

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 1109/92

DATE OF DECISION : 23.10.1992

Shri Hukum Chand

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri P.L. Mimroth, Counsel

For Respondent Nos.1 & 3

...Shri Ravinder Dayal, Counsel

For Respondent No.2

...Shri Ajay Kumar Aggarwal, Counsel

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

The applicant working as Head Clerk in the Directorate of Social Welfare has filed this application under Section 19 of the Administrative Tribunals, Act, 1985 on 21.4.1992 aggrieved by non fixation of pay in the pay scale of Rs.425-700 (RP-1400-2300) and non grant of increments in the same grade since 5.7.1985.

2. The applicant has prayed for the following reliefs :-

- (a) The respondent No.3 may be directed to release the L.P.C. of the applicant in pursuance of his Office Order No.F.9 (5)/84-MC/Estt/26164 dt.26.7.85.
- (b) The Hon'ble Tribunal may further direct the respondent No.2 to fix the pay of the applicant in Grade III (M) official of DASS Cadre, i.e., Rs.425-700 (Revised Scale Rs.1400-23)) with retrospective effect from 26.7.85 and grant of annual increments on the basis of so fixed pay to the applicant.

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- (c) The respondents may also be directed to pay the arrears of salary and yearly increments payable to the applicant w.e.f. 26.7.85.
- (d) All other consequential benefits arising out of the re-fixation of pay & grant of increments such as bonus and other allowances may also be granted to the applicant.
- (e) The respondents may be directed to pay interest @20% p.a. on the deferred payment of pay and increments due to the applicant from the date of on which they are payable till the date of actual payment.
- (f) The suitable compensation in lieu of mental torture and agony meted out to the applicant may also be awarded.
- (f) The respondents be further directed to award cost of litigation to the applicant.
- (h) The Hon'ble Tribunal may also be pleased to award any other relief to the applicant as it think proper & reasonable.

3. The facts are that the applicant joined as LDC on 27.4.1962 under Delhi Administration and was promoted to the rank of UDC on 5.2.1973 in the same organisation Directorate of Transport. On 26.11.1977, the applicant was transferred in the same capacity to Maulana Azad Medical College where he was also given in June, 1978 verbal instructions of the Head of the Department charge of the stores of surgery from Shri Tilak Raj Sharma, though this point is in controversy and, therefore, not relevant for the decision of the present case. The applicant was considered for promotion and was issued a promotion order as Head Clerk w.e.f. 5.7.1985 and posted in Directorate of Social Welfare, Delhi Administration. But in fact he was not relieved, though earlier he was relieved on 26.7.1985, But the said order appears to have been reviewed by another order dt. 4.11.1985 and from 26.7.1985, the applicant was posted

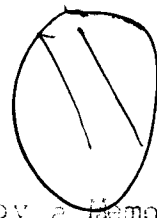


in the vacant post of Technical Assistant in the same grade of UDC/Grade III (M). By this order dt. 4.11.1985, which was in supersession of the earlier order of promotion of the applicant as Head Clerk, the applicant was relieved on 8.11.1985 and joined as Head Clerk in the Directorate of Social Welfare. The applicant, however, was not issued any LPC by the Administrator, Maulana Azad Medical College on the ground that the applicant did not hand over charge of the stores items of surgery including certain books, furniture etc. and there is a mention of this fact in the order dt. 4.11.1985 that the applicant should be relieved without handing over charge and he will subsequently hand over charge after getting him on loan from the Department of Social Welfare for the purpose of handing over the charge. The controversy of handing over charge still remains undecided. The case of the applicant is that he has handed over the charge and obtained a 'No Due Certificate' from Maulana Azad Medical College dt. 27.1.1986 (Annexure A12) while the case of the respondents is that the applicant did not obtain 'No Due Certificate' from the Department of Surgery where he was posted as UDC and earlier in charge of the stores and library books of the Department of Surgery. However, respondent No.3 did not issue the LPC and also did not fix the pay of the applicant on the promotion post because of not handing over the charge of all the items and not following the formalities which

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It was incident^{al} to transfer of the applicant from Maulana Azad Medical College to another organisation of Delhi Administration, Directorate of Social Welfare. The applicant has stated that respondent No.3 has harassed him and he was never handed over the charge of the said items which are ^{now} ~~not~~ found short with the respondents and for which a notice has also been given to the applicant dt. 3.7.1986 (Annexure A13). The applicant has been continuing making representations, but each and every time he has been informed that he has not handed over the charge of the costly books and furniture items as is evident by the Memo dt. 2.7.1987 (Annexure A16) and the Memo dt.30.11.1987 (Annexure A18).

4. Respondent No.3 contested the application and filed a reply stating that the applicant was promoted vide Office Order No.1297 dt. 26.7.1985 in the grade-II (M) in the pre revised scale of Rs.425-700 and he was also relieved, but he did not hand over the complete and full charge in proper manner. The applicant also failed to furnish 'No Due Certificate', which was mandatory before relinquishing charge on transfer on promotion outside the present office. It is because of this that the applicant could not be issued with an order of clearance certificate and also did not qualify for issue of LPC and ^{consequently} ~~subsequently~~ his service book and leave account. As many as 74 costly medical books as well as 11 items of furniture are found short which the applicant did not hand over in charge to his reliever.

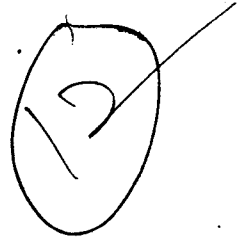


The Chief Probation Officer, Delhi was informed by a Memo dt. 30.11.1987 that the value of the books and furniture has been roughly estimated at Rs. 8,000 and the applicant be asked to trace out and hand over charge otherwise he will be subject to disciplinary action. It is admitted to the respondents that the order dt. 4.11.1985 was passed adjusting the applicant on the post of Technical Assistant w.e.f. 26.7.1985 and he was relieved w.e.f. 3.11.1985 to join the transferred post in the Directorate of Social Welfare. It is further stated that in view of the procedure and difficulty, the pay of the applicant could not be fixed nor the LPC could be issued. Respondent No. 2, Directorate of Social Welfare has also filed a separate reply and stated that the applicant joined as Head Clerk on 8.11.1985 (Forenoon). He remained there till 22.5.1992 and he was relieved from that date to join the Directorate of another department. The Dean, Maulana Azad Medical College did not release the Last Pay Certificate and the Service Book of the applicant and the pay of the applicant was fixed at the minimum at Rs. 1400 in the pay scale of Rs. 1400-2300 because the LPC of the applicant was not received. Respondent No. 3 did not issue the LPC because the applicant did not hand over the charge of costly medical books etc. having a cost of about Rs. 8,000.

5. I have heard the learned counsel for the parties at length and have gone through the record of the case. The only objection taken

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by respondent No.3 , i.e., Dean Maulana Azad Medical College for non issue of LPC and non fixation of pay of the applicant is that the applicant did not hand over the charge of various items which were with him while working as UDC in the Surgical Department of the medical college. Surprisingly years after years have passed and respondent No.3 did not resort to any disciplinary action nor reported to Delhi Administration, though persistently the applicant has been informed to hand over the charge of the missing costly books and various items of furniture. Withholding of LPC or non fixation of pay of the applicant cannot be said to be a proper administrative action on the part of respondent No.3. Either respondent No.3 should not have relieved the applicant till he has handed over the charge and when he has once been relieved, respondent No.3 should have acted according to the various circular issued with regard to transferred employee and the learned counsel for the applicant has referred to the instructions contained in Delhi Administration OM No.F-4/13/85 GRA (PT) dt. 23.8.1985. The relevant portion of the same is quoted below :-

"Instances have been to notice where members of the staff have not been paid their salary and other dues timely resulting in discontentment and hardship to them. As a good employer, it is expected that there would never be any delay in paying the individual his dues particularly monthly pay and allowances. In the event of transfer when LPC is not received, the departmental Heads may make provisional payment and adjust the same subsequently. The Administration will view with severe displeasure cases of delay in issue of LPC and payment of dues. The Head of Department will please fix responsibility in all cases of delay in payment and take such remedial measures as are necessary to ensure employees satisfaction in this behalf."



Thus respondent No.3 cannot in any case withhold the LPC of the applicant.

6. The question of fixation of pay of the applicant would not arise in the present case as the applicant has been promoted and transferred to the Directorate of Social Welfare on 5.7.1985, but he was only de facto released on 26.7.1985. But even after this, the applicant continued to work in Maulana Azad Medical College. So by another order dt. 4.11.1985, he was made to work on the post of Technical Assistant. It is not evident from the record as to what was the grade of this post of Technical Assistant or whether it was equivalent to the grade of Head Clerk Grade-II (M) of DASS. Whatever may be the actual position as none of the parties in their written submissions or in the arguments at the time of hearing have thrown any light on this matter, so respondent No.3 shall fix the pay of the applicant because ultimately they would have paid the pay upto October, 1985 as the applicant was relieved on 8.11.1985. Respondent No.3, therefore, has also to fix the pay of the applicant on his promotion w.e.f. 26.7.1985.

7. It is absolutely made clear that the point of handing over the charge of the applicant has not been dealt with in this application and that matter is left open to both the parties, i.e., respondent No.3 shall be free to proceed departmentally in an enquiry against the



applicant and the applicant shall be free to defend himself. The present observations in the judgement will not have any effect on the merit of that enquiry which may, if any, be instituted against the applicant for not handing over the charge of certain library books as well as the items of furniture detailed in various letters sent to the applicant or from one department to another and copies thereof have been filed as Annexures both to the application as well as counter of respondent No.3.

5. In view of the above facts, the present application is disposed of with the directions that respondent No.3 shall fix the pay of the applicant as on 26.7.1985 and also release the Last Pay Certificate of the applicant and respondent No.2 shall thereon consequently allow all the benefits to the applicant on that basis. The respondents shall, however, be free to proceed departmentally against the applicant for not handing over the charge of various items, as alleged and this judgement will not be a bar to these proceedings. The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this judgement. In the circumstances, the parties shall bear their own costs.

John
(J. P. SHARMA)
MEMBER (J)