

Date of order: 22.5.1995.

O.A. No. 16/95

JAGDISH PRASAD MEENA

: APPLICANT

VS.

UNION OF INDIA AND OTHERS

: RESPONDENTS

Mr. S. K. Malik, Counsel for the applicant.

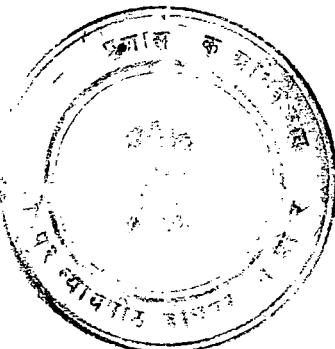
Ms. Padmani Rathore }
Mr. Sunil Joshi } - Brief holder for

Mr. J. P. Joshi, Counsel for the respondent No. 3.
None present for respondents no. 1 and 2.

CORAM:

THE HON'BLE MS. USHA SEN, ADMINISTRATIVE MEMBER

BY THE COURT :


This OA has been filed with the prayer that ^{the} order of November 1994 at Annex.A-1 fixing his pay at Rs.1050/- instead of Rs.1075/- be set aside and no recovery consequent to this order be made.

2. The facts of the case are briefly narrated below.

3. The applicant alongwith six others was selected as a Reserve Trained Pool Telegraphist ('RTPT' for short) for the recruiting year 1983. In the same year four candidates were selected against the regular vacancies. The candidates selected against regular vacancies as well as the RTPTs were sent for training. On completion of the training they were assigned seniority on the basis of the post-training marks in accordance with the instructions of the DGP&T on the subject. On availability of vacancies the Superintendent, Telegraph Traffic, Kota Division, Kota, vide his letter dated 29.8.86 (Annex.A-3) issued appointment orders to some of the candidates selected against regular vacancies and to some selected against the RTPT vacancies. He made an error in issuing these appointment orders in so far as he omitted two of the candidates selected against the regular vacancies and instead appointed two candidates selected for the Reserve Trained Pool ('RTP' for short). The applicant

was one of the RTP candidates erroneously appointed vide the said order dated 29.8.86. The applicant was last in the seniority amongst the candidates in the RTP. This error in issuing appointment orders was detected later and it was instructed by the Deputy General Manager (O), Office of the General Manager, Telecommunication, Jaipur, vide his letter dated 28.9.87 at Annex.A-4 that the irregular appointments should be got rectified immediately. A copy of these instructions was issued to the Superintendent, Telegraph Traffic (STT* for short), Kota Division, for compliance. On these instructions the STT, Kota dispensed with the services of the junior most RTP recruits, namely, the applicant and one Shri Gopal Lal Chhipa and issued appointment orders to two candidates who had been selected against regular vacancies vide an order dated 26.10.87 (Annex.A-5). However, on availability of vacant posts on a latter date, the services of the applicant and the said Shri Gopal Lal Chhipa were restored by the STT, Kota vide his order dated 13.6.88 (Annex.A-6) w.e.f. 15.6.88 and the pay of the applicant was fixed as 1075/- in the pay scale of Rs. 975-25-1150-EB-30-1660 (Annexure A-7 dated 6.7.88). In accordance with the rules the pay on appointment was required to be fixed by giving three advance increments. When the applicant was initially appointed erroneously vide the order dated 29.8.86 his pay was fixed as Rs.1050/- and when his services were dispensed with, he had already earned one increment and was drawing Rs.1075/-. When he was again appointed w.e.f. 15.6.88 his pay was fixed at Rs.1075/- i.e. the pay which he was drawing when his services were dispensed with. This pay fixation was erroneous and was detected by the concerned audit authorities. It was pointed out that the pay of the applicant should have been fixed at Rs.1050/- because it was actually a case of fresh appointment rather than restoration of the past services. The applicant was

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accordingly intimated vide the communication dated 28.7.92 at Annex.A-8 and he was asked to deposit the over payment of Rs.1871/- for the period, 15.6.88 to 31.5.92. It was stated in this communication that if the amount is not deposited the same would be recovered from his salary for the month of August 1992.

4. The grievance of the applicant is that his pay was correctly fixed at Rs.1075/- on restoration of the service w.e.f. 15.6.88 and that no recovery of the alleged over payment i.e. Rs.1871/- should be made from him.

5. Notices were issued to the respondents who have filed the reply. The learned counsel for the applicant and the brief holders for the counsel for the respondents have also been heard.

6. The gist of the contention of the respondents is that when the erroneous pay fixation of the applicant was detected it had to be rectified and it could not be allowed to be perpetuated.

7. The burden of the reply of the respondents as seen in particular from the order dated 3.2.95 of the SSSR, Ajmer Division at Annex.R-1 is that the initial appointment of the applicant w.e.f. 30.8.86 vide the order dated 29.8.86 ibid was erroneous and had, therefore, to be cancelled vide the order dated 26.10.87 at Annex.A-5. Later, when vacancies were available the applicant was again appointed and the use of the word "restoration" of his past services in the order dated 6.7.88 (Annex.A-7) was actually meant to denote a fresh appointment only. On this fresh appointment his pay was erroneously fixed at Rs.1075/- by giving him

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advantage of his past services. They have referred to the Rule FR 31-A and to the Government of India's Order No.1 below that in which it has been stated that the services rendered by the Government servant in the post to which he was wrongly appointed should not be reckoned for the purpose of increments or for any other purpose in that grade/post to which he would not normally be entitled to ^{but} for the erroneous appointment. The respondents have also stated that as mentioned in this Government of India's order the initial appointment of the applicant was cancelled and rectified in accordance with the instructions of the authority next higher to the appointing authority vide the instructions of the Deputy General Manager (O) dated 28.9.87 (Annex.R-4) mentioned above.

B. The counsel for the applicant argued that the contention of the respondents in their reply that the applicant's second appointment dated 15.6.88 was a fresh appointment should not be accepted in view of the fact that it has been mentioned in the appointment order dated 13.6.88 (Annex.A-6) that the services of the applicant have been "restored" vide the General Manager (T) Jaipur's letter of 7.6.88 mentioned therein. As the reply has been filed on behalf of respondent no.3, namely, Senior Superintendent Telegraph Traffic, Ajmer Division, who is an authority lower than the respondent no.2, namely, the Chief General Manager (T), Jaipur, the reply should not be taken to supersede the instructions of the General Manager (T), Jaipur dated 7.6.88 quoted in the order dated 13.6.88 at Annex.A-6. In this connection the two brief holders on behalf of the counsel for the respondents have

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strenuously stated at bar that the reply on record on behalf of respondent no.3 is actually a reply on behalf of respondent no.1, 2 and 3, though, on the file it has been mentioned that the reply is on behalf of respondent no.3. In view of this statement of the brief holders and in view of the very explicit and detailed exposition of the whole history of the case in the order dated 3.2.95 of the Senior Superintendent Telegraph(Traffic), Ajmer Division, at Annex.R-1 stating that the second appointment was actually a fresh appointment I have no doubt in my mind that the contention of the respondents that the appointment of the applicant w.e.f. 15.6.88 is to be treated in fact as a fresh appointment, has the authority of the appropriate administrative officer and the objection of the counsel for the applicant in the matter is not acceptable.

9. During the course of hearing the counsel for the applicant cited one case which he said was relevant in deciding the present case, Mrs. Mangala Kamat Vs. Government of Goa reported in 1992(2) SLJ 135. It is seen that this case relates to reduction of pay scales and has no relevance to the present case.

10. On an examination of the facts and circumstances of the case I find that the action on the part of the respondents to refix the pay of the applicant at Rs.1050/- instead of Rs.1075/- was correct. The whole confusion in the case has arisen because of the use of the word "restoration" of the services of the applicant, in the appointment order dated 13.6.88 at Annex.A-6 instead of mentioning the fact that the appointment of the

Verdict

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applicant was a fresh appointment. The facts of the case would indicate that the use of the words "restoration of the services" was an error which does not change the material fact that the applicant was given a fresh appointment vide the order dated 13.6.88. The applicant cannot be allowed to take undue advantage of the wrong use of the words when in fact the case was one of fresh appointment and on such appointment his pay ought to have been fixed at Rs.1050/- w.e.f. 15.6.88. In the circumstances the relief sought by the applicant to set aside Annex A-1 fixing his pay at Rs.1050/- cannot be granted. Nor is there any legal flaw in ordering recovery of the overpayment consequent to the refixation of pay at Rs.1050. However, the respondents are directed to rectify the error in the use of the word "restoration" of the applicant's services in the appointment order of dated 13.6.88 and the order dated 6.7.88 at Annexes A-6 and A-7 so that the orders clearly indicate that the appointment was a fresh appointment rather than restoration of his past services. Subject to this direction the DA is dismissed with no order as to costs.

Usha Sen
(USHA SEN)
Administrative Member

Copy of order
for 317/95 for Mark R

Copy of order
Sent to ~~Recd~~

Recd Regd AD

Advise No 317/95
dt 6-6-95

Part II and III destroyed
in my presence on 26/12/2001
under the supervision of
section officer () as per
order dated 6/1/2002

Section Officer (Record)

me
6/6/95

Copy of order
Sent to Regd
No 1 & 2 Regd
AD Advise No 366 & 67
dt 20/6/95

me
14/6/95