

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 512 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member
Hon'ble Mr. Swarup Kumar Mishra, Judicial Member**

Arjun Mohapatra, aged about 71 years, S/o Late Nityananda Mohapatra, permanent resident of At/PO Nilakantha Nagar, Chudangasahi, PS Puri, Town/Dist. – Puri.

.....Applicant

VERSUS

1. Union of India, represented through its Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi – 110001.
2. Postmaster General, Berhampur Region, At/PO Berhampur, Dist. Ganjam.
3. Director of Postal Accounts, Mahanadi Vihar, PO Nayabazar, Cuttack – 753004.

.....respondents.

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

For the respondents: Mr.S.Behera, counsel

Heard on : 12.12.2018

Order on : 19.12.2018

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA is filed for revision at par with the junior to the applicant.

Following reliefs are sought by the applicant in this OA:-

- "(i) to admit the OA;
- (ii) to quash the office order dtd. 7.7.2015 (Annexure A/6) and office order dtd. 14.7.2015 (Annexure A/7) holding that the same are unjustified and arbitrary;
- (iii) to direct the official respondents to revise his pension at par with his juniors making the notional fixation in the LSG & HSG grade;
- (iv) to direct the respondent to extend the consequential benefit including arrear, interest and cost of litigation to the applicant;
- (v) to pass any other order/orders as deemed fit and proper for the ends of justice."

2. The applicant was a regular employee under the respondents and after attaining superannuation, retired from service on 31.05.2002. His grievance is that he was not allowed stepping up of pay at par with his juniors. When no action was taken on his representation, he filed the OA No. 274/2015 which

was disposed of with a direction to the respondents to dispose of his representation by a speaking order. In compliance, the impugned orders dated 7.07.2015 (Annexure A/5) and 14.07.2015 (Annexure A/6) have been passed by the respondents, which have been impugned in this OA.

3. The respondents in their counter have stated that the applicant had filed a representation on 20.02.1991 for stepping up of his pay at par with Sri K.H.C. Reddy who was his junior and was getting higher salary after stepping up of pay was allowed to him w.e.f. 1.02.1986. The para 4.4 of the counter states as under:-

"The applicant joined in the Postal Department as Clerk on 12.11.1964. Sr. K.H.C.Reddy joined as Clerk on 13.11.1964. Both of the aforesaid officials got Time Bound Onwe promotion on 30.11.1983,. As on 30.11.1983, the pay of the both officials was Rs.455/- As on 1.11.1986, the pay of both the officials was Rs.1520/- The pay of Sri K.H.C.Reddy was stepped up with Sri B.K.Pradhan, TBOP Clerk and fixed to Rs.1560/- w.e.f. 1.2.1986, but the pay of the applicant remained unchanged. As such, the pay of the applicant as on 1.7.1986 was Rs.1520/- whereas the pay of Shri K.H.C.Reddy was Rs.1560/. For the aforesaid reason, the pay of the applicant at Sl.No.56 of the Annexure A/1 was Rs.1640/- whereas the pay of Sri K.H.C.Reddy at Sl. No.57 of the Annexure A/1 was Rs.1680/- as on 1.7.1990. While working as LSG PA at Berhampur HO, the applicant had represented on 20.2.1991 for stepping up of his pay at par with his juniors which was examined by the Circle IFA & the Director Postal Services, Berhampur and not acceded to. The reason of not acceding to the case could not be ascertained due to non availability of the file concerned because of the fact that the periodicity of preservation of file has since been over as the applicant has voluntarily retired from service from 1.6.2002. The Rules regarding the destruction of accounts records appertaining to the accounts audited by the Indian Audit Department (Appendix-5 to the Posts & Telegraphs Financial Hand Book Volume 1) is enclosed as Annexure R/1. The Senior Superintendent of Post Offices, Berhampur Division was asked to inform the fact to the applicant vide office of the Postmaster General, Berhampur Region Letter No. ST/11-3-8/91 dated 12.6.1991 (Annexure R/2)."

4. The impugned order dated 7.07.2015 has stated as under:-

"From the above statement, it is seen that all his erstwhile juniors baring the last one were drawing last pay at higher stages resulting in more average emoluments and got their pension fixed at higher amounts than the applicant.

There is no provision under the Rules for fixation of pension of a pensioner at par with another pensioner nor is the concept of senior pensioner and junior pensioner available anywhere. As the pension of the applicant has been correctly fixed as per the provisions of Rules, there is no further scope for re-fixation of his pension.

From the copy of the Gradation list attached to the OA (Annexure A/1) it is seen that although the applicant was senior, he was drawing less pay than his juniors. It may be examined by the Division Office.

The representation of the applicant stated to be submitted to the Director of Accounts (Postal), Cuttack as annexed as Annexure A/3 to OA No. 260/00274 of 2015 is accordingly disposed of."

5. The impugned order dated 14.07.2015 has stated as under:-

"From the above table, it is seen that all his erstwhile juniors baring the last one were drawing last pay at higher stages resulting in more average emoluments and accordingly got their pension fixed at higher amounts than the applicant.

There is no provision under the rules for fixation of pension of a pensioner at par with another pensioner nor is the concept of senior pensioner and junior pensioner available anywhere. As the pension of the applicant has been correctly fixed as per the provisions of Rules, there is no further scope for re-fixation of his pension.

It is also confirmed from the Gradation list maintained in respect of LSG officials including TBOP corrected up to 1.7.90 vide Annexure A/1 and Gradation list maintained in respect of HSG II officials including BCR vide Annexure A/2 that the pay of the official is less than those pensioners with whom the applicant is making comparison. In this regard the applicant had earlier represented on 20.2.1991 for stepping up of his pay at par with his junior Sri B.K.Pradhan at Sl.6 of the table supra. The case of the applicant was carefully examined by the Circle IFA and Director Postal Services, Berhampur (Gm) and his request was not acceded to. The SSPOs Berhampur Division was directed to intimate the fact to the applicant vide letter No. ST/11-3-8/91 dated 12.6.1991. Accordingly, the SSPOs Berhampur Division vide his letter No. E/G-19/A.Mohapatra dated 13.6.91 communicated the fact to the applicant through the Sr. Postmaster Berhampur HO."

In view of this, I do not find any merit in the representation of the applicant Sri Arjun Mohapatra and accordingly it is disposed of."

6. We have heard learned counsels of both the parties, who reiterated the stand taken in their respective pleadings and also perused the pleadings of both the parties as well as the documents on record.

7. Regarding the issue of delay on the part of the applicant in raising the grievance as stated in the counter filed by the respondents, the order dated 20.05.2015 (Annexure A/5) passed by this Tribunal in the applicant's first OA No. 274/2015 stated as under:-

"However, since it is a matter of revision of pension, the delay in filing this OA should not stand as a bar for redressal of the grievance of the applicant."

In view of the clear finding of the Tribunal as above and the settled position of law in this regard, we are also of the view that there is no delay on the part of the applicant as the matter.

8. Perusal of the order dated 12.6.1991 (Annexure R/2) by which the claim of the applicant was rejected as stated in the counter reveals that no reason for rejecting the request of the applicant has been mentioned in the order dated 12.6.1991, which states as under:-

"Sub : Stepping up the pay of Shri Arjun Mohapatra, LSG PA Berhampur (Gm) HO.

Ref: Your letter No.E/G-19/A.Mohapatra dated 15.5.91 and 6.5.91.

The representation dt. 20/2/91 of the above named official on the subject has carefully been examined by the Circle I.F.A. and D.P.S. Berhampur (Gm) and I am directed to intimate that his request is not acceded to.

He may be informed accordingly.

Three service books namely S/Shri Arjun Mohapatra, Batakrishna Pradhan and Gopinath Sahu of the officials received with your letter under reference are returned herewith.

The receipt of the same may please be acknowledged."

9. It is clear from above that the order dated 12.6.1991 is cryptic and non-speaking. No reason has been mentioned in the counter filed by the respondents for refusing the benefit of stepping up of his pay at par with his junior employee like Sri K.H.C. Reddy who was admittedly getting higher pay than the applicant after 1.02.1986 (as mentioned in the counter).

10. The claim of pay parity at par with juniors is to be considered under the Government of India's Orders No. (18) below the Fundamental Rule 22 which states as under :-

"(18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior – (a) As a result of application of FR 22-C.[Now FR 22(1)(a)(1)] – In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower fgrade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of

promotion or appointment of the junior officer and will be subject to the following conditions, namely -

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[GI, MF, OM No.F.2(78)-E.III(A)/66, dated the 4th February, 1966.]

11. As stated in the counter, the disparity in pay between the applicant and his junior Sri K.H.C. Reddy from 1.02.1986 arose due to stepping up of pay of the later viv-a-vis another employee. There is nothing on record to show that the applicant is not entitled to stepping up of pay as per the government of India's order as extracted at para 10 of this order. Further, no reason for not accepting the claim of the applicant was mentioned in the order of rejection dated 12.6.1991 as well as in the pleadings of the respondents.

12. In view of the above, we are of the considered view that the applicant was entitled for stepping up of his pay at par with his juniors from 1.2.1986, with consequential pensionary benefits as per the rules. But he is not entitled for any arrear salary and arrear pension till he filed the first OA (No. 274/2015), since he did not raise the grievance in time as per law. Accordingly, the impugned orders dated 7.07.2015 and 14.07.2015 are set aside and the matter is remitted to the respondents with direction to fix the applicant's pay notionally after 1.02.1986 after granting stepping up of his pay at par with Sri K.H.C. Reddy and revise his pension as per the rules. It is made clear that no arrear salary or pension is payable except for the arrear pension from 1.1.2015 and the differential retirement benefits on account of revision of pension based on notional fixation of pay. The OA is allowed in terms of the directions above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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