

47

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 21.02.2000

TA No.1/97 (SBCW No.15/73)

S.N.Bhargava through Legal Representatives - 1) Akhlesh Kumar Bhargava 2) Akshey Kumar Bhargava and 3) Mrs. Minakshi Bhargava, r/o C-124/A, Moti Marg, Bapu Nagar, Jaipur.

.. Applicant

Versus

1. The Union of India
2. The State of Rajasthan
3. The Accountant General, Rajasthan, Jaipur.

.. Respondents

Mr. Ashok Gaur, counsel for the applicant

Mr.U.D.Sharma, counsel for respondent No.2

Mr. V.S.Gurjar, counsel for respondents Nos. 1 and 3

CORAM:

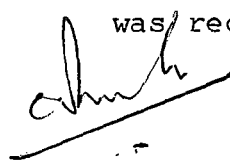
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

Petitioner, through his Writ Petition No. 15/97 filed in the High Court of Judicature for Rajasthan at Jodhpur, had prayed for quashing the order of refixation of his pay by reducing the same from Rs. 1250/- to Rs. 940/- and further that the respondents may be restrained from denying the benefits of and effecting any recovery from the salary on account of such refixation of his pay. The Writ Petition was transferred to this Tribunal vide order dated 8.7.1997 of the High Court and was registered as TA No. 1/97.



2. The case of the applicant, as briefly stated, is that he was holding the selection post in the Rajasthan Police Service (for short, RPS) by an order dated 5.2.1968 (Ex. 1). He was appointed to Indian Police Service (for short IPS) in an officiating capacity. Thereafter the Govt. of Rajasthan addressed a letter to him asking him to say whether he wants to get his lien terminated from RPS and he vide his reply dated 20.5.1968 stated that he was willing to do so provided he is substantially appointed in the IPS. By a Presidential order dated 24.6.1968 he was appointed to the IPS cadre of Rajasthan on probation w.e.f. 7.2.1968 (Ex.2). On completion of probation period he was confirmed in IPS w.e.f. 7.2.1969. He retired from the Govt. service in this position on 14.4.1972. The pay scale on selection grade of RPS came to be revised ^{to} Rs. 1250/- from Rs. 900/- p.m. w.e.f. 1.9.1968. The Accountant General of Rajasthan vide his order dated 25.2.1970 (Ex.3) proceeded to fix his pay and he accordingly drew his salary. The Govt. of Rajasthan subsequently on 17.9.1971 (Ex.4) endorsing a copy to the applicant informed that his salary has been refixed in accordance with the decision of the Govt. of India vide their letter dated 12.5.1971 (Ex.5). Thereafter the Accountant General, Rajasthan issued another letter dated 11.10.1970 (Ann.A7) refixing his pay at Rs. 940/- instead of Rs. 1250/- and also mentioned that an amount of Rs. 9140.32 is recoverable from the applicant on account of excess payment. The applicant made a detailed representation dated 15.10.1971 against the refixation of his pay after which a reference appears to have been made to the Cabinet Secretariat, inter alia, mentioning that by refixing of the pay of the applicant, officer junior to him in the cadre gets more pay and that the officer on promotion to higher service should not get pay less pay on

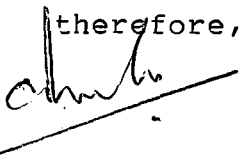
ch

being appointed to IPS than what he was already getting in the lower service and suggesting that Govt. of India may invoke Rule 3 of All India Services containing residuary matters to set right discrepancy. The Govt. of India vide letter dated 12.6.1972 is said to have informed the Govt. of Rajasthan that it will have no objection if the State Govt. waive the recovery for the excess pay in the circumstances of the case provided in their opinion the officer drew the excess amount in good faith but it appears that the State Govt. did not find it possible to waive the recovery. It is contended on behalf of the applicant that notwithstanding his appointment to IPS on probation, he continued to hold lien on his substantive post in the RPS and was entitled to all the benefits which are admissible to the officers in the selection grade of RPS. Since the selection grade of RPS was revised from Rs. 900/- to Rs. 1200/- p.m. w.e.f. 1.9.1968, while he was on probation, he should have been given benefit of the revised selection grade pay of RPS. It has further been contended that since the appointment on probation was neither substantive nor officiating, the IPS (Pay) Rules, 1954 cannot be deemed to apply to the applicant and if it is said by the Govt. of India that there are no rules for refixation of pay of a probationer in IPS, the applicant cannot be made to suffer and the refixation of his pay and order for recovery are violative of the fundamental rights guaranteed under Article 19 (1)(g) of the Constitution of India. It has also been stated that the applicant was confirmed in the selection grade of RPS alongwith Shri Narain Singh w.e.f. 28.11.1967 vide the State Govt. order dated 5.12.1969 (Ann.A) but while the pay of Shri Narain Singh was protected on the plea that he was officiating in a cadre post, that of the applicant was not. The Accountant General, Rajasthan refixed

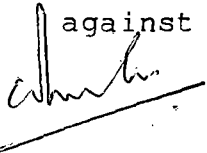


his pay vide letter dated 11.10.1971 (Ann.A7) at Rs. 940/- w.e.f. 20.12.1968. This action of the respondents is discriminatory and violative of Article 14 of the Constitution of India. After his appointment to IPS on probation, the pay of Shri Narain Singh was fixed by the Accountant General, Rajasthan vide letter dated 29.1.1970 (Ann.D) at 1060/- w.e.f. 10.6.1968. It has been mentioned that the applicant was appointed to IPS on probation basis by the Presidential notification w.e.f. 7.2.1968 whereas Shri Narain Singh was so appointed w.e.f. 31.10.1968 (Ann.C). Finally, it has been contended by the applicant that in any case no recovery could have been made from his DCRG without affording a chance to him to have a say and this was a violation of principles of natural justice.

4. The respondents in their reply have opposed the averments made by the applicant and have stated that a number of State Police Service officers on promotion to IPS is appointed against the substantive vacancies and the applicant was also similarly appointed. The promotee officers to the IPS even when on promotion are allowed all the benefits of, and are treated at par with other members of IPS, ^{and} once they are confirmed they are members of IPS right from the date of their first appointment to IPS and thus the applicant has been treated as member of IPS from 7.2.1968 and has been given all the benefits of that service as such seniority, status etc. The retention of lien till confirmation is allowed only with the objective of protecting the State Police Service officers in case of their reversion. However, the applicant cannot claim any benefit incidental to RPS while borne on the cadre of IPS and, therefore, is not entitled to benefits admissible to the



appointees in the selection grade of RPS when he was holding his appointment on probation to the IPS. He is, therefore, entitled to be fixed on the pay he was drawing on the date of appointment in the IPS i.e. 7.2.1968 and subsequent revision of pay in the selection grade of IPS w.e.f. 1.9.1968 does not entitle him to get dual benefits in two different services. It has been contended by the respondents that having been appointed to IPS the applicant has to be treated as any other member of the service and could not be subjected to any rules and regulations other than those framed under All India Services Act, 1951 and rules and regulations applicable to the members of the IPS. The pay of the applicant was correctly fixed in under the IPS(Pay) Rules, 1954 and, therefore, any allegation of discrimination is unfounded and incorrect. It has also been contended that the appointment on probation is intended to culminate into permanent absorption in the service and is made under the IPS (Recruitment) Rules, 1954 read with IPS (Appointment by Promotion) Regulations, 1955. The officiating appointment, on the other hand, is given to meet purely temporary requirements of the State with no intention or guarantee at all of subsequent absorption in the service and are made in accordance with Rule 9 of the IPS (Cadre) Rules, 1954. Further while the period spent on probation if followed by confirmation in the IPS is counted as part of regular service, the period of officiating service, even if followed by appointment to IPS is not always treated as part of total length of officer's service. It was, therefore, incorrect for the applicant to draw a parallel between an officer appointed to IPS on probation and one appointed merely to officiate against an IPS cadre post.

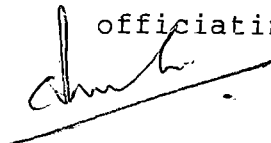


32

: 6 :

5. We have heard the learned counsel for the parties and have perused the records.

6. It is quite clear that in the case of the applicant, a State Police Service officer in Rajasthan, on being appointed to IPS cadre of Rajasthan on probation against a vacancy in the senior post w.e.f. 7.2.1968, his pay has to be fixed in accordance the provisions of the IPS (Probation) Rules, 1954 (for short, Probation Rules) and the IPS (Pay) Rules, 1954 (for short Pay Rules). In terms of Rule 13(3) read with Rule 3(2)(i) of the Probation Rules, a person appointed to IPS in accordance with IPS (Appointment by Promotion) Regulations, 1955 shall receive salary in the stage fixed for him in the senior scale in accordance with Rule 4 of the Pay Rules, 1954. Rule 4(3) of the IPS Pay Rules provides fixation of initial pay of a promoted officer who prior to the date of his appointment to IPS had not held a cadre post in an officiating capacity in accordance with the principles laid down in Section I of Schedule II of the Pay Rules whereas the fixation of the initial pay of a promoted officer who on the date of his appointment to IPS had held or is holding continuously a cadre post in an officiating capacity shall be fixed in accordance with Rule (4) of Pay Rules with the principles laid down in Section II of Schedule II of the Pay Rules. This being the rule position, we have to see whether the applicant was holding or not holding a cadre post in officiating capacity as recognised under the relevant rules prior to the date of his appointment to the IPS. It is seen from the order of the Govt. of Rajasthan dated 5.2.1968 that the applicant was posted as Superintendent of Police, Anti-corruption Department, Jaipur (IPS Post) in an officiating capacity. It appears that though the State Govt.



had issued the aforementioned order dated 5.2.1968, leaving just two days gap between this and his appointment in the IPS, it had not received the approval of the Central Govt. The applicant has not produced any document regarding such approval and the reply of the respondents is also silent on this point. In order to have initial pay fixation under Sub-rule (4) of Rule 4 of the Pay Rules, it is necessary that the promoted officer had held or is holding continuously a cadre post in an officiating capacity. However, such pay fixation is required to be done in accordance with the principles laid down in Section II of Schedule II. The Section II provides under (1) that "in the case of promoted officer who has already officiated in a cadre post and such officiation has been held by Central Govt., and wherever necessary in consultation with the Union Public Service Commission, to be in accordance with the Rule 9 of the Indian Police Service (Cadre) Rules, 1954 (emphasis added). It will thus be seen that unless the approval of the Central Govt. is obtained, mere order of officiation in a cadre post as issued by the State Govt. on 5.2.1968 may not be of any help to the applicant in getting his pay fixed in Sub-rule (4) of Rule 4 of the Pay Rules. On the other hand, it appears from the letter of Govt. of India dated 28/31 August, 1968 (Ann.B) that the Govt. of India had agreed to the temporary appointment of Shri Narain Singh in a cadre post in IPS for a period of six months from 22.6.1968 and, therefore, the case of the applicant is distinguishable from that of Shri Narain Singh and he cannot claim that his pay fixation should be done as has been done in the case of Shri Narain Singh. In view of this position, we cannot fault the refixation of the pay as done by the Accountant General, Rajasthan vide his letter dated 11th October, 1971 and we find no reasons to justify our intervention

Chandra

with such refixation.

7. The counsel for the applicant also strongly pleaded that the case of the applicant is fully covered under the letter of Govt. of India, Ministry of Home Affairs dated 10th February, 1970 (Ann.A9) which, inter alia provides that "the Govt. of India are of the view that pay of a probationer, who had a lien on a permanent post either under the Central Govt or under the State Govt. prior to appointment to IAS/IPS/IFS should be protected on the analogy of the provision of the FR 22 (b)(i) which is already available to the members of the central services. It is, however, not possible for us to persuade ourselves to accept the contention of the learned counsel for the applicant in view of the fact that in the very first para of this letter, which is like a preamble to the letter, it is clear that this letter concerns regulation of the initial pay of a direct recruit on his appointment to the IAS/IPS/IFS. This letter is, therefore, not applicable in cases of appointment to IPS by promotion as is the case in respect of the applicant.

8. In view of the above discussions, we do not find it just and proper to interfere with the refixation of pay of the applicant by the Accountant General, Rajasthan based on the letter dated 12th September, 1971 issued by the Govt. of Rajasthan which itself is based on the letter dated 12th May, 1971 issued by the Personnel Department, Cabinet Secretariat, Govt. of India.

9. There is also a prayer regarding the recovery of Rs. 9140.32 made from the applicant which was the difference

Chun

between the amount paid to the applicant on account of earlier fixation of pay and the amount payable after correct fixation of pay subsequently. It is now settled law that if a Govt. official is visited with civil consequences on account of his basic pay and if this is done without an opportunity given to the Govt. servant to explain his case, the principles of natural justice are violated. In the case of Bhagwan Shukla v. Union of India and ors. (1994) 6 SCC 154 the appellant's pay was reduced on the ground of having been wrongly fixed initially. It was held that prior opportunity ought to have been afforded. The order of reduction passed without affording opportunity, held violative of principles of natural justice. The impugned order by which the pay of appellant fixed on his promotion as to be reduced was held to be not sustainable and was set-aside. In Hindustan Petroleum Corporation v. H.C. Trehan and ors., 1989 (1) SCC 764 decided in Civil Appeal No. 3214 of 1979 it was held that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Govt. servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. In Shahib Ram v. State of Haryana and ors., 1995 Supp(1) SCC 18, the employee was given upgraded pay scale, without any mis-representation by the employee, on account of wrong construction of relevant rules by the authority. The Govt. was restrained from recovering the overpayment already made. In Collector of Madras and anr. v. K. Rajamickam, (1995) 2 SCC 98, the employee was continuously in service beyond the date of superannuation under a wrong decision of the Court. It was held that the period of service beyond the date of superannuation should not be counted.

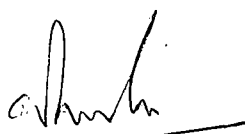
However, recovery of any amount paid during the period was

chub.

prohibited.

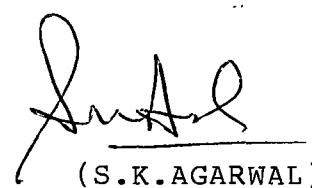
10. It has been contended by the applicant that when his pay was reduced, he was not allowed any opportunity to have his say and he was not even put on notice before his pay was reduced and the order of reduction of his pay came to be made behind his back. This being the case, and the legal position as discussed in the preceding paragraph, we hold that the recovery of Rs. 9140.32 from his DCRG is not sustainable and we, therefore, set-aside the pay fixation done by the Accountant General, Rajasthan vide letter dated 11th September, 1971 (Ann.A7) and the said letter of the Accountant General, Rajasthan stands quashed.

11. The TA is accordingly allowed partially and respondent No.2 is directed to refund the amount of Rs. 9140.32 to the Legal Representatives of the deceased applicant alongwith interest at the rate of 12% p.a. from the date of recovery to the date the amount is refunded. This direction may be carried out within a period of 2 months from the date of receipt of a copy of this order. Parties to bear their own costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member