

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 483 of 2009

Reserved on 7.8.2014

Pronounced on 26th August, 2014

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

Agan Ram Patel, aged about years, S/o Sri Ram Dular Patel, R/o Village Kath Ka Purwa, Post Office Sansarpur, District Pratapgarh.

.....Applicant

By Advocate : Sri Balram Yadav

Versus.

1. Union of India through the Secretary, Postal Department, Government of India, Civil Secretariat, New Delhi.
2. Chief Post Master General, U.P. Circle, Department of Posts, Government of India, Lucknow.
3. The Sr. Superintendent of Post Offices, Pratapgarh Division, Department of Posts Pratapgarh.

.....Respondents.

By Advocate : Sri K.K. Shukla

O R D E R

Per Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- "(a) issue direction to the Opposite parties to declare that action of the Opposite parties related to demotion, change of designation of the post held by the applicant and the recovery from the salary of the applicant is wholly illegal and quash the order, if any, has been passed by the Opposite parties.
- (b) issue a direction in the nature of mandamus commanding the Opposite parties not to demote the applicant from the post of Technician, not to change the designation of the post held by the applicant and not to make recovery from the salary of the applicant.
- (c) pass any other order or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- (d) allow the instant petition with costs."

2. The facts of the case are that the applicant was appointed on the post of Assistant Wireman in the pay scale of Rs. 210-

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270/- vide order dated 15.4.1986 His designation was changed to that of Wireman by letter dated 24.1.1991 and he was regularized on the post of Wireman (Electric) in the pay scale of Rs. 950-1500/- Thereafter, the applicant was promoted to the post of Technician (Electronic), Pratapgarh Division, Praratapgarh in officiating capacity vide order dated 15.12.1995 and drew his salary in the pay scale of Rs. 1200-1800/-. He was confirmed on the post of Technician (Electronic) w.e.f. 15.12.1995 vide order dated 17.3.1999. He was paid the salary of Technician in the pay scale of Rs. 5200-20200/- upto August, 2009. His pay slip for the month of September, 2009 contained in Annexure no.3 shows that all of sudden from September, 2009 the designation of the applicant was changed from Technician to Wireman and his pay was fixed in the lower scale of Wireman and his basic salary was reduced from Rs. 18460- to Rs. 13,680/-. This act of deduction after his confirmation has been made without giving him any show cause notice either for wrong fixation or for any kind of disciplinary action taken against him. Further, the deduction of Rs. 3000/- per month is being made from his salary without any order of recovery. On query, the applicant has been informed that due to some objection raised by the Audit Section, the said action of change of designation of post, reduction in pay fixation and the deduction from the salary was made. Hence this O.A. However, while entertaining the aforesaid Original Application, this Tribunal by means of order dated 18.1.2010 has stayed the recovery proceedings.

3. The respondents have filed their Reply and in para 3 thereof they have stated that the applicant was appointed on the post of Wireman purely on temporary and adhoc basis in the pay scale of Rs. 210-270/- vide order dated 15.4.1986. Since the post of Assistant Wireman was not sanctioned by Circle Office, Lucknow, the applicant recruited against post with the designation of Assistant Wireman and was regularized as Wireman vide order dated 10.4.1992. As one post of Technician was lying vacant, so the applicant was ordered to officiate as Technician (Electronic) by order dated 17.3.1999 w.e.f. 15.12.1995 purely on temporary and adhoc basis with clear cut stipulation that the said arrangement would not confer any right for his regular absorption in the cadre

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in which had been promoted to officiate and can be terminated at any time without assigning any reason. It is admitted by the respondents that the applicant was confirmed in Technician Grade w.e.f. 15.12.1995 vide order dated 17.3.1999. The respondents have further pleaded that during the course of inspection of Pratapgarh Head Office in 2009 by audit party of DAP, Lucknow, a recovery of overpayment of Rs. 4,39,057/- from the pay of the applicant was imposed and recovery is being made accordingly by Sr. Postmaster, Pratapgarh.

4. Rejoinder Reply has also been filed by the applicant refuting the contentions of the respondents made in Counter Reply and reiterating the averments made in the Original Application.

5. During the course of hearing, the learned counsel for the applicant has cited the judgment and order dated 30.4.2014 passed in O.A. no. 412 of 2010 (Allahabad Bench) in which Allahabad Bench of the Tribunal has set-aside the order of down grading of the applicant without following the due process. He has further relied upon the decision rendered in O.A. no. 1018 of 2005 of Allahabad Bench.

6. We have heard the learned counsel for the parties and have perused the pleadings available on record.

7. In this case, the applicant has been given designation of Technician (Electronic) in the pay scale of Rs. 1200-1800/-w.e.f. 15.12.1995. Further, by order dated 17.3.1999 the applicant has been confirmed on the post of Technician (Electronic) w.e.f. 15.12.1995. This order has not been denied by the respondents. Further, they have failed to demonstrate that this order was illegal and or any action by way of disciplinary proceedings had been instituted against the applicant resulting in cancellation of such confirmatory order. The process of confirmation is generally held to be appointment on substantive basis on a post and the employee so confirmed secures right to that post, unless such confirmation is ultra-vires or is withdrawn by due process of law. Once an employee is confirmed, the service of a person holding such appointment can only be terminated/reduced etc. as per condition of service rules which are applicable. If he has to be

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reduced in rank from the post he has been confirmed, then his case is covered by the provisions of Article 311 of Constitution of India. In the instant case, the only ground for change of designation of the applicant as was evident from the salary slip for the month of September, 2009, as per the respondents is that of audit note. The audit note is generally not basis for taking an action which is in the nature of intervention of the service conditions of an employee, rather it is duty of the respondents to ensure that all audit objections are adequately replied to so that only genuine objections are raised. In this case, the respondents have not demonstrated that either the efforts was made to explain the audit objection in the light of confirmation order dated 17.3.1999 w.e.f. 15.12.1995 or that the applicant was given notice in accordance with audit objection he was allowed him to represent against the same.

8. In view of the above, the O.A. succeeds. The respondents are directed to act in accordance with confirmation order dated 17.3.1999 thereby treating the applicant as Technician (Electronics) in the pre-revised pay scale of Rs. 1200-1800/- in all matters of designation/pay etc. The respondents are further directed to refund the amount, if already deducted pursuant to audit note, within a period of three months from the date of receipt of copy of this order. No costs.

J.Chandra
(Ms. Jayati Chandra)
Member-A
 Girish/-

Navneet Kumar
(Navneet Kumar)
Member-J