

OA.No.170/01646-01650/2015/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01646-01650/2015

DATED THIS THE 27th DAY OF MARCH, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. C.V.Manimaran
Aged 55 years
S/o.Late C.Vadivel
BCR PA & PRI(P) Vijayanagar MDG
Bangalore-560041.
2. B.Balasubramanian
Aged 56 years, S/o.
BCR PA, Malleswaram MDG
Bangalore-560003.
3. M.S.Jayashree
Aged 56 years, W/o.
Asst.Postmaster (APM)
Jalahalli HO, Bangalore-560013.
4. K.C.Savithri
Aged 57 years
D/o.Late Cheluvaiah
BCR PA, Srirampuram PO
Bangalore-560021.
5. M.R.Vijayalaxmi
Aged 59 years
W/o.K.N.Suryanarayana Rao
Asst.Postmaster(APM)
Rajajinagar HO
Bangalore-560010.

... Applicants

(By Advocate Shri B.Venkateshan)

Vs.

1. Union of India
Represented by the Secretary
Department of Posts
New Delhi-110001.
2. The Chief Post Master General

Karnataka Circle
Bangalore-560001.

3. The Sr.Superintendent of Post Offices
Bangalore West Division
Bangalore-560086.
4. The Postmaster
Rajajinagar HO
Bangalore-560010.
5. The Postmaster
Jalahalli HO
Bangalore-560013.
6. Smt.Y.S.Vijaya Kumari
BCR Postal Assistant
Malleswaram MDG
Bangalore-560003.

...Respondents

(By Advocate Shri K.Gajendra Vasu for R1-5)

ORDER

(PER HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A))

The applicants have filed the present OA seeking the following relief:

"To direct the respondents to consider the case of the applicants for stepping up of their pay at par with their junior Smt.Y.S.Vijayakumari, w.e.f.1.7.2006, as per rules and judicial decisions on the subject and to grant all consequential benefits accruing therefrom in the interest of justice and equity.

2. According to the applicants, they joined the services of the respondents as Postal Assistants during the period between August and October-1979. They were placed in TBOP grade in the year 1995 and to BCR grades w.e.f. 1.1.2006. Their pay was fixed at Rs.11,350/- with Grade Pay of Rs.4200 in BCR grade. They submit that one Smt.Y.S.Vijayakumari who joined the service as Postal Assistant in the year 1980 has been allowed higher pay than the applicants. When the applicants' pay in the BCR grade was fixed at Rs.11,350/- with GP 4200 as on 1.1.2006, the pay of their junior Smt.Y.S.Vijayakumari was fixed at Rs.11,160/- with GP Rs.2800 as on 1.1.2006 in TBOP grade

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and subsequently at Rs.12020+GP 4200 in BCR grade w.e.f. 1.7.2006.

Therefore, right from 1.1.2006, Smt.Y.S.Vijayakumari is getting higher pay. After the applicants came to know all these facts in 2013, they represented the Sr.Supdt. of Post Offices, Bangalore Division for removing anomaly in their pay. However, the Sr.Supdt. of Post Offices vide letter dtd.27.12.2013 rejected the claim of the applicants on the ground that the option once exercised cannot be considered as per rules(Annexure-A2).

3. The applicants have referred to 3rd proviso to Rule-7(1)(A) of the revised pay rules-2008 which indicated that the next increment of the Govt. Servant, whose pay is fixed on 1.1.2006 at the same stage as the one fixed for another Govt. servant junior to him in the same cadre and drawing pay at a lower stage than his junior in the existing scale should be granted same pay on the same date as admissible to his junior. Further Note-7 below Note-2B below Government of India decision No. (1) (Page-43) below Rule-7 of Revised Pay Rules-2008 provides that 'where the fixation of pay under sub rule(1), the pay of a Govt. Servant, who in the existing scale was drawing immediately before 1st day of January-2006, more pay than other Govt. Servant junior to him in the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised pay band as that of the junior.' The applicants are senior to the said Smt.Y.S.Vijayakumari, PA, Malleswaram, MDG. Therefore, their pay shall have to be stepped up at par with the pay of the said junior Smt.Y.S.Vijayakumari w.e.f. 1.7.2006.

4. The applicants have also referred to various judgments of the Tribunal

at Annexures-A3 to A7 wherein direction was given by the Tribunal for stepping up of pay of the applicants at par with their juniors. Therefore, they submit that they are entitled for stepping up of their pay at par with their juniors w.e.f.1.7.2006 with all consequential benefits.

5. The respondents in their reply statement have admitted the fact that the applicants Sri.C.V.Manimaran, Sri B.Balasubramanian, Smt.M.R.Vijayalaxmi, Smt.M.S.Jayashree were appointed to the cadre of Postal Assistant w.e.f. 20.8.1979 and Smt.K.C.Savithri was appointed w.e.f. 31.10.1979 while Smt.Y.S.Vijayakumari was appointed as PA w.e.f. 04.05.1980.
6. The increment of the applicants was preponed from Aug 1996 to Feb 1996 vide Hon'ble CAT order in OA.No.342/2008 conveyed vide CO Memo No.LC/2-2572/2008 dated:27.08.2009(the CAT order was received during 2009-2010 after implementation of the 6th CPC recommendations). The applicants were financially upgraded under BCR scheme with effect from 1.1.2006 and had opted to fix the pay on promotion w.e.f. date of next increment initially. After implementation of 6th CPC, vide GOI Memo No.F.No.1/1/2008/IC dated:29.1.2009(Annexure-2), again the official had re-exercised the option on promotion to fix the pay straight away from the date of promotion itself i.e. from 1.1.2006 which was beneficial to the official at that time. Accordingly, the pay has been fixed for all the said above applicants as follows:

01	Pay as on 1.1.06 in pre revised pay scale	Rs.5875/-
02	Pay as on 1.1.06 as per VI CPC	: 5875x1.86=10930+2800=13730
03	BCR w.e.f. 1.1.06 with option from date of promotion	:10930+2800=13730

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04	Notional increment 3%	:420
05	Total:	11350+4200=15550
06	With DNI on 1.7.2006 to the stage of	Rs.11820+4200

Smt.Y.S.Vijayakumari was financially upgraded under BCR Scheme w.e.f. 1.7.2006 and the official had opted to fix the pay from the date of promotion and pay was fixed as follows:

01	Pay as on 1.1.06 in pre revised pay scale	Rs.6000/-
02	Pay as on 1.1.06 as per VI CPC	: 6000x1.86=11160+2800=13960
03	BCR w.e.f. 1.7.06 with option from date of promotion	:11160+2800=13960
04	Normal increment 3%	:420
05	Total:	11580+2800=14380
06	Notional increment 3%	:420
07	With DNI on 1.7.2007 to the stage of	Rs.12510+4200

If the applicants had not re-exercised the option on BCR as per GOI Memo No.F.No.1/1/2008/IC dated:29.01.2009, this anomaly would not have arisen. As per GOI Memo No.10/02/2011-E III/A dated:19.3.2012(Annexure-3), the pay of the officials will be re-fixed, if they were drawing increment between Feb to June-2006. The reason why Smt.Y.S.Vijayakumari is drawing higher pay w.e.f. 01.01.2006 is because of this order. The applicants represented the respondents to implement this order, by requesting for permission to retain and consider the original option with date of next increment for fixation of pay exercised on promotion to the cadre of BCR. The applicants Sri.C.V.Manimaran, Sri B.Balasubramanian, Smt.M.S.Jayashree and Smt.K.C.Savithri had represented the respondents to allow them to retain their original option exercised initially for fixation of pay on promotion to BCR from the date of next increment i.e. from 1.2.2006, so that their pay will be re-fixed with reference to Directorate Memo No.10/02/2011-E-III/A dated:19.3.2012. The officials were informed vide letter No.B1/Misc dated:27.12.2013(Annexure-8), that the cases cannot be considered for

approval of revision of option for fixation of pay as per para-2 of GOI No.16/8/2000-Estt.(Pay-1) dated:25.02.2003.

7. The respondents further submitted that the applicants were drawing higher pay as on 1.1.2006, the anomaly occurred during 2013 only after implementing GOI Memo dtd.19.3.2012 in case of Smt.Y.S.Vijayakumari as one time measure. They have also mentioned that the increment of the applicants was preponed from Aug 1996 to Feb 1996 on par with Sri K.M.Verghese in terms of order of the Tribunal in OA.No.342/2008 conveyed vide Memo dtd.27.8.2009.
8. We have heard the Ld.Counsel for both sides. The Ld.Counsel for the applicant while highlighting the submission made in the OA emphasized on the fact that the applicants were senior to Smt.Y.S.Vijayakumari and hence they cannot be allowed pay less than their junior under the alleged circumstances. He also referred to the OAs at Annexures-A3 to A7 saying that in all the OAs various Benches of the Tribunal had given direction for stepping up of pay at par with the juniors. Therefore, he submitted that the claim of the applicants to draw pay at least on par with their junior is justified and should be allowed.
9. The Learned Counsel for the respondents, on the other hand, reiterated the stand taken by the respondents in the reply statement. When it was queried as to how Smt.Y.S.Vijayakumari could get higher pay in the pre-revised scale i.e.Rs.6000 as against allowed to the applicants in the pre-revised scale Rs.5875, he mentioned that Smt.Y.S.Vijayakumari was allowed an extra increment in terms of GOI Memo dtd.19.03.2012. When it was indicated to him the applicants were also drawing the increment in the month of February and hence

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why they were not provided similar benefit of one increment as provided to Smt.Y.S.Vijayakumari, he mentioned that the applicants have not exercised the option at the time of their promotion. However, he could not clarify as to how the option is required to be given in terms of the Memo dtd.19.03.2012 which does not prescribe for any fresh option on this account.

10. We have carefully considered the facts of the case and submissions made by either side. The only issue involved in this case is whether the grant of higher pay to Smt.Y.S.Vijayakumari who, as admitted by the respondents themselves, has joined the service of Postal Assistant after joining of all the applicants and therefore is junior to them is justified and whether the applicants' claim for pay at least on par with their junior is justified. It is evident from the facts submitted by both sides that the applicants as well as Smt.Y.S.Vijayakumari received financial upgradation under TBOP and then under BCR. While the applicants got BCR w.e.f. 1.1.2006 Smt.Y.S.Vijayakumari has got BCR w.e.f. 1.7.2006. The annual increment for both the applicants as well as Smt.Y.S.Vijayakumari fell between February and June. It is seen from the statement submitted in the reply statement that while the applicants were getting pay of Rs.5875 in the pre-revised scale as on 1.1.2006, while Smt.Y.S.Vijayakumari was allowed the pay of Rs.6000 in the pre-revised scale as on 1.1.2006. According to the respondents, this difference of pay was in terms of GOI Memo dtd.19.03.2012. The said OM No. 10/02/2011-E-III/A dated:19.3.2012 stipulated as follows:

New Delhi, the 19th March, 2012

OFFICE MEMORANDUM

Subject:- Central Civil Services (Revised Pay) Rules, 2008 – Date of next increment in the revised pay structure under Rule 10 of the CCS(RP) Rules, 2008.

In accordance with the provisions contained in Rule 10 of the CCS(RP) Rules, 2008, there will be a uniform date of annual increment viz. 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 1.1.2006 in the revised pay structure will be granted on 1.7.2006 for those employees for whom the date of next increment was between 1st July 2006 to 1st January 2007.

2. The staff Side has represented on this issue and has requested that those employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 01.01.2006 in the pre-revised scale.

3. On further consideration and in exercise of the powers available under CCS(RP) Rules 2008, the President is pleased to decide that in relaxation of stipulation under Rule 10 of these Rules, those central government employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 1.1.2006 in the pre-revised pay scale as a one time measure and thereafter will get the next increment in the revised pay structure on 1.7.2006 as per Rule 10 of CCS(RP) Rules, 2008. The pay of the eligible employees may be re-fixed accordingly.

4. In so far as the persons serving in the Indian Audit and Account Department are concerned these orders are issued in consultation with the Comptroller & Auditor General of India.

(Renu
Jain)

Director

11. From the aforesaid OM, it is evident that all those employees who were drawing annual increment between Feb 2006 and June 2006 can be granted one increment on 1.1.2006 as one time measure. The question of option does not arise in this case. It is also a fact that all the applicants as well as Smt.Y.S.Vijayakumari was drawing increment between February and June. Therefore, all of them should have been entitled for additional increment in terms of the said GOI Memo dtd.19.03.2012. The issue of option given by the applicants on their promotion on BCR as on 1.1.2006 in terms of OM

OA.No.170/01646-01650/2015/CAT/Bangalore Bench dtd.25.2.2003(Annexure-R3) has no relevance as far as this increment is concerned. If one increment is allowed to applicants also as one time measure in terms of GOI OM dtd.19.03.2012, the applicants should also have been allowed the same pay of Rs.6000 in the pre-revised scale as on 1.1.2006. Their corresponding pay in the revised pay scale would have been based on that and both the applicants as well as their junior would have been given the same pay in the revised scale. Thereafter, the applicants could have been allowed financial upgradation under BCR w.e.f. 1.1.2006 whereas Smt.Y.S.Vijayakumari was allowed upgradation under BCR w.e.f. 1.7.2006. Then the question of anomaly in the pay scale would not have been occurred in the cases of applicants who were allowed a lower pay than their junior.

12. Therefore, it clearly emerges that the benefit of OM dtd.19.03.2012 should have been extended to all the applicants as well and not to Smt.Y.S.Vijayakumari alone. Therefore, the respondents are required to fix the pay of the applicants in the pre-revised scale as on 1.1.2006 after giving one increment as they had allowed the same to Smt.Y.S.Vijayakumari so that the pay of the applicants and Smt.Y.S.Vijayakumari would remain the same in the pre-revised scale as on 1.1.2006. Thereafter, the principle allowed on promotion/financial upgradation under BCR should be applied to them as per rules. In any case, the fact remains that employees who have joined the service earlier should get at least the same pay as their junior if the promotions/financial upgradation have been extended to them in an identical manner. Therefore, we hold that the contention of the applicants to allow them pay on par with their junior Smt.Y.S.Vijayakumari is justified in terms of reasons outlined in the

preceding paras. The respondents are therefore directed to allow one increment to the applicants in the pre-revised scale in terms of OM dtd.19.03.2012 and fix their pay on 1.1.2006 accordingly. Thereafter the benefits applicable on financial upgradation as allowed under BCR be extended to them so that they draw same pay as that allowed to Smt.Y.S.Vijayakumari, their junior. Necessary orders shall be issued and consequential benefits shall be granted by the respondents within a period of three(3) months from the date of receipt of copy of this order.

13.The OA is accordingly, allowed in terms of the aforesaid direction. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in OA.170/01646-1650/2015

- Annexure-A1: SSPOs. Lr.No.B/40, dt.7.4.2015 (Gradation List)
Annexure-A2: SSPOs. BG(W)Lr.No.B1/Misc. dt.27.12.2013
Annexure-A3: CAT BG Order dt.20.6.2008 in OA.No.417/07
Annexure-A4: CAT BG Order dt.12.8.2009 in OAs.No.341 to 343, 346, 347, 349, 422 to 426 & 484/2008
Annexure-A5: CAT BG order dt.24.6.2014 in OA.No.949-952/12
Annexure-A6: CAT Principal Bench, Delhi order dt.1.2.13 in OA.No.2124/2011
Annexure-A7: CAT New Delhi Order dt.11.10.1991 in OA.No.1882/1989

Annexures with reply statement:

- Annexure-R1: Copy of the comparative pay fixation chart from the date of appointment of both the seniors and juniors w.r.t. their respective service book
Annexure-R2: Copy of the OM No.10/02/2011-E III/A dtd.19.03.2012
Annexure-R3: Copy of the OM No.16/8/2000-Estt.(Pay-I) dtd.25.02.2003
