

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.

Allahabad This The 31 of May, 2000

Original Application No. 780 of 1996

CORAM:

Hon'ble Mr. S. Biswas, A.M.

B.S.B haskar, aged about 58 years Retired Senior Superintendent of Post Offices, Muzaffar Nagar, at present resident of at 570/32, Bhartiya Colony Kukre Road, Muzaffarnagar.

.....Applicant

(By Adv: Sri K.C. Sinha)

VERSUS

1- Union Of India through Director General

(Post) Sanchar Bhawan, New Delhi.

2- Chief Post Master General, U.P.

Circle, Lucknow.

3- Director Of Accounts Postal U.P.

Circle, Lucknow.

4- Post Master General, Dehradun.

5- Senior Post Master, Muzafarnagar

Division, Muzafarnagar.

.....Respondents

(By Adv: Kum. S. Srivastva)

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O E D E R

(By Hon'ble Mr. S. Biswas, A.M.)

The applicant, an ex-employee of Postal deptt, retired on 31-3-1996, has sought the following remedies in the

D.A.:

(a) Quashing of impugned orders dt. 15-9-95 and 11-6-96 (annexed to the petition).

(b) Consequently, restoration of the applicants' basic pay to Rs. 3,400/- and refund of the amount (Rs. 38,110-60) which was recovered by virtue of impugned order dt. 15-9-95.

(c) Consequent to restoration of the applicants basic pay to Rs. 3,400/- which he was drawing before 15-9-95 for the cumulative retirement benefits like DCRG, Pension, Leave encashment and salary differentials from Sept 95 to March 98 be re-determined and paid with interest.

2- Heard the rival parties.

3- The applicants' case is that in the year 1982, when he was working as Assistant Superintendent of Post Offices at Barielly, he was transferred to Badaun. On joining there as Assistant Superintendent Of Post Offices, the Supt Post Office Badaun vide order dt 10-8-82 asked him to officiate as Post Master H.S.G-1 in the vacancy of one J.M.L. Saxena, who was earlier promoted and posted in a Gr. B' charge. The said order Supt. post offices, asking him to officiate as H.S.G-1, specifically held that this was on adhoc arrangement and it would not confer upon the applicant any right of absorption in H.S.G-1.

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4- The applicant proceeded immediately on leave w.e.f. 12-8-82 to 28-8-82 which was formally sanctioned vide order dt 11-8-82. In other words immediately on assuming charge on 11-8-82, the applicant applied for leave which was obviously sanctioned on 11-8-82 itself ^{as} the order shows. As per this Leave sanction order (Annex-2) the leave was sanctioned from 13-8-82 to 27-8-82 (12-8-82 being Janmashtami). The applicant was referred as officiating Post Master in this leave sanction order. In other words, the applicant officiated as postmaster in the HSG-1 grade only for a day on 11-8-82.

5- The case of the applicant is that since leave was formally granted to him from 13-8-82 to 27-8-82, he drew pay in the higher scale for HSG-1. Before he could resume in the said officiating post of post master HSG-1, he got his promotion to Gr. B charge when on leave and joined as Supt post office on 28-8-82, without resuming in the officiating post. As he received the salary for this period from 11-8-82 to 27-8-82 in the grade of HSG-1 there was a higher fixation of pay in the grade of Gr. B charge which he began to hold w.e.f. 28-8-82 and a cumulative higher fixation continued till he got promotion to Gr'A' charge and ultimately retired from service on 31-3-96.

6- According to the respondent the pay ^{as} the applicant was wrongly fixed on 28-8-82 as because his alleged promotion to officiate in the Grade of postmaster HSG-1 from 11-8-82 to 27-8-82 was an illegal order. The Supt of Post offices Badaun who had passed that order dt. 10-8-82 was not competent to pass any such order and hence the order dt. 10-8-82 is illegal and it does not confer any legal right or benefit of higher fixation. This is a promotional post and no formal promotion order was passed by competent authority.

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The promotion to higher post is to be given only on the basis of regular DPC. In this case the Supt. post offices Badaun was neither competent to hold such D.P.C. nor he was authorised to pass any such officiating order, by virtue of which a higher fixation of pay for the period from 11-8-82 to 27-8-82 was allowed as a consequence.

7- Realising the mistake, the same was corrected by the impugned order dt. 15-9-95. The pay was reduced as a consequence of the correction of the wrong and illegal fixation (Supra).

8- However, this position made out by the respondent has been challenged by the applicant by citing the clarificatory order dt. 11-4-96 of APGM U.P. It is stated in this letter addressed to PMG Dehradun (Referred as respondent 3 but there is no such respondent with this designation within the array of respondents) that the action of local Supt of Post office Badaun was not illegal.

9- However, the APGM has clarified in his letter dt. 11-4-96 that officiating posting is regulated by Sch. 3 of postal manual vol.III. This authorises the divisional Supt of post offices to fill up officiating vacancies in the selection grade of Inspector of post offices provided the vacancies are not more than four months. The case could be decided by S.P.O. Badaun. No sanction is required from higher authorities.

10- Consequently, the arguments of unauthorised action and illegality in the order dt- 10-8-82 do not hold good. The reading of the postal manual sch. 3 of vol. III clearly indicates that provision for such kind of officiating arrangement does exist and nothing irregular or illegal was decidedly committed by the Supt. of post office Badaun in his order dt. 10-8-82.

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11- In the meantime, the applicant made several representations challenging the alleged unauthorised deductions and refixation of his pay at a lower stage than he was drawing at the time of his retirement.

12- Vide letter dt. 11-6-96 the respondent No. 3 has clarified that "Your promotion in HSG-1 w.e.f. 11-8-82 (FN) is only for one day." In terms of Sch 3 of Postal Manual Vo. III it was purely a temporary and ad-hoc arrangement and less than 14 days and is not approved by appointing authority. HSG-1 is a circle. The arrangement should be approved by CO for taking the pay in consideration on promotion to PSG Gr.B. Hence applicant's pay was liable to be fixed with reference to pay drawn in ASPO Cadre.

13- The salary on officiating promotion was fixed on the basis of leave sanction order,. The pay of applicant, it is submitted by the counsel for the applicant, was fixed as per ad-hoc promotion, according to the provisions of FR 22C (now 22A(1)). Hence the fixation of the applicants' pay in Gr.B grade on promotion, done on the basis of earlier payfixation in the grade of post master HSG-1 is correct. In para 35 of C.A, only averment to this is "action as per rules."

14- What survives from the above projections by rival parties is whether the payfixation of the applicant in the grade of HSG-1 on the basis of leave sanction order dt. 11-8-82 is substantiable or not ^{All 59} other issues like legality of the order dt. 10-8-82 asking ^{the} applicant to officiate as an HSG-1 stands sorted out by the clarificatory order of APMG U.P. for chief Post Master General U.P. The only precondition which survives and which is to be looked into is whether in terms of FR 22C did the applicant as a matter of fact hold the officiating post for 14 days of minimum period or not. He is only entitled to pay fixation under

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FR 49 (1) and (iii). The respondent has contested the leave certificate dt. 11-8-82 stating that under FR 26 (b) (ii), since the applicant did not join back at the post from where he proceeded on leave, the certificate is ineffective.

15- Vide O.A./97 in S.R. Sagar vs. PMG U.P. circle. Lucknow, similar issue was once earlier decided. It was held: "As the applicant was working on the post of Assistant Post Master on an ad-hoc basis, on individual seniority basis, it cannot be treated as a regular officiation and he is not entitled to get the benefit of this officiation for fixup his pay as Inspector of Post Offices". In other words, the legality of the officiation has not been disputed as such. It is only the benefit of fixation of pay at a higher position/ or non-officiating post has been disallowed.

16- In view of the ratio of this observation, the applicant was asked to officiate in HSG-1. This was purely a temporary and ad-hoc arrangement. The precondition of this order dt. 10-8-82 was that this ad-hoc arrangement would not confer upon the applicant any right for absorption. Hence it was not a promotion of any kind. The applicant allegedly worked for only one day, ^{and} soon thereafter he proceeded on leave as per leave sanction order and he never resumed there to claim that a tenure of minimum 14 days for the purpose of eligibility of fixation in that grade. was completed. 13

17- In view of above the O.A. fails on merits and hence dismissed.

No costs.

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A.A./