(2018) 10 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ No. 12077 of 2018

Union of India @APPELLANT@Hash Momd Yusuf Khan

Date of Decision : 06-10-2018

Acts Referred:

Citation : (2018) 10 RAJ CK 0030

Hon'ble Judges : Pradeep Nandrajog, CJ;Dr. Pushpendra Singh Bhati, J

Bench : Division Bench

Advocate : Deepak Bishnoi, B.L.Bishnoi

Final Decision : Dismissed

Judgement

1. The writ petition comes up for preliminary hearing today. Challenge is to a decision dated 10.11.2017 allowing OA No.290/00463/2015 filed by the

respondent.

2. The facts are not in dispute. The respondent was appointed as a Postal Assistant on 6.9.1982. In the year 1995 he passed the examination of PO

and RMS Accountant and thus, with effect from 2.3.1995 was granted special pay of ☐ 90/- which was increased to ☐ 180/- with effect from 1.1.1996.

Taking into account the special pay the respondentâ??s pay was fixed. He was promoted under TBOP Scheme on 6.7.1998 and placed in the pay

scale ☐ 4500-7000. His initial pay was fixed at ☐ 5000/- in said scale taking into account the special pay granted to him as a Postal Assistant.

3. On an internal audit report in the year 2007 the benefit of special pay was withdrawn and recovery of ☐ 20,968/- was ordered. The pay was reduced

with effect from 1.3.2007.

4. The respondent was thereafter promoted as a Post Master HSG-I with effect from 13.5.2008 and sought voluntary retirement which was granted

with effect from 1st March, 2014.

5. In the year 2002 one S.Mohan Kumar who was aggrieved by a similar action filed an OA No.296/2002 before the Bangalore Bench of the Tribunal

which was allowed on 22.10.2002. The Writ Petition No.7593/2003 filed before the High Court of Karnataka by the Department was dismissed on

18.11.2010. The petition seeking leave to appeal filed by the Department was dismissed on 5.7.2012. Thereafter, the Department issued a circular on

10.1.2013. The circular reads as under:-

â??To

All Chief Postmasters General.

SUBJECT: Implementation of the decision of Honâ??ble CAT in OA No.296/2002, in the matter of S. Mohan Kumar, â??on dismissal of WP

No.7593/2003 in the Karnataka High Court, and SLP No. CC 10080/2012 in the Supreme Court of Indiaâ?, regarding treatment of Special

Pay/Allowance for fixation of pay on promotion/financial upgradation.

Consequent upon implementation of 5th CPC recommendation contained in Para 109.3 of its report; Special Pay allowed under FR 9(25) was doubled

and termed as â??Special Allowanceâ?? under DoPT OM No. 4/4/97 Estt.(Pay II) dated 22.04.1998 and given effect to from 01.08.1997. PO &

RMS Accountants were in receipt of Special Pay of Rs. 90/- per month before terming the same as special allowance, which was in lieu of separate

higher scale. In terms of Ministry of Finance OM No. F/6(1)-E. II(B)/68 dated 08.01.1968; special pay in lieu of separate higher scale drawn in the

lower post continuously for a minimum period of three years on the date of promotion/financial upgradation under the normal rules was allowed to be

treated as part of basic pay for the purpose of pay fixation.

2. Following dismissal of SLP No. CC 10080/2012 by Apex Court filed by the Union of India against the judgment of Karnataka High Court in WP

No.7593/2003 in the matter of Union of India vs. S. Mohan Kumar; the issue of reckoning Special Pay termed as special allowance for the purpose of

pay fixation on promotion/financial upgradation (TBOP/BCR) has been examined in consultation with Department of Expenditure, Ministry of

Finance. The Nodal Ministry vide ID No. 202660/E-III(A)/2012 dated 21.12.2012 has accorded its concurrence to the implementation of the judgment

of CAT Bangalore Bench in OA No. 296/2002 dated 22.10.2002 upheld by Karnataka High Court in WP No. 7593/2003 in respect of Shri S. Mohan

Kumar and other similarly placed persons, who were promoted after completing three years of service as PO & RMS Accountants before

22.04.1998, and in whose cases, the special pay was Rs. 90/- at the time of promotion.

3. I am accordingly directed to convey that the judgements of CAT Bangalore Bench in OA 296/2002 in the matter of S. Mohan Kumar, CAT

Ernakulam Bench in OAs No. 691/2005 & 347/2006 in the matter of Ms. K. Rajeshwari and Ms. Anita K. Alexander respectively and CAT Madras

Bench in OA 773/2010 in the matter of Ms. Jayalaxmi may be implemented by reckoning the special pay termed as special allowance as part of basic

pay for the purpose of pay fixation of the above the then PO & RMS Accountants. The recovery, if any, made from their pay and allowances on this

account shall be refunded to them immediately and compliance reported.

4. The aforesaid benefit of pay fixation on promotion/financial upgradation (TBOP/ BCR) shall also be extended in all similarly placed cases of the PO

& RMS Accountants where the special pay/allowance @ Rs. 90 per month was drawn continuously for three years before 22.04.1998. In cases

where the promotion/financial upgradation (TBOP/BCR) has taken place on or after 01.08.1997 but before 22.04.1998, special pay/allowance of Rs.

90/- will only be reckoned for this purpose.â??

6. Seeking benefit of a lease of life renewed to him in terms of the circular dated 10th January, 2013, the respondent filed the OA pleading therein that

he had made a representation on 6.4.2013 invoking the right under the circular and inspite of reminder sent on 1.5.2013 nothing was done by the

Department.

7. Needless to state the case was premised on the relief granted to S.Mohan Kumar and the circular in question.

8. Impugned order dated 10.11.2017 passed by the Central Administrative Tribunal shows that the petitioners could not justify as to why

S.Mohanâ??s case was different than that of the respondent. The decision in favour of S.Mohan Kumar shows that he was granted benefit of

TBOP Scheme with effect from 5.11.1997 and while fixing his pay special pay benefit of ☐ 90/-was granted to him. The Division Bench noted that

when the recommendations of the 5th Pay Commission were implemented the benefit of the special pay could not be withdrawn.

9. Thus, the reasoning of law would be that whosoever has got the benefit of special pay would be entitled to the continuation of the same benefit

when the recommendations of the 5th Pay Commission were made and persons placed in the replacement pay scales.

10. Relevant would it be to highlight that the circular dated 10th January, 2013 records that with the implementation of the recommendations of the 5th

Pay Commission special pay allowed under FR 9(25) was doubled and termed as a special allowance and was to be given effect from 1.8.1997.

Meaning thereby, with effect from 1.8.1997 the special allowance got doubled. The reference in the circular dated 10th January, 2013 to the date

22.4.1998 is with reference to DoPT OM of said date doubling the special allowance and thus the circular requiring restoration of the benefit to cases

of promotion/financial upgradation having taken place after 1.8.1997 but before 22.4.1998 is obviously an error in law.

