

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 547/92 199

DATE OF DECISION 8.6.1993

K. Sankaranarayanan _____ Applicant (s)

Mr. O. V. Radhakrishnan _____ Advocate for the Applicant (s)

Versus

Post Master, Manjeri & _____ Respondent (s)
4 others.

Mr. V. Ajithnarayanan, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

An important question about the right of a postal employee, who continued on deputation for an unduly long period of more than twenty five years in foreign service, to get protection of his pay and allied rights accrued in his favour while in foreign service, due to efflux of time and default of the parent department.

2. The applicant, who worked as Sub-Post Master and retired on superannuation, is aggrieved by the decision taken by the respondents in fixing his salary in a lower scale and stage than that of the scale which he was drawing while repatriation to parent department from the Army Postal Service, APS for short.

3. Short facts are as follows: The applicant entered the services as Clerk in Telegraph Department on 20.12.1958. He volunteered to be enrolled in Army Postal Service Corps and he was allowed to enroll in APS on 7.2.1962. His service in the APS was continued till the permissible period of attaining the age of 54 years. He got promotion as Naib Subedar on 8.10.1970 and as Subedar on 1.9.1987. Later, he was discharged from APS and transferred back to the Postal Service in the Lower Selection Grade with effect from 31.3.1988 on attaining the age of 54 years. on the ground that he cannot be allowed to continue in the service of APS beyond the age of 54 years. Thus, the applicant worked in the APS for a period of 25 years and 7 months and earned two promotions. But for the restriction as stated above regarding the age upto 54 the applicant was in fact willing to continue in APS till his normal age of superannuation. When he was discharged from the APS the applicant was getting a salary of Rs.2050/- p.m. plus D.A. When he joined the Postal Department after repatriation he was granted two increments at the rate of Rs.50/- p.m. in July 1988 and July 1989. Subsequently, the 1st respondent fixed the pay of the applicant in the scale of Sub-Post Master LSG grade at the rate of Rs.1640/- p.m. with effect from 1.7.1987 and issued Annexure-A1 to him. The applicant submitted his objections and repeated representations to the authorities. All the representations were rejected. The latest order passed by the Superintendent of Post Offices, Manjeri Division is Annexure-A12 dated 4.2.1992.

4. Aggrieved by the decision taken by the Department, the applicant has filed this Original Application with the following prayers:-

" i) to call for the records relating to Exts. A1, A3, A6, A10, A11 and A12 and to quash the same to the extent they affect the applicant prejudicially;

- ii) to direct the respondents to fix the pay of the applicant in the cadre of HSG-II which is equivalent to Subedar which he was holding at the time of his reversion to the Postal Circle;
- iii) to direct the respondents to refund the amount illegally recovered from the applicant as excess payment;
- iv) to direct the respondents to grant the applicant pension and other retiral benefits on the basis of the last pay drawn as fixed in the HSG-II cadre equivalent to Subedar in Army Postal Service and to make available to all service benefits on that basis; and
- v) to grant such other reliefs which this Hon'ble Tribunal may deem fit just and proper in the circumstances of the case."

5. Respondents filed a detailed reply in which they have admitted the basic facts stated by the applicant in the O.A. The applicant volunteered for enrolment in APS with effect from 1.8.1962 while he was working as a Clerk in Nilambur Post Office. He was discharged from APS on 31.3.88 and he was posted in Manjeri Division as Sub-Post Master in the Lower Selection Grade. Two increments were also given to him. At the time of his discharge from APS he was drawing a pay of Rs.2050/- in the scale of Rs.1600-50-2300-EB-60-2660 in HSG-II. This is established by the Last Pay Certificate issued by the Accounts Officer (Postal), Nagpur. They further submitted that as per the terms and conditions of the Postal Department on deputation to APS as laid down in Annexure-R2.D letter dated 19.3.1985 "an official deputed to APS is eligible for higher appointment in the Army Postal Service, but such promotion does not entitle him to a corresponding promotion in the parent cadre". It is on the basis of this letter that the respondents have passed the impugned orders refixing the pay of the applicant at Rs.1640/- with effect from 1.6.1987.

6. The learned counse, Shri O.V.Radhakrishnan, appearing on behalf of the applicant placed reliance on

Rule 20, 21, 24, 25(a) & 33 of the P&T Manual, Volume IV, Part-II of Appendix 23 and contended that notwithstanding the volition, the applicant was allowed to continue in APS for a long period of over 25 years. He was also given promotions upto the post of Subedar, which is equivalent to HSG cadre. Since these higher grades and pay are rights accrued in his favour while working in APS, they cannot be either taken away or denied to him placing reliance on the rules governing deputation or Annexure-R2.D which came into force long after the applicant's enrolment in APS. The above provisions in the Manual are extracted below:-

"20. Enrolment - Personnel volunteering for APS are enrolled on a Short Term basis, the period of their engagement being 18 months and for a long thereafter as the services of the individuals may be required.

21. The Maximum age limit is 40 years on the date of enrolment. However, preference is given to officials in younger age groups. Those above 35 years of age are not normally considered for enrolment.

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24. Army Ranks. - Personnel will be granted initial army ranks as follows:-

- (a) HSG or equivalent cadre ... - Subedar
- (b) Inspector of POs/RMS or equivalent cadre & LSG ... - Naib Subedar
- (c) Upper Division Clerk ... - Warrant Officer Cl. I
- (d) Other clerks ... - Warrant Officer Cl.II
- (e) Postmen & equivalent cadre ... - Naik
- (f) Group D Officials ... - Sepoy

25 (a) Pay and dearness allowance of corresponding civil appointment.

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33. Promotional avenues exist for grant of Commission/ Junior Commission in APS and promotion to the Officers and JCO rank (LSG/HSG) on acquiring prescribed Army qualifications."

7. From the above provisions of P&T Manual it is clear that an officer will be enrolled in APS for a short term of 18 months as well as for a longer term than the limited period. In the latter case, the officer will be allowed to

continue for longer period when his services are found to be required in APS, in which case age limit on the date of enrolment is insisted and promotional avenue are made available to such candidates. This shows that in the case of deputationists^{continuing} for longer period, would be drafted in the service of APS permanently. In the case of the applicant there was every likelihood of his permanent absorption in ARS but for the age factor. Since he attained the age of 54 years and it is not permissible to continue him in the APS beyond that age he was compelled to be discharged from APS and repatriated to Postal Department. In this connection it is to be remembered that after the deputation the parent department allowed the applicant to continue in the foreign service beyond the minimum period of 18 months and it was in the exigency of service. It is an admitted fact that the applicant continued to work in the APS for 25 years and 7 months. He was also given two promotions to the grade of Naib Subedar with effect from 8.10.1970 and Subedar w.e.f. 1.9.1987. While working in the APS he earned the higher salary in the scale of Rs.1600-2660 which is equivalent to HSG-II. This is really a right accrued in favour of the applicant on account of his continued working in APS and this cannot be denied to him relying on a letter issued in the year 1985 which is relied on by the respondents in the reply filed in this case.

8. It is seen that Annexure-R2.D letter of the Ministry of Defence is dated 19.3.85. It contains the following clause:-

"8. An official may be given promotion to higher appointment in the Army Postal Service, but such promotion does not entitle him to a corresponding promotion in his parent cadre."

This clause is in consonance with the standard terms of deputation as contained in the O.M. dated 7.12.1962 as amended from time to time. The relevant clause is extracted below:-

"3. The fixation of pay of Government servants transferred on 'deputation' in the public interest will be governed by the terms of any general or special orders issued. In the case of transfers which are not in the public interest, the pay of the officer will be fixed in the scale of the deputation post under the operation of the normal rules. In such cases, if the minimum of the deputation post is substantially higher than the emoluments admissible to him in his parent department/State. Administrative authorities are expected to invoke the provisions of F.R.35 and to restrict the pay of the officer suitably and the pay so fixed should be indicated in item 2(ii) of the enclosure (Annexure).

4. The standard terms as given in the Annexure to this decision should normally be allowed to officers deputed from the Centre to the State Governments."

9. It is clear from clause (8) of Annexure-R2.D and standard terms of deputation that an official who got higher promotion in the APS is not entitled to corresponding promotions in his parent cadre. This position is further clarified in clause 5.1 of Appendix 5, Deputation (Duty) Allowance, which reads as follows:-

"5.1. When an employee on deputation elects to draw pay in the scale of pay attached to the ex-cadre post, his pay may be fixed under the normal rules with reference to his pay in the cadre post to which he has been appointed on regular basis."

10. All the above rules are the normal rules and orders to be applied in the normal situations of deputations of employees to foreign services. Normally a deputation is limited to short durations. P&T Manual prescribes a limit of 18 months. But it may, in appropriate cases, be extended beyond that period. But in no case a deputation will be allowed to be prolonged for an unduly long period of more than 25 years. If a deputation goes beyond an unreasonably long period it is unreasonable to apply normal rules for normal situation has disappeared and abnormal position emerges requiring to treat it as special case to be dealt with individually for doing justice. In the instant case if the normal rules and

orders applicable to the deputation are applied it would cause gross injustice to the applicant who spent about ninety percent of his service in APS, presumably on deputation. At the fag end of his official career if he is repatriated to parent department and the normal rule of standard terms of deputation are applied he will be deprieved of the higher grade and salary which he has earned by his dint of labour throughout his official career in APS. It would also be inequitable to take away all these accrued right from the applicant at this stage.

11. The learned counsel for the applicant also submitted that the letter Annexure-R2.D dated 19.3.1985, which was issued long after the deputation of the applicant to APS cannot be applied to him. Applicant's service in APS commenced in February 1962. At that time there was no indication that the promotion in foreign services would not be equated with the same position in parent service and that such corresponding promotion would not be given to the deputationist. However, the applicant was allowed to continue beyond 18 months notwithstanding his willingness and he worked in the APS for 25 years and 7 months. At least as a special case the respondents ought to have given a special consideration. At this belated stage, after reversion, the applicant should not be denied the legal right of higher salary and promotion which he has earned while working in the APS.

12. The latest impugned order, Annexure-A12, is extracted below:-

" The pay of the above named official on his reversion to the civil post was fixed according to the Govt. of India instruction No.5 below FR 31. Though he was allowed the pay last drawn by him in APS, the mistake had come to notice subsequently. The LPC issued by the APS authorities, had contained a note that he was entitled to civil rate of pay w.e.f. 1.4.88. The official may please be informed accordingly."

The reason for reversion of the applicant and refixation of his pay as stated in Annexure-A12 is covered in the Note No.5 below FR 31. I have gone through this note below FR 31. It is extracted below:-

"(5) Refixation of pay in a case coming under the purview of 'next below rule'. - A question was raised whether refixation of pay under F.R.31(2) in respect of a post in which a Government servant was not actually officiating at the time of enhancement of his substantive pay but would have officiated under the 'next below rule' but for his deputation to a still higher post.

It is clarified that the provisions of sub-rule(2) of FR 31 shall be applicable in these cases also.

The pay of the Government servant concerned shall be refixed under FR 31(2) notionally in the post in which he would have continued to officiate but for his deputation to some other post or appointment in an officiating capacity to a still higher post. As and when the Government servant reverts to that post from deputation/higher post, the actual pay to be given to him on the date of reversion will be arrived at with reference to such notional pay."

The said note also applies to the normal case of deputation. As indicated above, the instant case is not a normal case of deputation to be dealt with by applying the above note. It is beyond the comprehension of the normal rules and order and it would only cause injustice if the same is treated as a normal case of deputation and the above provision is applied. Hence, I am not inclined to bring the case of the applicant within the above note. Moreover, the said note with FR 31 is omitted by Government of India, Department of Personnel & Training Notification dated 1.10.1989.

13. The applicant in this case had not worked on an officiating basis in the APS. He was enrolled there and treated as a permanent employee. He was also given two promotions. It is seen that the applicant was allowed to continue in APS till he attained the age of 54 years, beyond which an officer will not be allowed to continue in APS. However, after his repatriation to the parent department the applicant was given two increments at the rate of

Rs.50/- each in July 1988 and July 1989. So the parent department had already decided to treat the applicant's case as a special one and accepted his higher grade and scale. The respondents are, therefore, estopped from taking a different stand and deny him the higher scale at this stage. In this view also the impugned order is unsustainable.

14. The applicant's pay, as already indicated, has been fixed in the APS after his promotion to higher grades as stated in the O.A. According to me, since the applicant's case is treated as a separate one and special case, the general orders and standard terms governing normal deputation would not apply and they cannot be applied to the applicant under the peculiar facts and special circumstances as mentioned above.

15. In the result, I am of the view that the impugned orders are liable to be set aside and I do so. I direct the respondents to fix the pay of the applicant considering the last pay certificate which the applicant has received from the APS.

16. The application is allowed to the extent indicated above.

17. There is no order as to costs.


N. Dharmadan
JUDICIAL MEMBER
08.06.1993