

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.298 of 1993.

ALLAHABAD BENCH.

Sept
Date: 3rd August, 1996.

Between:

C.P. Thomas

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Applicant.

And

UNION OF INDIA REPRESENTED BY:

1. The Cabinet Secretary, Govt. of
India, South Block, New Delhi.
2. The Secretary to Government,
Department of Posts,
NEW DELHI.

Respondents.

Counsel for the Applicant: Shri K.S.R. Anjaneyulu.

Counsel for the Respondents: Shri N.R. Deva Raj.

CORAM:

HON'BLE SHRI JUSTICE B.C.SAKSENA, VICE-CHAIRMAN, ALLAHABAD BENCH.

HON'BLE SHRI R. RANGARAJAN, MEMBER (A)

occurred, one vacancy it is stated occurred on 31-10-1991 and the other on 17-12-1991 due to voluntary retirement of one officer and the other due to elevation of the Officer as Secretary. It has been further pleaded that since the Procedure has to be followed which takes considerable time the applicant was posted to look after the duties of Member (Development) as a working arrangement with a specific condition that he would draw the scale of Rs. 7300--7600 which is the scale of Chief Post Master General. The Respondents maintain that the applicant was only posted to look after the duties of the Member and therefore, it cannot be said that he had been given promotion to the said post. It is stated that according to the Government of India (Transaction of Business) Rules, 1961 the appointment to the post of Member, Postal Services Board can be made only by the President of India with the approval of the Appointments Committee of the Cabinet. It has been further pointed out that by the Order dated 12-12-1991 it was specifically ordered that the post of Chief Post Master General would be kept vacant in case the applicant of Member (Development) to leave the post and go back as CPMG. It is pleaded that it was open to the applicant to declare the same if it was not acceptable to him. It has been further pleaded that the recommendation

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Postal Service Board was illegal and he has been denied which should have the monetary benefits/accrued to him at the time of his retirement. It may be noted that the scale of pay of the Post of Member, Postal Services Board is Rs.7,300--8,000. On these facts, the applicant seeks quashing of the Order dated 3--7--1992 Annexure-I. He further prays for a direction to be issued to as the Respondents to treat him/Member, Postal Services Board in the scale of Rs.7,300--8,000 on ad hoc basis from the date he assumed charge that is to say from 18-12-1991 and on regular basis with effect from the date on which the DPC met and approved his name that is to say from 16--4--1992 on the basis of the recommendations of the DPC., and to grant him the pay and allowances with consequential pensionary benefits in the grade of Member, Postal Services Board.

2. The Respondents resisted the claim and filed a reply affidavit. It is not disputed that the Post of Member Postal Services Board carries the scale of Rs.7,300--8,000 and that the applicant was transferred and posted as Member (Development) of the said Board. The stand of the respondents further is that the appointment to the post of Member Postal Services Board is made by the Appointments Committee of Cabinet (ACC) on the recommendations of the DPC. It is further not disputed that after the last DPC meeting which was held in July, 1991 two vacancies of the Members had

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relevant reads as under:

"Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

7. As per the above provision it is very clear that the initial pay in the time scale of pay of a particular post would be available ~~and~~ only on "Appointment to a Post" either in a substantive, temporary or officiating capacity. The Order dated 12-12-1991 merely indicates that the applicant was transferred and posted to look after the duties of Member(Development), with no stretch of imagination can the said Order be treated as an Order of appointment to the post of Member.

8. F.R.35 provides that the Central Government may fix the pay of an officiating Government Servant at an amount less than that admissible under these Rules.

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of the DPC., is not binding on the Appointing Authority and it is not necessary for the Appointing Authority to accept the recommendation for appointing an Officer. It has been further pleaded that the recommendation by the DPC does not mean appointment in the Higher Grade. An Officer becomes entitled to the pay of the Higher post only from the date he is lawfully appointed by the Competent Authority to that post and he starts discharging all the functions of the higher post.

3. We have heard the learned counsel for the parties.

4. The short question that falls for consideration is:

"Whether the Order dated 12-12-1991 can be made a basis by the applicant to claim the scale of pay of Rs.7,300--8,000 admissible for the post of Member, Postal Services Board? "

5. As noted herein above, the Order d/12.12.1991 clearly stipulated that the applicant will continue to draw his pay in his present pay scale Rs.7,300--7,600 until further orders.

6. The learned counsel for the parties unfortunately have not indicated the relevant Fundamental Rules which would govern this situation. On our own, we find that F.R. 22(I) (a) (i) and F.R.35 would be applicable to the question under consideration. F.R.22(I) (a) (i) which is

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10. The learned counsel for the Respondents was right in submitting that it was open to the applicant to have accepted the posting as Member (Development) or to refuse the same. Since the applicant took over the charge of the said post, ~~it~~ would be subject to the clear stipulation in the Order dated 12-12-1991 that he would draw his pay in the scale of Rs.7,300--7,600, the claim for fixation of his pay in the higher scale admissible to the Member, Postal Services Board, therefore, cannot be countenanced.

11. The learned counsel for the applicant cited a few decisions in support of his submissions. The first decision is reported in RANDHIR SINGH Vs. UNION OF INDIA (1982(1)SLJ -490). In that ~~this~~ case, the claim of the applicants based on the principle of equal pay for equal work came up for consideration before the Hon'ble Supreme Court. The appellant therein was a constable in the Delhi Police Service. He claims that since he was performing the identical duties and responsibilities to that of Drivers working in the other Departments of Delhi Administration in the Central Government he was entitled to the same scale of pay. The principle of law laid down in the said case is not applicable to the facts of the present case. The principle of equal pay for equal work can be invoked

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Thus even if it could be accepted that the Order dated 12-12-1991 can be construed as an Order of officiating appointment of the applicant, under F.R.35, it was clearly permissible to provide fixation of pay at an amount less than that amount admissible to the said post. The stipulation in the Order dated 12-12-1991 that the applicant will continue to draw his pay in the then scale of Rs.7,300--7,600 was permissible.

9. The learned counsel for the Respondents made submissions on the basis of the pleadings set out in the reply affidavit. He submitted that the appointment to the post has to be made by the President of India after the A.C.C. accepts the recommendation of the DPC. Admittedly, the DPC., no doubt, had made its recommendation which did not find favour with ACC and consequently no order of appointment to the post of Member, Postal Service Board of the applicant has been passed. Therefore, the relief for the deemed officiating appointment and consequently fixation of pay on post-retirement benefits in the pay scale of Rs.7,300--8,000 cannot be accepted.

13. In the case on hand, however, a clear distinguishing feature is that the Order transferring and posting the applicant as Member, Postal Services Board, clearly stipulated that he would continue to draw pay in the pay scale of Rs.7,300--7,600. In other words, the scale of pay Rs.7,300--8,000 admissible for the post of Member would not be given to him. The applicant accepted the same without demur. ~~any demur.~~ We are, therefore, of the opinion that the decision referred to above proceeded on its own facts and the applicant herein cannot derive any benefit therefrom.

14. The learned counsel for the applicant then cited a decision reported in R. MOHANRAJ Vs. UNION OF INDIA & ANOTHER (1991(17)ATC 590). Reliance on this decision was placed for the submission that ACC could not have refused to accept the recommendation of the DPC. We have carefully gone through the decision. We are unable to hold that the submission made by the ~~app~~ learned counsel for the applicant finds support from ^{the} observations made in the said case. In that case, the applicant was placed in the select list and was given a particular ranking by the Board of Selection. The Appointing Authority altered the said ranking on re-evaluation of comparative merits. That

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by an incumbent ^{when he} is given a lower scale of pay though his work and responsibilities are identical to others working in other Department. In the present case, the said principle is not at all attracted. The applicant cannot therefore draw support from the said decision.

12. The next decision on which the learned counsel for the applicant relies on is a decision of the Madras Bench of the Central Administrative Tribunal reported in R. SRINIVASAN Vs. UNION OF INDIA & Ors. (W 1994(1)ATJ -232). In the said case, the applicant who was a Section Officer was promoted on ad hoc basis to the post of Controller of Imports and Exports. Through the O.A., he made a claim for Pay and Allowances attached to the Promotional Post which had been denied to him. The Division Bench took note of the circumstance that the applicant had not given any written undertaking that he would exercise the power of Higher Post without any extra monetary benefits. For that reason the claim of the applicant in that case was accepted and it was held that the applicant was entitled to the emoluments of Higher Post from the date of his ad hoc appointment.

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is not the situation in the present case. The submission, therefore, is wholly untenable. The DPC., clearly is only a recommendatory Body. The ACC., ~~xxx xxxx xxx agent~~ had not accepted the recommendation of the DPC. However, it was open to the ACC to have accepted or not ~~to accept~~ the recommendation made by the DPC. The ACC., did not accept the recommendation of the DPC. Merely on the basis of the circumstance that DPC., has recommended ~~at~~ the applicant's name for appointment, in our opinion does not clothe him with any legal rights to claim that he ^{be treated as} having been duly appointed to the Post of Member, Postal Services Board. He was not appointed and consequently in view of the discussion hereinabove, he also cannot claim to have been placed in the scale of Rs.7,300--8,000 when it was specically indicated to him that he would draw his pay in the scale of Rs.7,300--7,600.

15. In view of the above, we do not find any merit in the O.A. No good ground for grant ^{-ed} of the reliefs claims has been made out. The O.A., fails and it is accordingly dismissed. Costs easy.

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[Signature]

न्यायालय अधिकारी
COURT OFFICER

केन्द्रिय प्रशासनिक अधिकरण
Central Administrative Tribunal

हैदराबाद न्यायालय
HYDERABAD BENCH

reasons while differing with DPC. These reasons need not be communicated to the officer concerned but it is always open to the authority concerned to produce the necessary records before the Court, when its decision is challenged"

From the above it is clear that the Appointments Committee of the Cabinet has full power to reject the recommendations of the DPC., if in its opinion the recommendations of the DPC., cannot be accepted. But the ACC has to record its reasons for coming to its conclusions. But it is not the case of the applicant herein that reasons have not been recorded by the ACC before rejecting the recommendations of the DPC. As the ACC had rejected the recommendations of the DPC., there is no reason for the applicant to contend that he should be given the scale of pay of Rs.7,300--8,000 treating him as a Member(Development) of the Postal Board. When his promotion is not approved, the applicant cannot ask for the Grade of Pay of a Member(Development) i.e., Rs.7300--8000 in view of the Rule position as enshrined in FR 22(I) (a) (1).

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न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
HYDERABAD BENCH

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Date	
प्रति	36/9/11
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(PER HON'BLE SHRI RANGARAJAN, MEMBER(A) :

I fully endorse the views expressed by my learned HWC

B.C.Saksena, J as above. However, the recent decision of the Hon'ble Supreme Court reported in UNION OF INDIA AND OTHERS Vs. N.P.DHAMANIA AND OTHERS (1995 Supreme Court Cases (L & S) 239) is very relevant to the issue in question. Two important issues arose in that judgment. They are:

- 1) Whether it is open to the Appointments Committee of the Cabinet (hereinafter referred to as ACC) to differ from the recommendations of the Departmental Promotion Committee (hereinafter referred to as DPC) and
- ii) if so, whether reasons were to be given for differing?

In that connection it was held by the Supreme Court as under:

"It is clear from instructions contained in O.M. dated 30-12-1976 of Department of Personnel and Administrative Reforms and O.M. dated 27-11-1950 of Ministry of Home Affairs, recommendations of the DPC are advisory in nature. Such recommendations are not binding on the appointing authority. It is open to the appointing authority to differ from the recommendations in public interest. The ACC has however to record