

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 27TH DAY OF JULY , 2000

Original Application No.988 of 1996

CORAM:

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

HON.MR.S.BISWAS, MEMBER(A)

Kedar Nath Yadav, aged about 44 years  
S/o Shri Sukhu Yadav,  
R/o Village Katwans, Distt. Mau, (U.P)

.... Applicant

(By Adv: Shri K.P.Srivastava)

Versus

1. Union of India, through  
Secretary Posts, Ministry of  
Communication, Govt. of India  
New Delhi.
2. The Director Accounts(Postal)  
Uttar Pradesh Circle,Lucknow.
3. The Supdt.of Post Offices,  
Jaunpur.
4. The Post Master(HSG-I)  
Jaunpur.

.... Respondents

(By Adv: Shri Amit Sthalekar)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

By means of this application u/s 19 of the A.T.Act 1985, the applicant has questioned the order dated 5.7.1996 by which irregularities committed in fixing pay scale have been corrected.

2. The facts in short giving rise to the controversy are that the applicant joined Postal department as Postal Assistant. He was promoted as Postal Accountant in the scale of Rs.380-620 w.e.f. 8.1.1980. For this promotion the applicant had passed written examination and also had gone for training for some period. This cadre of Accountant however was declared defunct by the President of India vide order dated 24.2.1981, a copy of which has been filed as (Annexure 4 to this OA). The para 2 of the letter which is



relevant for settling the controversy is being reproduced below:-

"The President is now pleased to decide that the cadre of PO & RMS/DTO/CTO Accountants in the Pay scale of Rs.380-620 be declared as defunct and the incumbents of these posts be brought on to the scale of Rs.260-480 plus a uniform rate of special pay of Rs.45/-per month. The existing incumbents in the pay scale of Rs.380-620/- have the option to return the defunct scale under FR 23 and will not be eligible for promotion to any higher post in the General Line. The option should be exercised on or before 31.5.81. If no option is exercised within the stipulated date, the officials shall be deemed to have automatically elected the pay scale of Rs.260-480 plus special pay and their pay will be fixed as under. The individuals who opt for the pay scale with special pay now introduced will be eligible for promoting to higher posts in the normal channel of promotion as were available before the issue of this O.M.31-31/74-P-1 dated 10.11.1978."

It is not disputed that the applicant exercised option in favour of retaining the pay scale of Rs.380-620. However for some reason he was reverted to the old pay scale w.e.f. 26.8.1981. He was again promoted on 10.11.1981. However, on repromotion he <sup>was</sup> allowed to draw the pay on the basis of the defunct pay scale of Rs.380-620. That scale was declared defunct and the applicant could not draw salary on the basis of the same. This was <sup>detected</sup> during audit inspection and a report was submitted for correction of the irregularity <sup>in fixing</sup> on the pay scale. Consequently, the impugned order dated 5.7.1996 has been passed, aggrieved by which this application has been filed.

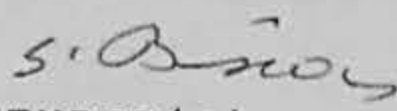
We have heard Shri K.P.Srivastava learned counsel for the applicant and Shri Amit Sthalekar learned counsel for the respondents at length and we have also perused the papers. There is no dispute so far as the factual aspect of the matter is concerned. Shri Srivastava however,

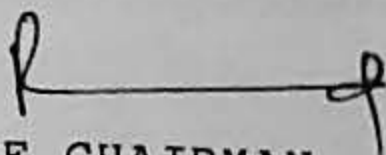
submitted that ~~where~~<sup>where</sup> the reversion of the applicant from the post of Accountant to Postal Assistant was illegal as his juniors were retained. In our opinion this challenge in this application is too late. It is not disputed that the applicant was aware of the reversion but he never raised any dispute before any court or the Tribunal.

The second submission of the learned counsel for the applicant is that the second promotion given to the applicant was also ~~included~~<sup>included</sup> in the grade of Rs.380-620 and thus the pay drawn by the applicant in the alleged defunct pay scale was correct and there was no irregularity. However, we do not find any such document on which basis it may be said that the next promotion granted to the applicant was in the pay scale which was declared defunct by the President's order dated 24.2.1981. The second promotion to the applicant was in general line. ~~In~~<sup>In</sup> ~~The~~<sup>The</sup> ~~fact~~<sup>fact</sup> learned counsel for the applicant has placed reliance in case of 'M.S.Sadanandan Versus Executive Engineer and another, (1997) 35 A.T.C 584(FB) and Bhagwan Shukla Vs. Union of India and Others, (1994) 28 A.T.C 258. In our opinion <sup>in</sup> the present case the aforesaid judgments do not help the applicant. There is no quarrel so far as the legal position explained by the Full bench is concerned that the role of an auditor is advisory in character and decision making authority has to take a decision after following the principles of natural justice. In the present case the auditors report was submitted thereafter the Competent Administrative Officer passed the order correcting the pay scale. In the present case no where it has been said that before passing the order the applicant was not made aware of the audit report and the irregular fixation in the pay scale was corrected without hearing him. In the circumstances both the aforesaid cases are not applicable and distinguishable on facts.

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For the reasons stated above, we do not find any merit in this case and this OA is dismissed. However, there will be no order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN

Dated: 27.7.2000

Uv/