

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 27TH DAY OF JULY, 2001

Original Application No.1044 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

Radhey Lal Ahirwar, a/a 62 years
S/o Shri Ram Dayal, R/o 413,
Sadar Bazar, Jhansi.

... Applicant

(By Adv: Shri A.K.Dave)

Versus

1. Union of India through Director
General Post Offices, new Delhi.
2. Chief Post Master General
U.P.Lucknow.
3. Post Master General, Agra
4. Senior Supdt. of Post Offices
Jhansi.

... Respondents

(By Adv: Ms.Sadhna Srivastava)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of A.T.Act 1985 applicant has prayed for a direction to the respondents to refix the pension of the applicant by giving the benefit of service rendered by him as Post Master w.e.f. 20.7.1991 and to fix the pension on the basis of the average salary of last ten months drawn by him before retirement. Some of the undisputed facts giving rise to this application are that applicant was serving as Assistant Post Master at Jhansi head Post office. By order dated 17.7.1991(Annexure A1) applicant was given officiating promotion and was posted as Post Master (HSG-II) at Lalitpur against a vacant post on account of transfer of Jamuna Das who was promoted and posted as SPM Jhansi

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City. The applicant continued to officiate as Post Master in (HSG-II) and retired on 30.6.1993. By order dated 16.5.1994 he was approved for promotion to the post of Post Master in (HSG-II) w.e.f. 1.1.1993 on the basis of the recommendation of the D.P.C.

The respondents case is that as applicant was not promoted on permanent basis before 1.1.1993, he was not entitled for pension on the basis of the last pay drawn for the post of Post Master during the period of last ten months before his retirement. On this reasoning by order dated 30.10.1995 they directed recovery of Rs.3535/- from the applicant which was paid to him in lieu of service as Post Master in (HSG-II).

Learned counsel for the applicant has submitted that applicant was entitled for the pay for (HSG-II) whether he worked on promotion on officiating basis or permanent basis and for the purpose of calculation of the pension the pay drawn during the last ten months should be taken into account irrespective of the fact whether the applicant was selected and appointed on the higher post on regular basis ^{on permanent date.}. The learned counsel for the applicant has relied on Rule 34 of Central Civil Services(Pension) Rules 1972 which defines average emoluments.

Ms.Sadhna Srivastava on the other hand, has submitted that as applicant was given only officiating chance to serve on a higher post on ad hoc basis as a time gap arrangement, he was not entitled for (HSG-II) and the order passed against him for recovery of the amount is justified.

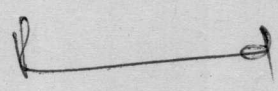
I have considered the submissions carefully. However, I do not find any force in the submissions made by the learned counsel for the respondents. It is not denied that applicant was serving as Assistant Post Master. He was asked to discharge higher responsibilities of a higher office of Post Master by order dated 17.7.1991 with specific stipulation that he would be serving in (HSG-II). He joined the post on 20.7.1991 and worked on the post till his retirement. The matter of his promotion on regular basis



continued in the department for long time and the order promoting him on regular basis was issued on 16.5.1994 w.e.f 1.1.1993 after his retirement. The question is whether the applicant was entitled for (HSG-II) during the period he was serving on officiating basis. So far as the period 1.1.1993 and onward is concerned, there is no dispute. In my opinion, the order dated 17.7.1991 is very clear and specific on this aspect of the case. It clearly contemplated that applicant shall serve as Post Master in (HSG-II). Thus a conscious decision was taken that though the applicant ^{would be} ~~was~~ served on ad hoc basis but he will be paid the same scale which is admissible to a Post Master in(HSG-II). Nothing has been brought to notice of this Tribunal showing that this order was subsequently modified or withdrawn, as such the applicant was fully entitled to draw the same pay scale(i.e. HSG-II) ^{he worked on} during officiating basis and also thereafter when he was regularly selected for appointment on the post. The order of recovery is not justified in any way.

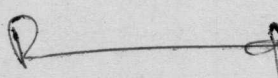
The pension is calculated on the basis of the average emoluments, Rule 34 defines average emoluments and provides that average emoluments shall be determined with reference to the emoluments drawn by a Govt. servant during the last (10months) of his service. In the earlier paragraph it has been found that applicant was entitled for the emoluments in (HSG-II) right from 20.7.1991 when he ^{started} ~~was asked~~ to discharge the functions of Post Master. Thus subsequent selection and appointment on regular basis was not very relevant.

For the reasons stated above this OA is allowed. The impugned order dated 30.10.1995 is quashed. The applicant shall be paid back the entire amount recovered from him and shall also be entitled for refixation of pension on the basis of the last pay drawn during ten months. The amount for which the applicant is found entitled shall be paid to him within three months from the



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date a copy of this order is filed. There will be no order as to costs.


VICE CHAIRMAN

Dated: 27.7.2001

Uv/