

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00757/2013, OA/310/00834/2013, OA/310/00908/2013,

OA/310/00925/2013 & OA/310/00978/2013

Dated the 01st day of November Two Thousand Eighteen

PRESENT

HON'BLE MR. P. MADHAVAN, Member (J)

&

HON'BLE MR. T. JACOB, Member (A)

1.S.Sivagurunathan,Applicant in OA 757/2013
2.K.Kannan,Applicant in OA 834/2013
3.K.Ashok Kumar,Applicant in OA 908/2013
4.P.Jothimani,Applicant in OA 925/2013
5.C.Jaiganesh.Applicant in OA 978/2013

By Advocate M/s. P.R.Satyanarayanan

Vs

Union of India represented by,

1.The Director General,
Department of Posts,
Dak Bhavan, New Delhi 110001.

2.Postmaster General,
Southern Region,
Madurai 625002.

3.The General Manager,
Postal Accounts & Finance,
Ethiraj Salai, Chennai 600008.

4.Senior Superintendent of Post Offices,
Madurai Postal Division,
Madurai 625002.Respondents in all OAs

By Advocate Mr.C. Kulanthaivel

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

These matters have been remanded by the Hon'ble High Court while disposing of the W.P.Nos. 63 of 2017 & batch by order dt. 29.8.2017 with the following observation:-

“5. Admittedly the issue raised in these writ petitions relates to pay anomaly consequent upon the recommendations of the VI Central Pay Commission with effect from 01.01.2006. On perusal of the orders passed by the Tribunal, we find that the Tribunal has mechanically directed the Department to fix the pay of the contesting respondent(s) herein based on its earlier orders without going into the facts and circumstances of each case with regard to the seniority or otherwise. Hence the matters are remanded back to the Tribunal to set right the anomaly as well to uphold the principle of seniority to be maintained and that the pay scale of the seniors has to be re-fixed than that of the juniors and thereafter, the Tribunal shall pass appropriate orders on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order.

6. With the above observation, the writ petitions are disposed of accordingly. Consequently, W.P.M.P. Nos. 78 of 2017, 27826, 27828, 27830, 27832, 27834 & 26941 of 2016 are closed. No costs.”

2. The main relief sought by the applicant in O.A. 757 of 2013 is as follows:-

“to call for the records relating to proceedings No. E/3-7/2003 dated 9.8.2012 issued by the fourth respondent and quash the same as arbitrary and illegal and direct the respondents to re-fix the basic pay of the applicant as Rs. 6460/- + Grade Pay of Rs. 2000 in the cadre of Postman w.e.f 01.01.2006 ie the date of implementation of the recommendations of Sixth Pay Commission with all consequential benefits and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

Similar relief has been sought by the applicants in all the remaining OAs.

3. The OA 757/2013 and batch were allowed by this Tribunal vide order dated 01.05.2015 with the following direction:-

"7. We have carefully considered the rival contentions and perused the material on record. The same issue relating to the fixation of the pay in respect of employees in the Postman category who entered service prior to 01.01.2006 came to be considered in the OA 1239/2011 wherein this Tribunal had held as under:

"5. We have considered the facts and submissions made by both sides. Thus, it is an admitted fact that the applicant is a Postman and all the Postman in the respondent Department are getting the salary with the basic pay of Rs. 6460/- plus Grade Pay of Rs. 2000/-. Therefore, it is not known how the respondents have fixed the applicant's pay alone at Rs. 5880/-. Moreover, we have also considered the contention of the Id. Counsel for the Respondents that the applicant is at the bottom of the seniority list in that division and therefore, he gets the lower pay. However, in the instant case, we are concerned with the fixation of pay of the applicant consequent on the implementation of the Sixth Pay Commission's recommendations. His ranking in the Seniority List is not relevant to be decided in this case. We are therefore of the opinion that the applicant is eligible for pay fixation at Rs. 6460/- with Grade Pay of Rs. 2000/- from 01.01.2006.

6. In that view of the matter, we direct the Respondents to fix the pay of the applicant in the basic pay of Rs. 6460/- and Grade Pay of Rs. 2000/- with effect from 1.1.2006 in the cadre of Postman with all consequential benefits and pass appropriate orders within a period of six weeks from the date of receipt of copy this order."

8. Following this decision, in the subsequent batch of OAs 1511 – 1514 / 2011, this Tribunal again had issued similar orders. In the light of the above position, we find that the applicants in these OAs are similarly placed and they are entitled for the same relief. Accordingly, we direct the respondents to fix the pay of the applicants in the basic pay of Rs. 6460/- and the Grade Pay of Rs. 2000/- from 01.01.2006 in the cadre of Postman with all consequential benefits and pass appropriate orders within a period of two months from the date of receipt of copy of this order. The OAs are allowed as above. No order as to costs."

4. As the Hon'ble High Court directed the Tribunal to deal with the seniority so also the pay fixation of the applicants, it is relevant to extract the following observation of the Tribunal while passing order dated 28.2.2013 in OA 1239/2011.

"5. We have considered the facts and submission made by both sides. Thus, it is an admitted fact that the applicant is a Post man and all the Postman in the Respondent Department are getting the salary with the basic pay of Rs. 6460/- plus Grade Pay of Rs. 2000. Therefore, it is not known how the Respondents have fixed the applicant's pay alone at Rs. 5880/-. Moreover, we have also considered the contention of the learned counsel for the respondents that the applicant is at the bottom of the seniority list in that division and therefore he gets the lower pay. However, in the instant case, we are concerned with the fixation of pay of the applicant consequent on the implementation of the sixth pay commission's recommendations. His ranking in the Seniority list is not relevant to be decided in this case. We are therefore of the opinion that the applicant is eligible for pay fixation at Rs.6460/- with grade pay of Rs. 2000/- from 01.01.2006."

From the above it is clear that the Tribunal addressed the contention of the respondents that the pay fixation has no nexus with the seniority. All through the applicants' prayer is only fixation of their pay and not seniority.

5. When the matter is taken up today for hearing, Counsel for the applicants produced before us a memo stating that the Ministry of Finance issued an Office Memorandum No.8-23/2017-E.IIIA dated 28.09.2018 stating that the pay anomaly was rectified as mentioned in paragraph 7 & 8 and hence applicant are also entitled to the same. The extract of para 7 & 8 are reproduced herein for better appreciation of the case:

" 7. Accordingly, the matter has been considered in the light of the above background and in the context of the specific orders of Hon'ble Supreme Court dated 1.9.2017 as arising out of the original issue raised by the Trained Graduated Teachers of GNCTD in terms of their OA No. 3217/2014. As mentioned above, the petitioners in that case were those who were appointed as TGT before 1.1.2006 and also promoted as TGT on or after 1.1.2006, and had occasion for grievance because their pay in the pay structure in vogue from 1.1.2006 had been fixed lower than the entry pay as prescribed for direct recruits appointed as TGT on or after 1.1.2006. Therefore, the principle of benefit of pay fixation, as flowing from the aforesaid orders of the Hon'ble CAT, Hon'ble Delhi High Court and the Hon'ble

Supreme Court, is that the pay of those who were appointed to the post prior to 1.1.2006 and those who were appointed to the post on promotion in the pay structure effective from 1.1.2006 onwards, and where in respect of such posts entry pay for direct recruits appointed on or after 1.1.2006 has been prescribed giving rise to differential pay, may not be lower than the said entry pay. It is the case of differential pay in respect of employees of a post, as caused by the existence of entry pay applicable for direct recruits on that post appointed on or after 1.1.2006, that has been addressed in the aforesaid case of the post of TGTs. In case entry pay as per Section II of Part A of the First Schedule of the CCS(RP) Rules, 2008 is not applicable in case of a post, the same will not give rise to differential pay for holders of the post and, hence, not covered under the ration of the case of TGT.

8. Accordingly, the President is pleased to decide that in respect of those posts where entry pay for direct recruits appointed on or after 1.1.2006, as per Section II of Part A of the First Schedule of CCS(RP) Rules, 2008, becomes applicable by virtue of the provision of the element of direct recruitment in the relevant recruitment rules, the pay of Central government employees who were appointed to such posts prior to 1.1.2006 and whose pay, as fixed in the revised pay structure under Rule 7 thereof as on 1.1.2006 turns out to be lower than the prescribed entry pay for direct recruits of that post, shall not be less than such entry pay w.e.f 1.1.2006. Likewise, the pay of Central Government employees who were appointed to such posts by way of promotion on or after 1.1.2006 and whose pay, as fixed under Rule 13 of CCS(RP) Rules, 2008, happens to be lower than the said entry pay, shall also not be less than such entry pay from the date of their promotion taking place on or after 1.1.2006."

6. It is stated that the subject matter in question had already been redressed by the Government which took decision through the aforesaid OM. Learned counsel for the applicants submits that applicants would be satisfied if a direction is given to the respondents to take a decision within a time frame to be set by the Tribunal pursuant to the OM dated 28.09.2018. The Counsel for the respondents has no objection to the above prayer.

7. In view of the policy decision already taken by the Government on subject in question in these OAs, there is no necessity to decide the

matter on merits as directed by the Hon'ble High Court vide order dt. 29.08.2017. However, in view of the limited relief sought by the applicants as stated above, we are of the view that these OAs may be disposed of by directing the respondents to take a decision in terms of the OM dated 28.09.2018 within a period of two months from the date of receipt of copy of this order. OAs are disposed of accordingly. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)

01.11.2018