

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

Original Application No.1369 of 1997.

Allahabad this the 21st th day October 2003.

Hon^{ble} Mr. Justice R.R.K. Trivedi, V.C.
Hon^{ble} Mr. D.R. Tiwari, Member-A.

Suresh Singh
Accountant,
Kanpur Head Office
S/o Late Puttu Singh,
R/o Plot No.14, Rana Pratap Nagar,
P.O. Rawatpur, Kanpur.

.....Applicant.

(By Advocate : Sri K.P. Srivastava)

Versus.

1. Union of India
through the Post Master General
Kanpur Region, Kanpur.
2. The Director, Postal Services,
O/o The P.M.G. Kanpur Region,
Kanpur.
3. The Chief Post Master,
Kanpur Head Office, Kanpur.
4. The Deputy Chief Post Master (D.D.O)
Kanpur Head Office-Kanpur.

.....Respondents.

(By Advocate : Kmi S Srivastava)

O R D E R

(By Hon^{ble} Mr. D.R. Tiwari Member A)

By this O.A filed under section 19 of the
Administrative Tribunals Act 1985, the applicant has
prayed for direction to the respondents not to reduce
the basic pay of the applicant without show cause
notice. He has further prayed for direction to the
respondents not to recover the alleged overpayments.

2. The facts of the case, in brief, are that the
applicant was initially appointed as Junior Clerk/

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Postal Assistant in the Department of Post in Kheri Head Post Office under Superintendent of Post Office (hereinafter called S.P.O), Sitapur Division on 27.10.1974. He passed the Post Office and Railway Mail Services Accountant Examination in 1980. He was posted as Accountant in Postal Assistant cadre post carrying special pay of Rs.45 in Hardoi Head Post Office under S.P.O Hardoi Division on 26.11.1981 and worked till 07.03.1982.

3. The applicant passed the Upper Division Clerk S.B.C.O, examination and result was declared vide U.P. Circle memo dated 16.02.1982. After one week training from 08.03.1982 to 14.03.1982, he joined as U.D.C, S.B.C.O., Hardoi Head Post Office on 15.03.1982 in temporary and officiating capacity, drawing U.D.C scale of pay Rs.330-560 (Annexure- S.R.A. 1 of Supplementary Rejoinder dated 28.10.1998). He ^{was} reverted to Postal Assistant Cadre and posted as Accountant on 27.03.1988. The Departmental Promotion Committee of 08.01.1991 found him fit for promotion to L.S.G cadre under the Time Bound One Promotion (in short T.B.O.P) scheme with effect from 26.10.1990. The competent authority issued promotion order dated 08.01.1991 for the post of L.S.G. grade (Annexure R.A 4).

4. In accordance with the guidelines issued by the Director, Department of Posts New Delhi dated 26.08.1986 (Annexure RA-1), the applicant exercised his option on

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14.01.1991 for fixation of pay in L.S.G. grade under T.B.O.P scheme only after completion of three years service as Accountant or upto his next D.N.I i.e. 01.10.1991 whichever is earlier (Annexure R.A.2).

The respondent fixed the pay in L.S.G. grade under T.B.O.P scheme w.e.f. 28.12.1990 taking into account the special pay drawn by him for three years and fixed the date of next increment on 1st December every year. This was checked by the audit party and ^{was paid salary} he ~~drawn this~~ accordingly for about seven years.

5. The applicant further states that in the month of November 1997 his basic pay was reduced from Rs.5,375 to Rs.5,250. His next date of increment was shifted from 1.12.1997 to 01.10.1998 and a recovery of Rs.2000 per month out of alleged overpayment of Rs.27,617,95. The applicant assails this action as it is illegal and arbitrary. He was not served with any show-cause and was not afforded any opportunity to anything in his defence.

6. The respondent^s on the other hand, ^{have} resisted the claim of applicant. The respondent's counsel through the written argument has submitted that the reversion of applicant from the post of U.D.C., S.B.C.O to the post of Postal Assistant had not been accepted by the Director General, Department of Post. The applicant did not fulfil the conditions laid down in Directorate letter dated 06.1.1986. His request

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for waiver of those conditions was also not accepted and the applicant was duly informed by a letter dated 04.09.1987 (Annexure W.A.1). It is further argued *that* his promotion under T.B.O.P scheme was irregular because the period of ex-cadre service of U.D.C S.B.C.O from 8/15-3-1983 to 26.02.1988 is not countable for assessing 16 years of service for promotion to L.S.G. grade. The option dated 14.01.1999 was not in order.

7. It has been further contended that special pay cannot be counted for fixation of pay, if it had not been drawn for more than 3 years continuously before promotion. The period claimed as his training period for U.D.C, S.B.C.O is not admissible because he was drawing the pay as U.D.C. He has drawn the pay as U.D.C. from 08.03.1982 to 14.03.1982 as per letter dated 30.03.1988 issued by Post Master, Hardoi (Annexure W.A.2).

8. The counsel for the respondent has further urged that the question of issue of show cause notice does not arise as the reduction of pay and recovery of overpayment has not been done as a punishment. Para 8 of the counter affidavit is in the light of instructions relating to recovery of overpayment of pay and allowances. In this case, he was duly informed of the facts how the amount of Rs.27,617.95 had been over paid on account of wrong fixation of pay and as such it was recovered from his pay at the rate of Rs.2000 per month.

Defence

9. Lastly, the counsel for respondents has put for the argument that the prayer is infructuous because the order dated 05.11.1997 was provisional and on 26.02.1998 the final order was issued which has not been challenged by the applicant.

10. We have carefully considered the rival contention of the parties and perused the pleadings. The written arguments submitted by the counsel of applicant and respondents had been considered.

11. There are some basic issues which require consideration and decision. The first issue relates to the fact whether his reversion from ^{post} of U.D.C, S.B.C.O. to the post of Postal Assistant is valid/permissible. The respondent's counsel has admitted in para 1 of written argument that the request of applicant would have been accepted, had he given his declaration as required vide D.G. Posts Communication dated 06.01.1986. This issue is no longer in dispute in view of order of this Tribunal in O.A. No.376 of 1998 decided on 11th April 2002 (Annexure 1 of Suppl.Written argument dated 6.8.2003). The relevant paras of the decision is extracted below:-

"....A person can be denied promotion for not rendering 16 years service after appointment as Postal Assistant only after he is told that services outside the cadre would not be counted either at the time of going out of the cadre or atleast when such a decision was taken. Since the applicant left his cadre on 15.03.82 without knowing that his going on deputation will stand in the way of his promotion under the T.B.O.P Scheme he cannot be deprived of the benefits of the scheme with retrospective effect. Even after 06.01.86 when this condition was laid down, all persons going on deputation as U.D.C. (S.B.C.O)

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should have been clearly informed that deputation would mean a loss of promotion under the T.B.O.P Scheme".

"We are therefore constrained to observe that the department cannot enforce this condition that the services rendered as U.D.C. (S.B.C.O) shall not be counted for promotion with retrospective effect without having given an opportunity to exercise an option to the class of people similar to the applicant".

The above decision of the Division Bench of this Tribunal emanated from the O.A. filed by the applicant and the respondents cannot dispute it now.

12. The next question which falls for consideration is whether his special pay would be taken into consideration while fixing his pay in L.S.G. grade. The respondent has disputed the fact that he did not draw it for three years continuously or in parts before promotion. However, facts given below indicate the contrary picture:-

Period	working as	year	Months	Days
16.12.81 to 7.3.82	Accountant	---	02	23.
8.3.82 to	Training treated as duty as Account under F.R. 9(6) (b) (i)	---	---	07
27.3.88 to 25.10.90	Accountant	02	06	29
26.10.90 to 27.12.90	Accountant	---	02	02.
		total-	03-	00- 01.

The above chart clearly shows that he has drawn the special pay for at least three years prior to promotion to L.S.G. grade and respondent^{or} had rightly fixed his pay. Even if it is presumed that he did not draw it for three years, the applicant has clearly stated in his option that he was agreeable to accept pay fixation in L.S.G. grade

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w.e.f. date of his next increment i.e. 1.10.1991 just to account for special pay for pay fixation. If it would have been done w.e.f. 1.10.1991, the drawal of special pay would have been for more than three years and ten months. But it was respondent who allowed promotion pay fixation w.e.f. 28.12.1990 taking into account the special pay and it was so done rightly.

13. The next issue which remains for decision is whether it was incumbent on the respondent to issue show cause notice. It is agreed that the recovery is not by way of punishment and it does not attach any stigma to the applicant. However, it does not mean that after seven years, the recovery ^{can be a} ~~is~~ effected without any information to the applicant. After all, it is financial burdent for an employee. It is unfair to recover the amount of overpayment as this was granted to the applicant for the work done by him on the post he was promoted. Even if it is assumed for the sake of argument that the respondent had power to revert him retrospectively, ^{they have} ~~they have~~ no power to recover the overpayment as the applicant had worked on that ^{post before} ~~reversion, is irregular~~. Hence, the recovery without any show cause is illegal. We are in agreement with the view taken by C.A.T., Madras (1993) 24 Administrative Tribunal Cases 327.

14. The last issue which remains to be dealt with is the contention of the respondent contained in

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para 16 of the written argument. Even this point has been discussed in the O.A. No.376 of 1998 by the applicant and the Division Bench of this Tribunal was not impressed and quashed the order dated 26.2.1998.

15. In view of the facts and circumstances mentioned above, the O.A. succeeds on merit and is allowed. The applicant shall have all the consequential benefits of pay and allowances. The respondents are directed not to recover the overpayment made to the applicant and refund the amount already recovered.

No order as to costs.

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Member-A.

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Vice-Chairman.

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