

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 148/95 &
O.A. No. 152/95

199

DATE OF DECISION 7.12.1995.

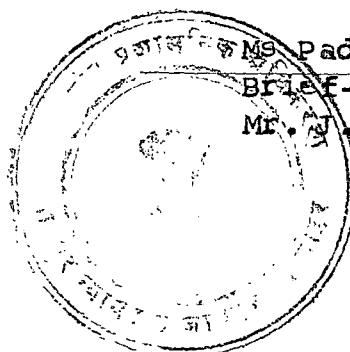
Jagdish Chandra & Anr. Petitioner

Mr. S.K. Malik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent



Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.K. Verma, Member (Administrative).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ? B

N.K. Verma
(N.K. VERMA)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.

Date of order : 7.12.1995

1. OA No. 148/95

Jagdish Chandra ... Applicant.
versus
Union of India & Ors. ... Respondents.

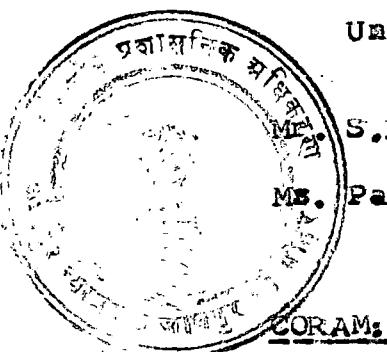
2. OA No. 152/95

Nemi Chand ... Applicant.

versus
Union of India & Ors. ... Respondents.

S.K. Malik, Counsel for the applicant.

Ms. Padmini Rathore, Brief Holder for Mr. J.P. Joshi,
Counsel for the respondents.



CORAM: Hon'ble Mr. N.K. Verma, Member Administrative.

BY THE COURT:

On the previous date, the 10th October, 1995 the matter was heard at length on both the sides. At that stage, Shri J.P. Joshi, learned counsel for the respondents prayed for time for submission of documents which would have a bearing on the matter. Today the document has been filed on behalf of the respondents, which is a photocopy of method of recruitment specially in regard to absorption of surplus ED Agent on the waiting list.

2. The OA No. 148/95 pertains to Jagdish Chandra and OA No. 152/95 pertains to Nemi Chandi are on identical facts and by common consent these two OAs are being disposed of by this judgement.

3. The facts of the case in regard to Jagdish Chandra is that he was appointed as EDDA, Sathin on 1.4.1967 under the Jodhpur Division and he continued to work as such for 2½ years till 4.7.88 when he was asked to look after the work of EDBPM, who had retired on attaining the age of superannuation of 65 years. In the Memo at Annexure A/1 dated 2.7.88 appointing Jagdish Chandra as EDBPM, it was specifically stipulated that he will be entitled to receive the pay and allowances of EDDA, Sathin. In other words, no extra allowances shall be paid to him for performing the additional work of EDBPM. However, suddenly after six ^{few} years in April, 1994 his pay was reduced to Rs. 275/- plus D.A. as against Rs. 420/- plus D.A.. He made a representation to the departmental authorities and was replied on 20.6.94 by Annexure A/2 by the respondents, wherein it was intimated to him that since there was no justification of three posts at Sathin Branch Post Office, the post of EDDA was transferred to the Nagour Postal Division under the order's of the Post Master General, Western Region, Jodhpur, Rajasthan, and hence he was entitled to draw the pay of EDBPM only which according to the work-load came to Rs. 275/- plus D.A. The applicant made further representation and a similar type of reply was again given to him by Annex. A/4 on 6.10.94. However, the Senior Superintendent of Post Offices, Jodhpur Division himself addressed a letter to the Post Master General, Western Region, Jodhpur, by Annexure A/5 dated 28.11.94 intimating therein that it is against the departmental rules to reduce the pay of an official if he is working on the

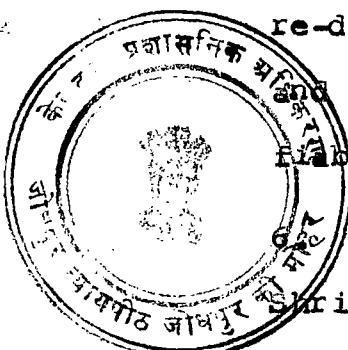
same post and even if the post is redesignated, his pay should be protected. However, in spite of all these efforts, the matter remains unresolved.

4. In case of Nemi Chand, he was appointed as EDDA on 30.12.1980 and was asked to discharge the functions of EDBPM as in the case of Jagdish Chandra on 7.11.88 consequent upon the superannuation of the incumbent of that post after attaining the age of 65 years. His pay was also reduced to Rs.275/- plus D.A. as against Rs. 420/- plus D.A. In his case, the post of EDDA was diverted to Shastri Nagar, Head Post Office, Jodhpur, from Khawaspura Branch Post Office.

5. There was no reply to the averments of the applicants in these two cases by the respondents for quite sometime and after a number of adjournments on these issues, a reply was ultimately filed only on 05.10.95, when I had summoned both the Post Master General, Rajasthan, Western Region, Jodhpur and Senior Superintendent of Post Offices to explain the reasons for not replying to the notices in the matter issued by the Tribunal. In the reply, the respondents have taken a plea that the pay of the applicants have not been reduced, but the allowances were being reduced due to abolition of post of EDDA at Khawaspura. After abolition of post, the applicant was given alternative appointment which carries a lower amount of pay. It was also averred that the excess payment was made due to the mistake of the office for quite sometime and, therefore, the excess payment made from 1.7.91 in case of Jagdish Chandra and from December, 1990 in case of Nemi Chand had to be recovered from their pay. They have also stated that as per D.G. Postal Services Order

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at Annexure R/5 dated 7.5.93 in OA No.148/95 there is no justification for protection of allowances of those EDAs who are re-deployed against any other post since the allowances of EDAs are fixed based on the work load of the post against which they are appointed. In the instant case, the question of re-deployment of EDAs arose as their old posts ^{were} abolished and thus, the reduction in allowances is wholly justifiable.



During the course of arguments today Shri S.K. Malik, learned Counsel for the applicant brought to my notice that the applicant in O.A. No. 148/95 had worked for 21 years as EDDA and at no point of time he was screened or selected for the post of Extra Departmental Branch Post Master (EDBPM). He was given the additional charge of EDBPM without additional remuneration as he continued to draw the allowance of EDDA till April, 1994, which was the predominant post of his work. At no time before 1994, he was ever informed that he has been duly selected and appointed as EDBPM on regular basis and he had to resign from the post of EDDA for his absorption as EDBPM which is admittedly a senior level of post compared to EDDA. There was no appointment order that he has been selected as EDBPM in a particular pay scale depending on the work load. Had he been given an alternative or a choice in the matter he would have given his consent or option for continuing as EDDA or EDBPM whichever was more beneficial in monetary terms. Suddenly in April, 1994, he was faced with recovery from his pay for the retrospective reduction w.e.f. September, 1991. Shri Malik also stated that no order

in this regard was ever issued by the respondents office excepting the reply to the representation made after the recovery was ordered. He brought to my notice the case of Bhagwan Shukla vs. Union of India & Ors. cited at (1994) 6 SCC 154 in which the Hon'ble Apex Court has laid down a clear law that no-one can be visited with civil consequences by reduction of his basic pay without granting an opportunity to show cause against this reduction. In that case "the petitioner's basic pay had been fixed since 1970 at Rs. 190/- p.m. which was not disputed. There was also no dispute that the basic pay of the appellant was reduced to Rs. 181/- p.m. from Rs. 190/- p.m. in 1991 retrospectively with effect from 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.91, which was impugned before the Tribunal could not certainly be sustained." Accordingly, the appellant was

given the relief and the Tribunal's order was set aside. The facts of the present case in these cases are very much identical with the one which was adjudicated at the level of Hon'ble Supreme Court.

Shri Malik also took me through with another judgement in the case of H.L. Trehan vs.

Union of India & Others cited at (1989) 1 SCC 764 wherein it was stated that even if a hearing is given that has to be predecisional and not after the order of the competent authority was passed.

The Hon'ble Apex Court held that "the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity.....

It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

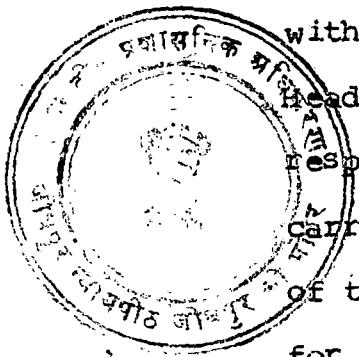
In view of these arguments, Shri Malik stated that the action of the respondents was wholly arbitrary, irregular and unreasonable and the order deserves to be set aside.

8. Ms. Padmini Rathore, Brief Holder for Mr. J.P. Joshi, learned counsel for the respondents only produced the Annexure A/7, which as has been discussed above is the method of recruitment in regard to absorption of surplus ED Agent on the waiting list.

9. I have given due consideration to the averments, pleadings and arguments of both the parties.

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The question which is important for decision in this matter is whether the applicants in these two OAS were surplus to have invited the application of the rules now been sought to be applied to them by the respondents. It is an admitted fact that both the applicants had been appointed as EDDA and they continued to work as such even after they were given the additional charge of EDBPM without any additional remuneration for that extra work. The reasons why the posts of EDDAs attached with the Sathin Branch Post Office under the Jodhpur Division was transferred to Nagaur Division and again the post of EDDA attached with the Khawaspura was transferred to Shastri Nagar, Head Office, Jodhpur, had not been explained by the respondents. Every branch office is post office which carries out the basic function of receipts and delivery of the mails not only for its own village but also for the jurisdiction assigned to it. The allowances for such delivery of mails is fixed by the department on the norms of work load. Once the work load justifies a higher allowance to which the employee becomes entitled for a number of years, it would be in the interest of justice that any decrease in the work load which would have civil consequences by reducing the pay and allowances of the employee has to be brought to the notice of the employee and the action taken accordingly. It would be travesty of justice if an EDDA who was appointed in the year 1967 and drew his allowances for such a long period (i.e. for 21 years) is suddenly told that the post itself has been abolished and diverted to other place which could not be explained afterwards. It was never averred by the respondents that the posts of EDDA Sathin and Khawaspur were



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temporary and could be abolished at any time without prior notice.

10. The entire attitude of the respondents seems to have been very casual and indifferent. Not only they did not give any notice to the applicants regarding the reduction in their pay/allowances but they did not even file a reply in these two OAs for noticeable period which resulted in taking a serious view by the Court and summoning the Post Master General and the Senior Superintendent of Post Offices concerned who were impleaded as respondents No.2 and 3. There ~~are~~ very default in filing reply indicates that there was nothing to support what they have done. It is needless to say that the action of the respondents has been grossly arbitrary and unlawful. The respondents have full rights to redistribute the work of any Branch Post Office or other Post Offices as they would like to do. However, that right cannot affect the civil rights of the employees who are holders of civil post for very long duration and enjoying the protection of Article 311 of the Constitution.

11. The respondents have also taken the plea that the pay of the applicants in these two OAs were not reduced but merely allowances were reduced. This is a matter of semantics. Pay as per FR 9(21) (a)(1) & (iii) has been defined as "Pay means the amount drawn monthly by a Government servant as (i) the pay, other than Special Pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his

position in a cadre; and (ii)(iii) any other emoluments which may be specially classed as pay by the president. As per Government of India instruction (2) below this rule Non-Practising Allowance for Medical posts is treated as pay. Swamy's Compilation of Service Rules for ED staff in Section V mentions "Remuneration payable to all categories of EDA's with effect from 1.1.1986. Remuneration as per Concise Oxford Dictionary means " Pay for service rendered." "Emolument" means profit from office or "employment, Salary". An ED's employee is paid the remuneration in the shape of a basic allowance and other admissible allowances. Any variation to the disadvantage of the employee can be made only after observing due process. Since/due process of natural justice and Administrative law were not applied in these two matters, the action of the respondents cannot be sustained and has to be negatived.

12. In the light of the observations above, the OA succeeds and it is hereby directed that the respondents shall continue to pay the allowances which the applicants were in receipt on 1.7.91 in case of applicant No.1, Jagdish Chandra and on 22.12.90 in case of Nemi Chand, the applicant No.2, when the pay of the applicants were revised. These orders shall be complied with within three months of the receipt of a copy of this order. The recoveries already made shall be refunded to the applicants also during that period. This order, however, does not preclude the respondents from redistributing or redesignating the work of EDBPM. However, the pay and allowances of the existing incumbents must be protected in all cases. No order as to costs.

N.K. VERMA
(N.K. VERMA)
MEMBER (A)