

Central Administrative Tribunal, Principal Bench

(13)

Original Application No. 759 of 1999

New Delhi, this the 29th day of September, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Shri A.N. Batra S/o Late Shri V.R. Batra
working as Asstt. Director Postal Services (P&A)
O/o the CPMG Delhi Circle New Delhi
R/o New Delhi
address for service of notices
C/o Shri Sant Lal, Advocate
C-21(B) New Multan Nagar, Delhi-110 056. -- Applicant
(By Advocate - Shri Sant Lal)

Versus

1. The Union of India, through
the Secretary,
Min. of Communications,
Department of Posts,
Dak Bhawan,
New Delhi-110001.
2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi-110 001.
3. The Director of Accounts (Postal)
Civil Lines,
Delhi-110 054. -- Respondents

(By Advocate - Mrs. P.K. Gupta)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA has challenged the impugned order dated 12.3.99, Annexure A-I whereby his representation with regard to the fixation of his pay in the PSS Group 'B' has been rejected.

2. The facts in brief are that the applicant was working as Assistant Superintendent of Post Offices. He was promoted as Sub Postmaster, Defence Head Quarters, New Delhi in the Higher Selection-I grade in the pay scale of Rs.2000-3200 on ad hoc basis

h

w.e.f. 3.4.95 and his pay was fixed at Rs.2675/- w.e.f. 4.4.95 under FR 22(I)(a)(i).

3. The applicant was further promoted to the next higher post of Sr. Postmaster, Lodi Road, New Delhi in the scale of Rs.2000-3500 w.e.f. 8.7.95. While his ad hoc arrangement in HSG-I as Sub Postmaster was still continuing against a clear vacancy, so his pay was fixed at Rs.2825/- in the pay scale of Rs.2000-3500 under FR 22(I)(a)(i) by the Office Order of DAP Delhi under pay slip dated 31.10.1995, Annexure A-6.

4. Thereafter, applicant was appointed on regular basis in Higher Selection Grade-I vide order dated 17.4.97 issued by the office order of the CPMG Delhi Circle, New Delhi w.e.f. 17.4.97 and he gave his option for pay fixation under FR 22(I)(a)(i) in HSG-I w.e.f. 3.4.95 vide Annexure A-8.

5. Thereafter the ad hoc appointment in the Postal Service Group 'B' was approved for the period from 8.7.95 to 31.3.97 vide order dated 13.8.97 issued by the Ministry of Communication, Department of Posts with the approval of the DOP&T vide their letter dated 15.7.97. The CPMG, Delhi Circle, New Delhi appointed the applicant in Postal Service Group 'B' on regular basis with immediate effect, i.e., 21.5.97. The order placing him in Postal Service Group 'B' is stated to be based on an earlier order dated 10.3.97 which also contained an option to be given for

(B)

choosing the pay fixation under FR 22(C). The applicant had also given an option on 17.6.97 in Postal Service Group 'B' w.e.f. 8.7.95. The pay of the applicant was fixed in HSG-I w.e.f. 4.4.95 at the stage of Rs.2675/- and in P.S. Group 'B' w.e.f. 8.7.95 at the stage of Rs.2825/- under FR 22(I)(a)(i).

6. It is further stated that after sometime the office order issued by respondent No.3 reduced the pay of the applicant in P.S. Group 'B' from Rs.2825/- to Rs.2675/- with retrospective effect from 8.7.95 without any intimation or show cause notice and also refixed the pay at the stage of Rs.2975/- w.e.f. 21.5.97 on his regular appointment in Postal Service Group 'B'. The Post Master Parliament Street was directed to refix the pay of the applicant in the HSG-I at Rs.2600/- instead of Rs.2675/- w.e.f. 4.4.95, so the pay of the applicant was fixed accordingly, as directed by respondent No.3 and on introduction of the revised pay scale on the recommendation of the 5th Pay Commission, the pay of the applicant has been refixed with reference to the reduced pay, as stated above, as under:-

"8.7.95 to 31.12.95 at Rs.2675/- in PS Group 'B'

1.1.96 to 30.6.96 at Rs.8250/- (Revised scale)

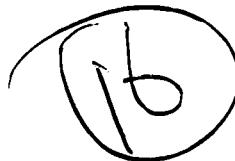
1.7.96 to 7.4.97 at Rs.8500/-

8.4.97 to 20.5.97 at Rs.8100/-

21.5.97 to 31.7.97 at Rs.8500/-

1.8.97 at Rs. 8750/- with date of next increment as 1st August."

h



7. It is further stated that the respondent No.3 had enforced the reduction of pay of the applicant and had also effected recovery and have realised the same partly by making adjustments in the arrears of pay and allowances becoming due on account of introduction of revised pay scale and partly by deduction from his monthly salary. However, the applicant had made a representation and requested that his pay in the HSG Grade-I and P.S. Group 'B' of service be fixed as per option, as under:-

"On 4.4.95 at Rs.2675/- in HSG-I

On 8.7.95 at Rs.2825/- in P.S. Group 'B'

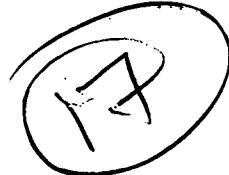
On 1.1.96 at Rs. 8750/- in revised scale
(7500-250-12000)

On 1.7.96 at Rs.9000/- with date of next
increment as Ist July".

8. The same has not been accepted and the applicant has been informed orally as there is break between ad hoc service in HSG-I and regular appointment in that grade on account of his promotion to P.S. Group 'B' on 8.7.95 on ad hoc basis and in P.S. Group 'B' on 1.4.97 as the ad hoc service in that grade has been approved by the competent authority only upto 31.3.97.

9. The applicant also claims that he has explained the whole situation before the Staff Adalat held on 29.12.97 but to not avail. He also states that he had also explained that similarly one junior to him who had continued in HSG-I, namely, R.K. Pahwa



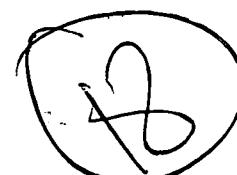


has been granted the benefit but no reduction had been effected in his case, but the department did not agree to the same.

10. In the grounds to challenge the reduction of pay the applicant has pleaded that from the day when he was appointed on ad hoc basis as HSG Grade-I and then regularised in the same grade and he was appointed as ad hoc in P.S. Group 'B' service, there had never been any reversion from the post held by the applicant to any lower post during the period from the date of his ad hoc appointment upto the date of his regular appointment, so there could not be any break but still the order of reduction of pay has been passed and recoveries had also been effected. The applicant has claimed that as he had continued in HSG Grade-I w.e.f. 4.4.95 but for his ad hoc appointment in still higher post of P.S. Group 'B' till his regular appointment on 17.4.97 which is quite evident from the fact that his seniors stood already regularised in HSG Grade-I w.e.f. 5.3.97. There is, therefore, no discrepancy in his regularisation so the order of reduction passed in his case is illegal and the same should be quashed.

11. The department is contesting the O.A. and their main plea is that the applicant was promoted to HSG Grade-I purely on temporary and ad hoc basis w.e.f. 4.4.95 and his pay was fixed at Rs.2675/- and further the applicant was promoted to the higher post of Senior Postmaster in the scale of Rs.2000-3500 again on temporary and ad hoc basis w.e.f. 8.7.95 and

h



his pay was wrongly fixed at Rs.2825/- and it was subsequently refixed at the stage of Rs.2675/-. The plea of the respondents is that ad hoc arrangement made in HSG-I on 5.5.95 had automatically terminated on 8.7.95, i.e., the date of ad hoc promotion of the applicant in the Postal Service Group 'B' since no Government servant can continue to work on two different posts on ad hoc basis at the same time on administrative grounds. Thus it is pleaded that the benefit of option on regular appointment in HSG-I w.e.f. 3.4.95 treated as ad hoc promotion followed by regular promotion is not permissible under FR 22(I)(a)(i).

12. It is further pleaded that further promotion vide CPMG Memo dated 17.4.97 cannot be treated as regular for the purpose of regular promotion w.e.f. 4.4.95. The order dated 17.4.97 regularising the applicant in HSG-I is irregular to the extent that it cannot take immediate effect from 17.4.97 as the applicant had already been ordered to be promoted to P.S. Group 'B' service on ad hoc basis, as such the benefit of revised option does not accrue.

13. It is stated that literally ad hoc arrangement in HSG-I were terminated w.e.f. 8.7.95 the date on which he assumed the charge in P.S. Group 'B', so the benefit of revised option does not accrue to him.

14. We have heard the learned counsel for the parties and have gone through the records of the case.



15. The learned counsel appearing for the applicant submitted that as far as FR 22(I)(a)(i) the applicant was entitled to exercise his option for fixation of his pay when he was regularised in HSG-I and then in the Postal Service as Group 'B'. The fact that when the order of regularisation in HSG-I came at that time when the applicant was working on ad hoc basis in the Postal Service Group 'B', does not debar him the fruit of pay fixation in HSG Grade-I as from the date when he was regularised in HSG Grade-I only from that date he was entitled to exercise his option because before that he was continuing as ad hoc in HSG Grade-I and when he was regularised in Postal Service Group 'B' at that time he was entitled to another benefit of option of pay fixation under FR 22(I)(a)(i).

16. The learned counsel appearing for the department submitted that since the applicant was not continuing on ad hoc promotion in HSG-I and when his regularisation in HSG-I had come, since he had already been promoted in Group 'B' Postal Service, so he was not entitled to have his pay fixation from the initial date of appointment in HSG-I as there was a break in service. But the learned counsel for the applicant to support his contention has referred to a certificate issued by the Department which shows that had he not been promoted in Group 'B', he would have continued in HSG-I though this certificate was lateron withdrawn and the applicant filed an amended OA also to challenge the withdrawal of that certificate.

Rn

(20)

17. We have considered the rival contentions raised by the parties and gone through the records. The only question to be seen is whether there is any break in service when applicant was appointed on ad hoc basis in HSG-I till his regularisation in HSG-I. This fact is admitted that the applicant had never been reverted back to a lower post from HSG-I while he was continuing on ad hoc basis in HSG-I and he was given further promotion on ad hoc basis in Postal Service Group 'B'. So there cannot be any break in the service of HSG-I, rather it has to be treated as if the promotion given to the applicant was regularised from the date of issue of the order of regularisation and the applicant can be treated as regular HSG-I and his pay fixation is to be regulated accordingly. Since the applicant has never been downgraded from the ad hoc post of HSG-I, so it cannot be said that a break had occurred in his service as HSG-I. In this case since the applicant has further been promoted as Postal Service Group 'B', so he was entitled for the pay fixation in HSG-I as per his option as he continued to work as HSG-I till his promotion to still higher rank. It is immaterial if his service as HSG-I has been regularised with a subsequent date. This by no reasons can be interpreted as break in ad hoc service as HSG-I as from the date of his appointment on ad hoc basis he continued to hold the post of HSG-I. Had he not been promoted to still higher rank he would have continued to hold the post of HSG-I without any break. The promotion to P.S. Group 'B' should not be considered

h

a disqualification or break in the service of HSG-I till it was regularised by a subsequent order. The applicant was entitled to exercise his option only on receipt of order regularising his service. The department cannot deny the benefit of that to the applicant since it had been so certified also. The respondents could have also not withdrawn the certificate Annexure A-13 vide which it had been certified that the applicant would have continued to work as HSG-I but for his promotion to P.S. Group 'B'.

18. Hence we are of the considered opinion that the applicant is entitled to pay fixation as per his option in HSG-I and P.S. Group 'B' service in accordance with FR 22(I)(a)(i).

19. In view of the above, the impugned order is quashed and the O.A. is allowed. The respondents are directed to pay to the applicant the pay as per the option exercised by applicant in accordance with the rules. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.

(S.A.T. Rizvi)
Member (A)

(Kuldip Singh)
Member (J)

/Rakesh/