

(Reserved on 02.12.2013)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

ALLAHABAD this the 12<sup>th</sup> day of March, 2014.

Original Application Number. 1010 OF 2003.

**HON'BLE MR. SHASHI PRAKASH, MEMBER (A)  
HON'BLE DR. MURTAZA ALI, MEMBER (J)**

Devendra Singh Sachan, S/o Shri Shiv Charan Singh, Resident of 1684, Awas Vikas Yojna -3, Kanpur.

.....Applicant.

**VE R S U S**

1. union of India through Secretary, M.O.C., Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General (Posts), Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. Assistant Director General (Establishment), Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
4. Post Master General, Kanpur.
5. Chief Post Master, Kanpur.
6. Director Postal Accounts, U.P. Circle, Lucknow.

.....Respondents

Advocate for the applicant : Shri R.K. Shukla  
Advocate for the Respondents: Shri S. Srivastava

**O R D E R**

**(Delivered by Hon'ble Mr. Shashi Prakash, A.M.)**

By way of the instant Original Application filed under Section 19 of Administrative Tribunals Act 1985, the applicant seeks following main reliefs: -

“(i). to issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 17.06.2000 (Annexure A-1) passed by P.M.G. Kanpur,

Order dated 19.07.2002 (Annexure A-2) passed on behalf of Director General (Posts), Order dated 26.12.2002 (Annexure A-3) passed by the same authority and order dated 04.07.2003 (Annexure A-4) passed by the Chief Post Master, Kanpur.

(ii). to issue a writ order or direction in the nature of mandamus commanding the respondents not to give effect the impugned orders dated 17.06.2000 (Annexure A-1), 19.07.2002 (Annexure A-2), 26.12.02 (Annexure A-3) and 04.07.2003 (Annexure A-4)."

2. The applicant, who was initially appointed to the post of Postal Assistant on 21.10.1980 and subsequently promoted as Accountant w.e.f. 07.12.1994, was granted the benefit of Time Bound One Promotional Scheme (hereinafter referred to as "T.B.O.P Scheme") w.e.f. 21.10.1996 and his pay was upgraded and fixed at Rs. 1560/- in the pay scale Rs. 1400-2300 by giving Rs. 90/- as Special pay (Annexure A-7). In a communication dated 05.11.1997 (Annexure A-12) between Assistant Director, Office of the P.M.G., Kanpur and Chief Post Master, Kanpur it was indicated that the applicant did not draw special pay for a continuous period of three years, therefore, his pay excluding special pay be fixed in supersession of previous order and excess amount paid to the applicant be recovered from him. Thereafter the applicant filed O.A No. 1255/1997 in which the proposed recovery was stayed by the Tribunal on 28.11.1997 (Annexure A-13). However, the above O.A was finally disposed of by the Tribunal vide order dated 10.03.1999 with direction to the Post Master General, Kanpur to consider and

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dispose of representation of the applicant dated 11.11.1997 (Annexure A-14). Consequently the representation of the applicant was considered and rejected by the post Master General, Kanpur on 17.06.2000, which was communicated to him vide communication dated 26.06.2000 (Annexure A-1). Against the order dated 17.06.2000, the applicant represented to the higher authorities vide representation dated 21.05.2002 and 12.11.2002, which were also rejected on 19.07.2002 and 26.12.2002 respectively ( Annexure A-2 and Annexure A-3). The applicant also made an application dated 03.07.2003 to the Chief Post Master, Kanpur with regard to stopping of the recovery, which was also rejected vide order dated 04.07.2003 (Annexure A-4). Aggrieved the applicant filed present original application and the operation of the order dated 04.07.2003 had been stayed by the Tribunal on 08.09.2003 till the final order in O.A. According to the applicant, he is going to retire on 30.04.2014.

3. Upon notice the respondents have filed Counter Affidavit and contended that the pay of the applicant on promotion under TBOP Scheme was wrongly fixed to the stage of Rs. 1560/- by taking into account special pay drawn by him @ Rs. 90/- as Accountant because he had not drawn the special pay for a period of three years. It is also contented that the benefit of counting special pay in fixation on promotion under TBOP was not admissible to him on 21.10.1996 as his pay in the pre-revised scale should have been fixed at the stage of Rs. 1440/- instead of Rs. 1560/-. After

recommendation of 6<sup>th</sup> Pay Commission w.e.f. January 1996 , the pay of the applicant was required to be fixed in time scale cadre with respect to his pay in pre-revised scale of Rs. 1390/- and then under TBOP with effect from 21.10.1996 without taking into account the special pay. It is further contended that as per the letter dated 19.07.2002 communicated by the Ministry of Communication, Department of Post, as the applicant had not completed three years of service of P.O & RMS Accountant, he is not entitled for the special pay attached with P.O & RMS Accountant to be taken into account for fixation of pay on promotion under TBOP w.e.f. 21.10.1996 (Annexure CA-1). Thus there is no infirmity in recovery of over payment of Rs. 6804/- paid to the applicant during 21.10.1997 to 31.10.1997.

4. Heard Shri R.K. Shukla, learned counsel for the applicant and Shri S. Srivastava for respondents. Learned counsel for the applicant has also submitted a written arguments on 05.12.2013 alongwith a copy of order of order dated 15.04.2005 passed by this Tribunal in O.A No. 529/2003 - Indrasan Prasad Kushwaha Vs. U.O.I .

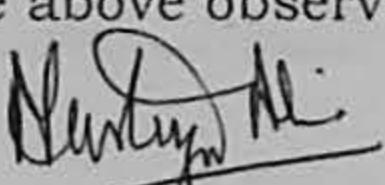
5. A perusal of the order dated 15.04.2005 reveals that the question involved in the aforesaid O.A is identical to one which has been raised in the present O.A. The limited question involved in both the O.A is whether special pay granted to the applicant in lieu of higher pay scale is to be counted as part of the pay for the

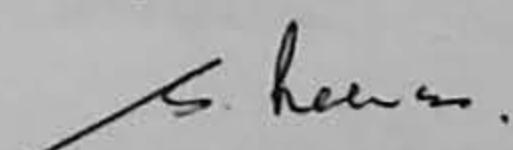
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purposes of fixation of pay while promotion under T.B.O.P. In the aforesaid O.A, the Tribunal has come to the finding based upon the orders of the department dated 04.01.1972 read with para 5 of the order dated 24.02.1987 (quoted in the order) that the applicant is fully entitled to count of special pay for fixation of pay on promotional post. In the aforesaid order of the Tribunal , the order dated 04.06.2002 passed by the respondents fixing pay in respect of the applicant in that O.A taking into account the special pay has been upheld.

6. Keeping in view the almost identical nature of the issue involved in O.A No. 529/2003 and the present original application, we direct the respondents to take a decision in the matter based upon the observation and directions contained in the order dated 15.04.2005 passed in O.A No. 529/2003. The applicant is directed to produce a certified copy of this order alongwith with order dated 15.04.2005 passed in O.A No. 529/2003 to the competent authority within 10 days from the date of receipt of certified copy of the order. If the applicant files certified copy of the order within stipulated period, the competent authority to take a decision in the matter and communicate the same before his superannuation i.e 30.04.2014.

7. With the above observation the O.A is disposed of. No costs.

  
(DR. MURTAZA ALI)  
MEMBER- J.

  
(SHASHI PRAKASH)  
MEMBER- A.

Anand...