



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/1008/2016

Date of order : 15.2.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member

MRINAL KANTI DE

S/o Late Amulya Ranjan De,
Ex Postal Assistant in the office of
GPO, Kolkata - 1,
R/o Atmananda Sarani,
Subhasgram,
Pin - 700147.

...APPLICANT

VERSUS

1. Union of India, through
The Secretary,
To Govt. of India,
Ministry of Communications,
Dept. of Posts,
Dak Bhawan,
New Delhi - 110001.
2. The Director General,
Dept. of Posts,
Dak Bhawan,
New Delhi - 110001.
3. The Chief Postmaster General,
West Bengal Circle,
Yogayog Bhawan,
36 C.R.Avenue,
Kolkata - 700012.
4. The Director,
Kolkata GPO,
Kolkata - 700001.
5. The Assistant Director of
Postal Services (Accounts)
Office of the Chief Postmaster General,
West Bengal Circle,
Yogayog Bhawan,
36 C.R.Avenue,
Kolkata - 700012.
6. The General Manager (PA&F)
West Bengal Circle,
Office of the Chief Postmaster General,
West Bengal Circle,
Yogayog Bhawan,
36 C.R.Avenue,
Kolkata - 700012.

7. The Accounts Officer (Postal),
Office of the General Manager (PA&F)
West Bengal Circle,
Yogayog Bhawan,
36 C.R.Avenue,
Kolkata - 700012.

...RESPONDENTS.

For the applicant : Mr.S.K.Dutta, counsel

For the respondents: Mr.B.B.Chatterjee, counsel

O R D E R (ORAL)

Per Ms. Manjula Das, Judicial Member

Mr.S.K.Dutta, Id. Counsel appeared for the applicant and
Mr.B.B.Chatterjee, Id. Counsel appeared for the respondents.

2. Being aggrieved for not accepting the grievances of the applicant the present application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :


- a) An order quashing and/or setting aside the decision regretting the claim of the applicant for counting his period of training prior to his posting on promotion as Postal Assistant for the purpose of increment as done in respect of the applicants in OA NO. 930 of 1999 as contained in Annexures A/11 to A/13;
- b) An order holding that the grounds for rejection of the claim of the applicant for counting his period of training prior to his posting on promotion as Postal Assistant are bad in law, arbitrary and discriminatory and further holding that the applicant is entitled to the benefits of increment considering his period of training prior to his posting as Postal Assistant;
- c) An order directing the respondents to grant the benefits of increment counting the period of training of the applicant before his actual posting as Postal Assistant on promotion and to grant all consequential monetary benefits like arrears of pay and allowances and the benefits of revised pension and other post retirement benefits;
- d) An order further directing the respondents to consider the case for fixation of pay in the revised pay under CCS (RP) Rules, 2008 in accordance with Govt. of India, Ministry of Finance OM No. 10-02/2011-E.III/A dated 19th March, 2012;
- e) An order directing the respondents to produce/cause production of all relevant records;
- f) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper.



3. Brief fact of the case as narrated by the Id. Counsel for the applicant is that the applicant is a retired employee of the Postal Department having retired on superannuation as Postal Assistant from Kolkata GPO on 31.1.2010. The applicant was initially appointed as Postman on 11.7.1988 and after completion of training by order dated 19.7.1988 was posted as Postal Assistant and attached to the Registry Delivery Department of Calcutta GPO. It is stated that prior to his promotion as Postal Assistant the applicant underwent training before his posting as Postal Assistant, but the said period was not counted for the purpose of increment. It is submitted by Mr.Dutta that similarly situated persons under the same department who were deprived of the benefits of pay fixation counting the period of training undergone by them prior to their posting on promotion in the working post as Postal Assistant filed OA 930/1999 before this Tribunal, where the Tribunal vide its order dated 6.7.2005 extended the benefits as per DOPT OM dated 22.10.1990 and directed the respondents to consider the prayer of the applicant and extend to them the benefit of DOPT OM dated 22.10.1990 as modified from time to time in the same way as admissible in the case of direct recruits along with such consequential benefits as may become due to them.

4. It is submitted by Mr.Dutta that some other co-ordinate Benches passed similar order by granting the benefits of DOPT OM dated 22.10.1990. The present applicant also approached before the authority for granting the same benefit. However, the authority vide impugned order dated 16.10.2015 rejected his prayer by stating that as he was not in the party array with amongst the applicants in the OA 930/1999, his case could not be considered.

It is further stated by Mr.Dutta that decisions of this Tribunal had been challenged before the Hon'ble High Court of Calcutta vide order dated 23.2.2009 in WPCT No. 261/2006 where Hon'ble High Court dismissed the case of the respondents by affirming the decision of this Tribunal. It is submitted that rejection is not sustainable in the eye of law in view of the fact that the issue has already attained its finality. As such the applicant is entitled to get the benefit of the said judgment so extended to the similarly situated



persons in view of the DOPT OM dated 22.10.1990 and subsequent modified OMs issued from time to time.

5. On the other hand Mr.Chatterjee, Id. Counsel for the respondents by filing reply on 20.12.2016 submits that although this matter is similar to that of the case of the applicants in OA 930/1999, the name of the present applicant was not enlisted as applicants in OA 930/1999 and hence the judgment is not applicable to the present applicant. Id. Counsel for the respondents further submitted that while extending the benefit of DOPT OM dated 22.10.1990 by the Tribunal, subsequent office memorandum dated 29.3.1993 was not taken into account. The OM dated 29.3.1993 clarified that the OM dated 22.10.1990 will be applicable only in cases of direct recruits, who are compulsory required to undergo training before taking up Government employment. But the present applicant was not a direct recruit. He was a promote candidate and hence the prayer for counting the training period prior to his posting as Postal Assistant for the purpose of increment could not be entertained as per rules.

6. Countering the submissions made in the reply, Mr.Dutta, Id. Counsel for the applicant has drawn my attention to the decision of this Tribunal in OA 930/1990 dated 6.7.2005 (Annexure A/1 to the OA) which reveals that this Tribunal while passing the order, discussed and has taken into account not only the DOPT OM dated 29.3.1993 but also the subsequent DOPT OMs dated 30.8.1994 i.e. as a whole took into consideration the OM dated 22.10.1990 and 30.8.1994 circulated by DOPT.

7. I have heard both the Id. Counsels and perused the pleadings and materials placed before me.

8. I have perused the DOPT OMs and for coming to a logical conclusion, I am in hand the OM dated 22.10.1990 issued by the DOPT which specifies in the subject of 'Training period before appointment on stipend or otherwise, counts for increments', where it is clarified as under :

"4. These orders take effect from 1st October , 1990. On the demand of the Staff Side in the National Council (JCM), the matter has further been examined and it has been decided that the benefit of treatment of such



training period as duty for the purpose of increment may be allowed in the case of those Government servants also who had undergone such training on or after 1st January, 1986. However, in such cases the benefit of counting period for pay will be admissible on notional basis from 1st January, 1986 and actual basis from 1st October, 1990."

9. As the ld. Counsel for the respondents refers to the OM dated 29.3.1993 subsequently I am in hand with it. This also modified clarificatorily the OM dated 22.10.1990 on the subject of counting the training period before appointment on stipend or otherwise for increments, as hereunder :

"The undersigned is directed to refer to this department's OM of even number dated 22.10.1990 on the subject mentioned above which provides that the training period counts as duty for the purpose of drawing increments in the case of person selected for regular appointment who is required to undergo training (whether on remuneration of stipend or otherwise) before formally taking over charge of the best.

2. Certain cases have been brought to the notice of the Government of department candidate already in Government service whose period of pre-service training does not count as duty for the purpose of increments in the scale of pay of the new post to which he is appointed and thereby causing him to draw less pay than a direct recruit junior to him because in latter's case, this period counts as duty for the purpose of increments in the post to which he is appointed. The anomaly may arise because this period in the case of the departmental candidate counts as duty in the scale of pay in which the pay is drawn by the candidates and is entitled to fixation of pay in the higher post with reference to the pay already drawn in terms of FR 22(3) or any other corresponding rules or order. This anomaly sets in either from the date of his promotion or from the date of next increment of the direct recruit.

3. In order to remove the aforesaid anomaly, it has been decided to step up the pay of a candidate already in Government service from the date of next increment of direct recruit junior to him. However, the stepping up of pay is to be allowed only if the anomaly is due to direct application of the provisions contained in this department's OM of even number dated 22.10.1990."

10. Now for proper explanation I perused the decision of this Tribunal passed on 6.7.2005 in OA 930/1999 where it appears that the said 30 applicants were also the Postal Assistants in Būrabazar HO, Calcutta and they were initially appointed as Postman and promoted to Postal Assistant cadre and therefore had to undergo theoretical and practical training. Subsequently they were also given promotion to the Postal Assistant under the departmental quota after completing the theoretical and practical training for 90 days. The increments were also refixed as per DOPT OM's dated 22.10.1990, 31.3.1992, 29.3.1993 and 30.8.1994 circulated by the DOPT. However, later on, during an inspection it was found by Audit party in terms of Govt. of India order incorporated below

FR 2 dated 23.8.1991 the benefit of training period before appointment may be counted for the purpose of increment only in the case of direct recruits who are compulsorily required to undergo training before taking up Government employment. Therefore in the case of those applicants the payment so made was found to have been overpaid up to February 1997 on this account and order for recovery from the Postmen concerned and future payments were required to be regulated accordingly, whereas the applicants in the said case approached this Tribunal by claiming that in view of the office memorandum dated 22.10.1990 as well as modified the benefits to be extended to the promotes also. In the said case also the matter was discussed in details by this Tribunal and came to a finding that OM dated 22.10.1990 an exception had been made to the provisions of FR 26 by stating to the effect that irrespective of the type of remuneration drawn during the training period i.e. whether by way of stipend or otherwise that period can be allowed to count for increment in the post for which the training is undergone. This Tribunal observed as hereunder:

"The respondents before the Madras Bench had taken a stand based on the OM dated 23.8.91 and contended that as per Audit Instruction 3(ii) below FR 26 any period spent on training is allowed to count for increment in the post in which the employees were officiating prior to being sent for training provided the employees were allowed to draw pay of that post during the period of training. As such it was argued that since the promotes were allowed to draw pay of the lower post while undergoing training, the period spent on training would count for increment only in the lower post. A further plea was taken that the matter could be raised through the mechanism of the JCM since the earlier OM dated 22.10.90 was issued as a sequel to a demand raised by the staf side in the JCM. The Tribunal having considered the facts of the case found no rational basis for discrimination between a direct recruit and promotes in the matter of counting the period of training for drawal of increment in the posts for which the trainees were selected and underwent the training. It was noted that by OM dated 22.10.90 an exception had been made to the provisions of FR 26 by stating to the effect that irrespective of the type of remuneration drawn during the training period, i.e. whether by way of stipend or otherwise this period can be allowed to count for increment in the post for which the training is undergone. This exception is not limited to those trainees who were paid stipend during the training period. Further the Ernakulam Bench in OA No. 101/92 has held that there is no rational basis for discriminating against he promotes. Therefore, also agreeing with the judgment of the Ernakulam Bench in OA 101/92 and in the absence of any rational basis being advanced for such a distinction between the promotes and direct recruits, the Tribunal directed the respondents to apply the benefit of the Department of Personnel and Training OM dated 22.10.90, as modified from time to time, to the applicants and allow the period of training undergone by them to be counted for drawal of increment in the same

way as has been done in the case of direct recruits as per the claim of the applicants therein."

And passed the final order by holding as hereunder :

"In the above situation, we find no reason as to why the same principle as followed by the coordinate Benches of this Tribunal at Ernakulam and Madras should not be applicable to the present case. The respondents are therefore directed to consider the prayer of the applicants and extend to them the benefit of the DOPT OM dated 22.10.90 as modified from time to time, and allow the period of training undergone by them to be counted for drawal of increment in the same way as is admissible in the case of direct recruits along with such consequential benefits as may become due to them. There shall be no recovery of any amount that may have already been paid to them towards increment for the period of training."

The matter went up to Hon'ble High Court of Calcutta in WPCT 261/2006 by assailing the order passed by this Tribunal where the Hon'ble High Court passed the order as hereunder :

"Once the Madras judgment attained finality the Calcutta Bench very rightly followed the same as a Coordinate Bench.
We do not find any scope of interference herein.
The writ application fails and is hereby dismissed."

11. I have further noted that undisputedly the case of the Tribunal was affirmed by the Hon'ble High Court and was order to be implemented by the department and the benefits were extended accordingly to the said applicants. The exception has been made in the present case that as the present applicant was not party to the said case the benefit so extended to those applicants could not be extended to the present applicant. In the case of Inderpal Yadav -vs- Union of India & Ors. [1985 (2) SCC 648] Hon'ble Apex Court has held as hereunder :

"Relief granted by the Court is to be given to other similarly situated employees without forcing them to go to Court for similar benefits."

12. In view of the aforesaid discussions, I am of the view that decisions extended to the similarly situated employees shall be applicable to the present applicant in view of the law laid down in Inderpal Yadav (supra).

13. The OA is therefore allowed with a direction to the respondents to extend the benefits of OM dated 22.10.1990 as modified subsequently from time to time. Needless to mention that consequential benefits be also extended to the



applicant. The impugned order dated 16.10.2015 rejecting the prayer made by the applicant is set aside.

14. The OA is accordingly disposed of. No order as to costs.

(MANJULA DAS)
JUDICIAL MEMBER

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