

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/1433/2013

Date of Order :10.07.2019.

Between :

M.Satyanarayana Reddy, s/o Pedavenkaiah,
Aged about 50 yrs, Occ:Postal Assistant,
Suryapet Head Office, Nalgonda District.

...Applicants

And

1. Union of India, rep. by the
Director General (Posts), Dak Bhavan,
Sansad Marg, New Delhi-110 001.

2. The Chief Postmaster General,
A.P.Circle, Abids, Hyderabad-500 001.

3. The Director of Accounts (Postal),
Hyderabad-500 001.

4. The Superintendent of Post Offices,
Suryapet Division, Suryapet-508 213.

5. The Head Postmaster, Suryapet Head
Post Office, Suryapet-508 213.

... Respondents

Counsel for the Applicants ... Mr.J.Sudheer

Counsel for the Respondents ...Mrs.K.Rajitha, Sr.CGSC

CORAM:

**THE HON'BLE DR.BHAGWAN SAHAI, MEMBER (ADMN.)
THE HON'BLE MR.R.N.SINGH, MEMBER (JUDL.)**

ORAL ORDER

(By R.N.SINGH, MEMBER (JUDL.)

Heard Mr.J.Sudheer, learned Counsel appearing for the Applicant and
Mrs.K.Rajitha, learned Sr. Central Govt. Standing Counsel appearing for the
Respondents.

2. The applicant, who is working as Postal Assistant in the respondent-department has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order dated 24.10.2013 (Annexure.A-X), wherein the scale/pay of the applicant has been reduced from Rs.19,280/- to Rs.18,670/- from 01.10.2013 and an order has also been passed for recovery of Rs.80,715/- paid in excess during the period from 18.02.2004 to 30.09.2013.

3. The undisputed facts leading to the present OA are that the applicant was initially appointed as Postal Assistant in the year 1988. He got qualified in the requisite examination to hold the post of PO and RMS Accountant, and in view of his eligibility and suitability when a vacancy to the post of PO and RMS Accountant arose with effect from 11.05.1996, the applicant was required by the competent authority to discharge the functions of the said post with effect from 11.05.1996 in place of the person viz., Sri G.Bhaskar, who was holding the said post earlier. The applicant was granted a special pay of Rs.90/- per month since 11.05.1996 i.e., the date from which he was required to discharge the duties and functions of the post of PO and RMS Accountant and the applicant complied such order of the competent authority.

4. The Department of Personnel & Training, New Delhi, issued OM dated 22.04.1998 (Annexure.A-3) and keeping in view the recommendations of the V CPC, the Hon'ble President of India decided as under:

“(a) The special pay already admissible would be doubled in those cases where it was sanctioned at the current rates between

January 1, 1986 and December 31, 1990 and enhanced by 50% in those cases where it was revised or introduced at rates higher than current rates after December 31, 1990.

(b) Where the special pay was sanctioned as a percentage of the basic pay, the quantum would be decided in consultation with this Department and the Ministry of Finance.

(c) The orders regarding special pay to Cashier will be issued separately.

(d) The special pay henceforth be termed as "special allowance" as recommended by the fifth Central Pay Commission in para 109.5 of the Report and would be granted as hithertoforesubject to same conditions as are stipulated in FR 9 (25).

2. These orders would be effective from 1st August 1997."

In view of the OM dated 22.04.1998, and sanction of the competent authority, the applicant was granted a special pay of Rs.90/- , which was doubled to Rs.180/-, and the same was granted to the applicant with effect from 01.08.1997, and the applicant continued to get the same till his promotion with effect from 28.02.2004 to Lower Selection Grade (LSG).

5. It is further contended that in view of his promotion with effect from 28.02.2004, a special pay of Rs.180/-, earlier being drawn by the applicant, was taken into consideration while fixing his pay in the promotional grade of LSG.

6. The grievance of the applicant is that though he has been granted initially a special pay of Rs.90/- with effect from 1996 and subsequently Rs.180/- per month with effect from 01.08.1997, and the same has been taken into consideration while fixing his pay in the promotional grade of LSG, however, abruptly the respondents issued the impugned order dated 24.10.2013, reducing the pay of the applicant from Rs.19,280/- to Rs.18,670/- and also have ordered for recovery of a sum of Rs.80,715/-.

7. The learned counsel for the Applicant submits that the impugned order is in violation of the relevant rules and also the law settled by the Hon'ble High Court of Karnataka at Bangalore, vide judgment dated 18.11.2010 in Writ Petition No.7593/2003 (S.CAT) filed by the *Chief Post Master General, Karnataka Circle, Bangalore, & Others v. S.Mohan Kumar* (Annexure.A-6). The SLP filed by the respondents against the aforesaid judgment dated 18.11.2010 of the Hon'ble High Court of Karnataka at Bangalore in S.Mohan Kumar (supra) has been affirmed by the Hon'ble Supreme Court by dismissing the SLP (C) No.10080/2012, vide judgment dated 05.07.2012. In S.Mohan Kumar (supra), the respondent therein was working as Sorting Assistant and was posted as Accountant at Head Record Office, Bangalore Sorting Division w.e.f. 01.11.1994. The post of Accountant carried a special pay of Rs.90/- per month and when he was offered placement in higher scale of TBOP Scheme service, he opted for promotion to the higher grade and he got the benefit of higher scale under TBOP scheme with effect from 05.11.1997 and his pay was fixed taking into account the special pay of Rs.90/-, which he received for more than 3 years. Subsequently by a memo dated 18.08.2001, he was informed that the fixation of pay by taking into consideration the amount of special pay of Rs.90/- on TBOP promotion was erroneous and therefore the department refixed the salary and ordered for recovery of the excess amount, which was challenged by the said S.Mohan Kumar (supra) before the Bangalore Bench of this Tribunal. The Bangalore Bench of this Tribunal held that the pay of S.Mohan Kumar (supra) was properly fixed taking into consideration the special pay which was in accordance with the rules and instructions then in existence. The

Order of Bangalore Bench of this Tribunal was challenged before the Hon'ble High Court. The relevant portion of the judgment of the Hon'ble High Court of Karnataka at Bangalore in S.Mohan Kumar (supra) reads as under:

“5. From the aforesaid facts it is very clear, on the day the special pay of Rs.90/- was granted to the respondent under the rules prevailing then, he was entitled to the same. He has worked for three years continuously and he is entitled to the said special pay. When in pursuance of the V Pay Commission pay was sought to be fixed, certainly that special pay also has to be taken into consideration. In fact, it was taken into consideration and his pay is properly fixed. It is on a wrong understanding that merely because in the V Pay Commission they have issued direction to discard such practice, on the assumption that it is applicable to the respondent also, now an attempt is made to refix the pay excluding the special pay and to recover the excess pay. As rightly observed by the Tribunal, once a vested right had accrued in favour of the employee in terms of the Rules which governed him on the day the said benefit was extended and he has worked continuously for three years and drawn the said amount, merely because some recommendations were made in the V Pay Commission, that would not have the effect of taking away a vested right in him. In so far as the respondent is concerned, those recommendations have no effect. Therefore, the fixation of pay taking into consideration the special pay is valid and legal and on that basis if his salary is refixed in pursuance of the recommendations of the V Pay Commission it is not open to the authorities to seek for refund on the ground that some excess amount is paid. We do not see any merit in this petition. Accordingly, it is dismissed.”

8. The learned counsel for the Applicant submits that the case of the applicant is covered by the judgment of the Hon'ble High Court of Karnataka at Bangalore in **S.Mohan Kumar (supra)**, which has been

affirmed by the Hon'ble Supreme Court . He argued that in the case of **S.Mohan Kumar**, he has been drawing the special pay for more than 3 years before his promotion to the TBOP Scheme, whereas in the present case, the applicant has been drawing a special pay for around 8 years i.e., with effect from 11.05.1996, till his promotion to the next grade i.e., LSG with effect from 28.02.2004. He also argued that the respondents have not been able to show any rule or instructions, which takes away the right of the applicant to a special pay to be taken into consideration while fixing his pay in the promotional grade of LSG.

9. In response to the notice, the respondents have filed a reply statement. The learned counsel for the Respondents very fairly submits that the facts are not in dispute. However, she submits that the refixation of pay of the applicant and proposed order for recovery of the alleged excess payment is on account of a letter dated 10.01.2013 (Annexure.R-I) issued by the respondents in implementation of the judgment of this Tribunal in O.A.No.296/2002 in the matter of **S.Mohan Kumar**. On the basis of the said letter dated 10.01.2013, she has attempted to make a distinction between the persons, who were promoted after completion of 3 years of service as PO and RMS Accountant before 22.04.1998 and the persons who have been promoted after 22.04.1998. However, she has not been able to show any Rule or Circular in this regard. She has also not been able to show that any such distinction has been made by the Bangalore Bench of this Tribunal, the Hon'ble High Court of Karnataka at Bangalore and the Hon'ble Supreme Court in the case of **S.Mohan Kumar (supra)**.

10. We have considered the facts and perused the pleadings on record. We have also considered the submissions made on behalf of the parties.

11. We are of the considered view that in the absence of any binding instructive policy or Circular, which provides distinction between the persons who have been promoted prior to 22.04.1998 or thereafter, and also keeping in view the fact that no such distinction has been made by the Bangalore Bench of this Tribunal or the Hon'ble High Court of Karnataka at Bangalore or by the Hon'ble Supreme Court in the case of **S.Mohan Kumar (supra)** when the applicant is drawing the special pay since 11.05.1996 and revised the special pay with effect from 01.08.1997 and the same has been taken into consideration while fixing his pay in the next promotional grade of LSG, there is no reason or occasion to the respondents to refix and reduce the pay of the applicant or to order recovery of the alleged excess payment made.

12. In view of the aforesaid, the impugned order dated 24.10.2013 is quashed and set aside with all consequential benefits. The OA is allowed to this extent. However, in the facts and circumstances of the case, no order as to costs.

Sd/-

(R.N.SINGH)
MEMBER (JUDL.)

Sd/-

(BHAGWAN SAHAI)
MEMBER (ADMN.)

Dated: this the 10th day of July, 2019

Dictated in the Open Court

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