

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01656-01658/2018

DATED THIS THE 27th DAY OF NOVEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. B.V.Satishkumar
S/o. B.L.Venkatarathnam
Aged: 44 years
Working as Group Leader (PLI)
O/O SSPOS Kolar Dv.
Kolar-563102.
Residing at:
Behind Amara Jyothi School
Dr.Vasude Reddy layout
Mulbagal-563131.

2. V.Anil Kumar
S/o. Late V.K.Rajanna
Aged: 43 years
Working as Office Assistant
C/o SSPOS Kolar Dv.
Kolar-563102.
Residing at:
No.1147, Jail Road, Fort
Kolar-563101.

3. Narasimhappa
S/o. Late Sampangeppa
Aged about: 49 years
Working as PO SB promoter
Kolar-563101.
Residing at:
Postal Quarters
P.C.Extension
Kolar-563102.

....Applicants

(By Advocate Sri P.Kamalesan)

Vs.

1. Union of India
Represented by Director General
Department of Posts
Dak Bhavan
New Delhi.
2. Chief Post Master General
Karnataka Circle
Bangalore-560001.
3. Post Master General
S.K.Region
Bangalore-560001.
4. Senior Superintendent of Post Offices
Kolar Postal Division
Kolar-563101.

....Respondents

(By Advocate Sri N.Amaresh, Sr.PC for CG)

ORDER(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicants is that they were appointed as Postal Assistants on 15.11.1996. As per the Ministry of Finance Notification dtd.25.7.2016(Annexure-A1) by which the 7th CPC revised pay scales to Central Government employees were given effect from 1.1.2016, it was stipulated vide para-5 regarding drawal of pay in the revised pay structure that 'a Govt. Servant may elect to continue to draw pay in the existing pay structure until the date on which he earns his next or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure'. The applicants exercised their options to continue in the pre-revised pay until the date of their any subsequent increment in accordance with Central Civil Services (Revised Pay) Rules 2016. The applicants were granted their next increment from 1.7.2017 in the pre-revised scales. They were granted 2nd MACP from 29.11.2016 and pay fixation was also

done in the pre revised pay structure. They submit that in accordance with their option, their pay fixation from 1.7.2017 should be in accordance with 7th CPC pay scales as the same were granted to other officials as per RTI information at Annexure-A2 wherein other postal divisions in Karnataka, pay fixation in the revised pay scales was done accepting the officials' option which is similarly exercised by the applicants. Then the applicants submitted representations on 26.6.2018 and 6.7.2018 to the Senior Superintendent of Post Offices, Kolar Division(Annexure-A3). The applicants submit that the DoP&T vide letter dtd.20.9.2018, clarified that the option for fixation of pay will be applicable in the cases of pay fixation after grant of MACP also(Annexure-A4). Denial of the benefit of pay fixation in the revised pay scales after subsequent increment from 1.7.2017, which was granted to other employees in the department, is discriminatory, arbitrary and in violation of Article 14 of the Constitution of India. Therefore, the applicants have filed the present OA seeking direction to the respondents to fix their pay as per their option exercised and in accordance with the provisions of para No.5 of Min. of Finance, (Dept. of Expenditure) Notification dtd.25.7.2016(Annexure-A1).

2. The respondents, on the other hand, have submitted in their reply statement that the applicants were appointed as Postal Assistants in the Department under direct recruitment on 15.11.1996. They were granted 1st financial upgradation under MACP w.e.f. 1.9.2008. They were due for 2nd financial upgradation under MACP w.e.f. 29.11.2016. After implementation of the 7th CPC w.e.f. 1.1.2016, the applicants elected to continue on Pay Band and Grade pay of their substantive/officiating post until the date of his subsequent increment raising their pay to Rs.17500/- i.e. opted for fixation of the pay from the date of their 2nd

subsequent increment i.e. 1.7.2017 raising their pay to Rs.17500/- and that till such time, the applicants opted to continue to draw pay in the existing pay structure of old pay i.e. 6th CPC scales. The applicants were granted 2nd MACP on completion of 20 years of qualifying service in the PA cadre w.e.f. 29.11.2016. Further the applicants have drawn the annual increment on 1.7.2017 in the pre-revised pay structure. In the meantime, the audit party has conducted audit on fixation of pay during 7th CPC at Kolar Head Post Office and raised an objection stating that the employees cannot draw their pay in the pre-revised scales forever on the score that they opted to come over to revised scales on various subsequent increment dates. The word subsequent means 'followed by immediately' and not the date at a distant future. The applicants have opted to fix their pay from the date of their 2nd subsequent increment i.e. 1.7.2017 which cannot be termed as immediately after the implementation of 7th CPC recommendations. As per Rule 6 of CCS(RP) Rules 2016, if an official does not exercise his valid option within 3 months from the date of notification of these rules, he had deemed to have come over to new scales. In the above circumstances, the pay of the applicants are to be regulated as per Rule 5 of CCS(RP) Rules 2016 subject to any clarification that may be received from the Directorate in this regard. The applicants submitted their revised options to draw their pay as per 7th CPC w.e.f. 1.1.2016. Accordingly, the pay of the applicants were fixed as per the recommendations of the 7th CPC w.e.f. 1.1.2016. Further, there is no scope for coming over to the new pay structure on promotion/upgradation if such promotion/upgradation is later than 25.7.2016. The applicants were granted 2nd MACP w.e.f. 29.11.2016, as such their request to come over to the revised pay structure from the date their financial upgradation i.e. later than 25.7.2016(the date of notification of the revised pay rules) is not tenable.

Further as per 2nd provision to Rule 5 of CCS(RP) Rules 2016, 'where a Govt. Servant has been placed in a higher Grade Pay or Scale between 1.1.2016 to 25.7.2016 on account of promotion or upgradation, the Govt. Servant may elect to switch over to the revised pay structure from the date of such promotion or upgradation. Hence, it is clear that the option to come to the new pay matrix either from 1.1.2016 or from the DNI/promotion/upgradation is only with reference to the event happening between 1.1.2016 and the date of notification i.e. 25.7.2016. That means **(a)** if promotion happens between 1.1.2016 and 1.7.2016(the date of next increment(DNI)), the Govt. Servant can opt to come over to the new pay matrix either from 1.1.2016 or the date of promotion/financial upgradation. The option to come over to the new pay matrix from 1.7.2016 does not arise. This is because the option available under Rule 5 of the CCS(RP) Rules 2016 is with reference to the post held on 1.1.2016 as clarified in Min. of Finance, Dept. of Expenditure note ID dtd.14.9.2017(Annexure-R1), **(b)** if upgradation happening between 1.1.2016 and 1.7.2016(DNI), the same logic as in **(a)** applies. But here, the change is in scale but not in post. **(c)** If promotion or upgradation happening between the date of next increment i.e. 1.7.2016 and the date of notification i.e. 25.7.2016, the Govt. Servant has an option to come over to the new pay structure either from 1.1.2016, 1.7.2016(DNI) or the date of promotion/upgradation, provided such promotion/upgradation takes place before the date of notification i.e. 25.7.2016. The option to come over to the new pay matrix from the date of promotion/upgradation as envisaged in Rule 5 of CCS(RP) Rules 2016 is only for promotion/upgradation taking place prior to the date of notification of the revised pay rules i.e. 25.7.2016. There is no scope for coming over to the new pay structure on promotion/upgradation if such promotion/upgradation is later than

25.7.2016 as per the provisions at Annexure-R1. Min. of Finance vide OM dtd.12.12.2018(Annexure-R2) clearly states that Govt. Servant who have already exercised their option to come over to the revised pay structure as notified by the CCS(RP) Rules, 2016, shall be permitted another opportunity to revise their initial option in terms of Rule 5 & Rule 6. In view of the above, the officials cannot exercise option to come over to the revised pay matrix with effect from the date of grant of upgradation/promotion after 25.7.2016. In addition to this, in accordance with the 2nd provision to Rule 5 of the CCS(RP) Rules, 2016, read with Min. of Finance, Dept. of Expenditure note ID dtd.19.3.2018(Annexure-R3), the option to come over to the new pay matrix from the date of promotion/upgradation as envisaged in Rule 5 of the CCS(RP) Rules 2016 is only for promotion/upgradation taking place prior to the date of notification of the revised pay rules i.e. 25.7.2016. The applicants were granted 2nd MACP on completion of 20 years of qualifying service in the PA cadre w.e.f. 29.11.2016 and further they have drawn annual increment on 1.7.2017 in the pre-revised pay structure. The request of the applicants to come over to the revised pay structure from the date they got their financial upgradation under the MACPs i.e. later than 25.7.2016 is not tenable. The averment of the applicants that other officials were granted 7th CPC scales from the date of subsequent increment is not correct. Since all the officials who initially opted for fixation of pay from the date of their 2nd subsequent increment i.e. 1.7.2017 submitted their revised options to draw their pay as per 7th CPC w.e.f. 1.1.2016, their pay was accordingly fixed from that date as per the Postmaster letter dtd.13.9.2017(Annexure-R4). Thus the applicants have no case and the OA is liable to be dismissed.

3. We have heard the Learned Counsel for both the parties and perused the

materials placed on record in detail. The applicants in this case elected to continue in the Pay Band and Grade Pay of their substantive officiating post till the date of their subsequent increment vide their option given by them dtd.17.10.2016. Subsequently vide option given dtd.11.9.2017, they decided to opt for the revised pay structure w.e.f. 1.1.2016 itself and in their representations vide Annexure-A3, they have given the reasons for the same citing the comments of the audit party. Their main plea is to consider the first proviso to Rule 5 of CCS(RP) Rules 2016 notified on 25.7.2016 which states as follows:

“Provided that a Government Servant may elect to continue to draw pay in the existing pay structure until the date on which he earns his next or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure”.

4. According to the logic of the respondents, as per this proviso, the applicants can continue to draw the pay in the existing pay structure until the date on which they earned the next or any subsequent increment in the existing pay structure. In this case, they would contend that the revised pay structure was w.e.f. 1.1.2016 and therefore as per this proviso, they can opt for either the next increment viz. 1.7.2016 or any subsequent increment viz. 1.7.2017. However, we must notice that there is a second proviso to the same Rule 5 which states as follows:

“Provided further that in cases where a Government servant has been placed in a higher grade pay or scale between 1st day of January, 2016 and the date of notification of these rules on account of promotion or upgradation, the Government servant may elect to switch over to the revised pay structure from the date of such promotion or upgradation, as the case may be”.

5. A harmonious reading of these two provisos would make it clear that the first proviso will operate only if the contingency regarding the second proviso is not applicable. In other words, if there is no promotion or upgradation which results in the Govt.servant being placed in the higher grade pay or scale between 1.1.2016

and the date of notification of these rules viz. 25.7.2016, then the applicants can claim the higher pay scale/grade with effect from the date of their subsequent increments also. The audit party may be right in their reasoning that any subsequent increment does not mean that the issue can be kept open for ever since as per the subsequent Rule 6, the option has to be exercised within a period of three months from the date of notification of these rules. Even though they are technically correct, the wording in subsequent increments makes the provision a little vague allowing for different interpretations. However, as we have already seen, the applicants are eligible for the relief they have claimed only if their promotions or upgradations had taken place between 1.1.2016 and 25.7.2016 as contended by the respondents. The respondents have also brought in Annexure-R1 relating to the existence of the post held on 1.1.2016 and a very specific Annexure-R3 wherein the respondents have clarified that the option for fixation of pay in the revised pay structure after the date of notification of rules cannot be exercised if the promotion is taking place after 25.7.2016. Vide Annexure-R4, it is also made clear that the applicants have in fact opted for the fixation of pay from 1.1.2016 itself. Therefore, it is clear that a harmonious reading of both the provisos under Rule 5 clearly lead to the conclusion that since the MACP upgradation for which the applicants were eligible came after 25.7.2016, the applicants cannot opt for a revised pay structure after the upgradation. Financial upgradation is only in view of the absence of promotion and that can only be considered along with the consideration of proviso-2 to Rule 5. The applicants have cited several proceedings in the CEPT, Mysore and Raichur Division of the same respondents wherein the MACP upgradation has been given subsequent to 25.7.2016 and revised pay structure has also been admitted after that date. It is for the

respondents to take appropriate action in this regard but as has been held in any number of cases, there cannot be any equality in illegality.

6. The OA is therefore dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred by the applicant in OA.No.170/01656-1658/2018

- Annexure-A1: Copy of Ministry of Finance (Department of Expenditure) Notification, New Delhi dtd.25.7.2016
- Annexure-A2: Copy of RTI information obtained by the applicants **(a)** Vide RTI/30/18-19 dtd.28.5.18 (from SPOS, Kolar), **(b)** CEPT-Mysuru-10 letter No.CEPT/STa/RTI/19/2018 dtd.4.5.2018, **(c)** SPOS, Kolar letter No.HVR/L/RTI/DLGS/2018-19 dtd.13.6.2018 & **(d)** SPOS Raichur letter No.RCRPG/RTI/OA-05/2018 dtd.4.5.2018
- Annexure-A3: Copy of representation of applicants dtd.26.6.2018, 6.7.2018 and 6.7.2018
- Annexure-A4: Copy of government of India, Ministry of Personnel and Public grievances and pensions, Department of personnel and training, OM No.35034/1/2017 Estt-D dtd.20.9.2018

Annexures with reply statement:

- Annexure-R1: MOF DOE Note dtd.14.9.2017
- Annexure-R2: MOF OM dtd.12.12.2018
- Annexure-R3: MOF DOE Note dtd.19.3.2018
- Annexure-R4: Postmaster Letter dtd.13.9.2017
