

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/01120/2019

DATED THIS THE 23rd DAY OF JANUARY 2020

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Milind Anand Moon
S/o Anand Rao Ganapat Moon,
Aged: 59 years
Working as Scientist-D
Regional Silk Technological
Research Station, CSRTI,
Central Silk Board,
IIHT, Chalukya Ghat,
Varanasi
(Head Office located at Bangalore) ... Applicant

(By Shri Ranganath S. Jois..... Advocate)

vs.

1.The Union of India,
represented by Secretary,
Ministry of Textiles,
Udyog Bhavan,
New Delhi - 110 001

2. The Director,
Central Silk Technological
Research Institute,
Central Silk Board,
BTM Layout, Madiwala,
Bangalore – 560 068

...Respondents

(By Shri Vishnu Bhat.. Senior Panel Counsel)

ORDER (ORAL)HON'BLE DR. K.B. SURESH, MEMBER (J):

1. The matter seems to be covered by our order in OA.1442-1445/2018 which we quote:-

"HON'BLE DR. K.B. SURESH, MEMBER (J):

1. *"Heard. The matter relates to promotion granted almost a decade back. In this connection we need to refer to Annexure-A10 which we quote:-*

*"F.No.25012/54/1999-Silk
Government of India
Ministry of Textiles*

*Udyog Bhavan
New Delhi*

Date: 18th January, 2012

TO
The Member Secretary,
Central Silk Board,
B.T.M.Layout, Madivala,
Bangalore – 560 068.

Sub: Holding of Assessment interview for CSB under Modified Flexible Complementing Scheme-Nomination of Ministry's representative on the Assessment Committee- reg.

Madam,

In continuation of this Ministry's letter of even number dated 13th January,2012, on the subject cited subject, I am directed to state that the following officers are nominated as Ministry's representative in the Assessment Committees for interviews for promotion.

1. Shri Arindam Basu, Director (CSR&TI), Bangalore: Scientist 'B' to Scientist 'C'
2. Shri S.M.H. Qadri, Director (CSR&TI), Mysore : Scientist 'C' to Scientist 'D'
3. Shri N.D.George, Economic Adviser Ministry of Textiles : Scientist 'D' to Scientist 'E'

2. *Shri R.K.Vashisht, Under Secretary (Silk) would also be present in the meetings.*

This issues with the approval of Secretary (Textiles).

*Yours faithfully
Sd/-
(R.K.Vashisht)
Under Secretary to the Govt. of India
Tele:No.23062341”*

2. *Following Annexure-A10, after 4 years time Annexure-A11 seems to be issued, which we quote:-*

“No. CSB.7(7)/2015-ES-II Date 17th February, 2016

*The Joint Secretary (silk),
Ministry of Textiles,
Govt. Of India,
Udyog Bhavan,
Maulana Azad Road,
New Delhi – 110 107.*

Madam,

Sub: Extension of in situ promotion under FCS to CSB Scientists from the grade of Scientist-D to Scientist É – regarding.

Kindly refer to Ministry's letter No.25012/02/2015-Silk dated 14th December, 2015 on the above subject. The Ministry's observation has been noted and the lapse on the part of CSB is admitted. However, as indicated in our letter of even number dated 7th October, 2015, after receipt of Ministry's letter No,25012/54/99-silk dated 11th August, 2008, the issue was discussed with Shri Manish Kumar Gupta, then Director (Silk), Ministry of textiles when he came to Bangalore on 26th August 2008 and as per his suggestion, a reply clarifying the position was furnished to the Ministry vide letter dated 29th August 2008 and CSB was awaiting further instructions from the Ministry on this issue.

Further, Ministry while rejecting CSB's proposal for extension of FCS at higher levels vide letter dated 13th July2009 had indicated that it has been decided that the disposal of CSB to extend the FCS for CSB Scientists at the level of Scientist-E to Scientist-F and Scientist-F to Scientist-G cannot be acceded to. This also gave an impression that FCS sanctioned was at the

levels from Scientist-B to Scientist-C Scientist-C to Scientist-D and Scientist-D to Scientist-E.

Since CSB was awaiting further instructions from the Ministry based on the clarifications furnished to the Ministry on 29th August,2008, the then Member-Secretary had orally instructed that the

practice of effecting in situ promotion from Scientist-D to E may be continued till we get clear orders from the Ministry and it is for this reasons that the two Officers were promoted in 2009 to 2010. This was approved by the then Member-Secretary both at the Screening stage as also after the Assessment interview. Further, status reports for having effecting these two promotions were promptly submitted to the Ministry. It is therefore clear that the officials who handled the subject acted in good faith as per the instructions and with the approval of the then Member-Secretary only and it was not deliberate.

In view of the position indicated above, as the Officials have discharged their duties in good faith, it is requested that the matter may kindly be re-examined and treated as closed.

*Yours faithfully
Sd/-*

*(Dr. H.Nagesh Prabhu)
Member-Secretary “*

3. *The matter in issue seems to be that now the Ministry has devised a view that only the Scientists up to the level of D in the Central Silk Board (CSB), going by the size of that organization can be held to be eligible for Flexible Complementing Scheme of promotion which are available to all other Scientists in all other organizations. They say that this new view taken by the Ministry had therefore restricted the promotion of those Scientists from D to E and above on the Flexible Complementing Scheme. It was apparently after discussion, as found from the records of the Ministry's letter No. 25012/54/99-Silk dated 11.8.2008 that the issue was discussed with the Director (Silk), M/o Textiles and as per a suggestion clarified the position furnished to the Ministry and vide letter dated 29.8.2008 and apparently the*

Central Silk Board was awaiting further instructions from the Ministry on this issue. The Ministry now would say that for all these years Ministry had not given a clarification. But then, the then Member Secretary had orally instructed that the practice of effecting in-situ promotion for Scientists from D to E may be continued. This word 'continued' indicates that this practice was in vogue in the Central Silk Board till then. Therefore, if any current practice has to be stopped then it is to be by way of a compelling significant move. It cannot be by silence. In the interregnum between this and February 2016 apparently some persons were promoted. In the promotion DPCs representatives of Ministry had also attended and they were thereafter promoted.

4. *Now the case of the Ministry seems to be that they will not recover any amounts from these persons. But they want to declare these promotions as ill begotten promotions and cancel them with a recurring effect on the applicants' in the fag end of their life. Some of them are 68-72 years of age. Therefore, it is submitted that the crucial effect of the White Washers judgement and the soul of the judgement will visit these persons' careers at the fag end of these persons. It may not be justified that their regularly obtained promotion at least at that point of time is under the vision even the Ministry at that point of time may not be now set aside. The matter seems to be covered by an order of the Hon'ble Apex Court in Kusheswar Nath Pandey vs. State of Bihar & others reported in (2013) 12 SCC 580 which we quote:-*

“ REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6658 OF 2013
(Arising out of SLP(C)No. 4037/2013)
KUSHESWAR NATH PANDEY .. APPELLANT(S)
vs.
STATE OF BIHAR & ORS. ... RESPONDENT(S)
J U D G M E N T
H.L.GOKHALE, J.

Heard Mr. Nagender Rai, learned senior counsel appearing for the appellant, Mr. Arijit Prasad, learned counsel for the State of Bihar and Mr. Mohan Jain, learned Additional Solicitor General for the respondent no.5. Leave granted.

2. This appeal seeks to challenge the judgment and order rendered by the Division Bench of the Patna High Court in L.P.A. No. 266 of 2011 dated 19.9.2012 whereby the Division Bench reversed the judgment of the Learned Single Judge of that High Court in case No. 4369 of 2010.

3. The facts leading to this case are as under:

The appellant herein joined the service under the State of Bihar on 5th May, 1979 and on 29th August, 1981, he was promoted as a Correspondence Clerk. An order was subsequently issued by the Finance Department on 13.11.1998 granting him promotion with effect from 1st September, 1991 which was a time bound promotion. Subsequently it was found that this promotion was irregular for not passing a promotional examination prior thereto and therefore the orders were issued on 16.9.2009 and 5.10.2009 for canceling this time bound promotion.

4. Being aggrieved by that order, the appellant filed the above referred writ petition No. 4369/2010. Learned Single Judge of the High Court who heard the matter allowed that writ petition. He held that the time bound promotion granted to the appellant eleven years earlier was not because of any fault or fraudulent act on the part of the appellant, and therefore could not be cancelled. The Learned Single Judge allowed that writ petition and set aside the order of cancelling his promotion. It is also relevant to note that the appellant had passed the required examination in the meantime in 2007 and

had retired on

31st May, 2009.

5. Being aggrieved by that order, respondents herein, filed an appeal which has been allowed by the Division Bench. The Division Bench found that the promotion was not approved by the competent authority and passing of the Accounts examination was condition precedent and therefore the decision of the Government to cancel his promotion was a proper one. Being aggrieved by this judgment, the present special leave petition has been filed.

6. Mr. Rai, learned senior counsel for the appellant points out that there was no fraud or misrepresentation on the part of the appellant. The appellant was given a time bound promotion by the concerned Department. If at all the examination was required to be passed, he had passed it subsequently in 2007 much before the cancellation orders were issued in 2009. Mr. Rai relied upon two judgments of this Court in case of Bihar State Electricity Board and Another vs. Bijay Bhadur and Another reported in (2000) 10 SCC 99 and Purushottam Lal Das and Others vs. State of Bihar and Others reported in (2006) 11 SCC 492 wherein it has been held that recovery can be permitted only in such cases where the employee concerned is guilty of producing forged certificate for the appointment or got the benefit due to misrepresentation.

7. The learned counsel for the State of Bihar submitted that under the relevant rules passing of this examination was necessary. He referred us to the counter affidavit of the respondent No.1 wherein a plea has been taken that under the particular Government Circular dated 26.12.1985 the amounts in excess are permitted to be recovered. He relied upon clause (j) of the Government Circular dated 1st April, 1980 to the same effect.

8. Mr. Jain, learned Additional Solicitor General appearing for the Accountant General drew our attention to another judgment of this Court in Chandi Prasad Uniyal and Others vs. State of Utrakhnad and Others reported in (2012) 8 SCC 417 and particularly paragraph 14 thereof which states that there could be situations where both the payer and the payee

could be at fault and where mistake is mutual then in that case such amounts could be recovered.

9. In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr. Rai. The appellant was not at all in any way at fault. It was a time bound promotion which was given to him and some eleven years thereafter, the Authorities of the Bihar Government woke up and according to them the time bound promotion was wrongly given and then the relevant rules are being relied upon and that too after the appellant had passed the required examination.

10. In our view, this approach was totally unjustified. Learned Single Judge was right in the order that he has passed. There was no reason for the Division Bench to interfere. The appeal is therefore allowed. The judgment of the Division Bench is set aside. The writ petition filed by the appellant will stand decreed as granted by the Learned Single Judge. The parties will bear their own costs.

*.....J.
(H.L. GOKHALE)
.....J.
(J. CHELAMESWAR)
NEW DELHI;
AUGUST 5, 2013.*

5. Thereafter, the applicant relies on one more judgement Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department & others dated 17.4.2014 which we quote:-

“NON-REPORTABLE

*IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5262 OF 2008
SUSHIL KUMAR SINGHAL ...APPELLANT
VERSUS
PRAMUKH SACHIV IRRIGATION*

DEPARTMENT & OTHERSRESPONDENTS

J U D G M E N T

ANIL R. DAVE, J.

1. Being aggrieved by the judgment delivered in Writ Petition No.95 of 2005 by the High Court of Uttarakhand at Nainital on 14th November, 2006, this appeal has been filed by the appellant-employee, from whom excess amount of salary, which had been paid by mistake is sought to be recovered and whose pension is also sought to be reduced.

2. The appellant retired on 31st December, 2003 as an Assistant Engineer and on the basis of his last salary drawn, his pension had been fixed. At the time of his retirement, his salary was Rs.11,625/- and on the basis of the said salary, his pension had been fixed.

3. After a few years of his retirement, it was found by the respondent-employer that salary of the appellant had been wrongly fixed in 1986 and therefore, his salary had been re-fixed by an order dated 23.03.2005. On the basis of the re-fixed salary a sum of Rs.99,522/- was sought to be recovered and for that purpose a notice had been issued to the appellant on 23.04.2005. In pursuance of the incorrect fixation of his salary in 1986, his salary at the time of his retirement had also been reduced from Rs.11625/- to Rs.10,975/- and therefore, his pension had also been reduced.

4. The aforesaid action of the respondent-employer had been challenged by the appellant by filing the aforesaid Writ Petition before the High Court. The High Court was pleased to reject the petition as it had come to the conclusion that the pay of the appellant had been wrongly fixed and therefore, the impugned action of the respondent-employer with regard to recovery of the excess salary paid and reduction in the pension was justified.

5. It had been submitted by the learned counsel appearing for the appellant employee that the impugned judgment delivered by the High Court is incorrect for the reason that the High Court did not consider the G.O. Dated 16.1.2007 bearing No.S-3-35/10-07-101(6)/2005 which reads as under:

“[1]. Pension Fixation Authority shall

inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977.

[2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an employee can be effectively removed through the process of general inquiry/audit only when the employee is still in service.”

6. It had been submitted by the learned counsel that the appellant had retired on 31st December, 2003 and somewhere in the month of March, 2005 it was revealed that a mistake had been committed while fixing pay of the appellant in 1986. It had been further submitted that by virtue of the aforestated G.O. dated 16th January, 2007, the mistake committed in pay fixation beyond period of 34 months prior to retirement of the appellant could not have been taken into account by the respondent employer and therefore, neither any recovery could have been sought by the respondents nor there could have been any reduction in the pension on the basis of reduction of salary.

7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been

committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

8. The learned counsel appearing for the respondent employer could not deny any of the facts stated herein above.

9. In the aforestated circumstances, the High Court was not correct while permitting the respondent authorities to reduce the pension payable to the appellant by not setting aside the order whereby excess amount of salary paid to the appellant was sought to be recovered.

10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing

pension of the appellant.

11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant.

12. For the reasons recorded herein above, we quash and set aside the

impugned judgment as well as the order dated 23.03.2005 whereby salary of the appellant was re-fixed and order dated 23.04.2005 whereby recovery of excess amount of Rs.99,522/- was ordered to be recovered from the appellant. The appellant shall be paid pension which had been determined at the time of his retirement, i.e. immediately after 31st December, 2003. The appeal is disposed of as allowed with no order as to costs.

.....J.

(ANIL R. DAVE)

.....J.

(VIKRAMAJIT SEN)

New Delhi

April 17, 2014.”

6. *In this case also the Hon'ble Apex Court had cancelled the re-fixation on the ground that “[1]. Pension Fixation Authority shall inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977.*

[2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an employee can be effectively removed through the process of general inquiry/audit only when the employee is still in service.”

7. *We quote from Annexure-R-9.*

*F.No.25012/54/1999-Silk
Government of India
Ministry of Textiles*

*Udyog Bhavan, New Delhi
January 24, 2007*

TO
*Dr.H.Basker,
The Member Secretary,
Central Silk Board,
Bangalore*

Sir,

Please refer to this office letter of even number dated 30th August, 2006 through which this Ministry had conveyed the approval of the Government of India for extension of Flexible Complementing Scheme (FCS) to the Scientists of the Central Silk Board at the level on Scientist-B (Rs. 8000-13500). Scientist-C (10000 – 15200) and Scientist-D (12000-16500).

2. It was also mentioned that the Scheme would be effective from the date of issue of the above mentioned letter and is subject to the Recruitment Rules being amended in accordance with the residency period and other conditions quoted in the DOP & T's guidelines dated 09.11.1998 read with O.M. Dated 21.11.2005 and the Scheme would be implemented strictly in conformity with the guidelines/conditions of the schemes conveyed by the DOP&T vide their communication No.2/41/97/PIC dated 09.11.98 read with DOP&T's O.M. No. AB-14017/31/2004-Estt. (RR) dated 21.11.2005. However, after a gap of 3 months, CSB had sent amendments of the Central Silk Board (Consolidated) Recruitment Rules 1989 for notification by the Ministry through their letter dated 20.12.06.

3. You are, therefore, again directed to implement the FCS as per the conditions laid by this Ministry's letter dated 30.8.2006 by 15.2.2007 and intimate this Ministry of the action taken.

4. It is further clarified that since CSB is implementing FCS for its Scientific cadre for the first time the rules for promotion of Scientist-B,C & D as approved by DOP&T under FCS need to be added in the existing CSB Recruitment Rules, 1989 and there is no need for amending the existing rules for officers other than the Scientific cadre.

*Yours faithfully
Sd/-*

*(B.V.Uma Devi)
Director"*

This indicates that at the time when an approval was given by Annexure-R-

9 in January 24, 2007 the promotion for Scientists from D to E was also within the competence of the concerned officials. Therefore, there is no meaning in the contention now raised by the respondents.

8. Across the Bar Shri S.Sugumaran, learned counsel produces a letter No. 25012/54/1999-Silk dated 30.8.2006 which we quote:-

*“F.No.25012/54/1999-Silk
Government of India
Ministry of Textiles*

*Udyog Bhavan, New Delhi
Date: 30th August, 2006*

TO
The Member Secretary,
Central Silk Board,
Bangalore
(Karnataka).

*Subject: Introduction of Flexible Complementing Scheme in
Central Silk Board- reg.*

Sir,

I am directed to convey the approval of the Government of India for extension of Flexible Complementing Scheme (FCS) to the Scientists of the Central Silk Board at the level on Scientist-B (Rs. 8000-13500). Scientist-C (10000 – 15200) and Scientist-D (12000-16500).

2. *The Scheme would be effective from the date of issue of this letter and is subject to the recruitment rules being amended in accordance with the residency period and other conditions quoted in the DOP & T's guidelines dated 09.11.1998 read with O.M. Dated 21.11.2005.*

3. *The Scheme would be implemented strictly in conformity with the guidelines/conditions of the scheme conveyed by the DOP&t vide their communication No.2/41/97/PIC dated 09.11.98 read with DOP&T's O.M. No. AB-14017/31/2004-Estt. (RR) dated 21.11.2005.*

4. *The expenditure involved in the implementation of the scheme will be met by the Central Silk Board out of their approved budget and no additional funds will be provided for the purpose.*

5. *This issues with the approval of the DOP&T and Department of Expenditure as conveyed vide their ID Note No. MP-14017/7/2004-Estt (RR)*

dated 26.04.2006 and No.7(36)/E-III dated 31.07.2006 respectively. This also has the approval of the Ministry's IFW as communicated vide Dy.No.18240, dated 25.08.2006.

*Yours faithfully
Sd/-
(B.V.Uma Devi)
Director”*

This was issued with the approval of the DoPT at the level of Scientists B against it says that it conveys the approval of the Government of India for extension of Flexible Complementary Scheme promotion to Scientists in Central Silk Board at the level of Scientist B, Scientist C, Scientist D . This can only mean one thing a Scientist B can aspire to be Scientist C and Scientist C can aspire to be Scientist D and Scientist D can aspire to Scientist E, for which approval has already been granted. Therefore, there is no meaning in the present contention of the Ministry.

9. *At this point of time Shri S.Sugumaran, learned counsel submits that Annexure-R-11 may also be looked into where in line 5, the residency period for promotion from Scientist D to Scientist E was not given. As such the matter was examined in consultation with the Integrated Finance Wing of the Ministry and the Ministry vide their letter dated 30.8.2006 had approved the proposal for granting Flexible Complementing Scheme to CSB Scientists at the level of Scientist B to Scientist D i.e., granting the benefit of in-situ promotion till Scientist D level. Accordingly the benefit of in-situ promotion under FCS would have to be confined to following scales. But then, there may be contradictory and conflicting views in side the Ministry. But the issue raised is that if it has been a continuing*

process no amount of letters from the Ministry can improve the position of the rule. If the Flexible Complementing Scheme had been adopted for Scientists all over India then it has to be adopted in full, not piece meal by piece meal operation of the rule going by the size of the organization and this will defeat the purpose and purport of Article 14 & 16. Therefore, annexure-R-11 has only a limited application, as it is dated 11.8.2008 whereas the other letter which is quoted above is 30.8.2006. This sudden change of the Ministry is submerged in the Pension Rules as stated by the Hon'ble Apex Court in the case mentioned above . Therefore the attempt of the Ministry is illegal and unsustainable. There is no relevancy, no juncture and no legality in the contention raised by the Ministry and it is quite arbitrary and all impugned orders are hereby quashed. OA is allowed. No order as to costs."

2. Since the matter is exactly similar to the earlier cases, this OA is also allowed to the same , limited extent. May be done within the 2 months next. No order as to costs.

3. Reply filed is taken on record.

(CV.SANKAR)
MEMBER (A)

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

bk

Annexures referred to by the applicant in OA No.1120/2019

Annexure A1: Copy of the order dated 28.2.2007

Annexure A2: Copy of communication dated 31.1.2012

Annexure A3: Copy of representation 6.2.2018

Annexure A4: Copy of communication dated 6.6.2019

Annexure A5: Copy of letter dated 2.7.2018

Annexure A6: Copy of impugned endorsement dated 10.7.2019

Annexure A7: Copy of order dated 21.3.2019 in OA. No. 1442-1445/2018

Annexure referred to by the Respondents in the reply

Annexure: R-1.Copy of letter dated 30.8.2006

Annexure: R-2.Copy of letter dated 13.5.2013

Annexure: R-3.Copy of Gazette Notification dated 28.11.2013

Annexure: R-4.Copy of letter dated 27.7.2018

Annexure: R-5. Copy of CSB letter dated 14.8.2018

Annexure: R-6.Copy of DOPT OM dated 10.9.2010

Annexure: R-7.Copy of CSB letter dated 2.7.2018

Annexure: R-8. Copy of letter dated 21.12.2011

Annexure: R-9. Copy of letter dated 14.2.2013

Annexure:R-10.Copy of CSB letter dated 27.9.2013

Annexure:R-11.Copy of letter dated 3.12.2018

Annexure:R-12.Copy of letter dated 3.7.2019

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bk.