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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

ORIGINAL APPLICATION NO.1272 OF 2006

ALLAHABAD THIS THE 22nd DAY OF November, 2006

HON'BLE DR. K.B.S. RAJAN, J.M.
HON'BLE MR. P. K. CHATTERJI, A.M.

Swaran Kumar Nigam,
Aged about 45 years,
S/o Late Shri Om Prakash Nigam,
R/o 106/101-A, Ganexhi Nagar,
Kanpur.

..... .Applicant

By Advocate: Shri R. Verma)

Versus

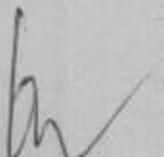
1. Union of India
through the Secretary,
Ministry of communication,
(Department of Posts),
New Delhi.
2. The Post Master General,
Kanpur Region, Kanpur-208 001.
3. The Director, Postal Services,
Office of the Director, Postal Services,
Kanpur-208 001.
4. The Manager, Mail Motor Services,
Office of the Manager Mail Motor Service,
Kanpur-208001.

..... .Respondents

By Advocate : Shri S. Singh

O R D E R

HON'BLE DR. K.B.S. RAJAN, J.M.


The applicant, appointed as a painter in 1989
was, by Annexure A-3 order dated 27.06.2000, asked to

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perform the duties of Traffic Clerk on Ad-hoc basis.

Accordingly, he had enshouldered the higher responsibility of the said post and continued till 24.09.2004. While the pay scale of painter was Rs.3050-4500/-, that of Traffic Clerk is Rs.4000-6000/- For having worked in the higher post under a positive order of the respondents, according to the applicant, he is entitled to the higher pay scale of Rs.4000-6000/-. Meanwhile by virtue of ACP the applicant having completed 12 years of service w.e.f. 01.10.2001 he was afforded the benefit of ACP and thus his claim for higher pay scale of RS.4000-6000/- from 01.10.2001 to 24.09.2004 got satisfied. However, his claim for this pay scale from 27.6.2000 to 30.09.2001 remains unconsidered.

2. The applicant has approached the authorities invoking the provisions of R.A.T. and the respondents by Annexure A-1 order rejected the claim.

3. We had the benefit of the presence of the Senior Standing Counsel present in the court and a copy of the OA has been made available to him.

4. Arguments were heard. The applicant had been functioning as Postal Assistant since 27.6.2000 by virtue of Annexure A-3 order and the said post carries the pay scale of Rs.4000-6000/- as such the applicant is legitimately entitled to the higher pay scale of

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Rs. 4000 - 6000/- for the period from 27.6.2000 onwards. It appears by (Annexure A-10) order the department has refused the claim of the applicant under the impression that his claim is under ACP. The claim of the applicant is based on his having functioned and having enshouldered the higher responsibility of Traffic Clerk since 27.03.2000.

5. The Apex Court in the following cases have held that when a person has enshouldered the higher responsibility under the order of the authorities, he is entitled to the pay scale attached to the said post.

(a) *Kameshwar Prasad v. State of Bihar*, (1995) 6 SCC 44, where the Apex Court has held, "Since the appellant has already worked from 8-5-1991 till 10-12-1992 as a clerk, he is entitled to salary attached to the post of clerk for the said period."

(b) *Jaswant Singh v. Punjab Poultry Field Staff Assn.*, (2002) 1 SCC 261, at page 264 :

In that case, the appellant originally appointed as Bird Attendant, was later appointed as Chick Sexer which he held for a substantial period. His claim for the pay scale as of Chick Sexer was dismissed by the Court in the suit filed by him. In the appeal, the Additional District Judge held, "... the Department is ordered to consider the fact as to whether the plaintiff was working as Chick Sexer and if so his request for other benefits may also be considered according to law." In the meanwhile, one Gobind Singh (whose case was substantially similar to the appellant's case) also filed a suit. The suit ultimately culminated in an order passed by the High Court in second appeal by which the High Court directed that since Gobind Singh had been discharging the duties of a Chick Sexer, he was entitled to get the pay and allowances of that post. As far as the appellant was concerned, in purported compliance with the direction of the Additional District Judge and the decision of the High Court in Gobind Singh case, an order was passed promoting the appellant as Chick Sexer. This order was challenged under Article 226 by the Punjab Poultry Field Staff Association (Respondent I herein). The Association claimed that the appellant

was a Class IV staff member and was not qualified nor eligible to be promoted to the post of Chick Sexer which was a Class III post. The Association's writ application was allowed by the High Court holding that the appellant was not qualified to hold the post of Chick Sexer. The Apex Court has, however, held that in Gobind Singh case what was directed was the payment of salary and allowances of the post of Chick Sexer since Gobind Singh had been discharging the duties of that post. Therefore, given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

(c) In the case of Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291 the order states as under:-

2. A limited notice was issued in the SLPs which has resulted into these appeals. It was to the effect "whether the petitioner is entitled to draw the salary attached to the post of Secretary (Scouts) during the time he actually worked on that post pursuant to the order at Annexure 'E' dated 28-1-1992 at page 32 of the Paper-Book. And if so, what was the scale of pay for the said post according to him". When we turned to the order dated 28-1-1992 under which the appellant was called upon to look after the duties of the Secretary (Scouts) we find the following recitals as per Order No. 276, dated 28-1-1992.

"The Director of Education, A & N Islands is pleased to order the transfer to Shri Selvaraj, Primary School Teacher attached to Middle School, Kanyakumari to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GER 77."

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GER 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs.1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn

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during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29-1-1992 to 19-9-1995 during which time the appellant actually worked."

(d) In yet another case of Jeet Singh v. M.C.D., 1986 Supp SCC 560 the Apex court's verdict is as under:

"Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis are paid to regular and permanent employees from the date of their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly."

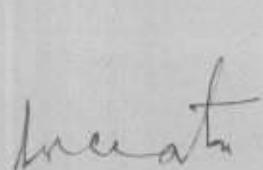
6. All the above decisions of the Apex Court go to show that the law laid down by the Apex Court is that if an individual has been asked to perform the duties of a higher post which he performs for a substantial period, he is entitled to the pay scale of that higher post for the period he had carried out the higher responsibility attached to that post, albeit, he cannot claim on account of such holding of higher responsibility either regular promotion or seniority or the like. In other words, pay the individual for the work he has done as asked for to do.

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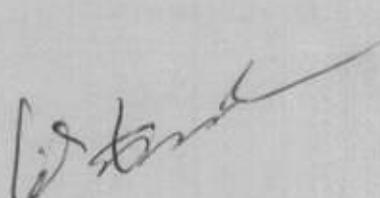
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7. In view of the above, we are of the considered view, that the applicant is entitled to higher pay scale of Rs.4000-6000/- for a period from 27.6.2000 to 30.09.2001. The respondents are, therefore, directed to verify the fact as to the applicant having functioned in that capacity and afford him the higher pay scale of Rs.4000-6000/- for the aforesaid period. This order may be complied with, within a period of two months from the date of receipt of the order.

7. The OA is disposed of accordingly. No costs.



Member-A



Member-J

/ns/