

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 139 of 1989

Date of decision: **1.8.1989**

Shri O.P. Pokhriyal

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Applicant

Vs.

Union of India & Others

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Respondents

PRESENT

Shri M.C. Juneja, counsel for the applicant.

Shri K.C. Mittal counsel for the respondents

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri O.P. Pokhriyal, Junior Hindi Translator, Directorate General All India Radio, New Delhi, against the impugned orders No. 33/3/88-Admn.II dated 7.10.1988 regarding fixation of his pay in the post of Junior Hindi Translator.

2. Brief facts of the case, as stated in the application are that the applicant while holding the post of U.D.C. was appointed by Respondent No.1 as Junior Hindi Translator Grade V of the Central Secretariat Official Language Service (Group 'C' posts) Cadre of his Ministry. He joined the said post on 30.9.1983. He continued to work in that post till September 1987 and after earning his increments in the revised pay scale of Rs. 1400-2600, his pay was fixed at Rs. 1520.00 p.m. on 1.9.1987, but his pay was fixed at Rs. 1400.00 w.e.f. 2.11.1987 when he continued as Junior Hindi Translator after availing the earned leave from 20.9.87 to 1.11.87. His case is that his appointment as Junior Hindi Translator was on ad hoc basis for a period of six months or till such time the post was filled on regular basis, whichever was earlier and it was clarified that he would be governed by the terms and conditions of deputation as laid down in the Ministry of Finance's O.M. No. F. 10(24)-E.III/0 dated 4.5.1961 as amended from time to time. His ad

hoc appointment was extended from time to time until 30.9.87 when he was ordered by Respondent No.1 to be reverted to the post of U.D.C. of the C.S.C.S. Cadre of the Ministry where he had already officiated as Junior Hindi Translator continuously for four years. He had opted for the drawal of pay in the pay scale of Rs. 425-700 of the post applicable to Junior Hindi Translators instead of deputation allowance plus the basic pay in the pay scale of Rs. 330-560 as admissible to UDCs. While holding the post of Junior Hindi Translator the applicant proceeded on earned leave with effect from 29.9.87, on the expiry of which he reported for duty on the forenoon of 2.11.87. On the basis of the Central Secretariat Official Language Service (Sr. Jr. Translator) Examination, 1987 conducted by the Staff Selection Commission, ^{the respondent. No. 1} again appointed him as Junior Hindi Translator w.e.f. 2.11.1987. Since the applicant was reposted in the same post from which he had proceeded ^{leave on} on 30.9.83, his reversion to the parent post of U.D.C. had not become effective and, therefore, he should be deemed to have continued as Junior Hindi Translator throughout without any break, but the respondents fixed his salary at the minimum of the scale of Rs. 1400-2600 with effect from 2.11.87. His representations were rejected by Respondent No.1 stating that the applicant having earlier been appointed on deputation basis, his pay was fixed under F.R. 35, as he was holding the substantive post of U.D.C. and that the deputation (duty) allowance being not treated as 'pay' under F.R..9(21)(1), the benefit of annual increment earned in the deputation post cannot be allowed to the applicant.

3. The respondents in their reply have stated that an employee on deputation may elect to draw either the pay in scale of pay of the new post or his basic pay in the parent department + personal pay, if any + deputation (duty) allowance. As the applicant opted for the pay scale of the post of Junior Hindi Translator i.e. Rs. 425-700 on dputation basis, his pay was fixed at Rs. 425.00. The applicant was reverted to the parent post of UDC of the CSCS Cadre of the Ministry of I

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& B with effect from 30.9.87 vide Ministry of I&B's order dated 8.9.87. As at that time he was posted in the Directorate of Advertising and Visual Publicity, the applicant was relieved of his duties in the Directorate General of All India Radio w.e.f. 30.9.87. Instead of reporting for duty in the D.A.V.P., he applied for earned leave with effect from 29.9.87 to 16.10.87 and further requested for extension upto 30.10.87 on personal grounds. As such, the applicant is deemed to have been holding the post of UDC during the period of leave. The applicant reported for duty in the Ministry of I&B on 2.11.87 whereas he was supposed to report for duty in the D.A.V.P. The Ministry's order dated 2.11.87 stated that on repatriation from the ex-cadre post of Junior Hindi Translator in the DG, AIR, w.e.f. 30.9.87 and after availing of leave from 29.9.87 to 30.10.87, the applicant a U.D.C. of CSCS Cadre of Ministry of I & B reported for duty on the forenoon of 2.11.87 in the Ministry of I&B. In the same order it was also stated that on the basis of the result of the Central Secretariat Official Language Services (Senior/Junior)

Examination, 1987, conducted by the Staff Selection Commission, he was appointed as Junior Hindi Translator of the CS (OL) Services Cadre of the Ministry of I & B in the pay scale of Rs. 1400-2600 with effect from the forenoon of 2.11.87 and that he was to be on probation for a period of two years from the date of appointment and he was posted in the DG, AIR. As a direct recruit, it cannot be said that he continued to hold the post of Junior Hindi Translator after his reversion to the grade of UDC and his proceeding on leave from 29.9.87 to 30.10.87. He went on leave on his volition and during the period of leave, he cannot claim that he continued to hold the post of Junior Hindi Translator on deputation basis. There is a definite gap between his completion of deputation in the post of Junior Hindi Translator and his fresh appointment as Junior Hindi Translator on regular basis through the Staff Selection Commission. During this intervening period, he was to be treated as UDC

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~~being~~ the parent cadre post. His appointment to the post of Junior Hindi Translator on the direct recruitment basis has nothing to do with his earlier ad hoc services on deputation basis and cannot claim protection of pay drawn by him earlier while he held the same post of Junior Hindi Translator on deputation. According, his pay was fixed under F.R. 35, as he was holding the substantive post of U.D.C. The deputation (duty) allowance is not treated as pay under F.R. 9(21)(a).

4. I have gone through the pleadings of both sides and the arguments advanced by the learned counsel for the applicant as well as respondents. The applicant who was holding the substantive post of U.D.C. and was on deputation on ad hoc basis initially for a fixed period or till a regular appointee was available whichever was earlier. His original appointment was for a period of six months but was extended from time to time awaiting availability of a regular Junior Hindi Translator to be appointed on the basis of an examination conducted by the Staff Selection Commission. The ad hoc deputation was extended upto 30.9.87 only when orders of his reversion were passed. It so happened that the applicant himself was selected through Staff Selection Commission for a fresh appointment on a regular basis and normally under the rules he should get the minimum of the scale prescribed for that post. The respondents have claimed that he has reverted to the post of U.D.C., once reversion orders were issued and he cannot claim any benefit because he chooses to avail Earned Leave before he could be reverted. It is, however, a fact that he never actually worked as U.D.C. after his deputation as Junior Hindi Translator was not extended and during the period of leave he continued to draw the leave salary as admissible to a Junior Hindi Translator. The position could have been different had he reverted as U.D.C. and in that case his pay would have been fixed differently.

5. The respondents have also stated that the pay of the applicant was fixed under F.R. 35 under which the pay is restricted to an amount less than admissible under the rules. This does not

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appear to be the case, ^{the} applicant had opted for pay of the post on deputation and was given minimum start of Rs. 425/-. Under Govt. of India's orders No. 2 of F.R. 22-C, it has been clarified that para (1) of the same rules apply only in cases of appointment of a Government servant from his parent department to an ex-cadre post. In cases of appointment/promotion from one ex-cadre post to another ex-cadre post where the official opts to draw pay in the scale of ex-cadre post, the pay in the second and subsequent ex-cadre posts should be fixed under the normal rules with reference to pay in the cadre post only. In respect of appointment to ex-cadre posts on time scale of pay identical with the time scale of pay of ex-cadre posts held on an earlier occasion^s the benefit of proviso (iii) to F.R. 22 will be admissible (G.I.M.F. O.M. No. F.2(9)-E-III/61 dated the 1st June 70).

6. However, there are certain other points which may go against the applicant. He gets four increments while on deputation whereas in the select list his position is 16th. In these ^{peculiar} ~~peculiar~~ circumstances the persons who are senior to him may also demand for stepping up their salary as admissible to the applicant but in the peculiar circumstance, I hold that this may not be extended automatically. The Government may examine the rules in the wider context and may decide whether four increments which he has earned on deputation basis should be kept as personal pay to the applicant till his next promotion. It is also seen that the applicant is regularly appointed as Junior Hindi Translator on probation for two years. Normally benefit of a higher pay in an identical ex-cadre post is not available but as the applicant has to be given advantage of increment already drawn by him, it is directed that the pay protection should be allowed to the applicant subject to the examination of the aspect by the Government mentioned above viz., whether the increments earned by him on an ex-cadre post should be treated as personal pay. It is directed that the applicant should be allowed increments

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already drawn by him and his pay including personal pay will not be minimum of the scale. With these observations, the application is allowed. There will be no orders as to costs.

B.C. Mathur
(B.C. MATHUR) 1.8.89
VICE CHAIRMAN