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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.1300 of 1994.

Between

Dated: 17.8.1995.

P.J.Naidu

...

Applicant

And

1. The Chief Post Master General, A.P.Circle, Hyd.
2. The Post Master General, Vijayawada Region, Vijayawada.
3. The Director of Postal Accounts, Hyderabad.

...

Respondents

Counsel for the Applicant

: Sri. D.Subramanyam

Counsel for the Respondents

: Sri. N.V.Ramana, Addl. CGSC.

CORAM:

Hon'ble Mr. A.B.Gorthi, Administrative Member

Contd:...2/-

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OA 1300/94.

Dt. of Order: 17-8-95.

(Order passed by Hon'ble Shri A.B.Gorthi, Member (A)).

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The applicant, who joined postal department in 1956 retired on reaching the age of superannuation with effect from 31-7-94. At the time of his retirement he was a Jr. timescale officer of I.P.S. Group-A Services and was drawing salary of Rs.3,200/-. The Respondents however without any notice came to the conclusion that his last drawn pay was only Rs.3,100/- and accordingly they re-calculated the average emoluments to the financial detriment of the applicant. Hence this O.A. with a prayer for a direction to the respondents firstly not to recover any money from the applicant towards the alleged excess payment of salary and consequently to refix the pensionary benefits of the applicant correctly taking into consideration the emoluments that were actually drawn by the applicant during the 10 months preceeding to his date of superannuation.

2. The essential facts averred by the applicant are not in dispute and may be summarised briefly. The applicant was promoted to HSG Gr.I on 3-5-87 and his pay was fixed at Rs.2,450/- in the scale of Rs.2000-75-3200. At that time, the applicant gave an option for fixation of his pay on his promotion with effect from the next date of increment, i.e. 1-6-87. For administrative reasons, he was reverted to his substantive post of Asst. Superintendent of Post Offices on 21-7-87 and consequently reverted to the corresponding pay of Rs.2,360/-. He was again promoted to HSG Gr.I on 5-10-87 and his pay was fixed at Rs.2,450/- with the

date of next increment as 1-8-88. Accordingly on 1-8-88 he was given the next increment and his pay was fixed at Rs.2,525/-. It was at this stage that he was promoted to PSS Group-8 in the scale of pay of Rs.2000-75-3200-100-3500. His pay on promotion was fixed under FR 22(c) at Rs.2,675/- with effect from 1-9-88. It was on this basis that his pay as on 1-9-92 was Rs.2,975/-. On his next promotion to Junior time scale of IPS Group-A on 24-7-93 his pay was fixed at Rs.3,100/- in the scale of Rs.2,200-4000. He drew the next increment and his pay was fixed at Rs.3,200/- with effect from 1-7-94.

3. Heard learned counsel for both the parties. Shri D.Subrahmanyam, learned counsel for the applicant first contended that the pay of the applicant was at all times correctly fixed in accordance with the extant rules/instructions. Further ~~xxxx~~, the Accounts Department, from time to time, verified and certified his pay as correct. The Respondents therefore have no justification to unilaterally alter his pay fixation just at the time of his superannuation.

4. Learned standing counsel for the Respondents has stated that the initial error in the fixation of pay of the applicant took place in May, 1987 when he was promoted to HSG-I and when his pay was fixed at Rs.2,450/-. According to the Respondents the promotion of the applicant was on adhoc basis and he/^{was}therefore ^{not} entitled to exercise the option for fixation of his pay from the date of next increment. The option thus exercised by the applicant was erroneously accepted ~~by~~ and, had that not been done, his pay would have ~~not~~ been correctly fixed at Rs.2,375/-

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only. In this context my attention has been drawn to clarification No.4 contained in Govt. of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms O.Ms dt.8-2-83 and 28-1-85, which ^{is} reproduced on pages 65-66 of Swamy's Compilations of FRSR, 12th Edition, 1994. The said clarification No.4 is re-produced below :-

"4. No option in case of adhoc promotion --
The option is not admissible in respect of adhoc promotions. However, in cases where such a promotion is followed by regular appointment to the higher post without break, the option may be allowed as from the date of initial appointment to the higher post, to be obtained within one month from the date of such regular appointment.

Shri D.Subrahmanyam, learned counsel for the applicant has drawn my pointed attention to the promotion order dt.22-4-87 (Annexure-III) to the O.A). It is to the effect that the applicant was promoted and posted to officiate as HSG-I, Postmaster, Visakhapatnam HO till further orders (underlined for emphasis). The contention of tShri D.Subrahmanyam, learned counsel for the applicant is that the promotion of the applicant was not adhoc but was an officiating promotion. He therefore urges that the aforestated Clarification-4 which governs adhoc promotions does not apply to officiating promotions. There is merit in the submission made by the applicant's counsel. Nothing has been shown to me to indicate that the adhoc promotion is same as that of an officiating promotion except that the Respondents contended that they should be treated alike as neither of them is a regular promotion but is ordered as a local arrangement.

5. Without going into the issue whether the promotion of the applicant in 1987 could be deemed to be adhoc promotion, there

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seems to be a legal impediment in the matter of revision/re-fixation of the emoluments of the applicant as was done by the Respondents. In this regard Shri D. Subrahmanyam, learned counsel for the applicant ~~makes references to~~ Rule-59 (1)(b)(iii) of CCS (Pension) Rules, 1972. The said clause reads as under :-

"(iii) Calculation of average emoluments-
For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service, have been correctly shown in the service book the Head of Office may verify the correctness of emoluments for the period of twenty four months only preceding the date of retirement of a Government servant and not for any period prior to that date.

6. In view of the above statutory provision, the applicant's counsel urges that the Head of the Office is statutorily prevented from undertaking a verification of the correctness of the otherwise of the emoluments drawn by the applicant during the period 1987, which was 6 to 7 years prior to the date of retirement of the applicant. From a careful reading of clause (iii) of Rule 59(1)(b) of the Pension Rules, it would be evident that the purport of the said clause is to save a government employee from unexpected harassment at the fag end of his service.

7. In the counter affidavit filed by the Respondents there was not even a whisper as to how and why the respondents did not detect the error, presuming that there is one, in the fixation of pay of the applicant, at or about / ^{the} time that the error was committed.

8. Shri D.Subrahmanyam, learned counsel for the applicant states that the applicant on his promotion to PSS Group B had not exercised a fresh option for fixation of pay from the date of next increment because of his earlier option in 1987, which was accepted by the Respondents. Had the respondents refused to accept his earlier option of 1987, he would have given his fresh option in 1988 on his promotion to Group B. The Respondents did not take this aspect into consideration, while arriving at their unilateral decision of re-fixation of pay on the presumption that the applicant would not have exercised such option.

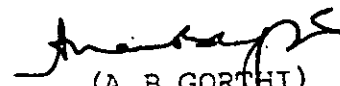
9. Last but not the least, it is contended for the applicant that the action of the respondents is violative of the principles of natural justice, in that, the applicant was not given any opportunity to explain his position before the impugned orders were passed by the Respondents. This is yet another irrefutable argument advanced by the applicant's counsel.

10. In the result, looking at the case from any angle, I find that the respondents' decision to revise the emoluments of the applicant and to reduce the same on the eve of his retirement is neither legal nor fair. Consequently memo No.CA.1/Per/PJN/94 dated.11, September, 1994 and the letter from the Director of Accounts (Postal), Andhra Circle, Hyderabad-1 addressed to Accounts Officer, Pension Section dt.15-10-94 are hereby side. The Respondents are directed to refund the amount, if any covered from the applicant on the basis of the impugned order as the further directs the alleged excess salary paid. The Respondents are/to

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pensionary benefits of the applicant on the basis of the actual emoluments drawn by him during the 10 months preceding the date of his retirement. This shall be done within a period of three months from the date of communication of this order. No order as to costs.


(A.B. GORTHI)
Member (A)

Dated: 17th August, 1995.
Dictated in Open Court.


Deputy Registrar (Judl.)

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Copy to:-

1. The Chief Post Master General, A.P. Circle, Hyd.
2. The Post Master General, Vijayawada Region, Vijayawada.
3. The Director of Postal Accounts, Hyd.
4. One copy to Sri. D. Subramanayam, advocate, Flat No. 8, Padmaja Apartments, Gandhinagar, Hyd.
5. One copy to Sri. N.V. Raman, Addl. CGSC, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

HON'BLE MR. A.B. GORTHY, ADMINISTRATIVE MEMBER.

HON'BLE MR. JUDICIAL MEMBER.

ORDER/JUDGEMENT:

DATED: 17/8. 1995.

M.A./R.A./C.A.NO.

IN 1300/ay

O.A.NO.

T.A.NO. (W.P.NO.)

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

DISMISSED FOR DEFAULT.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.

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Rsm/-

