

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
SITTING AT NAINITAL

Dated: Nainital, the 11th day of June, 2001.

Coram: Hon'ble Mr. S. Dayal, A.M.
Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION NO. 936 OF 1994

Sri Mahendra Singh Sahi,
s/o Sri Bachchi Singh Sahi,
r/o village & Post Nachni,
District Pithoragarh and
Ex-Postmaster, Pithoragarh.

. Applicant

(By Advocate: Sri Rajendra Dobhal)

Versus

1. Union of India, through the Secretary,
Ministry of Communications,
New Delhi- 110001.
2. Postmaster General, Bareilly Region,
Bareilly.
3. Superintendent of Post Offices,
Pithoragarh.
4. Chief Postmaster General,
U.P. Circle, Lucknow-1.

. Respondents

(By Advocate: Km. Sadhna Srivastava)

O R D E R (ORAL)

(By Hon'ble Mr. S. Dayal, A.M)

This application has been filed for setting aside the order dated 24-9-91 of Respondent No.2 and for a direction to the Respondents to grant final pension and D.C.R.G. with interest.

Contd..2

2. The case of the applicant is that he was holding substantively the post of Assistant Postmaster, Pithoragarh in the pay-scale of Rs.1400-- 2300. The post of Deputy Postmaster, Pithoragarh fell vacant and the applicant was ordered to work on the said post from 13.4.90 by the Superintendent of Post Offices Pithoragarh, vide his Memo dated 2.5.90. The post of Postmaster, Pithoragarh borne in the pay-scale of Rs.2000- 3200 fell vacant with effect from 27.4.90 and the applicant was ordered by the Superintendent of Post Offices, Pithoragarh to officiate on the post of Postmaster, vide his letter dated 3.5.90. It was certified by the Superintendent of Post Offices, Pithoragarh that officiating arrangement was imperatively necessary, as the post could not be managed without a full time substitute and it was certified that the applicant was quite competent to hold the said post. The applicant continued to work as Post Master and was allowed the pay-scale of Rs.2000-3200/- till 12.6.91. He proceeded on leave and retired from service from 30.6.91. The Respondent No.2 issued a letter dated 24.9.91, permitting the applicant to draw pay and allowances during the period 27.4.90 to 11.6.91 as an employee working in the pay-scale of Rs.1600- - 3200/-. The order reads as follows:-

" The P.M.G. has been pleased to order that Sri Mahendra Singh Rahi, A.P.M Pithoragarh who officiated as Postmaster Pithoragarh (A post borne in Higher Selection Grade-I) during the period from 27.4.1990 to 11.6.1991 shall be allowed to draw pay and allowances as admissible to an employee working in the scale of Rs.1600/- - 3200/- i.e. in Higher Selection Grade II.

Overpayment/Underpayment if any should accordingly be regularised."

Contd..3

3. We have heard Sri Rajendra Dubhal for the applicant and Km. Sadhna Srivastava for the Respondents.

4. The Respondents have stated that the applicant was approved in the Lower Selection Grade in the scale of Rs. 1400 - 2300/- since 30.6.89. As Sri Sita Ram, who was working as Deputy Postmaster in the Higher Selection Grade II in the pay-scale of Rs. 1600- 2660/- was deputed for Refresher Training Course commencing from 16.4.90 for a period of two weeks, the applicant, who was the seniormost in the Lower Selection Grade in Pithoragarh at Head Post Office, was ordered to work as Deputy Post Master vice Sri Sita Ram by an order dated 2.5.90. It is mentioned that the applicant worked in HSG II post from 12.4.90 onwards and on 27.4.90 the applicant was posted on the post of Postmaster on account of promotion of permanent incumbent to T.S.S. Group 'B'. It is admitted that the applicant was allowed to draw his pay in the pay-scale of Rs. 2000- 3200/- after he started officiating on the post of Postmaster in H.S.G. Grade-I. It is claimed that since the applicant was officiating in HSG cadre, he was not eligible for promotion to the next higher scale of H.S.G. Grade-I. It is also being contended that the officiating arrangement was approved by the Post Master General, Bareilly, subject to the condition that the applicant would get pay and allowances of HSG-II. Thus, the fixation of pay of HSG-I is stated to be in violation of Rule 22 (1)(A)(1). It is mentioned that the amount over paid was to be recovered from the salary of the applicant. The Respondents have also raised the issue of limitation.

5. We find that the applicant had filed a representation with the Post Master General, Bareilly by petition dated 3.5.93. No orders have been passed on the said petition. The applicant has also mentioned that final pension and DCRG are held up. Since the applicant has been deprived of the pay-scale given to him for his work as Postmaster in HSG-I and applicant was not made the payment of gratuity and pension till the time he filed his O.A., we waive any delay and consider the application on merits.

6. We find that the applicant was appointed by way of officiating arrangement on the post of Postmaster in HSG-I at Pithoragarh Head Office with effect from 26.4.90 afternoon till further orders or till the joining of regular Postmaster. It has been certified by the Superintendent of Post Offices dated 3.5.90 (Annexure No. A-3 to the OA) that officiating arrangement was invariably necessary as work could not be managed without a full time substitute. Therefore, it is clear that the applicant was made to work on the post of Postmaster Grade-I from 27.4.90 to 11.6.91. This post is in the pay-scale of Rs. 2000- 3200/- in HSG-I. There is no contention that the Superintendent of Post Offices, Pithoragarh, who had passed the order dated 3.5.90 had done so without any authority. The only contention on behalf of the Respondents is that since officiation ^{exceeded} ~~existed~~ for four months, it had to be approved by the Post Master General. The Post Master General amended the order of Superintendent of Post Offices dated 24.9.91,

which was nearly 3 months after the applicant had been retired to give pay and allowances as admissible to an employee working in the Higher Selection Grade-II. The applicant having worked on the post of Postmaster in HSG-I and having been paid in the pay-scale of Rs. 2000- 3200/- could not subsequently have been subjected to reduction in pay-scale without any reason. The impugned order states no reason for reduction in the pay-scale of the applicant.

7. We also find that the impugned order has been passed without issuing any show-cause notice to the applicant, which was incumbent on the Respondents since they were passing an order with regard to the applicant having adverse civil consequences to the applicant.

8. The Respondent No.2 also through the impugned order directed the subordinate authorities to regularise overpayment/underpayment, if any, and as such, the regularisation was taken to mean that the applicant should be subjected to recovery of overpayment. The Respondents have stated in their counter reply that the amount of overpayment has been recovered from the applicant. The learned counsel for the applicant has relied on the judgment of Hon'ble Supreme Court in the case of Saheb Ram Vs. State of Maharashtra and others, JT 1995(1), SC 24. It lays down that if salary has been paid to an employee not on account of ^{any misrepresentation} ~~misappropriation~~ made by him and the benefit of higher pay-scale was given to the

on part of

employee by wrong conception ~~by~~ the employer for which the appellant cannot be held to be at fault, the Supreme Court held that the amount so paid should not be recovered from the appellant. Thus, we find that the recovery of the amount is also not as per law.

9. Since it is quite clear that the applicant had worked on the post of Postmaster w.e.f. 27.4.90 to 11.6.91 on local officiating basis, the payment of salary in the scale of Rs.2000- 3200/- cannot be faulted. The contention of the Respondents that the salary was given on account of mistake, which was later on rectified cannot be accepted in the circumstances of this case.

10. We, therefore, set aside the impugned order dated 24.9.90. The applicant would be entitled to payment of final pension and D.C.R.G. after taking into account the fact that he was entitled to be paid in the pay-scale of Rs.2000- 3200/- w.e.f. 27.4.90 to 11.6.91. The period of 11.6.91 to 30.6.91 cannot be, however, taken to be a period of local officiating on the post of Postmaster Grade-I.

11. The amount of recovery and the amount of gratuity as well as pension or arrears thereof shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order with 10% interest on the amount due to be paid to the applicant. No order as to costs.

Rafiq Uddin
(RAFIQ UDDIN)
JUDICIAL MEMBER

Dayal
(S. DAYAL)
MEMBER (A)

Nath/