

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

T.A. No. 1870 of 1987

(W.P.No.12108 of 1985)

Bala Singh Hyanki

....

Applicant

Vs.

Union of India & Others

....

Respondents

Hon'ble Mr. D.K.Agrawal, Member(J)

Hon'ble Mr. K. Obayya, Member(A)

(By Hon.Mr.K.Obayya, A.M.)

The above writ petition was received on transfer under Section 29 of the Administrative Tribunals Act, 1985 from the High Court of Judicature at Allahabad. The petitioner who has retired from U.P.State Police Service has prayed for issue of mandamus directing the opposite parties to pay him salary of the post of Dy.S.P. for the period 14.9.74 to 30.6.81 and to pay the border pay alongwith the deputation pay, compensatory allowance etc for the period 1.7.77 to 30.6.81 and pay gratuity, provident fund and pension in the scale of Dy.S.P. and to include his military service for counting his pension gratuity etc.

2. Briefly the facts of the case are that the petitioner, after discharged from Air-Force in 1947 entered service of U.P. State Police as Sub-Inspector in 1952. He was confirmed on that post in 1959 and later in 1970 his promotion to the next higher post of Inspector was also approved. He retired from service on superannuation on 30.6.81. While in service he was on deputation to Government of India with Cabinet Secretariat initially on the post of Circle Organisr and later as Sub-Area Organisr in S.S.B. during the period 31.8.65 to 30.6.81. The post of Circle Organisr was equivalent to that of Inspector in State Police and the post of Sub-Area Organisr was comparable to Dy.S.P. in State Service.

R

21
A/N

3. The grievance of the petitioner is that he held the post of Sub-Area Organisr in S.S.B. which was equivalent to the post of Dy.S.P. in the State Cadre, but he was not given the grade pay of Dy.S.P. Secondly he served in the border areas, but deputation pay, border pay and other admissable allowances are not paid to him. Thirdly he had served in the Air Force for more than 4 years from 1943 to 1947 but that period was not included for computation of his pension and other retiral benefits.

4. The stands taken by the respondents in their counter is that the petitioner was in S.S.B. on deputation and he was paid the salary and other allowance as ~~are~~ admissable to employees on deputation in accordance with terms and conditions of deputation. He was not paid pay of Dy.S.P. as he was not promoted to that post in his parent cadre. He was paid the pay of the substantive post held by him in the parent cadre namely Inspector of Police and for officiating in the post of Sub-Area Organisr he was paid besides pay, special pay of Rs.150/-- also. Regarding the allowance and special pay deputation pay etc for working in the border areas it is stated that these allowances ~~were~~ paid to the petitioner though there was delay because the U.P. State Government took some time to issue orders extending the deputation of the petitioner. It is also stated that the petitioner was in S.S.B. only on deputation holding lien in the parent department as such ~~he~~ reverted to the State and pension and other retiral dues were settled by the State Govt. and the petitioner has to approach the State Government if he has any grievance in this regard.

5. We have heard the counsel of the parties. On the material facts there is no dispute. The petitioner was on deputation in SSB, Government of India from 1965 to 1981. He was not absorbed in SSB and continued to be the employee of the U.P. State Police Department. While on deputation his pay allowance and other service benefits are governed by the terms of deputation. Admittedly the petitioner

was promoted to the post of Sub-Area Organisr which is a post equivalent to that of State Dy.S.P. Though there is dispute as to the date of promotion, The petitioner contends that it was with effect from 1974 whereas the opposite parties contend that it is with effect from 27.1.76. Annexure-6 to the petitioner is the order dated 5.8.74 containing promotion of the petitioner to the post of Sub-Area Organisr on adhoc-basis wherein it is also mentioned that the petitioner will continue to get his present emolument and not that of the promotion post till clearance of the State Government. This order was made effective from 25.11.75 by the subsequent order dated 13.1.76(Annexure-7). It would appear that the petitioner was on leave during 1975 and rejoined duty on 27.1.76 hence the promotion order became effective only from this date and not earlier. In this circumstances the contention that the petitioner was promoted in 1974 is not supported by record. He performed the duties of Sub-Area Organisr from 27.1.76 to 30.6.81 i.e. more than 5 years. It is the pay of this period that is in dispute. The respondents contention is that since he was not promoted in the parent cadre as Dy.S.P. he was paid the pay of the substantive post i.e. Inspector of Police plus special pay of Rs.150/- besides other allowances. The petitioner appears to have made a number of representations to the authorities in this regard, This question was also considered, Annexure-9 clearly indicated that the petitioner was ^{not} approved for promotion as Dy.S.P. in the State and as such he was not entitled for proforma promotion. However, Annexure-22 which is a letter dated 20.6.81 addressed to Assistant Director S.S.B., New Delhi puts the case of the petitioner in proper perspective. The relevant para is as under:-

NO.III-68/63-Vol.II/4478
OFFICE OF THE DIVISIONAL ORGANISOR,SSB,
(GOVT.OF INDIA) U.P. DIVISION
ROSE MOUNT : RANIKHET
DATED : 20.6.81.

P

MEMORANDUM

2. Shri B.S.Hyanki is working as Sub-Area Organisr in Pithoragarh Area and is retiring on 30.6.81. He had requested that he may be allowed the pay of Dy.S.P. as he was already working as S.A.O., which is equivalent to the post of Dy.S.P. in U.P. We had written to his parent department about giving proforma promotion to him as Dy.S.P. but they have informed that he is not yet due for officiation as Dy.S.P. hence they are not in a position to give him proforma promotion. But, they have informed that they will have no objection in case we allow him the grade of Dy.S.P. in our own Organisation.

3.

Sd/-
S.S. Joshi
AREA ORGANISER (ADMN)

From the above it is evident that though the State Govt. has not given the proforma promotion to the petitioner to the post of Dy.S.P. they had however, no objection if petitioner was allowed the grade of Dy.S.P. in S.S.B. on the deputation post. We have also seen the instructions on the subject issued from time to time annexed to the petition as also the rejoinder. Annexure-4 to the rejoinder contains instruction regarding pay and dearness allowance in respect of the deputationist Police Officer to Intelligence Bureau. It is mentioned that persons who come on promotion or promoted while serving with Government of India are entitled for pay of the equivalent post in the parent cadre. Annexure-14 to the rejoinder is the copy of the notification dated 13.6.76 containing service rules of SSB (Junior Executive). In para 6 it is mentioned that all persons holding the post specified in rule 4 whether in a permanent, temporary or deputation will be eligible for appointment to the service at the initial stands there of. Having regard to the circular instructions issued from time to time and also keeping in view the fact that the U.P. State Government had no objection to the pay scale of Dy.S.P. to be given to the petitioner while on deputation, We are of the view that the petitioner was entitled to the pay of Dy.S.P. for the period he held the post of Sub-Area Organisr in S.S. B. The cadres

3
D/S

in S.S.B. and the State Police are different. The pay scale and other benefits given in S.S.B. to a deputationist will not entitle him to claim the same in his parent department where the pay scale, allowances etc are governed by the rules in the parent cadre on the substantive post held by him in the parent cadre. In the circumstances we are of the view that the petitioner was entitled for the pay of the post namely S.A.O. which is equivalent to that of Dy.S.P. for the period he officiated as S.A.O. from 27.1.76 to 30.6.81. The contention that the petitioner was eligible only for the pay of the substantive post held by him in the parent cadre, even while holding the higher post on deputation under S.S.B. appears to be *prima facie* not well founded for the reason when the petitioner was selected to the post of Circle Organiser in S.S.B. in 1965 the substantive post of the petitioner was only that of Sub-Inspector while the post of Circle Organiser is equivalent to that of Inspector, and the petitioner was appointed as Circle Organiser with the pay of Inspector. Further in S.S.B. the petitioner was promoted to the post of S.A.O. against deputationist quota on merit and he also officiated in the post for more than 5 years. As the promotion in S.S.B. confers no right to the petitioner to claim the same in the department, there is no bar for Government of India to give the pay of S.A.O. which is equivalent to that of Dy.S.P. to the petitioner. Accordingly we direct the respondents to calculate the pay and other allowances due to the petitioner on the post of S.A.O. held by him and pay him the balance amount within a period of 3 months from the date of receipt of the copy of this order. We would however, like to clarify that the pension in the State Government will be taken only on the basis of substantive post held by him in the State Government and not on the basis of pay scale on a deputation post in S.S.B.

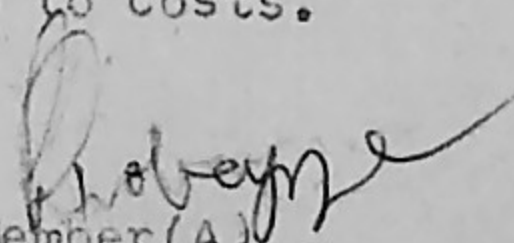
P

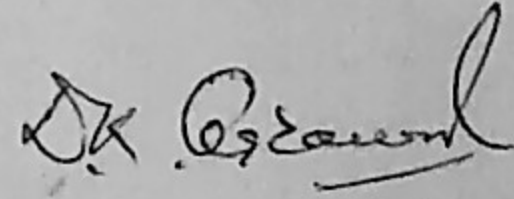
3
10/6

6. Regarding border pay, special pay and other allowance etc for working on the border areas, the respondents have stated that the same was paid later and the delay was due to the fact that U.P. State Government delayed in conveying their approval of extension of the deputation of the petitioner. We do not see that there is any case for the petitioner in this regard.

7. Regarding his pension, the petitioner has prayed that the State Govt. Police Department has not included his army service also as qualifying service for computation of pension. There is nothing on record to show that the petitioner has made a representation to the concerned State authorities i.e. I.G. Police/D.G. Police of U.P. State Govt. He may approach the State Govt. authorities to consider the case of the petitioner as per rules on the subject.

8. The petition is disposed of as above. With no order as to costs.


Member (A)


Member (J)

Date :, 14/11/1992.

(sph)