

J O D H P U R

Date of Order: 31.8.2000.

O.A. No. 138/99

&

M.A. No. 104/99 (O.A.NO.138/99)

Shanker Singh S/o Shri Champa Lal aged 50 years, Head Post Master, Post Office, Mavli Jn. r/o New Colony, Chuarbhujia Road, Rajsamand.

Mr. Vijay Mehta, for applicant.

..... APPLICANT.

V E R S U S

1. Union of India through the Secretary to the Govt. Ministry of Communication (Department of Posts), Dak Bhawan, New Delhi.

2. Senior Superintendent of Post Offices, Udaipur.

3. Director, Postal Services, Rajasthan, Southern Region, Ajmer.

Mr. Vineet Mathur, for respondents.

..... RESPONDENTS.

CORAM:

Hon'ble Mr. A.K.MISRA, Judl. Member.

O R D E R

(By the Court)

The applicant had filed an original application with the prayer that the respondents be directed to make payment of annual grade Increment with effect from 01.4.90 at the stage of Rs. 1680/- to the applicant.

2. Alongwith the O.A. the applicant also filed an application for condonation of delay stating therein that the applicant has not been granted grade increment as correctly and thus non-payment of annual grade increment as due gives the applicant

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recurring cause of action and therefore the claim of the applicant is not hit by limitation. In any case the question of limitation does not arise so far as it relates to current increments. However the application for condonation of delay is being moved as an abandoned caution.

3. Notice of both the applications was given to the respondents who have filed their reply separately for both the applications.

4. It is alleged by the respondents in reply to the O.A that the O.A. is time barred. The applicant has not challenged the order of punishment timely, therefore, he cannot challenge the same now. The pay of the applicant was fixed as per Rule 24 of the Fundamental Rules (for short 'FR') and Note 17 Below the Rule 11 of CCS(CCA) Rules 1965. The applicant was punished in the year 1988 with stoppage of one annual grade increment for three years with cumulative effect. The applicant would not earn any increment for three years and on completion of punishment period he would earn his first increment which was due three years ago. Since the penalty is cumulative-one he would not earn the increments which were stopped, during his service period. The O.A. is devoid of any merits and deserves to be dismissed.

5. To the Misc. Application, the respondents replied that applicant made a representation in the year 1990 for fixation of Pay which was disposed of vide order dated 17.8.90 and the applicant was informed accordingly. Subsequent representations made by the applicant are of no help to him. It is further alleged that after completion of the penalty period the pay of the applicant was fixed in the year 1993. If his pay was incorrectly fixed in that year then cause of action arose to him in that year but the applicant did not take any steps for redressal of his grievance soon thereafter and had been

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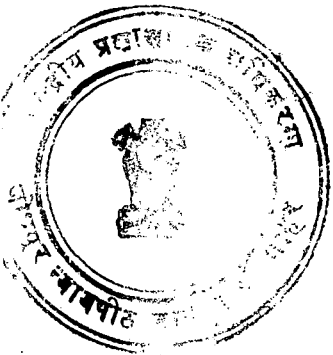
sleeping over the matter all these years. Hence the applicant is not entitled to get the delay condoned. The application deserves to be dismissed.

6. I have heard the learned counsel for the parties and have gone through the case file.

7. I shall proceed to decide the Point of Limitation first of all. No doubt short payment of pay gives a recurring cause of action to the applicant every month. Thus the applicant can claim correct fixation of pay at any time during such payment. The limitation would only regulate the payment of past arrears. But in the instant case the applicant wants payment of annual grade increment w.e.f, 1.4.90. The applicant's representation regarding grant of annual grade increment was rejected on 17.8.90 thus cause of action for grant of increment arose to him in that year but the applicant did not agitate the matter any further by challenging the order of rejection of his representation in a Court of Law. Therefore the applicant cannot now be permitted to claim the relief over which he has been sleeping over for so many years. Making repeated representations by the applicant to the concerned authorities does not save limitation in this regard or non decision of such representation does not give the applicant fresh cause of action. in this regard. Thus the claim of the applicant for grant of annual grade increment with effect from 1.4.90 is hopelessly time barred.

8. Further on completion of penalty period the pay of the applicant was fixed in the year 1993 after granting one increment. If the pay of the applicant was not correctly fixed by the respondents at that time, then the applicant could have challenged the action of the respondents soon thereafter but the applicant did not take any steps in that regard, therefore he cannot be permitted to agitate the point of not granting

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of increments correctly or less payment of pay. The claim of the applicant is barred by limitation on this count too.

9. For the reasons discussed above the Misc. Application of the applicant deserves to be dismissed. The applicant has not been able to make out a case for condonation of delay.

10. As per the above discussion, the O.A. of the applicant deserves to be dismissed on the point of limitation. However to dispose of the matter finally, it would be better to discuss the claim of the applicant in respect of fixation of his pay on merits as per the rival contentions.

11. The applicant was awarded a penalty in Dec. 1988 in a departmental action to the effect "stoppage of one increment of the official for 3 years with cumulative effect". There is no dispute about this. However the applicant has alleged that the punishment order was not in accordance with the rules in as much as the Disciplinary authority has not stated the period for which the increment has been withheld and whether the postponement shall have the effect of postponing the future increments. But in my opinion this challenge is not available to the applicant after a lapse of 10 years. In the punishment order the words "with cumulative effect" have been used which in my opinion clearly means that the increment in future would be postponed, otherwise the words "with cumulative effect" would lose their significance. Thus on this count the order cannot be faulted. The punishment order also clearly mentions one increment for 3 years was stopped. Thus it would mean that the applicant would not earn any increment for these three years. The interpretation of the learned counsel for the applicant that only one increment was to be denied to the applicant for three years as per the punishment order, in my opinion is not correct.

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As per the order of punishment the applicant was not to be given any increment for three years and this denial shall continue for future as the punishment has been made cumulative. In view of this the pay fixation of the applicant as per Annex. A/2 is not ⁱⁿ correct. To further clarify the matter letter of D.G, P& T. No. 6/4/55 - Disc, dated 27.10.1965, printed at page No. 25 of CCS (CCA) Rules 24th Edn. 1999 as Note 17 can be usefully quoted here under.

"17. Whether all the increments or only one increment to be withheld during the currency of penalty. When the penalty of withholding of increment is awarded to an employee, it is obligatory on the part of the disciplinary authority to specify the period for which the penalty should remain current. A doubt has been raised whether in such a case, all the increments falling due during the currency of the penalty or only one increment should remain withheld during the specified period. It is clarified that an order of withholding of increment for a specified period implies withholding of all the increments admissible during that specified period and not the first increment only."




12. It was further argued by the learned advocate for the applicant that as per Annex. A/5 which is a copy of letter dated 11.5.88 of D.G, P& T the applicant is entitled to get all subsequent increments except the first one, which was stopped for three years. But in my opinion, this letter also does not help the applicant at all. The letter is only a clarificatory one and is for information of all concerned. It also reiterates that the Provisions of letter of D.G, P&T No. 20/41/66- Disc dated 14.4.67 be kept in view. It does not say that in such cases of punishment, as is in our hand, only the first increment is to be stopped or denied and subsequent increments should be released. The letter dated 14.4.67, clarifies the situation that may arise when the punishment order purports to withhold the "next increment" for a specified period instead of withholding of one increment for a specified period. But this letter does not apply to a punishment which has ordered stoppage of increment for specified

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period cumulatively. Therefore the applicant can not claim that only the first increment in time was to be stopped and subsequent increments were to be released. In fact withholding of increment with cumulative effect will result in recurring loss of pay ~~of~~ to the official.

13. In view of the above discussion, it can not be said that the pay of the applicant was incorrectly fixed in the year 1993 on completion of penalty period. The claim of the applicant that he is being paid lesser salary than his entitlement and due increments were wrongly denied has no legs to stand. The O.A. of the applicant is devoid of merits and deserves to be dismissed.

14. Therefore, the Original Application and the Misc. Application of the applicant are hereby dismissed. Parties are left to bear their own costs.


31/8/2000
(A. K. MISRA)
Judl. Member.

R. Chaff

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C. R.
H.S. Gill
for V.K. Mathur
6-9-2000

Part II and III destroyed
in my presence on 9-2-02
under the supervision of
Section officer (I) as per
order dated 10/1/02

NEERA
Section officer (Records)