

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1106/97.

Dt. of Decision : 09-04-99.

Y. Manik Prabhu

.. Applicant.

Vs

1. The union of India, rep. by its Director, National Sample Survey Organisation, Field Operation Division (FOD), New Delhi.
2. The Dy. Director, National Sample Survey Organisation (FOD), West Wing, Gagan Vihar, M.J. Road, New Hyderabad-1.
3. The Regional Asst. Director, National Sample Survey Organisation (FOD), West Wing, Gagan Vihar, M.J. Road, Hyderabad-1. .. Respondents.

Counsel for the applicant : Mr. K. K. Chakravarthy

Counsel for the respondents : Mr. B. N. Sharma, Sr. CGSC.

CORAM:-

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B. S. JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

Oral Order (Per Hon. Mr. B. S. Jai Parameshwar : Member (J))
Heard Mr. K. K. Chakravarthy, learned counsel for the applicant and Mr. Jacob for Mr. B. N. Sharma, learned counsel for the respondents.

2. The applicant herein was serving as Peon in the office of the Deputy Director, National Sample Survey Organisation, Hyderabad i.e., R-2. He joined in the service as Chowkidar and by the order No.2(4)/Estt/Hyd/85, dated 25-10-85, he was appointed on transfer as Peon (Group-D) in the scale of Rs.196-232/- w.e.f., 25-10-95 under the R-3. Thus he was having continuous service of more than 11 years.

3. The R-1 introduced career advancement scheme under C.M.No.10(1)/R-III/88, dated 13-9-91. The applicant was given the in-situ promotion under the said scheme by order dated 9-1-96. Accordingly the pay of the applicant was fixed at Rs.1000/- w.e.f., 1-4-95. He was paid arrears on account of such fixation of pay.

4. However, on 1-7-96 the 3rd respondent by an office order cancelled the said promotion.

5. The applicant submitted his representation dated 4-7-96 praying for the reasons for the cancellation of the in-situ promotion. The applicant submits that ~~he~~ he had reached the maximum scale of Rs.1000/- on 1-10-90 and the Govt. of India in its C.M.No.F.No.13(2)/IC/92 dated 7-4-95 revised the scale to Rs.775-1150/- from Rs.775-1025/-. Therefore, he was entitled to the promotional pay from 1-10-90. He made a representation on 26-2-96 to that extent. The R-3 had not taken any action. The R-2 passed order dated 27-5-97 effecting the order dated

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1-7-96 of R-3 and ordered recovery of the arrears by the impugned order at Annexure-I. The applicant submits that he was not given opportunity before passing the said order. He submits that one of his colleagues in the same office had earlier approached this Tribunal in OA.196/96 and on 14-3-97 by basing the submission made by the counsel for respondents the recovery was not effected till the disposal of the OA.

6. On 26-8-97 an interim order was passed directing that if the pay bill had already been prepared for the month of August, 1997 for recovering the amount in terms of the memorandum dated 14-8-97, then no action need be taken for the month of August, 1997. But the recovery for the month of Sept.1997 as per the memo dated 14-8-97 is suspended. In case the pay bill for the month of August, 1997 is not prepared then the suspension order will hold good even for the month of August, 1997.

7. The respondents have filed the reply stating that the applicant joined as Group-D Chowkidar at Hyderabad on 21-10-74. He was promoted as Peon on 25-10-1985 in the scale of pay of Rs.196-232/- . On reaching at maximum in the scale of pay of Rs.750-940/- he was given in-situ promotion to the scale of pay of Rs.775-1025/- w.e.f., 1-4-95 vide order No.A-46011/1/Estdt./95 dated 9-1-96. Subsequently, the said order was reviewed by the Departmental promotion committee in accordance with Min. of Finance instructions and found that the said in-situ promotion was issued contrary to the specific clarifications given thereunder. Hence, the order was cancelled and recovery was effected by the Asst. Director, Hyderabad vide his order dated 1-7-96. On cancellation of the said promotion order, he approached this Tribunal in OA.755/97 which was decided on

23-6-97 directing the R-3 to consider and dispose of the representation dated 4-7-96 of the applicant through a speaking order and that R-2 shall not effect any recovery till the disposal of the representation of the applicant.

8. The respondents in compliance with the direction of this Tribunal considered the representation of the applicant and a memo dated 17-7-97 was issued. They submit that the applicant again filed another OA.1106/97.

9. The only point for consideration is whether the in-situ promotion given in 1996 by order dated 9-1-96 should stand or not.

10. The learned counsel for the respondents submits that in view of the clarification given in regard to the point of doubt, the applicant is not entitled for in-situ promotion in the transferred unit. The point of doubt which had arisen and clarified by the office memorandum dated 25-5-92 enclosed as Annexure R-1 to the reply is reproduced below:-

"Whether in-situ promotion can be allowed in case of persons who were initially appointed to a post on direct recruitment basis but subsequently transferred to different post(s) carrying the same scale of pay

Yes, such persons are eligible for in-situ promotion in terms of para-2(a) of O.M. dated 13-9-91 viz., from the date a directly recruited person junior to him and fixed at the maximum of the scale becomes eligible for promotion"

11. We have perused the doubt and clarification given on that doubt. The clarification arises when a candidate is posted ~~xxxxx~~ fresh in an organisation fixing his pay at higher scale. That is not the position in the present case. The applicant was appointed at the ~~xxx~~ minimum of the scale of Group-D in the earlier scale of pay of Rs.196-232/- when he came to R-3 organisation on 25-10-1985. When he joined R-3 organisation

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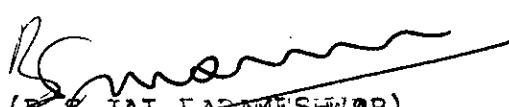
on 23-10-1985 his pay was fixed taking his pay drawn by him earlier in the previous organisation. Hence his joining in the R-3 organisation on 25-10-85 and fixation of pay should not be taken as a fresh appointment in the higher scale of pay. It is continuous of fixation of his pay in the scale of pay as drawn by him under R-3. If that be the case, the doubt and clarification extracted above played no role in regard to the cancellation of his in-situ promotion.

12. The applicant had fulfilled the 3 conditions as laid down in the OM dated 13th Sept. 1991. As he had fully complied with the rules as provided for in the in-situ promotion scheme, 1991 and he was promoted on that basis by order dated 9-1-96. We see no reason to cancel the in-situ promotion granted to him.

13. In view of the above the following directions are given:-

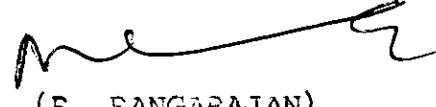
- 1) The in-situ promotion granted to the applicant w.e.f., 1-4-95 will stand. The applicant is entitled to fixation of his pay on that basis in the higher scale.
- 2) It is seen that only Rs.1000/- has been recovered due to the cancellation of the order dated 9-1-96 from him.
- 3) However if any amount recovered from his pay due to the cancellation of in-situ promotion ordered on 9-1-96 the same should be refunded to him within a period of 2 months from the date of receipt of a copy of this order.

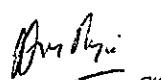
14. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

9.4.99

Dated : The 9th April, 1999.
(Dictated in the Open Court)


(R. RANGARAJAN)
MEMBER (ADMN.)


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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESWAR :
MEMBER (B)

DATED: 9/4/99

ORDER / JUDGEMENT

M.A. / R.A. / C.P. REC'D.

IN

CAUSE NO. 1106/97

C.A. NO. 1106/97
ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

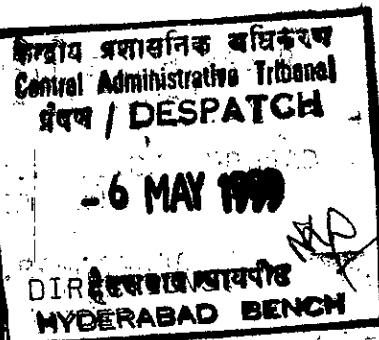
DISPOSED OF WITH DIR. HYDERABAD BENCH

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.



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