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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 179 of 1987

Nand Lal Prasad

....

Applicant.

Versus

Union of India & another

....

Respondents.

Hon'ble Ajay Johri, A.M.

The applicant in this application, filed under Section 19 of the Administrative Tribunals Act XIII of 1985, is presently posted as an Inspector of Post Offices at Chandauli in Varanasi Sub-Division. In February, 1977 the applicant was appointed as Sub-Post Master (Accounts) (SPM(A)) in a leave arrangement of 15 days' duration on 11.2.1977 and worked in that post from 11.2.1977 to 17.2.1977.

As he had already been selected for the post of Complaint Inspector (CI) he went to join his new post on 18.2.1977 and the period from 18.2.1977 to 25.2.1977 was spent by him as transit time before joining the new post. According to him he would have normally officiated as Assistant Post Master (Accounts) (APM(A)) for the period of 15 days in the leave arrangement and a certificate to this effect was also given but had to leave on 18.2.1977 to join the new post. When he joined his new post since the officiating vacancy against which

~~32~~ ³² ~~put to work~~
he was ~~put to work~~ as APM(A) was for a duration of more than 14 days and a certificate was issued by his controlling officer, ~~that~~ ³² his pay was fixed taking into account his officiating pay as APM(A) and he continued to draw the salary in accordance with this fixation upto August, 1986. In September, 1986 his pay was reduced by Rs.40/-

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According to him he was not served any show-cause notice for reduction in his pay nor he was ~~involved~~ ^{subjected to} in any departmental proceedings and since the order reduced his pay he claims that this was in violation of Article 311(2) of the Constitution. He represented against the same in October, 1986 to the Senior Post Master (SPM), Varanasi but his representation was not considered. He, therefore, filed this application on 17.2.1987 with a prayer that a direction be issued to the respondents to restore his pay scale according to what was fixed when he took over his new post as Inspector, to pay him the balance of the salaries illegally and wrongfully deducted from September, 1986 onwards, and also a direction not to make any reduction in future otherwise than in accordance with law.

2. In their reply the respondents have said that the applicant was put to officiate as APM(A) for 7 days and he drew his pay at the rate of Rs.425/- in the scale of Rs.425-640 unauthorisedly. Thereafter the applicant proceeded on joining time before taking over as CI in the grade of Rs.425-700 ~~and had taken the joining~~ ^{and} ~~also~~ and drew the salary of Rs.425/-. Since the officiating period was for only 7 days and the next 8 days were spent by the applicant in transit, the period of officiation was less than 14 days and no certificate for drawal of officiating pay, which is necessary, was forthcoming from the competent authority, ~~for the transit period~~ ^{and} the fixation of pay in the new post was wrongly done by taking into consideration the pay he drew unauthorisedly during his officiating period. The entitlement of the officiating pay was justified in advance by APM(A), Mirzapur before the applicant completed 14 days of officiating service and it was also entered in the service book which according to the respondents appeared to be as a result of the personal influence of the applicant while he was working as an APM(A), Mirzapur. His subsequent fixations were, therefore, erroneously made and the proviso of F.R. 22-C is not applicable in his case.

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His pay had to be fixed at the minimum of Rs.425/- in the Inspector's cadre. These irregularities came to light during the audit inspection in the year 1986 and, therefore, his pay was re-fixed and the two increments already drawn by him were withdrawn and orders were also issued for recovery of the over-payments. The respondents have said that during these 8 years' period his case was not put up before the audit party by the Allahabad and Ghazipur Divisions where the applicant had served earlier and only when the inspection was carried out at Varanasi this incorrect fixation came to light.

3. In his rejoinder affidavit the applicant has said that the Superintendent of Post Offices, Mirzapur authorised him to officiate as APM for the period 11.2.1977 to 25.2.1977 in leave arrangement and he also gave a certificate dated 1.12.1986 which clearly shows that the applicant was to officiate for 15 days as APM(A). He has further said that under the Service Rules the journey period after the promotion/transfer is treated as duty and hence he was legally paid the minimum of the scale of APM(A), i.e. Rs.425/- and since he worked under the orders of the Superintendent of Post Offices as APM(A) his salary at Rs.425/- was justified. He has also mentioned that there is no service rules which says that if a person has worked for less than 14 days in the officiating capacity then he is not entitled to pay and allowances attached with the officiating post. According to him, if a person has been ordered to officiate for 14 days or more then he will be deemed to have been appointed in the officiating capacity for the said period whether in fact he works for 14 days or not and since he was in transit in continuation of his officiating capacity and the total period became 15 days he should be entitled to draw the salary of the officiating post.

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4. I have heard the learned counsel for the parties. The main stress laid by the learned counsel for the applicant was that his pay had been correctly fixed under F.R. 22-C and since the orders were for officiating in a leave vacancy of 14 days irrespective of the fact that the applicant worked only 7 days in the post and thereafter spent the remaining 8 days in transit he should be deemed to have officiated in the higher post for 14 days and, therefore, his fixation had been correctly done. On behalf of the respondents the submission made was that since the officiating period was less than 14 days and the applicant had carried out the transfer before the period ³¹ ~~was~~ completed he was wrongly fixed at the new station of posting and his fixation had to be corrected and over payments made to him had to be recovered. Nothing else was pressed before me. I have also perused the case file and the documents in record carefully.

5. The main question that is for adjudication here is that if a person is ordered to officiate in a promoted post for 14 days the minimum period required for drawing the salary of that post and if he moves away from the post after working for a period of less than 14 days whether he should get the benefit of F.R. 22-C or not. There is no dispute about the fact that the applicant had worked from 11.2.1977 to 17.2.1977, i.e. a period of 7 days only as APM(A) before he carried out his transfer to take over charge as an Inspector at the new station of posting. A certificate was also given by the Superintendent of Post Offices that but for his having moved on transfer the applicant would have continued to officiate in the leave vacancy. It was on the basis of this certificate and the last pay certificate issued by the Dak Pal, Mirzapur that his pay at the new station as Inspector was fixed taking into account that he had officiated for 14 days and, therefore, he was entitled ³¹ ³² for fixation under F.R. 22-C.

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6. When a person moves on transfer his pay is regulated by the pay and status and grade of the post which he held immediately before transfer. Thus if he moves on promotion, till he takes over charge of the new post, his pay has to be regulated on the basis of his previous appointment. In the applicant's case he was promoted to officiate in leave vacancy of 15 days. It will be a requirement in this case that condition of working for 14 days or more has to be satisfied before he is paid the pay of the post on which he was put to officiate. He did not complete this period but moved on transfer after working of seven days. The period of joining time is treated as duty. F.R. 107~~1~~ ^{31 (Since date replaced by Joining time Rate 1979)} lays down that where joining time is granted to join a new post either at the same or new station without availing any leave or relinquishing charge of his old post the pay which he would have drawn if he had continued in the old post or the pay which he will draw on taking charge of new post whichever is less will be his entitlement. Now what will be the pay in the old post? The condition necessary to draw the officiating pay is that the employee must have completed the minimum period of duty to earn that pay. This minimum period is 14 days. If this period is not completed and the employee goes on leave/sick without completing the initial 14 days it cannot be recognised as effective officiating. It would, as a matter of fact, mean that he was never promoted to officiate. Proceeding on transfer to join new post is not working on the same or any post. The period spent is duty ~~but~~ ³² it is not duty performed on the post and hence no advantage can accrue on this account. The previous post will then be the post on which the employee was substantively working. It will not be the officiating post. Hence the applicant was not entitled to any benefit on account of the officiation for seven days. The certificate issued

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by DPS had also no meaning. Such a certificate that he would have continued to officiate has no validity or application in the applicant's case. It is unfortunate that this fact went unnoticed for eight years. A benefit incorrectly given can be withdrawn. It is not a penal order. It does not require any show-cause notice to be given and neither does it violate Article 311(2) of the Constitution. An administrative order based on reasons which do not exist is to be held to be infected with abuse of power. In the applicant's case there is no such plea. The fact remains that he officiated only for seven days and this period can give him no advantage. He had not generated any vested rights against the post of APM(A) by working for a period of less than 14 days. The impugned order cannot also be said to be a mala fide order. It is also not an arbitrary order. Hence the application must fail.

7. In the result I reject the application. Parties will bear their own costs.

MEMBER (A)
MEMBER (A)

Dated: September 19th, 1988.

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