instead of 01.07.1995. For that purpose, the applicant has placed reliance upon the decision of this Tribunal in the case of Vijay Kumar Choudhary vs. Union of India & Others [OA No. 203/2007 decided on 01.08.2008]. This Tribunal has allowed the OA on the basis of the decision rendered by the Full Bench, Chandigarh of the Tribunal in the case of Piran Dutta & 25 others vs. Union of India & Others, reported in 2005 (1) ATJ 430 and also decision of the Hon'ble

High Court of Rajasthan, Jaipur Bench in **DB Writ Petition No. 5574/2001** decided on 19.04.2005.

2. Notice of this application was given to the respondents. The respondents have filed their reply. The stand taken by the respondents is that such an increment has to be given on 1st January or 1st July, as the case may be, and not from the date of 26 years of service. The second objection taken by the respondents is regarding limitation.

3. We have heard the learned counsel for the parties. We are of the view that the present OA is squarely covered by the judgment rendered by this Tribunal in the case of Vijay Kumar Choudhary (Supra). At this stage, it will be useful to quote Para No. 6 of the judgment, which thus reads as under:-

"6. We see considerable force in the submission made by the learned counsel for the applicants. The matter on this point is no 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 extend 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 refixation of pay in the manner suggested above, refixation 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."

4. The ratio as laid down by this Tribunal in the case of Vijay Kumar Chudhary (Supra) is squarely applicable to the facts & circumstances of this case. Accordingly, we are of the view that the applicant is also entitled to the relief, as prayed for by him. Accordingly, the respondents are directed to extend the benefit of BCR to the applicant with effect from 23.01.1995 instead of 01.07.1995. Since there is a delay in filing this OA, we are of the view that the applicant shall not be entitled for arrear on account of preponement of increment w.e.f. 23.01.1995 and ~~shall~~ arrear, if any, shall be given to the applicant with effect from the date of filing of the representation, which in this case is 01.09.2008.

5. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ