

Central Administrative Tribunal
Mumbai Bench

OA No.982/97

Mumbai this the 12th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Suresh Prabhakar Pethkar,
S/o Prabhakar Pethkar,
R/o C-34, Mangal Murthy, Complex,
Satara Road, Dhankavdi, Pune-411043. -Applicant

(By Advocate Shri S.P. Kulkarni)

-Versus-

Union of India through
Chief Postmaster General,
Maharashtra Circle,
Old GPO Building,
Near CST, Central Railway,
Fort, Mumbai-400001 and
three others -Respondents
(By Advocate Shri P.M. Pradhan)
ORDER (ORAL)

Mrs. Shanta Shastry, Member (Admnv):

Applicant in this case is aggrieved as his case was not considered for posting him as Assistant Director of Postal Services (Postal Superintendent Group B cadre post in the scale of Rs.2000-3500) carrying a special pay of Rs.200/- per month.

2. Applicant joined the Postal Department in the Clerical Cadre and was promoted as Inspector of Posts in 1973 and further to Postal Service Group 'B' on 30.8.1990 in the pay scale of Rs.2000-3500. Respondents considered one Shri R.R. Lanke, admittedly junior to the applicant to the post of Assistant Director Postal Services (ADPS, for short), Pune vide order dated 29.10.97. Applicant was ignored.

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3. It is the contention of the applicant that the post of ADPS, though in the same pay scale as that of Postal Service Group 'B' posts, carries a special pay of Rs.200/per month and as this carries the special pay the post has to be treated as ^upromotion post. Therefore, the respondents ought to have called for willingness of the seniormost Postal Service Group 'B' officers, otherwise eligible and followed the proper procedure. Respondents failed to do so. They did not hold any DPC either. It is further contended that even when a junior officer is posted as ADPS, overlooking seniors, then according to Note 2 (c) below OM dated 8.1.1968 the pay of such senior person will have to be stepped up to that of the pay of the junior person and, therefore, also applicant ought to have been granted the benefit of Rs.200/- as special pay, attached to the post of ADPS. Learned counsel of the applicant has drawn our attention to a judgement of this Tribunal in OA-107/88, 365/88 and 560/92 in the matter of Sh. (Dr.) Madhu Kherdey v. Director of Accounts (Postal) Nagpur. The issue considered in this judgment was whether the special pay attached to the post of ADPS is in lieu of separate higher pay scale and whether the post should be treated as a promotion post. The Tribunal held that the special pay of Rs.200/- is not in consideration of any special responsibility but it is in lieu of higher pay scale and discussed sub rule (13) to FR 22, according to which, when the special pay is in lieu of separate higher pay scale then the pay on promotion to a higher post may be fixed after taking into account the special pay drawn in the lower post, subject to certain conditions.

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4. Respondents have submitted their reply. According to respondents this post of ADPS with special pay is not a promotion post as per the instructions of the Postal Department issued on 30.1.86 from the Assistant Director General (SPN), Department of Posts, New Delhi, addressed to all the Heads of the Postal Circles. In this letter it was decided that there is no need to hold DPC for making appointment to posts which carry special pay in the same grade i.e. the appointments which do not involve promotion. In such cases selective authority should take all factors into account, including currency of penalties before making appointment and the case should be referred to Director, Vigilance or Vigilance Officer of the Circle office for his opinion on the suitability of such employees to be considered for appointment to the post carrying special pay and only after that, selection should be held. Respondents submit that they have followed this circular of the Department of Posts and accordingly Sh. Lanke was found suitable, though junior to the applicant. Sh. Lanke, it transpires, did not accept the same and one Sh. Pathak was given the post of ADPS with special pay, who was also junior to applicant. It is further submitted by the respondents that there was a departmental proceeding initiated against the applicant at the relevant time. A chargesheet was issued to the applicant on 19.1.96 and the posting of Sh. Lanke as ADPS was made vide order dated 29.10.97. The chargesheet was pending at that time and, therefore, the applicant could not have been considered suitable for promotion to the post of ADPS with special pay. Applicant has also been issued a warning on 13.5.97. Even if a DPC were to be held applicant's case was to be kept in a sealed cover. Both ways applicant could not have been appointed.

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5. Applicant was promoted on a regular basis to the junior time scale in Group 'A' on 11.3.99.

6. In view of this position even though the judgment referred to by the learned counsel for the applicant would have been helpful to the applicant, considering the facts and circumstances of the case, in our considered view, the OA is not maintainable. Although the chargesheet was dropped later on 15.2.99, since he was promoted thereafter the question of considering him for the post of ADPS with special pay does not arise.

7. In the result, the OA is dismissed, with no order as to costs.

S. Raju
(Shanker Raju)
Member(J)

Shanta T.
(Smt. Shanta Shastri)
Member (A)

Order/Judgment despatched
to Applicant dependent (s)
On 25/6/02

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