

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No.415/92

DATE OF JUDGEMENT: 26th April 1993

Between

S.Lingaiah

.. Applicant

and

1. Secretary to Govt. of India
Department of Posts
New Delhi
2. Chief Postmaster General
AP Circle
Hyderabad
3. Director of Accounts(Postal)
Andhra Circle
Hyderabad-1.

.. Respondents

Counsel for the Applicant

:: Mr KSR? Anjaneyulu,

Counsel for the Respondents

:: Mr M.Gaganmohan Reddy,
Adv. S.S. & Co.

CCRAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to restore the pay of the applicant at Rs.1760/- as on 9.5.87 and Rs.2120/- as on 4.9.90 with all consequential benefits thereon as fixed in OO No.168/Adm II/JA II/AAC/SL dtd 22.10.90 and to declare that the orders of the Director of Accounts(Postal) Hyderabad, (3rd respondent herein) dated 31.1.92 revising the pay of the applicant from 1760/- to Rs.1640 w.e.f. 9.5.87 and from Rs.2120 to Rs.2000/- w.e.f. 4.9.90 and ordering recovery and the decision of the Director General Posts vide third respondent memo dated 1.5.92 as illegal and pass such other order(s) as may deem fit and proper in the circumstances of the case.

T - C - m - f

..2..

2. Facts giving rise to this OA in brief, may be stated as follows:-

3. The applicant herein while working as Postal Assistant in the Hanamkonda Head Post Office, after qualifying in the JAO(Postal) Examination in 1979, was deputed to Postal Civil Division, Rajkot as JAO w.e.f. 22.7.81, as per the orders of the Superintendent of Post Offices, Hanamkonda dated 16.7.81, issued on the basis of the ^{order of} Director of Accounts (Postal), Hyderabad. The applicant continued on deputation in Gujarat Circle as Junior Accounts Officer upto 4.6.89.

4. While the applicant was on deputation at Rajkot in Gujarat Circle, the applicant was given proforma promotion w.e.f. 9.5.87 in the Andhra Circle as per orders of the Director of Postal Accounts, Hyderabad dated 12.2.88. As per orders of the 3rd respondent dated 12.7.89, the applicant was repatriated to Andhra Circle and posted in the office of the 3rd respondent w.e.f. 28.6.89. After the applicant was repatriated to the Andhra Circle As JAO, by mistake, the pay and allowances of the applicant, which he drew in the Gujarat Circle while he was on deputation as JAO was taken into account while fixing his pay as JAO in the Andhra Circle. The applicant was promoted as Assistant Accounts Officer in the scale of Rs.2000-3200/- w.e.f. 4.9.90 His Pay on promotion was fixed at Rs.2120/- in the post of Assistant Accounts Officer. According to the respondents a mistake crept in the fixation of the ~~ex~~ pay of the applicant in the post of Assistant Accounts Officer due to the fact the pay of the applicant was not correctly fixed in the post of Junior Accounts Officer, after he was repatriated to the Andhra Circle. So, due to the wrong fixation of pay of the applicant, it was found according to the respondents, that there had been an excess payment of pay and allowances ~~and deputation~~

..3

..3..

amounting to Rs.11,025/- to the applicant. So, steps had been taken to collect from the applicant the excess pay and allowances and deputation allowance that had been paid to the applicant after his repatriation from Rajkot to Andhra Circle as Jr.Accounts Officer. Aggrieved by the action of the respondents to recover the amount of Rs.11,025/- the present OA is filed by the applicant for the relief already indicated above.

5. Counter is filed by the respondents opposing this OA.

6. In the counter filed by the respondents, it is maintained that, on repatriation to the parent office, the pay and allowance of the official was erroneously drawn at the same rate of pay i.e. ^{at} Rs.1880/- which was ~~xxxxxx~~ shown in the LPC i.e. pay in Ex-cadre scale instead of regulating his pay in the cadre post as provided under the proviso under FR 22. ~~and~~ while reviewing his service records the erroneous fixation of pay on repatriation came to the notice and the excess paid amount of Rs.11,025/- by Director of Accounts (Postal) was ordered for recovery. According to the respondents, the action of the respondents to recover the said amount is legal and valid.

7. In the OA, at Page 2, in para 1, it is pleaded that the applicant passed the Junior Accounts Officer Part-II Postal Examination in 1979 from Andhra Circle and that he was promoted and posted as Junior Accounts Officer with effect from 22.7.81. No doubt, the applicant had passed ^{Part} JAO/II examination in the year 1979 ^{also} which fact is not in dispute. The facts that the applicant had been promoted and posted as Jr.Accounts Officer w.e.f. 22.7.81 is not at all correct. It will be ~~xxxx~~ pertinent to extract the proceedings dated 16.7.81 issued by the Superintendent of Postoffices, Hanamkonda Division, when the applicant was deputed to ~~P&T~~ P&T Rajkot Division. ..4

3288
T. C. M.

INDIAN POSTS AND TELEGRAPHS DEPARTMENT
Office of the Supdt. of Post Offices, Hanamkonda Division at SBI
Memo No.B3-3/17 dated at Subedari 506010 the 16.7.1981

In pursuance of the orders contained in Director of Accounts (Postal) Andhra Circle, Hyderabad DC lr.No. 541/Amn I/EC I/Deptn/Vol.III, SriSlingaiah, PA Hanamkonda PO is hereby deputed to officiate as Jr.Accounts Officer, P&T Civil Division, Rajkot. The terms and conditions of deputation are:-

1. The deputation of the official as Jr.Accounts Officer Civil Division P&T Rajkot is for a period of one year.
2. The official will be drawn only officiating pay in the scale of Rs.500-900/- applicable to Jr.Accounts Officers during the period of deputation.
3. No other benefits will be given i.e. benefit of service as Jr.Accounts Officer during the period of his deputation for the purpose of All India Seniority, etc.

xx	xx	xx	xx	xx
xx	xx	xx	xx	xx

From the said posting order, it is quite evident that the applicant, while he was deputed to Rajkot as Jr.Accounts Officer, the applicant had been working only as Postal Assistant in the Hanamkonda Division. So, as the applicant had qualified in the examination of JAO Part II Postal examination conducted in the year 1979 from Andhra Postal Circle, ~~as Junior Accounts Officer~~ and as the applicant had been willing to go on deputation, he ~~had~~ been deputed to as Junior Accounts Officer. Rajkot/ So, as the applicant had only been deputed to Rajkot, while he was working as Postal Assistant, we are unable to understand how the applicant can plead that he had been promoted and posted as Jr.Accounts Officer w.e.f. 22.7.1981. So, from the tenor of the proceedings dated 16.7.81 issued by the Superintendent of Postoffices, there cannot be any doubt about the fact that the applicant was only deputed as Junior Accounts Officer to Rajkot while he was working as Postal Assistant in the Hanamkonda Division.

8. The fact that the applicant had been given proforma promotion as Jr.Accounts Officer in the parent circle w.e.f. 9.5.87 as per orders dated 12.2.88 of the Director of Accounts(Postal) is not in dispute. Till the issue of the said orders of the 3rd respondent dated 12.2.88, the fact that the applicant was holding the post of Postal Assistant in the P&T Andhra Circle cannot be doubted at all. The fact that on repatriation to Andhra Circle, the applicant was absorbed in the cadre of Jr.Accounts Officer is also not in dispute in this OA. After the applicant's repatriation to the parent circle and after absorption as Jr.Accounts Officer, the respondents, taking into consideration, the same pay and allowance which the applicant was drawing in the ex-cadre post while he was on deputation, had fixed the pay of the applicant on the basis of the LPC issued by the Gujarat Circle.

According to the applicant, he has a right to be paid as Junior Accounts Officer the same pay as he was drawing at Rajkot / while on deputation even after repatriation as Jr.Accounts Officer to the Parent circle i.e. Andhra Circle. The law is well settled on this point. For all purposes, the applicant must be deemed to have been working only as Postal Assistant in the parent cadre till 9.5.87 even though he was on deputation to Rajkot as Jr.Accounts Officer. After the applicant was repatriated to the parent department, the applicant had a right to get his pay and allowance fixed on par with his immediate junior in the cadre of Jr.Accounts Officer. But, without fixing the pay of the applicant on par with his immediate junior, on repatriation on the principle of next below rule, the respondents had committed serious mistake in fixing the pay of the applicant on the basis of the LPC issued by the Gujarat Circle.

As already pointed out, the pay of the applicant when he was promoted as Assistant Accounts Officer which is a promotional post from that of Jr.Accounts Officer, had been fixed on the basis of the pay which the applicant was drawing in the post of Jr.Accounts Officer which was fixed erroneously on the basis of the LPC issued by the Gujarat Circle. So, in the promotional post of Accounts Officer also, the pay of the applicant was not correctly fixed. After realising the mistake, the impugned order dated 31.1.92 was issued by the respondents for recovery of excess pay and allowance ~~that was paid to the applicant.~~ that was paid to the applicant. In the said impugned order, it is mentioned that consequent to the applicant's repatriation to parent cadre w.e.f. 28.5.89 the applicant continued to draw ex-cadre post's pay and on his promotion as Assistant Accounts Officer w.e.f. 4.9.90 the pay of the applicant was erroneously fixed taking into account the pay of the ex-cadre post and that the same had resulted in over-payment to the tune of Rs.11,025/- from 9.5.87 to 31.12.91. It may be mentioned ~~xx~~ here that on the repatriation of the applicant to Andhra Circle, the deputation allowance which the applicant was drawing at Gujarat Circle ^{have been} seems to ~~be~~ taken into consideration while fixing the pay of the applicant in Andhra Circle. So, in view of the facts and circumstances of the case, the action of the respondents in correcting the mistake that had been committed in fixing the pay of the applicant as Jr.Accounts Officer on repatriation and also as AAO on promotion, ~~as per the impugned proceedings dated 31.1.92~~ as per the impugned proceedings dated 31.1.92 ~~has got to be held as valid.~~ The applicant was not entitled for any deputation allowance after repatriation to the parent cadre.

There is no doubt ~~that~~ that wrong fixation of the pay of the applicant in the post of Jr.Accounts Officer after repatriation and also in the post of Asst. Accounts Officer, had resulted in excess payment and there is legal obligation on the part of the applicant to refund the said amount that is paid to the applicant in excess by the respondents due to wrong fixation of pay. So, the CA is liable to be dismissed.

The learned counsel for the applicant relied on a decision reported in 1986(1) SLJ 31 J&K High Court DD Sadhotra Vs State of J&K and others wherein it is laid down as follows:-

"when the excadre post is equivalent in status and responsibility to cadre post, the official working in such scale attached to the cadre post."

He also relied on a decision reported in 1991(3) SLJ CAT 90 (Paras 4 & 5)VV Abdul Rasheed Vs Administrator Union Territory of Lakshadweep where in it is laid down that adhoc service followed by regular appointment counts for seniority and as qualifying service for next promotion. We have gone through the said two decisions. The said two decisions are not at all applicable to the facts of this case. The said two decisions do not advance the case of the applicant in any way in exonerating the applicant to refund the excess amount that had been paid due to wrong fixation.

9. The learned counsel appearing for the applicant to support the case of the applicant strongly relied on the proceedings dated 20.7.82 issued by the Accounts Officer(Admn) Director of Accounts(Postal) Hyderabad which reads as follows:

" xx xx xx xx xx
 xx xx xx xx xx

Directorate desires to know whether the SAS passed clerks (waiting for promotion) of our office are willing to be considered for a posting on promotion as JAO (scale 500-900) outside Hyderabad. The posting will be in postal units either at the headquarters /outside headquarters. station of ~~xx~~ other Circle Postal Accounts Offices

where the posts of JAOs are vacant. The stations are given below. The service rendered as JAO in other circles will not count for the purpose of seniority in the parent cadre but they will be allowed to draw pay in the JAOs scale and this would count for pay fixation."

1.	xx	xx	xx	xx	xx	xx
2.	xx	xx	xx	xx	xx	xx

Sd/-
AO(Admn)DA(P),Hyd

The counsel for the applicant relied on the last sentence namely, that the applicant will be allowed to draw pay in the JAO scale and this would count for future pay fixation. A cumulative reading of the proceedings of Sr.Superintendent of Postoffices, Hanamkonda Division dated 16.7.81 (for which a reference has already been made in this Judgement) and the proceedings of the Accounts Officer (Admn)Director ofAccounts(Postal) dated 20.7.82 cited above would go to show that at no time that the respondents had made the applicant believe that the applicant will be eligible to draw same pay drawn on deputation, after his repatriation to parent cadre. As a matter of fact, the law does not give such pay protection to anybody who had gone on deputation and after their return to the parent department. So, that being the position, it is not open for the applicant to rely on the said proceedings dated 20.7.82 issued by the Accounts Officer(Admn) O/o Director ofAccounts (Postal) Hyderabad and try to make a case for the applicant that the applicant is liable to be paid the same amount ~~that the applicant~~ ^{The Applicant -} he was drawing while ~~he~~ was on deputation and thus, the pay of the applicant is liable to be protected. So, this OA as already indicated, is liable to be dismissed and is accordingly dismissed.

11. In the impugned memo of the respondents dated 31.1.92 issued by Accounts Officer(Admn), office of the Director of Accounts Posta, Andhra Circle, it is stated that the applicant is not entitled to any deputation allowance from 9.5.87 (the date onwhich the applicant was given proforma promotion

as JAO to 28-5-1989 (the date of repatriation to parent circle). As long as the applicant had worked on deputation at Rajkot, the applicant was entitled to be paid deputation allowance eventhough the applicand had been given proforma promotion in the parent cadre in P&T Andhra Circle. So, if the respondents had included any amount in the sum of Rs.11,025 pertaining to the deputation period of the applicant upto 27-5-1989, the same shall be deducted from out of the amount of Rs.11,025 and the recoveries shall be restricted only to the balance of the ~~amount~~ that was paid in excess with effect from 28-5-1989 due to wrong fixation of pay.

12. By interim order dated 11-5-1992, this Bench had ordered the respondents to stay the recovery along. In view of the judgement delivered today, the said stay order dated 11-5-1992 is ~~forthwith~~ vacated.

13. The OA is disposed of accordingly, leaving the parties to bear their own costs.

T. Chandrasekhara Reddy
(T. Chandrasekhara Reddy)
Member (Judl.)

Dated : April 26, 1993

827/473
Deputy Registrar(J)

To.

1. The Secretary to Govt.of India,
Department of Posts, New Delhi.
2. The Chief Postmaster General, A.P.Circle,Hyderabad.
3. The Director of Accounts (Postal) Andhra Circle,Hyderabad-1.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
5. One copy to Mr.M.Jaganmohan Reddy, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm

*20/4/93
pvm*

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. K. BALASUBRAMANIAN
MEMBER (ADMN)

AND

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

DATED: 26 - 4 - 1993

~~ORDER~~ / JUDGMENT

R.P./ C.P/M.A.No.

in

O.A.No.

415/92

T.A.No.

(W.P.No

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

Central Administrative Tribunal
DESPATCH
12 MAY 1993
HYDERABAD BENCH.

AM 27
4B