IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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केन्द्रीय प्रशासनिक अधिकरण (प्रक्रिया) नियमावली, 1987 के 22 के अन्तर्गत निःशुल्क प्रति

DATE OF ORDER : 07.09.99

1. O.A.NO. 169/1996
Date of Institution - 9.5.96

Kashi Ram S/o Shri Ram Chandra, by caste Agarwal, aged about 40 years, R/o Vill & Post Dhingarla, Distt. Churu (Raj) (Presently working as EDBPM in the Post Office Chubkia Tal, District Churu (Raj).

...APPLICANT

VERSUS

1.Union of India through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, Parliament Street, New Delhi-1.

2.The Post Master General, Rajasthan Western Region, Jodhpur.

3.The Superintendent of Post Office, Churu (Raj).

...RESPONDENTS

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2. OA NO. 246/1996
Date of Institution - 5.7.96

Chela Ram Parmar S/o Shri Deva Ramji Parmar, by caste Meghwal, aged about 47 years, R/o Vill and PO Panchla, Tehsil Sanchers, District Jalore, Raj, (Presently working on the post of EDMC, Post Office Panchla, District Jalore, Raj).

...APPLICANT

VERSUS

1.Union of India through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, Parliament Street, New Delhi.

2.The Post Master General, Rajasthan Western Region, Jodhpur (Raj).

3.The Superintendent of Post Offices, Sirohi Division, Sirohi- 307 001.

...RESPONDENTS

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3. OA NO. 222/1997

Date of Institution - 1.7.97

Purkha Ram S/o Shri Sawan Ramji, aged about 33 years R/o Vill. and Post Bajoli, Dist.Nagaour (Raj)Presentl

working on the post od EDBPM in the office of Midiyan District Nagaour (Raj).

...APPLICANT

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Sanchar Bhawan, New Delhi.

2. The Superintendent of Post Offices, Nagaur Division, Nagaur

3. S.D.I.(P) Degana, Degana - 341 503.

...RESPONDENTS

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CORAM :

HONOURABLE MR. A.K.MISRA,JUDICIAL MEMBER

HONOURABLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

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For the Applicants Mr. S.K.Malik

For the Respondents Mr.Vineet Mathur

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PER MR. A.K.MISRA,JUDICIAL MEMBER :

In all these cases, action of the respondents of reducing the pay of the applicants on the ground of shifting of applicants from one post to another, is under challenge. The grievance of all the three applicants and the relief(s) sought by all the applicants is almost common. Hence, these cases are disposed of by this common order.

2. For purposes of better appreciation brief facts relating to each individual case are required to be given, which are as follows :-

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3. The applicant was appointed on the post of EDDA/EDMC w.e.f. 1.1.1979 at Dhingarla on superannuation of

one Shri Gulzari Lal. The applicant's pay was fixed at Rs. 105 + DA which was increased to 420/- + Allowance w.e.f. 1.1.1986 and since then the applicant continued on the post. The respondents opened a new post office at Village Chubkia Tal w.e.f.1.5.1992. The applicant was appointed as Extra Departmental Branch Post Master (for short "EDBPM"), at Chubkia Tal w.e.f. 17.6.1992 but his pay was fixed at the rate of Rs. 275 + DA per month instead of Rs.420/- which he was getting earlier. The defence of the respondents in this case is that the allowance has been fixed keeping in view the work-load of the post.

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4. It is alleged by the applicant that he was appointed on the post of Extra Departmental Mail Carrier (for short "EDMC") w.e.f. 12.2.1979, vide appointment order dated 17.1.1990. At the time of his appointment, the pay of the applicant was fixed at Rs. 105 + DA which was fixed at Rs. 420 + DA w.e.f. 1.1.1986 and since then applicant continued to draw this pay up to 31.8.1989. Thereafter, the respondents without any notice, reduced the pay of the applicant to Rs. 270/- per month w.e.f. 1.9.1989 by their impugned order dated 27.11.1989. The defence of the respondents in this case is that the allowance of the applicant has been reduced to Rs. 270/- per month in view of Office Memo No. 275 dated 27.11.1989 calculating his work-load etc.

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5. It is alleged by the applicant that he was appointed on the post of Extra Departmental Mail Carrier (for short "EDMC") at Bajoli (Degana), w.e.f. 3.10.1991, on

the pay of Rs. 320/- per month allowance. Subsequently, the respondents opened a Post Office at Midiyan (Degana) on 30.4.1992 and asked the applicant to work at Mediyan Post Office as EDBPM. As per the direction of the respondents, the applicant started working at the Mediyan Post Office on the post of EDBPM w.e.f. 30.4.1992 but the respondents fixed the pay of the applicant at Rs. 275/- + DA w.e.f. 1.5.1992, without giving any notice to the applicant and without affording him an opportunity of being heard. The respondents in the instant case, have replied that applicant became surplus and was offered alternative post which the applicant had accepted. Therefore, the applicant cannot challenge the payment of pay at the reduced rate. Moreover, looking to the load of work, the pay/allowance of the applicant has been fixed as per rules.

6. In all these cases, applicants have challenged the action of the respondents as arbitrary, against the principles of natural justice and against the provisions of the Constitution. On the other hand, the respondents have justified their action as stated above with further stipulation that the application of the applicant in each case is time barred and the applicants are not entitled to any relief.

7. We have heard the learned counsel for the parties and gone through the case file.

8. First of all, the learned counsel for the respondents argued that all these cases are hit by provisions of limitation and the applicants are not entitled to any relief. On the other hand, the learned counsel for the applicants has stated that short payment of pay is a

recurring cause of action to the applicants and, therefore, the cases are well within limitation. He has further argued that matter of limitation is required to be liberally construed as per the rule proounded by Hon'ble the Supreme Court.

9. We have considered the rival arguments. This is a settled law that short payment of pay or wrong fixation of pay and consequently short payment, gives rise to recurring cause of action to the affected Government servant and fresh cause of action arise every month. But in the matter of past payments, the question of limitation would be of greater importance. Hon'ble Supreme Court in 1992 (2) ATC 567 - M.R.Gupta Vs. U.O.I. and Ors., has held that "where the fixation of pay was not in accordance with rules, it is a continuing wrong against the concerned employee giving rise to a recurring cause of action each time he was paid salary." It has also been observed by Hon'ble Supreme Court in Para 5 of their judgment that "the applicants' claim, if any, for recovery of arrears calculated on the basis of difference in pay which has become time barred, would not be recoverable but he would be entitled to proper fixation."

This means, that the applicants' claim for correct fixation of pay can never become time barred but he may lose his arrears of pay on the ground of limitation. In the instant case, the applicants have challenged the orders of the respondents regarding fixation of applicants' pay which were passed in the case of Shri Chela Ram in November 1989 and in other two cases relating to Shri Purkha Ram and Shri Kashi Ram in May and June 1992 respectively. Therefore, the applicants' claim for arrears of pay consequent to these actions will be regulated strictly in

terms of limitation. But their challenge to wrong fixation of their pay would survive and would not be affected by the objection relating to limitation. Thus, the arguments of learned counsel for respondents relating to limitation is disposed of as discussed above.

10. In all these cases, the applicants were regularly appointed as Extra Departmental Agents and their earlier pay before the order of reduction was at Rs. 420/- per month + Allowance, which was reduced without any notice to the applicants and without affording an opportunity of hearing to the applicants. In the case of Purkha Ram, while he was appointed in the Post Office of Bajoli he was shifted to Midiyan on establishment of a new Post Office. In the case of Shri Chela Ram, his pay was reduced by re-calculating his work-load and in the case of Shri Kashi Ram, who was appointed at Dhigarla was shifted to Chubkia Tal on the new Post Office being created. In all these cases, no protection of pay was afforded to the applicants. Needless to say that when applicants were regularly appointed candidates and were either working on the same post or were shifted to newly created post offices, then naturally their pay was required to be protected. Their pay could not have been arbitrarily reduced on the ground that the post on which they were shifted bore a lesser pay or that their work-load has come down considerably. There is nothing on record to show that the applicants were ever afforded an opportunity of hearing before their pay was reduced. The action of the respondents of reducing the pay of the applicants or fixing their pay at a lower stage, cannot be justified and is difficult to up-hold. The applicants are entitled to get the pay which they were getting prior to their shifting or on re-fixation of their pay/allowance as per the work-load.

11. In all these cases, the reduction in pay allowance has been affected without any notice to the affected applicants. This, in our opinion, is against the principles of natural justice. The reduction in pay without notice gives rise to civil consequence and cannot be done without due notice. If for some reason, the respondents were of the opinion that due to reduction in work-load, the pay/allowance of the concerned applicant was required to be recalculated and fixed, then a notice to show cause, as to why pay/allowance be not refixed and reduced as per the work-load, ought to have been given to the applicants, which has not been done in the insant case, therefore, the impunged orders fixing the allowance in respect of individual applicant, deserves to be quashed. Judgment rendered by this Bench on 7.12.1995 in O.A. NO. 148/1995 - Jagdish Chandra Vs. U.O.I. and Others, applies fully in the instant case.

12. The respondent department had issued a letter on 23.3.1990, as mentioned in Annex.A/2 dated 22.3.1996 filed in O.A. No. 222/1997 - Purkha Rm Vs. U.O.I. and Others, which goes to show that in case of reduction or revision of pay/allowance of E.D.Agents, protection was required to be provided and till further orders reduction was directed not to be carried out. This means that on re-calculation of work-load or shifting of departmental agent from one place to another, his pay/allowance was not required to be reduced, rather, it was to be protected. But in the instant cases, the action of the respondents of reducing the pay/allowance of the applicants by re-calculating the work-load and refixing the same as per the maximum payable for a post, is in violation of the departmental instructions. Therefore

also, the impugned orders reducing or refixing the pay/allowance of the applicants on the lower side deserve to be quashed.

13. So far as the recovery of arrears of pay/allowance is concerned, the same is required to be regulated as per the law of limitation. Kashi Ram's pay / allowance was fixed/reduced in June 1992 but he has filed the O.A. on 9.5.1996. Chela Ram's pay/allowance was fixed w.e.f. 1.9.1989 in November 1989 but he has filed the O.A. on 5.7.1996. Purkha Ram's pay/allowance was fixed in May 1992 but he has filed the O.A. on 1.7.1997. The applicants did not promptly challenge the orders of the respondents reducing or refixing their pay/allowance. Therefore, the claim of the individual applicant can be restricted to only one year prior to the date of filing of their respective O.A. Claim of the individual applicant in respect of the period prior to the one, mentioned above, is hit by limitation and can not be allowed.

14. In view of the above discussion, each O.A. deserves to be partly accepted.

15. The O.As are, therefore, partly accepted. The action/orders of the respondents reducing the pay / allowance of the applicants or re-fixation of pay/ allowance on the basis of re-calculation of work-load, are hereby quashed. All the applicants are entitled to protection of their pay/allowance which they were drawing earlier to refixation or reduction and the same is hereby protected. The applicants are held entitled to get and the respondents are directed to make payment of

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difference of pay/allowance to each individual applicant for one year prior to the institution of the O.As and subsequent thereto up-to-date within a period of three months. The arrears shall, however, be payable without interest. The cost to be borned by the parties themselves.

SD/-
(N.P.NAWANI)
ADMV.MEMBER

SD/-
(A.K.MISRA)
JUDL.MEMBER

प्रमाणित सही प्रतिलिपि

10/9/99

अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

mehta