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CENTRAL ADMINISTRATIVE TRIBUNAL ALAHABAD.

Registration No.15 of 1987.

S.R.Sagar

.....applicant.

Vs.

P.M.G.,U.P.,Circle Lucknow

and another

..... Respondents.

Hon'ble D.S.Misra,A.M.

Hon'ble G.S.Sharma,J.M.

(By Hon'ble D.S.Misra)

In this application under Section 19 of the A.T.Act XIII of 1985, the applicant has challenged the order of recovery of excess payment of Rs.30/- w.e.f. 1.3.77.

case
2.The applicant's /is that he was working as accountant in the Badaun Head Office w.e.f. 12.10.1976 and was drawing a special pay of Rs.45/- besides his own basic pay of Rs.396/- in the scale of Rs.260-480; that the applicant passed the IPO examination and completed his training on 13.2.77; that he was posted as APM Accounts in the scale of Rs.425-640 w.e.f. 14.2.77; that his pay was fixed at Rs.425/- the minimum of the Time Scale plus Rs. 16/- as personal pay to be absorbed in future increments; that he was promoted as Inspector of Post Offices in the scale of pay of Rs.425-700 and he assumed charge w.e.f. 1.3.77; that his pay as Inspector of Post Offices was fixed at Rs.455/- per month in accordance with F.R. 22-C; that he drew his annual increment on 1.3.78, 1.3.79 and 1.3.80; that the local audit party in the course of their audit from 8.4.81 to 27.4.81 observed that the pay of the applicant was wrongly fixed on 1.3.77 when he was promoted from the post of APM Accounts to the post of Inspector of Post Offices; that according to the local audit party, the pay of the applicant should have been fixed at Rs.425/- on 1.3.77. *bl*

The applicant made various representations to the higher authorities against this observation of the audit party but to no effect; that the appeal to the P.M.G.,U.P., was rejected vide order dated 17.2.1986(copy annexure C and *bl*

D).The applicant has prayed that the observations of the audit party in IR-6(G) of Moradabad Head Office during and April 1981 be declared ultra vires and illegal / the pay fixed by the Postal authorities may be restored to the applicant and the recovery made from the applicant as a result of the said observation may be refunded to him with interest.

3.In the reply filed on behalf of the respondents,it is stated that before his promotion to Inspector Post Offices cadre, the applicant was promoted to officiate as Asstt. Post Master Accounts in short term vacancy w.e.f.4.2.77, on the divisional seniority basis; that the post of Asstt. Post Master (Accounts) is a circle cadre post and the appointments to this cadre are made on the circle/^{seniority}basis,appointing authority being the Director of Postal Services; that the promotion of the petitioner to the post of APM Accounts w.e.f. 14.2.77 was made by the Divisional Superintendent of Post Offices as a staff gap arrangement and the applicant had relinquished the charge of the post of Asstt. Post Master Accounts on 28.2.77 and reverted back to his parent post of Post Office, Railway Mail Service Accountant with pay of Rs.396 plus special pay of Rs.45/-; that the pay of the applicant on officiating promotion as Inspector Post Offices from 1.3.77 should have been fixed at Rs.425/-plus Rs.16/- as personal pay in terms of F.R.22-C read with Government of India decision no.13(A)(ii) below F.R.22 C(copy annexure CA-1) and that the applicant was not entitled to anything.

4.A rejoinder affidavit was filed by the applicant in which it was stated that he was never reverted from the post of APM Accounts to that of Accountant on 28.2.77, and

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that he began working as Inspector of Post Offices w.e.f. 1.3.77; ^{post of} that his pay in the/Inspector of Post Offices cadre should be fixed in accordance with F.R.22-C read with Government of India decision no. 8 below this rule; and that the word 'officiating' used in F.R.22-C covers both the officiating service on regular basis as well as ad hoc basis.

5. We have heard the arguments of the learned counsel for the parties and have carefully perused the documents on record . The short point for consideration in this case is whether the pay of the applicant as Inspector of Post Offices w.e.f. 1.3.77 should be fixed in accordance with Note 8 below F.R.22-C as claimed by the applicant or in accordance with Note 13 below 22-C as held by the respondents. Note 8 below Rule 22C reads as under:

"(8)-Application when a permanent Government servant promoted from an officiating post.-It may sometimes happen that the pay of an employee, permanent in post A but officiating in post B and subsequently transferred/promoted to post C, fixed with reference to the officiating pay in post B may work out to be less than the pay fixed with reference to the substantive pay in post A. In order to remove this anomaly, it has been decided that in such cases pay should be fixed under F.R.22 C with reference to the substantive pay or the officiating pay whichever may be beneficial to the Government servant.

2. These orders will take effect from the date of their issue and past cases already decided otherwise will not be reopened."

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Note 13(a) below Rule 22C reads as thus:-

"Treatment of special pay for purpose of fixation of pay on promotion.(a) When the special pay is in lieu of a separate higher scale.--In cases where a Government servant is in receipt of a special pay in a Post, his pay on promotion to a higher post may be fixed after taking into account the special pay drawn in the lower post subject to the conditions mentioned below:-

(i) The special pay in the lower post should have been granted in lieu of a separate higher scale (e.g., special pay granted to steno typist, clerk in charge, etc.)

(ii) If the special pay has been drawn in the lower post continuously for a minimum period of three years on the date of promotion, the pay in the higher post will be fixed, under the normal rules, ~~treated~~ the special pay as part of basic pay. In other cases, the pay in the time-scale of the higher post will be fixed, under the normal rules, with reference to the basic pay drawn in the lower post (excluding the special pay); where this results in drop in emoluments the difference between the pay so fixed and the pay plus special pay drawn in the lower post will be allowed in the form of personal pay to be absorbed in future increases of pay;

(iii) In both the kinds of cases referred to in clause (ii) above, it should be certified that, but for the promotion, the Government servant would have continued to draw the special pay in the lower post."

The plea taken by the respondents counsel in this case is not at all helpful in deciding the matter under dispute. In para 7 of their reply, they concede that on the promotion of the applicant to the post of Inspector of Post Offices his pay was proposed to be fixed with reference to his pay of Rs.396/- plus special pay of Rs.45/- as Post Office and Railway Mail Service Accountant under sub clause

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(ii) of clause(a) of Note 13 below F.R. 22 C. They have also filed annexure C.A.-1 certificate to the effect that the applicant would have continued officiating as Accountant, but for his promotion in the I.P.O.cadre. As against this, the objection raised by the audit party in audit para 6(q) states that the pay of the applicant on promotion as IPO should have been fixed with reference to his regular pay as clerk and as such he was entitled to Rs.425/-p.m. with reference to his pay of Rs.396/- as clerk. There is an obvious contradiction in the above mentioned observation of the audit party and the statement contained in para 7 of the counter reply. We are of the opinion that whether we applied the provisions of Note⁽⁸⁾ below Rule 22 C or Note 13(a) (ii) below F,R.22 C, the result would be the same. The applicant was working as Accountant in the scale of Rs.260-480 and his basic pay in that scale was Rs.396/- p.m. and he was also receiving a special pay of Rs. 45/- p.m.. On his promotion as Asstt.Post Master Accnunts in the scale of pay of Rs.425-640 his pay was fixed at Rs.425/- plus personal pay of Rs.16/- p.m.. On his promotion as IPO in the scale of Rs.425-700, his pay was fixed at ~~Rx.455-700, his pay was fixed at~~ Rs.455/-P.M. by giving him benefit of one more increment on existing pay as Asstt. Post Master Accounts. As the applicant was working on the post of Asstt. Post Master on an ad-hoc basis on divisional seniority basis, it can not be treated as a regular officiation and he is not entitled to get the benefit of this officiation for fixing his pay as Inspector Post Offices. However, the proposal of audit

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party to fix his pay at Rs.425/- would amount to the reduction of his salary on his promotion as Inspector Post Offices.

According to the common ^{sense} view as well as the provisions of F.R.22-C, this can not be done and the salary of the applicant can not be reduced on promotion as Inspector Post Offices. We are, therefore, of the opinion that the salary of the applicant in the post of Inspector Post Offices should be fixed at Rs.425/- plus 16/- p.m. as personal pay which is equal to his basic pay of Rs.396/- plus special pay of Rs.45/- as Accountant Post Offices and R.M.S., which post was held by him since 24.9.76. The personal pay of Rs.16/- p.m. would be absorbed on his future increment due on 1.3.78 onwards.

The application is allowed accordingly without any order as to costs.

A.M.
10.11.87

J.M.
10/11/87

JS/10.11.1987

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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Review Application no .51 of 1987

IN

Registration No .15 of 1987

S.R Sagar

applicant.

Versus

P.M.G.U.P., Circle, Lucknow and another

Respondents.

Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(By Hon'ble D.S. Misra)

This is a review petition in Original Application no.15 of 1987 with the prayer that the order be amended to the effect that the pay of the applicant should be fixed under F.R.S.R 22 -C.

2. We have heard the arguments of the learned counsel for the parties and we find that all the points raised on behalf of the applicant were considered and decided in the original claim petition. No new points, which were not in the knowledge of the applicant, have been brought out in the present petition. The applicant has also not pointed out any clerical error in the order under review.

For the reasons mentioned above, there is no merit in the review petition, and the same is rejected.

D. Misra
18.1.88

A.M.

G.S. Sharma
18/1/88

J.M.