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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1354/2000

New Delhi this the 3rd day of May, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S.Tampi, Member(A)

Jitender Prasad Mishra
S/O Sh. Surender Prasad Mishra
Postal Asstt. Post Office
Lohamandi, Agra.
Residential Address

2/2, Nala Peepal Mandi
Mandir-Gali Agra-3

..Applicant

(By Advocates Shri D.P. Sharma with
Shri Sant Lal)

VERSUS

1. Union of India through the
Secretary, Ministry of Communication
(Department of Posts), New Delhi.

2. The Director Postal Services
Agra-Region
O/O the Postmaster General
Pratap-pura, Agra.

3. The Sr. Superintendent Post Offices
Sanjay Place-Agra.

4. The Senior Postmaster,
Agra.

.. Respondents

(By Advocate Shri S.M. Arif)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J))

The applicant is aggrieved by the order passed by the respondents dated 29.1.1998 (Annexure A.1). By this order, the case of the applicant for promotion under the One Time Bound Promotion (OTBP) Scheme is stated to have been wrongly allowed to him and the order was, therefore, cancelled. He has prayed that the impugned order may be quashed and set aside and his pay which was reduced from Rs 4625/- to Rs. 4500/- with effect from 9.1.1996, may be restored with effect from the same date.

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2. The brief relevant facts of the case are that the applicant was appointed as Hindi Typist on 8.1.1980. According to him, the post of Hindi Typist was abolished and the incumbents working on these posts were absorbed as Postal Assistants (PAs) in the same scale of pay after taking option of the regular appointees. This position has been controverted by the respondents who have stated that the post of Hindi Typists has not been abolished and is/^{still} existing in certain Units. The respondents have stated that the applicant by his application dated 4.7.1995, had himself requested for transfer to the PA cadre which was accepted by the competent authority and thereafter he joined as PA on 7.1.1997, which is a different cadre.

3. The applicant has submitted that the DPC which was held on 5th and 6.11.1996 to consider the cases of persons of PAs cadre, who had completed 16 years of service had found him fit and allowed ^{benefit of 18-} OTBP Scheme w.e.f. 9.1.1996 in the higher pay scale of Rs.1400-2300. Thereafter, the impugned order was issued by the respondents dated 29.1.1998, reverting him to his substantive post of Hindi Typist. Shri D.P.Sharma, learned counsel for the applicant, has submitted that this was done even without issuing a show cause notice to the applicant. By the impugned order, the basic pay of the applicant was reduced with retrospective effect that is w.e.f. 9.1.1996. Against this action, the applicant had submitted a representation which was rejected by the respondents by their letter dated 29.7.1998.

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4. This OA was originally filed in the Allahabad Bench of the Tribunal in 1999 and was thereafter transferred to the Principle Bench by order dated 28.4.2000. The Allahabad Bench of the Tribunal by order dated 24.8.1999, had stayed the recovery of the amounts from the salary of the applicant.

5. The main contention of the learned counsel for the applicant is that the applicant is entitled for promotion under the OTBP Scheme, as applicable to the PAs, counting his past service as Hindi Typist which post is also in the identical pay scale of PA.

6. The respondents in their reply have controverted the above submissions made on behalf of the applicant. They have submitted that the request of the applicant for change of cadre was accepted by the competent authority under Rule 38 of the P&T Manual (Vol.IV) with certain conditions. They have submitted that after the applicant had undergone necessary basic training i.e. theoretical training and practical training, he joined as PA on 7.1.1997. They have submitted that the DPC had wrongly taken into account his past service of 16 years as Hindi Typist and recommended for promotion in OTBP Scheme on 15.11.1996 w.e.f. 9.1.1996 in the scale of Rs.1400-2300. Thereafter on re-examination of his case, they have submitted that the OTBP Scheme is only applicable to PAs/SAs, which benefit was also extended to UDC/LDC staff of Saving Bank Control Organisation (SBCO) but it has not been extended to Hindi Typists so far. The respondents, have, therefore, submitted that there was nothing wrong in the impugned order dated 29.1.1998 by

which the wrong promotion to the applicant under the OTBP Scheme was cancelled as the same did not permit to reckon his past service as Hindi Typist of 16 years. Shri Arif, learned counsel for the respondents has also emphasized ¹⁸ that the contentions of the applicant that the posts of Hindi Typist were abolished, is not correct. In any case, in the present application the applicant himself had requested for transfer from one cadre to another cadre which has been accepted by the respondents and he joined as PA on 7.1.1997. In the circumstances, learned counsel has submitted that ~~as~~ the applicant is working in the cadre of PA only from 7.1.1997, he has not completed 16 years of service to get the benefit of the OTBP Scheme, particularly so ~~19~~ because the Scheme does not cover the cadre of Hindi Typists. The respondents have also stated in their reply that the applicant has already attained the age of superannuation. As he has been over paid, the recovery has to be made for which they have prayed that the ex- parte stay order granted by the Tribunal (Allahabad Bench) dated 24.8.1999 may be vacated.

7. In the rejoinder, the applicant ^{has} ~~has~~ more or less reiterated the averments made in the OA. Shri Sant Lal, Learned proxy counsel for the applicant has also been heard, who has relied on Paragraph 22 of the Scheme dated 22.12.1983. He has contended that it will apply even to the case of officials who have been transferred under Rule 38 of the P&T Manual (Vol.IV) in the same cadre and they are eligible to count their entire period of service for promotion under the Scheme. He has submitted that there is no reason why the entire service record of the applicant who had

worked for more than 16 years as Hindi Typist should not be reckoned for counting ~~of~~ ^{his} service for promotion under the OTBP Scheme.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. It is seen from the facts mentioned above that the respondents have stated that the applicant has already attained the age of superannuation. The applicant was initially appointed as Hindi Typist w.e.f. 8.1.1980. Taking into account the services of the applicant as Hindi Typist, he has, therefore, completed 16 years of service as on 8.1.1996.

9. The main issue in this case is whether the services rendered by the applicant of 16 years ~~earlier~~ as Hindi Typist, which is admittedly in the same grade and pay scale as the posts of PAs, can be counted for purposes of ^{the} OTBP Scheme prepared by the respondents. Paragraph 22 of this Scheme reads as follows:

"Since it has been decided to give one promotion to all officials who complete 16 years of service in a particular grade, officials who have been transferred under Rule 38 of the P&T Manual (Vol. IV) in the same cadre, are eligible to count their entire period of service for promotion under the scheme. This will cover even officials who have been transferred from one circle to another in the same cadre. The question of extending the scheme to officials who have been transferred under Rule 38 from one cadre to another (e.g. from RMS, Assistants to PO Assistants) is separately under consideration."

The applicant has contended that the benefit of the aforesaid Scheme has been extended to UDC/LDC staff of SBCO which has also been confirmed by the respondents, who have contended that the benefit has not

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been extended to Hindi Typists so far. It is relevant to note that the pay scales of Hindi Typists and PAs are the same. The respondents had earlier considered the case of the applicant for promotion under the OTBP Scheme, taking into account his 16 years past service as Hindi Typist and he was recommended for promotion by the DPC which was held on 12.1.1998. During the hearing, learned counsel for the respondents has argued that the previous 16 years service of the applicant as Hindi Typist cannot be taken into account as there was change in his cadre from Hindi Typist to that of PAs and by giving such benefit of his past service in another cadre, others PAs. are likely to be adversely affected. However, we note from the respondents own averments that the applicant has since superannuated from service. Therefore, their contention that it is only after he puts in another 16 years of service in the cadre of PAs. that he would earn his promotion under the OTBP Scheme, will merely be an academic question and ^{and P/} cannot be accepted. It does not also stand to reason that the grant of OTBP to him would adversely effect others. At the same time, it was also mentioned during the hearing that the applicant would in any case be entitled to at least one promotion as recommended by the 5th Central Pay Commission under the Assurred Career Progression (ACP) Scheme, but it was not clarified whether this has been granted to him or not. Therefore, the principle contained in the provisions of Para 22 of the Scheme, where even in a case of transfer of an official in the same cadre under Rule 38 of the P&T Manual, his entire service is allowed to be counted should be applied in the facts of the present case, as the applicant has already retired from service.

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10. In the facts and circumstances of the case, the decision of the respondents to reduce the pay of the applicant and that too without giving him any show cause notice is liable to be quashed and set aside. The respondents are accordingly directed to consider granting the applicant promotion to the next higher grade under the ACP Scheme or the OTBP Scheme as a special case, taking into account his 16 years service as Hindi Typist as on 8.1.1996. As a DPC had already been held by the respondents in 1998 which had recommended the case of the applicant for promotion under the OTBP Scheme, considering the fact that the applicant has already attained the age of superannuation, the recommendations of that DPC shall be taken into account for granting the applicant promotion to the next higher grade.

11. In the result, for the reasons given above, the OA succeeds and is allowed. The impugned order dated 29.1.1998 is quashed and set aside. The applicant shall be entitled for placement in the higher pay scale of Rs.1400-2300^{(Re-revised) 19}, at least with effect from 8.1.1996. Consequently he shall be entitled to the refund of all amounts recovered by the respondents from his monthly salary till the interim order dated 24.8.1998 was passed by the Tribunal, which shall be done within one month from the date of receipt of a copy of this order. However, in the facts and circumstances of the case, the claim for interest is rejected. No order ^{as} to costs

(Govindan S. Tampl)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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