

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::AT HYD.

O.A.No.779/91.

Date of Judgment: 13-7-92

Between:

M.A.Hafeez ..

Applicant

Vs.

Union of India, rep. by

1. The Chief Post Master General,
Andhra Circle, Hyderabad.
2. The D.P.S., A.P.Northern Region,
Hyderabad.
3. The Sr. Superintendent,
Hyderabad Sorting Divn.,Hyd.
4. The Inspector RMS,
Hyd. Air Mail & Sorting Divn.,
Hyderabad.

Respondents

For the applicant

: Sri M. Gopal Singh, Advocate

For the respondents

: Sri Naram Bhaskara Rao, Addl. CGSC

CORAM:

THE HON'BLE SRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

THE HON'BLE SRI C.J. ROY, MEMBER (JUDL.)

....

[JUDGMENT OF THE BENCH AS PER HON'BLE SRI C.J. ROY, MEMBER (J)]

This application is filed under sec.19 of the Administrative Tribunals Act, 1985 with a prayer to call for the records relating to the issue of officiating orders by the 4th respondents viz. Inspector Hyderabad Air Mail and Sorting to the applicant and for a direction to consider the claim of the applicant for refund of the amount for which he is legally entitled by virtue of officiating in a higher cadre holding higher responsibilities.

2. The facts of the case are that the applicant was working as Mailguard in Hyderabad Sorting Division, Hyderabad. While so, 4th respondent by his orders dt. 29-8-1985 directed the applicant +

...2.

42

officiate^m the post of Head Mailguard at Secunderabad Unit in a vacancy caused by one Sri Mahmood Ali Khan, due to his long unauthorised absence. It is stated that Sri M.A.Baqui who was junior to the applicant and was officiating^m the said post was reverted back as mailguard vide the same orders. The applicant avers that he joined the said post of Head Mailguard at Sec'bad unit on 1-9-1985 and continued till 20-8-1986 on officiating basis. The applicant also claims that he also officiated as Head Mailguard at Hyderabad Sorting Unit with effect from 21-8-1986 on his transfer and worked as such till 31-5-1988. The applicant~~s~~ stated that he was paid the emoluments at higher rates by virtue of officiating Head Mail Guard during the above period, but alleges that a sum of Rs.100/- p.m. was being recovered from his pay. Pursuant thereto he had protested and at the intervention of 3rd respondent~~s~~ the recovery was stopped.

3. The applicant alleges that he ^{was} ~~had~~ served with a letter by the 3rd respondent stating that some illegal payment of officiating allowances in Head Mailguard had taken place in respect of one Sri M.A.Baqui, Mailguard and other Sri M.A.Hafeez, the applicant herein and therefore decided to recover the entire amount of alleged excess payment in one lump, but however, ordered to recover~~x~~ the said amount in instalments @ Rs.100/- p.m. The applicant~~s~~ averred that he made a representation before the respondents stating that he actually worked as Head Mailguard carrying higher responsibilities and is entitled for the pay disbursed to him. The applicant alleged that the action of the respondents in recovering the sum of Rs.4,000-00 is unjustified and illegal and therefore made appeals before 1st and 2nd respondents. It is alleged that the appeals made by him all in vain and hence filed this O.A.

4. The respondents filed counter and opposed the application. It is their case that prior to the introduction of Time bound

...3.

22

promotion scheme, officiating arrangements in the cadre of Head Mail Guards was permissible upto 29.11.1983, but no officiating arrangements can be allowed in the said posts as per Directorate letter No.6/34/84/SPB.II dt. 22.12.1984. It is also contended that the officials who works in the place of Head Mail Guards are also not entitled for any higher emoluments. The respondents state that the applicant worked in the leave vacancy of Sri Md.Mahmood Ali Khan, Head Mailguard who was on long leave from 10.9.1985 to 23.4.1986 and one Sri Balamallaiah from 24.4.86 to 10.5.86 on the strength of the orders issued by 3rd respondent herein who is not competent to issue orders and was paid the pay and allowances of Head Mail Guard erroneously. It is alleged that since the applicant was not eligible as his name was not approved for promotion as HeadMail Guard as per the instructions issued by the Directorate by their proceedings dt. 10.12.1984. The respondents also allege that the applicant worked against the post of Head Mailguard in Hyderabad unit without any orders. The respondents justify their action in recovering the amounts on the ground that no officiating arrangements can be allowed in view of the circulars issued by the department and also that the applicant has not completed 16 years of service as Mailguard and desire the application be dismissed.

5. ~~On behalf of applicant written arguments~~ are filed.

We have perused the same. The contents are more or less repetition of facts explained in the O.A. besides following citations -

- (a) A decision of the Chandigarh Bench of this Tribunal in O.A.No.514/HP/86 pg. 347 in K.B.Vaidya Vs. Union of India X)ATR 1987 (2) X;

44

- (b) A decision of Ernakulam Bench of this Tribunal in O.A. Nos.299 & 345 of 1990 pg.342 between Raghava Kumar Vs. Union of India and others -{ SLR 1990 (7) Vol.70 }.

The applicant, in support of his contentions state that due to omissions or commissions on the part of some irresponsible officers the applicant should not be made to suffer and it is the Inspector who was to suffer the loss if any and not the applicant.

6. We heard Sri M.GopalSingh, learned counsel for the applicant and Sri Naram Bhaskara Rao, learned Standing Counsel for respondents and perused the records carefully.

7. The short point involved in this is, whether the relief claimed by the applicant as stated supra is entitled ^{to be given} for it or not. It may be noted that the applicant while working as Mail guard was ordered to officiate with immediate effect as Head Mailguard vide orders dt. 29.8.1985 bearing Memo No.IRM/Offg/MG issued by the Inspector, Hyderabad Air Mail Sorting, Hyderabad. Under the same order one M.A.Baqui was reverted. It is seen that the applicant was appointed in a leave vacancy from 1.9.85 to 20.8.1986. by mistake by the incompetent authority and therefore the respondents recovered the excess amount paid to him. The respondents in para-3 of their counter stated that "the applicant worked in the leave vacancies of Md.Mahmood Ali Khan HMG (who was on long leave) from 10.9.85 to 23.4.86 and Sri Balamalliah HMG (who was also on leave) from 24.4.86 to 10.5.86 as per the orders of IRM who is not competent to issue orders in the former case and without any orders in respect of later case and that thereafter he worked in the lower post as Mail Guard only from 11.5.86 to 31.5.88 but paid the pay and allowances of HeadMail Guard, higher post erroneously." However, there are two spells which we see the applicant had worked, ^{with} though orders were issued by incompetent person from 10.9.85 to 23.4.86 and without orders from 24.4.86 to 10.5.86. It can be seen that the applicant worked from 10.9.85 to 22.4.86 on the strength of the orders issued by 3rd respondent. Therefore, the

Copy to:-

1. The Chief Post Master General, Andhra Circle, Hyderabad.
2. The D.P.S., A.P. Northern Region, Hyderabad.
3. The Sr. Superintendent, Hyderabad Sorting Division, Hyderabad.
4. The Inspector RMS, Hyderabad Air Mail & Sorting Division, Hyd.
5. One copy to Sri. M.Gopal Singh, advocate, 4-82, Durganagar, Near Dilsukhnagar Bus Depot, Hyd.
6. One copy to Sri. N.Bhaskara Rao, Addl. CGSC, CAT, Hyd.
7. One copy to Hon'ble Mr. C.J.Roy, Judicial Member, CAT, Hyd.
8. One spare copy.

Rsm/-

(C.J. Roy)
Member (J)

Date: 13.7.92

(R. Balasubramanian)
Member (A)

contention of the respondents that the applicant worked under an incompetent orders issued by ineligible persons cannot be accepted. We have also perused the orders issued by the respondents directing him to officiate the post of Head Mailguard. On perusal, it can be seen that the applicant was ordered to officiate in the post of Head Mailguard and that he had no option except to discharge the duties of the said post. It is relevant to mention here the observations of the Hon'ble Members of Chandigarh Circuit Bench, Shimla, in O.A.No.514/HP/86 pg.345 in K.B.Vaidya Vs. Union of India, cited supra that -

"It is clear that the applicant admittedly discharged the duties and responsibilities of a cadre post from 18.6.79 to the date of his retirement i.e. 31.7.83. He is, therefore, clearly entitled to the pay and allowances admissible for that post. Having been ordered to officiate against the cadre post, the applicant had no option but to discharge the duties of that post. After he has faithfully discharged those duties he cannot be denied the pay and allowances of that post.. on principle of equity and fair play, such officer is entitled to the emoluments attached to a cadre post."

8. On the principles of equity and natural justice and also following the principles enunciated under the citation supra, we hold the applicant is entitled to draw the pay and allowances of the post of Head Mailguard for the period from 10.9.1985 to 23.4.1986 having worked with the orders issued by the respondents alleged to have been issued by mistake. Therefore, the amount drawn by him cannot be recovered from him. The amounts pertaining to the said period be worked out and returned back to the applicant accordingly. With regard to the period from 24.4.86 to 10.5.86 the claim of the applicant cannot be allowed as no orders were issued by the respondents in this regard and he chose to work. Therefore, the claim of the applicant is rejected for this period.

9. With the above directions, the O.A. is partly allowed, with no order as to costs.

0.A. 779/91

205
TYPED BY

6

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BUNAL : HYDERABAD BENCH.

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 13/7/-1992

ORDER / JUDGMENT

~~R.A./C.A./M.A. No.~~

in

O.A. No.

779/91

~~T.A. No.~~

(W.P. No.)

Admitted and interim directions
issued

☒ Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/Rejected.

☒ No order as to costs.

pvm.

