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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 58/2003
~~T.A. No.~~

198

DATE OF DECISION 28.5.2003

NIZAMMUDIN Petitioner

MR. S.K. MALIK Advocate for the Petitioner(s)

Versus

UOI & ORS. Respondent

MR. VINEET MATHUR Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. G.C. Srivastava, Administrative Member

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

G.C. Srivastava
(G.C. Srivastava)

Adm. Member

G.L. Gupta
(G.L. Gupta)

Vice Chairma

I/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of Order : 28.05.2003.

O.A. NO. 58/2003

Nizamuddin S/o Shri Badri Khan, aged about 43 years, Resident of Village and Post Talanpur, Via Gotan, District Nagaur (Rajasthan), presently working on the post of Extra Departmental Branch Post Master (EDBPM), at Dhanapa Via Gotan, District Nagaur (Rajasthan).

.....Applicant.

VERSUS

1. Union of India through Secretary,
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi.
2. The Post Master General,
Rajasthan Western Region,
Jodhpur (Rajasthan).
3. Superintendent of Post Offices,
Nagaur Division,
Nagaur (Rajasthan).

.....Respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

Hon'ble Mr. G.C. Srivastava, Administrative Member

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Mr. S.K. Malik, counsel for the applicant, is present.

Mr. Vineet Mathur, counsel for the respondents, is present.

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ORDER
[PER MR. JUSTICE G.L. GUPTA]

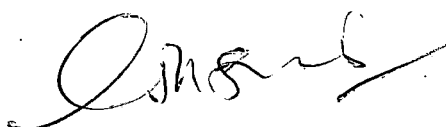
The reliefs claimed in this O.A. are as follows :-

- (i) that by an appropriate writ, order or directions impugned actions of respondents of reducing pay of the applicant from Rs. 420/- plus D.A. to Rs. 276 plus D.A. with effect from 1.5.1992 be declared illegal and be quashed and set aside by the Hon'ble Tribunal;
- (ii) that the respondents may be directed to restore pay of applicant to Rs. 420/- plus D.A. with effect from 01.05.1992 and refund the amount less paid to till date along with interest @ 12% p.a.;
- (iii) exemplary cost be imposed on respondents for causing undue harassment to the applicant;
- (iv) any other relief/s which is found just and proper may be passed in favour of the applicant in the interest of justice by the Hon'ble Tribunal".

2. It is averred that the applicant was initially appointed on the post of Extra Departmental Mail Carrier (EDMC) at Talanpur Post Office w.e.f. 27.5.1985 at pay/allowance of Rs. 420 per month plus D.A. The order of appointment was issued by the Sub Divisional Inspector (SDI), Merta. He continued to work on the post up to 30.4.1992. Thereafter, he was shifted to Dhanapa, in a new Post Office, on the post of Extra Departmental Branch Post Master (EDBPM) w.e.f. 1.5.1992 and was paid pay/allowance at Rs. 275/- per month plus D.A.

2.1. The grievance of the applicant is that his pay/allowance was reduced without issuing show cause notice to him and he has been asked to discharge duties of EDBPM as well as Delivery Agent at a place more than 8 Kms. away from the place of his initial appointing. It is stated that the applicant made a representation on 4.3.1997 but, no action was taken.

3. In the counter, it is not disputed that the applicant was initially appointed as EDMC from 27.5.1985 and he was paid pay/allowance at Rs. 420/- per month plus D.A. It is also not denied

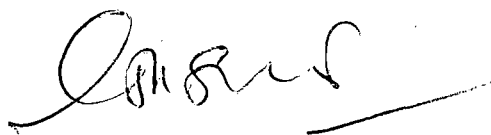


that he was shifted to Dhanapa Post Office w.e.f. 1.5.1992 on the post of EDBPM and is being paid Rs. 275/- per month plus D.A. The stand of the respondents is that Dhanapa, Extra Departmental Branch Post Office was opened on 1.4.1992 in Maching Savings and the applicant was re-deployed as EDBPM, Dhanapa, and, therefore, his pay/allowance came to be reduced to Rs. 275/-. It is averred that the applicant's appointment at Dhanapa was fresh appointment and in order to avoid his retrenchment, he was redeployed.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The contention of Mr. Malik, learned counsel for the applicant was that in no circumstances, the pay/allowance of the applicant could be reduced as it amounted to financial loss to the applicant. He pointed out that no disciplinary inquiry had been held against the applicant and even no show cause notice was given to him before reducing the pay/allowance of the applicant. Relying on the case of Kashi Ram Versus Union of India and others, (O.A. No. 169/1996, decided on 7.9.1999 along with two other O.As), he contended that the applicant is entitled to the same pay/allowance on which he was initially appointed.

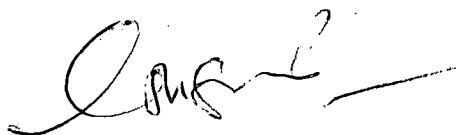
6. Mr. Vineet Mathur, learned counsel for the respondents contended that a new Post Office was opened at Dhanapa and there was no post available at Talanpur Post Office, where the applicant was initially appointed and, therefore, if, the applicant was not given re-appointment, his services would have come to an end and in order to help the applicant, he was given appointment at Dhanapa. He contended that the various Circulars of the Post and Telegraph department provide that alternative appointment should be provided to Extra Departmental Agents where there is departmentalisation of



the office or for any other reason. He canvassed that the services of the E.D. AGents are not like the services of the ordinary civil servants because, they are only part time employees and payment is made to them on the basis of the work-load. According to him, the Pay/Allowance paid to the E.D. employees, is known as Time Rated Continuity Allowance (TRCA) which is paid on work-load and time basis. He brought to our notice various provisions of the Rajasthan Post and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964 and the Instructions issued from time to time to emphasize that the E.D. Agents are not regular Government servants but, keeping in view the small quantity of work which is required to be done in the remote areas, some allowance is paid to them for the work. He justified the reduction of the allowance on the ground that there was not enough work at Dhanapa.

Mr. Mathur further pointing out that the instant application has been filed many years after the expiry of period of limitation, urged that it should be dismissed on the ground of limitation.

7. It has to be accepted that the cause of action had arisen to the applicant when the order Annexure A/2 dated 9.11.1993 was issued appointing the applicant as EDBPM w.e.f. 1.5.1992 and he was paid lesser amount of pay/allowance. It is obvious that the applicant kept quite atleast upto 1997 when according to him, he for the first time, made representation Annexure A/3. The applicant did not approach the Tribunal even after the expiry of the period of six months of submitting the representation Annexure A/3. Therefore, the objection of the respondents that the claim of the applicant, is liable to be rejected being barred by limitation cannot be said to be without foundation.



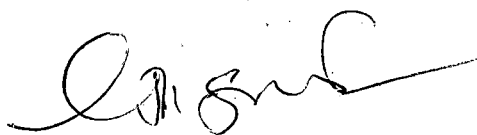
7.1 It has, however, to be accepted that the short payment of pay/ allowance gives rise to recurring cause of action to a Government servant. Fresh cause of action arises to him every month when he get short payment. The Government servant Certainly has a right to get full pay/allowance at least from one year preceeding the date of filing of the case in the Court.

7.2. In view of the aforesaid legal position, it is held that applicant's claim for the arrears of the pay/allowance, from 1.5.1992 till 20.2.2002, is not sustainable being barred by limitation. However, he has a right to get the pay/allowance fixed at the rate of Rs. 420/- per month plus D.A. from 21.2.2000 till the date of application as also for the future period.

7.3. It has been held by their Lordships in the case of H.L. Trehan and others Versus Union of India and Others (1989 SCC (L&S) 246 that alteration in pay which adversely affects remuneration of an employee, is not sustainable where, no show cause notice was given before making alteration. Admittedly, no show cause notice has been given to the applicant before reducing his allowance.

7.4. The respondents could not be justified in reducing the amount of pay/ allowance when the applicant was shifted to Dhanapa on account of non availability of the post at Talanpur without affording him an opportunity of show cause against the proposed reduction of allowance. It is not the specific case for the respondents that the applicant had given his consent to reduce his pay/allowance.

7.5. What is stated in the reply, is that the applicant was offered alternative appointment and he joined there. The order Annexure A/2 nowhere stated that on his appointment as EDBPM at




Dhanapa, the applicant would get less amount of pay/allowance. Therefore, it cannot be presumed that the applicant had given his consent for less amount of pay/allowance. The applicant is, therefore, entitled to re-fix his pay/ allowance as per the original conditions of his appointment.

8. Consequently, this O.A. is allowed in part. The respondents are directed to re-fix the pay/allowance plus D.A. of the applicant w.e.f. 21.2.2002 in the light of the observations made above and make payment of arrears to him within a period of two months from the date of communication of this order. Needless to state that if the pay/allowance as fixed in the year 1985/1987 on the work-load basis, has been revised, the applicant shall be paid at the revised rates.

9. Misc.Application stands disposed of.

10. No order as to cost.


(G.C.Srivastava)
Administrative Member


(G.L.Gupta)
Vice Chairman

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Wm
2/6/03

Rec

2/6/03

Part II and III destroyed
in my presence on 1-3-09
under the supervision of
section officer (1) as per
order dated 5/2/08

Wm
Section officer (Record)