

(2020) 01 CAT CK 0032
In the Central Administrative Tribunal
Case No : Original Application No. 97 Of 2015

Mahabir Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Citation : (2020) 01 CAT CK 0032

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : T.D. Yadav, R.K. Sharma

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. Applicant herein is a senior citizen. He was appointed as a Peon in the scale of R.70-85 on 18.01.1965. He was promoted as LDC in the pay scale of Rs.110-180 on 06.10.1966 and as UDC in the pay scale of Rs.330-560 on 25.07.1977. Thereafter he was promoted as Head Clerk in the pay scale of Rs.1400-2300 on 01.09.1997 and superannuated on 31.03.1998 on attaining 58 years of age. Options were called from non-Gazetted staff recruited upto 01.10.1986 for placement in Telecom wing. However, he had given option for continuation in Department of Post (Civil Wing) and this was allowed w.e.f. 01.04.1993 vide OM dated 22.11.1994.

2. Department of Post vide letter dated 22.07.1993 decided to extend the TBOP/ BCR Scheme to clerical staff of administrative offices w.e.f. 26.06.1993. TBOP involves one financial upgradation in the pay scale of next higher post in departmental hierarchy if someone is not promoted for 16 years and BCR involves second financial upgradation if someone is not promoted for 26 years.

He requested for grant of Time Bound One Promotion (TBOP) and for grant of Biennial Cadre Review (BCR). This was not agreed to. He along with 11 others

filed OA No.886/HR/1998 at Chandigarh which was allowed vide order dated 06.02.2002. The Chandigarh Bench of this Tribunal passed following directions:

"6. In the facts and circumstances of the case and if one has regard to the reasons stated above, no logic is available with the respondents not to extend the benefit of TBOP and BCR Schemes to the applicants when it has been made (Circle Offices) in the Deptt. of Posts. Annexures A/1 and A/2 are liable to be quashed and set aside and as such we direct accordingly. Respondents are directed to consider cases of the applicants for their promotion to the next higher grade of Rs.1400-2300 (unrevised) under TBOP Scheme and Rs.1600-2660 (unrevised) under BCR, second promotion scheme on completion of 16 years and 26 years service respectively from the due dates from which other equally situated employees of Deptt. of Posts in the cadre of the applicants have been promoted with consequential benefits, if otherwise they are found eligible, in terms of the provisions contained in the related Schemes. Respondents are further directed to implement the above direction within a period of three months from service of these orders."

3. Respondents preferred a writ in Hon"ble High Court and decided to implement the Tribunal's order, subject to outcome of Writ vide letter dated 29.07.2003. Accordingly, TBOP/BCR benefit, both were extended together w.e.f. 26.06.1993 vide order dated 15.12.2003. Applicant pleads that the said Writ is yet to be decided.

4. Applicant represented on 27.08.2004 to grant BCR benefit w.e.f. 01.07.1993 instead of 26.06.1993. This was agreed vide order dated 08.11.2004 and the earlier order dated 12.08.2004 was modified.

Accordingly, basic pay was fixed at Rs.1700/- as of 01.07.1993 in the scale of Rs.1600-50-2660. Applicant, however, pleads that it ought to have been fixed at Rs.1800/- as of 26.06.1993 as was given to one Sh. Lal Chand, Ex Head Clerk vide order dated 16.05.2006. As per this order, Sh. Lal Chand was given following fixation as of 26.06.1993:

As LDC/UDC in pay scale of Rs.1200-2040

Rs.1640/-

Placement as Postal Assistant in pay scale of Rs.975-1660

Rs.1660/-

TBOP benefit given in pay scale of Rs.1400-2300

Rs.1720/-

BCR benefit given in pay scale of Rs.1600-2660

Rs.1800/-

This fixation order also specified as under:

"The above fixation is subject to the final decision of the Hon"ble Punjab & Haryana High Court Chandigarh. In the ongoing appeal filed in CW/8767/CAT/2002 against the impugned orders dated 06.02.2002 of the Hon"ble CAT Chandigarh Bench, Chandigarh."

5. Applicant has been pleading for grant of benefits at par with Sh. Lal Chand, vide his representation dated 14.02.2006, 22.08.2007, 28.08.2007, 27.08.2009, 14.09.2011, 26.09.2011, 22.10.2011 & 22.01.2014. This has not been agreed so far. Hence the applicant filed this OA.

6. Applicant brings out that Department of Post has issued OM on 28.01.2011 in relation to 5th CPC and 6th CPC recommendations. The impact of this letter is summarized as under:

Designation

Head Clerk

OS-II

OS-I

OS

4th CPC w.e.f. 01.01.1986

1400-2300

1400-2600

1600-2660

1640-2900

5th CPC w.e.f. 01.01.1996

These two scales are merged and post is designated as Assistant in scale of Rs.1600-2660

These two scales are merged and post is designated as OS in scale of Rs.1640-2900

New scale as per 5th CPC was Rs.5000-8000

New scale as per 5th CPC was Rs.5500-9000

6th CPC w.e.f. 01.01.2006

These two scales are merged and revised pay scale given PB-2 + GP Rs.4200/- or (Rs.9300-34800 + GP Rs.4200)

7. Respondents opposed the OA on the following grounds:

(i) He has not exhausted departmental remedies and as such OA is violative of Section 20 of CAT (Procedure) Rules.

(ii) OA is not maintainable as it is self contradictory.

(iii) OA is barred by limitation as applicant is seeking benefit from 2006 whereas he filed the OA in 2015. Following was specifically averred in counter reply:

"3. As per the Hon"ble Supreme Court in the case of D.C.S.Negi vs. U.O.I. & ors., [SLP (Civil) No.7956/2011 decided on 07.03.2011] has given a categorical direction tht the Central Administrative Tribunal is duty bound to consider the limitation issue as per the provisions of Administrative Tribunals Act, even if this issue is not raised by the respondent authorities. The explanation offered by the applicant is that he belongs to Rajasthan State and came to know about benefits given to persons similarly situated in the judgment dated 16.11.2010 in OA-3765/2009 later in point of time. Only thereafter he could approach a legal practitioner for legal help and on his advice he had sent a legal notice on 22.09.2011 which is not yet responded to. It is seen that there is no valid ground to condone the delay. In the case of BSNL vs. Ghanshyam Dass & Ors., AISLJ IV-2011(1) 472 it was held by the Apex Court that fence sitters cannot be given any benefit."

8. It was further pleaded that in compliance to order dated 06.02.2002 passed in OA No.886/1998 by Chandigarh Bench of this Tribunal, TBOP/BCR benefit was granted w.e.f. 26.06.1993 vide order dated 12.08.2004. This pay fixation was revised vide order dated 08.11.2004 at the request of applicant to grant him TBOP/BCR benefit w.e.f. 01.07.1993. Later on, this was partially revised vide order dated 12.10.2009. Pay fixation granted is correct.

As per this fixation, applicant was drawing Rs.1600/- in the scale of Rs.1200-2040 as of 26.06.1993. On grant of TBOP benefit to the scale of Rs.1400-2300, he was fixed at Rs.1680 as of 26.06.1993 and on grant of BCR benefit to the scale of Rs.1600-2660, he was fixed at Rs.1750 w.e.f. 26.06.1993. Subsequent pay fixations were accordingly done. These are correct and nothing further is due.

9. Matter has been heard. Sh. T.D.Yadav, learned counsel represented the applicant and Sh. R.K.Sharma, learned counsel represented the respondents.

10. (a) Applicant's grievance is in reference to pay fixation done on grant of TBOP/BCR benefit where he claims that he needs to be at par with one Sh. Lal Chand, who also retired as Head Clerk. (Applicant mentioned that Sh. Lal Chand had taken voluntary retirement in 2002).

(b) Before grant of TBOP/BCR benefit, Sh. Lal Chand with whom applicant is comparing himself, was fixed at Rs.1640 in the scale of Rs.1200-2040 as of 26.06.1993. It is only natural that when Sh. Lal Chand was given TBOP/BCR benefits his fixation will be with respect to this basic pay of Rs.1640.

(c) As against this, applicant was drawing Rs.1600/- in the pay scale of Rs.1200-2040 as of 26.06.1993, before grant of TBOP/BCR. Naturally his subsequent fixation under TBOP/BCR will be with respect to this basic pay and

they may not be same as that of Sh. Lal Chand.

(d) Despite repeated queries as to how his case is similar to that of Sh. Lal Chand, applicant who was present in person or his counsel, both could not bring out anything except continuously pleading that applicant needs to be at par with Sh. Lal Chand.

(e) In absence of anything produced in support of his claim, it has to be concluded that claim of applicant is without merit.

11. Accordingly, OA is dismissed being devoid of merit. No costs.