

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

**Original Application No.583/2005
This the 1st day of July 2009**

**HON'BLE MR. M. KANTHAIAH, MEMBER (J).
HON'BLE DR. A.K. MISHRA, MEMBER (A).**

Harikesh Singh, aged about 38 years, son of Sri Devi Deen Singh, resident of Village and Post Office Maugarvi, District Rae Bareli.

...Applicant.

By Advocate: Shri Dharmendra Singh.

Versus.

1. Union of India through the Secretary to Government, Ministry of Communications, Department of Posts, Civil Secretariat, New Delhi.
2. Director, Department of Posts, Lucknow Region, Office of Chief Post Master General, Mahatma Gandhi Marg, Lucknow.
3. Superintendent of Post Offices, Postal Division, Rae Bareli.

... Respondents.

By Advocate: Shri K.K. Shukla for Shri R. Mishra.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed the OA with a prayer to issue direction to the respondents to treat the applicant having been reinstated in the pay of Rs. 1880/- plus admissible allowances with continuity of service with effect from 08.10.1990 and for payment of arrears of



unpaid salary on the ground that he is entitled for such relief's in view of the direction of the Tribunal in his earlier OA No.42/1994 dt. 8.8.2001.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that he is not entitled for the relief as claimed by him, since no pay protection granted to him in the earlier OA.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and also reiterating her pleas in the OA.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The brief facts of the case are that the applicant was appointed on the post of DBPM, Maugarhi, District Rae-Bareli which fell vacant due to the death of Shri R.K. Sharma by Respondent NO.3 subject to the decision of OA.No.170/1990 on the file of this Tribunal filed by Smt. Ra. Lali, mother of the deceased R.K. Sharma. He joined as EDBPM, Maugarhi on 16.10.1990, but this Tribunal vide order dt. 6.1.1993 in O.A.No.170/1990 directed the respondents to consider the case of the Smt. Ram Lali for the post of Stamp Vender, if vacancy is available or she may be appointed on the other suitable post. But due to non-availability of vacancy of Stamp Vender in the division, she could not be considered for appointment on the post of ED Stamp Vender and was asked to submit her consent for appointment on any other post of EDDAs cadre. Up on which she made request for her appointment on the post of GDSBPM, Maugarhi,

Raiberali and in view of her request she was appointed on the said post and due to which the appointment of this applicant was terminated. Thereafter, the applicant had filed O.A.No.42/1994 against the said termination order and the same was finally allowed by this Tribunal vide order dt. 8.8.2001 as follows:-

"In view of the above, discussions, the OA is allowed to the extent that the order of termination dated 30.12.1993 Annexreu-A-1 is quashed. The appointment of respondent No.5 on the post of EDBPM is not disturbed. The respondents are directed to reinstate the applicant on the post of EDBPM with immediate effect, but shall be given posting to some near by place, when the vacancy falls vacant. The applicant would be entitled to all consequential benefits except back wages."

7. In compliance of the judgment and order dt. 8.8.2001, the applicant was appointed and posted on the post of GDSBPM, Chandapur in account with Maharajganj S.O. Raiberali. Ann.-A-2 dt.13.5.2002 is the copy of said appointment order and after accepting the terms and conditions, he joined on the said post. Thereafter, the applicant made representations dt. 18.10.2002, 24.10.2002 and 17.02.2003 and 14.11.2003 requesting for pay protection on the basis of seniority but the authorities have considered such representations of the applicant and rejected his claim for pay protection vide letter dt. 15.12.2003 (Ann.CR-3). Thereafter, the applicant made representations to the Respondent NO.2 on 15.12.2005 (Ann.A-6) to reconsider his claim for pay protection on the ground that he was getting Rs. 2881/- while

working at Maugarbi whereas, in the present post at Chandapur, he was getting Rs. 1957/- and the said representation is still pending with Respondent No.2. Thereafter, the applicant has filed the present OA on 6.12.2005, to issue direction to the respondents to treat the applicant having been reinstated in the pay of Rs. 1880/- plus admissible allowances with continuity of service with effect from 08.10.1990 and for payment of arrears of unpaid salary on the ground that he is entitled for such relief's in view of the direction of the Tribunal in his earlier OA No.42/1994 dt. 8.8.2001.

8. It is the case of the applicant that when he was terminated while working on the post of EDBPM, Maugarbi, he was in the pay scale of Rs. 1880/- plus admissible allowances but after his appointment on the post of GDSBPM, Chandapur, he has been getting pay of Rs. 1287 plus DA and thus, his earlier pay was reduced and as such, he claimed pay protection in the pay of Rs. 1880/- plus admissible allowances, which he was getting before his termination and also claimed continuity of service with effect from his first appointment dt. 8.10.1990.

9. Admittedly, while allowing the OA of the applicant in O.A.No.42.1994 dt. 8.8.2001 (An.A-1), the respondents are directed to reinstate the applicant on the post of EDBPM with immediate effect, but shall be given posting to some near by place, when the vacancy falls vacant. The applicant would be entitled to all consequential benefits except back wages. Admittedly, there was no pay protection granted to the applicant though allowed consequential

benefits except back wages. But, it is not the case of the applicant that the authorities have denied any consequential benefits more particularly in respect of seniority etc. after his reappointment.

10. Further, in pursuance of the direction of the tribunal the authorities have also issued appointment order to the applicant dt. 13.5.2002 (Ann.A-2) in which, they have categorically stated that the applicant is taken back to duty on the post of GDSBPM and is ordered to be appointed on the post of GDSBPM Chandapur in account with Maharajganj SO under Rae Bareli Head Office w.e.f. the date of taking over the charge of the post. He will regain his original seniority but shall not be entitled for back wages as directed by the Tribunal and he shall be paid such allowances as are admissible from time to time. After accepting the said terms and conditions, the applicant joined in the said post of GDBPM, Chandapur. The respondents are paying all the allowances as are admissible at Chandapur. After accepting such offer of the respondents now, it is not open to the applicant to agitate for allowances, which he was drawing before his termination at Maugarbi, Rae Bareli.

11. Without any pay protection granted by this Tribunal in O.A.No.42/1994 dt. 8.8.201 and after accepting the terms and conditions of appointment order dt.13.5.2002 (Ann.A-2), it is not open to the applicant to claim allowances, which he was drawing on his earlier posting and further Respondent No.3 also rejected such claim of the applicant vide order dt. 15.12.2003 (Ann.A-5) . But the applicant has not challenged the said rejection order dt. 15.12.2003

(Ann.A-5) and filed this OA as if this Tribunal allowed his claim in his earlier O.A.No.42/1994 dt. 8.8.2001, which is not at all maintainable.

12. Further, if the applicant is entitled for pay protection as per the direction of the Tribunal in his earlier O.A.No.42/1994 dt. 8.8.2001, he ought to have filed execution petition or contempt petition but filing of fresh OA claiming such relief is not at all maintainable.

13. Under the above circumstances, there are no merits in the claim of the applicant for grant of pay protection as claimed by him and as such, the OA is liable for dismissal.

In the result, OA is dismissed. No costs.

Apniya 01/07/09
(DR. A.K. MISHRA)
MEMBER (A)

01-07-09
(M. KANTHAIAH)
MEMBER (J)

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