

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR

Date of order : 07.09.1999

O.A.NO.71/1998

Amrit Lal Rawal S/o Shri Shankar Lal aged about 36 years, R/o Vill. & Post : Palari (M), District Sirohi, (Raj), presently serving as E.D.Packer at Post Office Palri(M), District Sirohi.

.....APPLICANT.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Parliament Street, New Delhi.
2. The Post Master General, Rajasthan Western Region, Jodhpur.
3. Superintendent of Post Offices, Sirohi Division, Sirohi.

.....RESPONDENTS.

CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

Mr. S.K.Malik, Counsel for the applicant.
Mr. Vineet Mathur, Counsel for the respondents.

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

The applicant has filed this O.A. with the prayer that the impugned orders dated 16.12.1996, Annex.A-1 and dated 5.1.1998, Annex.A-2, be declared illegal and quashed. The respondents be directed to make payment to the applicant at the rate of 505/- + D.A. per month, as applicable to the post of E.D.Sub Post Master w.e.f. 7.10.1988 onwards with interest

at the rate of 24% p.a.

2. Notice of this O.A. was issued to the respondents who have filed their reply to which no rejoinder has been filed by the applicant.

3. It is stated by the applicant in his application that the applicant was appointed on the post of E.D. Sub Post Master after completing all the formalities as required under the rules w.e.f. 26.5.1986. The appointment order was issued by the respondent No. 3 vide its Memo dated 28.7.1987. After the appointment, applicant continued to get pay of Rs. 505/- + D.A. till 5.11.1989. It is further alleged by the applicant that Post Office Palri (M) was up-graded and was ordered to be manned by departmental employees. Consequent thereto, respondent No. 3 ordered the applicant to work on the post of Extra Departmental Packer w.e.f. 7.10.1988. His appointment on the post of Extra Departmental Packer w.e.f. 7.10.1988 was issued but his pay was reduced from 505/- to 420/- w.e.f. 7.10.1988 without issuing any show cause notice. The applicant represented against this action of the respondents to the department but the grievance of the applicant was not redressed by the department and the applicant was continued to be paid monthly pay at the rate of Rs. 420/- + Allowance. The department did not extend any benefit to the applicant inspite of applicant's showing orders of the Tribunal passed in O.A. No. 148 and 152 of 1995. Hence, this O.A.

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4. The applicant has challenged the action of the respondents on the ground that the applicant's pay has been reduced without any notice to the applicant and without affording him an opportunity of hearing on this count, the department failed to extend benefit of orders of the Tribunal passed in the favour of similarly situated Extra Departmental Agents etc. and on the ground that the respondents failed to consider various circulars of the Government on this point.

5. The respondents filed their reply in which it is alleged by the respondents that the applicant was never appointed on regular basis but was appointed as Extra Departmental Sub Post Master on - provisional basis. On up-gradation of post office, the applicant was posted on the post of Extra Departmental Mail Carrier (for short "EDMC) / Packer w.e.f. 7.10.1988 and is being given allowance which that post carries. The applicant was adjusted inspite of being a provisional appointee. There is no question of his pay having been reduced. The applicant is willingly working on the post of EDMC/P since 7.10.1988 and is not entitled to challenge that order after a lapse of ~~eleven~~ years. The claim of the applicant for protection of his earlier pay is time barred. Moreover, being a provisional appointee, he was not entitled to get protection of his pay. The allowance of the post on which the applicant is working is regulated according to the work-load. Since the applicant is being paid maximum allowance of 420/- ^a _l ment for that post,

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hence, he cannot claim protection of his earlier allowance. The O.A. is without any force and deserves to be dismissed.

6. We have heard the learned counsels for the parties and gone through the case file. Both the counsels ... elaborated their arguments on the basis of the pleadings which we have considered in detail.

7. First of all, it was argued by the learned counsel for the respondents that the O.A. is hopelessly time barred. The applicant was appointed as EDMC/P way back on 7.10.1988 and since then he is getting his pay/allowance at the rate of Rs. 420/-, therefore, his claim is time barred. On the other hand, it was argued by the learned counsel for the applicant that non-payment of pay/allowance as per the prescribed scale gives a continuous cause of action to the concerned Government employee and, therefore, his claim of correct fixation and arrears of pay can never be treated as time barred. Moreover, in such cases, the Tribunal should adopt a liberal approach in condoning the delay as per the rules ^{propounded} by Hon'ble the Supreme Court from time to time.

8. We have considered the arguments. No doubt, in appropriate cases, the approach relating to limitation shall have to be liberal but this rule cannot be generalised in every case. In this case, applicant was given an alternative appointment on the post of EDMC/P in October 1988 and without any

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objection since then, the applicant continued to work on that post. From the impugned order Annex.A/1 dated 16.12.1996, it appears that applicant made representation for the first time probably on 5.12.1996 in respect of short payment of his allowance/pay. There is nothing on record which may go to show that earlier to that applicant had ever represented to the department in this respect. Therefore, in our opinion, the claim of the applicant atleast for purposes of grant of arrears, is absolutely time barred.

9. There is no dispute about recurring cause of action ^{arising} to the applicant every month in such matters of short payment, therefore, the entire case cannot be treated to be time barred, as argued by the learned counsel for the respondents.

10. In this case, the applicant ~~who~~ was provisionally appointed on the post of Extra Departmental Sub Post Master, therefore, on upgradation of the post office, the applicant was shifted and accommodated to another post which carries less pay. Being a provisional appointee, the applicant's services could have been dispensed with without notice but in the instant case, he was provided with an alternative employment on a post bearing lesser allowance. Therefore, the question of protection of allowance in the instant case does not arise. The learned counsel for the applicant has cited 1990 (6) SLR 318 - C.Vijayan vs. Sub Divisional Inspector, Post Offices and Others and

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argued that where even for provisional appointment, formalities relating to regular appointment are adopted, such provisional appointment should be deemed to be a regular appointment as laid down in this ruling. We have considered this aspect. In our opinion, because of difference of facts, the rule propounded in the C.Vijayan's case, cannot be made applicable in the instant case. In the case in hand, the applicant was given a provisional appointment vide Annex.A-3 with a clear stipulation that his services can be dispensed with at any time without notice. The applicant was provided with provisional appointment because process for recruitment of regular appointee was likely to take some more time and when the matter was under process, the post office came to be upgraded and the post of Extra Departmental Sub Post Master was bracketed for retrenchment. In such circumstances, the appointment of applicant cannot be deemed to be a regular appointment. To accommodate the applicant, he was adjusted on the post of Packer instead of being terminated. Had the applicant been a regular appointee and had been shifted to some other post it would have been a different case but here the applicant being a provisional appointee, on upgradation of post office his services came to an end and on the post of EDMC/P, his appointment can be taken to be a fresh appointment. The order passed by the Tribunal in O.A. Nos. 148 and 152 of 1995 on 7.12.1995 is not applicable in the instant case because of difference of facts. In these cases, the applicants were not provisional

appointees and appeared to be regular appointees. Consequently, no protection of pay can be extended in the instant case, as argued.

11. In our opinion, the applicant has failed to make out a case for grant of relief claimed. The O.A. deserves to be dismissed and is hereby dismissed with no orders as to cost.



(N.P.NAWANI)
Adm.Member



(A.K.MISRA)
Judl.Member

Mehta

Rec Copy of order



10/9/88

(S. I. malik)

~~Received~~
~~Patent~~

Part II and III destroyed
in my presence on 10/9/88
Under the supervision of
Section Officer (I) as per
Order dated 10/5/88


Section Officer (Record)