

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00535/2015

Wednesday, this the 6th day of February, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

V.V.Simon,
Aged 58 years,
S/o V.L.Varu,
Mail Guard, HRO,
R.M.S., E.K.Division,
Kochi – 682 001.
Residing at Kavalakkat House,
EWS. 447, Gandhi Nagar,
Kadavanthra, Ernakulam.Applicant

(By Advocate Mr. Sreedevi Kylasanath)

V e r s u s

1. The Secretary,
Ministry of Communication and IT.,
Department of Post,
Government of India,
New Delhi – 110 001.
2. The Post Master General,
Office of the Post Master General,
Gandhi Nagar, Kochi-20.
3. The Superintendent,
Office of the Superintendent,
R.M.S. EK Division,
Kochi – 682 011.
4. The Head Record Officer,
Office of the Head Record Officer,

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R.M.S. EK Division,
Kochi – 682 011.

....Respondents

(By Mr.S.Ramesh, ACGSC for Respondents)

This application having been heard on 25th January, 2019 the Tribunal on 6th February, 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

OA No.488/2015 is filed by Shri V.V.Simon seeking the following reliefs:

- i) To call for records leading to Annexure A5 and set aside the same.
- ii) To issue a direction to the respondents to grant applicant the benefit of pay fixation under FR 22(l)(a)(i) on his promotion from the post of Multi Tasking Staff to Mail Guard, granting one additional increment w.e.f the date of promotion as Mail Guard.
- iii) To declare that applicant is entitled to notional increment at the scale of pay at the feeder grade and placement of that stage in the scale admissible to the promotion post.
- iv) To issue a direction to the respondents 2 to 4 to grant applicant Grade pay of Rs.2800 in the cadre of Mail Guard and refix applicants pay and grant arrears of pay along with interest with effect from the date of promotion as Mail Guard" in the interest of justice.
- v) To pass any other order(s) as is deemed fit and proper by this Hon'ble Tribunal in the interest of justice.

2. The applicant entered in service as Multi Tasking Staff in 1979. He was given placement on higher grade pay with effect from 18.10.2009 with grade

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pay of Rs.2400/- . In the year 2013 the applicant was selected in 25% quota for promotion by selection cum seniority of Multi Tasking Staff (MTS) as per the Postman and Mail Guard Recruitment Rule, 2010 and the applicant was promoted in the cadre of Mail Guard in the scale of pay of Rs.5200-20200 with grade pay of Rs.2000/- on 12.11.2013.. The promotion by the above said order involves responsibility of greater importance than those attached to the post of MTS, the post held by him. On regular promotion as Mail Guard the applicant has not been granted any additional increments. It is submitted by the applicant the National Anomaly Committee in its meeting held on 17.07.2012 took a decision to recommend one increment whenever the employees are promoted to a post carrying the same grade pay subject to the condition that the promotional post had higher duties and responsibilities under FR.22(I)(a)(i) and increment was permitted. But in the case of the applicant by Annexure A5, claim of one increment is rejected by the respondents, which according to the applicant is illegal, arbitrary and violative of Article 14 and 21 of Constitution of India. Feeling aggrieved by this, he has approached this Tribunal for redressal of his grievance.

3. Notices were issued to the respondents. Respondents put up their appearance and filed their reply. The respondents submit that the applicant entered in the Department as Mail Man with effect from 01.05.1981 and the date of notional promotion of the official is 31.08.1979. The official was promoted under TBOP w.e.f. 17.09.1995. He was again promoted under BCR

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Scheme w.e.f. 01.01.2006. After the implementation of 6th CPC, the official was placed under MACP III w.e.f. 18.10.2009. As per rules he was promoted to the post of Mail Guard on the basis of selection from seniority w.e.f. 18.11.2013. The pay band (PB-1) and pay scale (Rs.5200-20200) of both the cadres are same. But the Grade pay of the post of Mail Guard is more than the post of MTS. The initial Grade pay of the post of MTS is Rs.1800/- and that of MG is Rs.2000/- . It may kindly be noted that the official has already been drawing pay and allowances in Pb-1 with the Grade Pay of Rs.2400/- after attaining MACP III w.e.f. From 18.10.2009. It is submitted that the pay scale of the cadre of Mail Guard corresponds to PB-1 in the same pay scale of Rs.5200-20200 with Grade Pay of Rs.2000/-, and since the initial pay of the Mail Guard was lower than the pay already drawn by the official, fixation of pay was not made. When the official submitted Annexure A4 representation, the claim of the applicant was analysed. As the applicant was not eligible for further pay fixation on promotion for the reasons stated above, the matter was informed to him vide Annexure A5.

4. It is further submitted that the applicant is presently working as Mail Guard, HRO RMS EK Division Kochi. The applicant has been promoted to the present post from the cadre of MTS. It is true that the pay drawn by the applicant remains the same even after promotion to the posts of Mail Guard. His Claim for fixation of pay vide Annexure A4 letter of the OA was duly analysed. It is submitted that the duty of Mail Guard is different and is of

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greater responsibilities. For this reason these posts are considered as two entirely different cadres as MTS (erstwhile MM) and MG with different Grade Pays in PB-1, The pay structure of MTS Posts is as follows.

Cadre	Initial Grade pay and Pay Band	Grade Pay and Pay Band MACP-I	Grade Pay and Pay Band MACP-II	Grade Pay and Pay Band MACP -III
MTS	1800 (PB-I 5200-20200)	1900 (PB-I 5200-20200)	2000 (PB-I 5200-20200)	2400 (PB-I 5200-20200)
MG	2000 (PB-I 5200-20200)	2400 (PB-I 5200-20200)	2800 (PB-I 5200-20200)	4200 (PB-I 9300-34800)

It is pertinent to note that the promotion of the applicant was based on selection cum seniority basis and with his long service and the MACPs he has already attained a higher grade pay in the lower cadre even before getting the promotion to the cadre of Mail Guard. The last pay drawn by the applicant before promotion was Rs.12910/-. The pay of the applicant as on 17.11.2013 in the posts of MTS was Rs.10510+GP Rs.2400/- = Rs.12910/-. The fixation admissible to the applicant on his promotion to the post of Mail Guard as per Rule 13 of CCS (RP) Rules is Rs.12900/- ie the pay band Rs.10510 + an increment @ 3% amounting to Rs.390+ Grade Pay of the post of MG Rs.2000/- which is lesser than the last pay drawn by him before the promotion by Rs.10. Since the applicant is seeking pay fixation, on his promotion to the post of Mail Guard with GP and Rs.2000 in PB-I which is below the pay drawn by him in MM cadre after getting the benefits of MAC-III in that cadre, the OA is liable to be

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dismissed.

5. The respondents further submit that the pay cannot be fixed as contended by the applicant. The fixation admissible to the applicant in this case would leave him with lesser pay than what he was drawing in the lower post ie MTS with GP Rs.2400/- and got financial upgradation under MACP III. The last pay drawn by the applicant before promotion was Rs.12910/-. The pay of the applicant as on 17.11.2013 in the post of MTS was Rs.10510 + GP Rs.2400 = Rs.12910/-. The fixation admissible to the applicant on his promotion to the post of Mail Guard as per Rule 13 of CCS(RP) Rules is Rs.12900/- i.e., the pay in the pay band Rs.10510 + an increment @ 3% amounting to Rs.390+ Grade Pay of the post of MG Rs.2000/-) which is less than that of the last pay drawn by him before promotion by Rs.10/-.

6. Heard Counsel for the parties at length and perused the records. The applicant has raised vital issue that he is entitled for grant of benefit of pay fixation under FR 22 (I)(a)(1) or not, let us examine the same:-

The FR 22(I)(a)(1) -

“Where a Government servant holding a post, other than a tenure post, in substantive or temporary or officiating capacity, is promoted or appointed in a substantive, temporary or officiating capacity as the case may be subject to fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of higher post shall be fixed at the next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued whichever is more.”

7. FR 22 has clearly laid down the criteria or fixation of pay on promotion on or after 01.01.2006. The applicant has got three financial upgradation while working as MTS during his 36 years of service. On promotion to the post of Mail Guard he got the pay scale of Rs.5200-20200 with grade pay of Rs.2000/-. In fact the applicant even after getting this promotion as Mail Guard has not received any increment or benefit on promotion though he is shouldering the responsibilities of Mail Guard and where as his actual designation is MTS.

8. Even in the National Anomaly Committee meeting held on 17.07.2012, it was decided that in cases where promotion to a post carrying same grade pay benefit of one increment would be considered to each category of employees subject to the condition that the promotional post had higher duties and responsibilities under FR 22(I)(a)(1). Thus while rejecting the claim of the applicant it is escaped from the notice of the respondents that the applicant has not received any benefit despite being promoted to the next post which is having higher responsibilities.

8.12 Item No.41 – Fixation of pay on promotion to the post carrying the same grade pay.

The Staff side demanded that with regard to fixation of pay on promotion to a post carrying the same grade pay, one increment should be granted. The Official side was inclined to agree to such a suggestion on the condition that such a promotion shall also be reckoned with for the purpose of MACP. It was decided that in cases where promotion is to a post carrying the same grade pay, benefit of one increment would be considered separately for each category of employee subject to the condition that the promotional post had higher duties and responsibilities under FR 22(I)(a)(1) and an increment was

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permitted in such cases even prior to 6th CPC as the two posts carrying the same pay scale was not merged due to functional considerations. The issue of treating it as promotion for the purpose of MACPs will be examined separately.

Further on reading the Clause of FR 22 envisaged that in case of shouldering of higher responsibilities or post carrying duties and responsibilities of greater importance than the pay of the employee can be refixed by granting increment at which the said pay has accrued or which is more. Thus the Rule FR22 squarely covers the case of the applicant herein. He has been appointed on regular basis to the post of Mail Guard which carries higher duties and responsibilities than the post held by him which is MTS.

9. In view of the above, after carefully considering the legal submissions and pleadings, we are of the view that present OA deserves to be allowed. Hence OA is allowed with a direction to the respondents to give the applicant the benefit of one increment under the Rule FR 22(I)(a)(1). This exercise shall be completed within a period of 60 days from the date of receipt of a copy of this order. OA is allowed with no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00535/2015

1. **Annexure A1** – True copy of the promotion order dated 12.11.2013 of the 3rd respondent.
 2. **Annexure A2** – True copy of the Memorandum of Distribution of work - Ernakulam showing the duties and responsibility of Mail Guard and Multi Tasking Staff.
 3. **Annexure A3** – True copy of the representation dated 7.4.2015 submitted before 2nd respondent.
 4. **Annexure A4** – True copy of the representation dated 7.4.2015 submitted before 3rd respondent.
 5. **Annexure A5** – As per communication No.C3/HRO/MTS-Corr. Dated 11.6.2015, 4th respondent intimated that applicant is not eligible for fixation of pay on promotion to the cadre of Mail Guard, PB-I (rs.5200-20200) with grade pay of Rs.2000/- as applicant is already drawing pay as PB-I with grade pay of Rs.24,000/-
 6. **Annexure A6** – True copy of the relevant portion of the Minutes of the meeting of the National Anomaly Committee held on 17th July, 2012.
 7. **Annexure A7** – True copy of the order dated 25th January, 2012 in OA No.285/2011.
 8. **Annexure A8** – True copy of the judgment dated 2.11.2012 of the Hon'ble High Court of Kerala in O.P. CAT 2900/2012 taken from the website.
 9. **Annexure R1** – True copy of the Rule-13 of CCS (RP) Rules, 2008.
 10. **Annexure R2** - True copy of the Government of India's order 1 (i) below FR 22 extracted from Swamy's Compilation of FRSR Part-I General Rules Twentieth Edition 2010.
 11. **Annexure A9** - True copy of the relevant part of Fundamental rules FR 22(I)(a)(1).
 12. **Annexure R3** - True copy of statement showing grade pay admissible to different categories of staff/officers on placement in the Modified ACP.
 13. **Annexure R4** - True copy of O.M.No.4-7(MACPs) 2009-PCC dated 18.09.2009.
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