

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 21.08.2000

OA No.596/95

Hari Charan Sharma S/o Chiranjit Lal Sharma, Ex- Assistant Postmaster (Accounts) Head Post Office, Alwar

.. Applicant

V e r s u s

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, New Delhi.
2. Member (Personnel) Postal Services Board, Dak Bhawan, Sansad Marg, New Delhi.
3. Chief Postmaster General, Rajasthan Circle, Jaipur.
4. Director Postal Services, Jaipur Region, Jaipur
5. Sr. Superintendent of Post Offices, Alwar Division, Alwar.

.. Respondents

Mr. K.L.Thawani, counsel for the applicant.

Mr. Hawa Singh, proxy counsel to Mr. V.S.Gurjar, counsel for the respondents

CORAM:

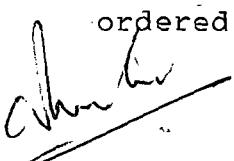
Hon'ble Mr. S.K.Agarwal, Judicial Member

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

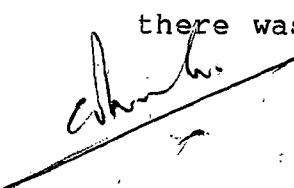
ORDER

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

In this Original Application, applicant seeks quashing of the order dated 28.1.1994 and prays that respondents may be directed to restore promotion of the applicant in the Higher Selection Grade - II (for short HSG) from the original date of promotion i.e. 1.10.1994 and further that refund of Rs. 3750/- recovered from him may also be ordered.



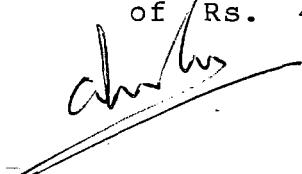
2. The case of the applicant is that he was appointed as Postal Clerk (now designated as Postal Assistant) on 5.7.1957 and on passing the Post Office and RMS Accounts Examination in 1967 was posted in August, 1968 as Accountant with a special pay of Rs. 40 per month. The Department of Posts introduced new scale of pay for Post Office Accountants as Rs. 380-620 w.e.f. 1.11.78 and the applicant opted for the same. The grade was made defunct from 24.2.1981. It was revised as Rs. 1300-2200 w.e.f. 1.1.1986. A scheme of One Time Bound Promotion (for short OTBP) was introduced w.e.f. 30.11.1983 for promotion from clerk to Lower Selection Grade (for short LSG) on completion of 16 years of service in the grade of Rs. 425-640 (now revised to Rs. 1400-2300). The said scheme of OTBP was not applicable to the applicant as he has already stood promoted to LSG of Rs. 1400-2300 and was working as Assistant Postmaster (Accounts) in supervisory cadre vide order dated 26.4.83 (Ann.A4). The applicant continued in LSG from April, 1983 till 1991, when the Department of Posts introduced Second Time Bound Promotion scheme (for short BCR) w.e.f. 1.10.1991 on completion of 26 years of service. Since the applicant was already working as supervisor in LSG cadre for last 9 years and have put in about 34 years of service, there was no question of furnishing any option for promotion to LSG Gr.II under BCR scheme and respondents, therefore, rightly considered him for promotion under BCR scheme and promoted the applicant w.e.f. 1.10.1991 vide order dated 18.5.92 (Ann.A6). However, all of a sudden without adopting lawful process, respondent No.3 issued impugned order Ann.A1 reverting the applicant to LSG. The contention of the applicant is that he was entitled to benefit of BCR scheme and there was no separate cadre of Post Office and RMS Accountants



(12)

and also that there is no prescribed channel for promotion of Accountants still holding defunct pay scale of Rs. 1350-2200 and they are considered for OTBP as well as BCR schemes. Thus denial of promotion to the applicant under the aforesaid schemes was violative of Articles 14 and 16 and Rule 272 of the P&T Manual specially with no show-cause notice for personal hearing etc.

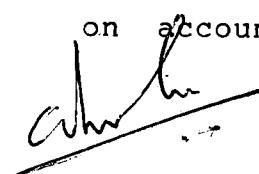
3. It has been admitted by the respondents in their reply that the applicant on passing the Post Office and RMS Accountant Examination, was appointed as Accountant with special pay of Rs. 40/- per month in August, 1968 and a new pay scale of Rs. 380-620 plus special pay was introduced for Post Office and RMS Accountants in lieu of the time scale of pay of Rs. 260-480. However, subsequently the pay scale of Rs. 380-620 was declared defunct w.e.f. 24.2.1981 and the time scale of pay of Rs. 260-480 with special pay was re-introduced and the incumbent were given an option to either retain defunct scale or to switch over to the time scale of Rs. 260-480 plus special pay applicable to the Postal Assistant/ Sorting Assistants. It has also been stated that one of the conditions stipulated was that the incumbent who would retain defunct scale of pay Rs. 380-620 would not be eligible for promotion in higher post in the general line and the applicant vide his option dated 13.5.1981 has decided to retain defunct scale of pay and consequently he was not entitled for promotion to any higher post in the general line. It has been contended that the Post Office/RMS Accountants who had opted for such defunct scale of Rs. 380-620 will not <sup>be</sup> eligible for promotion to OTBP and in any case the applicant was already promoted as APM (Accounts) in the Accounts line in the scale of Rs. 425-640 (now revised to Rs. 1400-2300) prior to



introduction of OTBP. Further since promotion under BCR was applicable only to those employees who were given promotion under OTBP scheme, applicant was not entitled for promotion w.e.f. 1.10.91. The applicant was erroneously promoted under BCR Scheme w.e.f. 1.10.91. However, later on the Government of India decided to consider the Post Office/RMS Accountants holding defunct scale for promotion under BCR scheme w.e.f. 1.12.92 and accordingly the case of the applicant was reconsidered and he was given promotion w.e.f. 1.12.1992 vide DG Post, New Delhi letter dated 1.12.92 vide order dated 4.2.1994. In view of this background and the grant of erroneous promotion, the pay and allowances overpaid to the applicant from 1.10.1991 to 30.11.1992 were recovered from him vide order dated 28.1.1994 and as such making recovery was justifiable and not violative of any Articles of the Constitution of India.

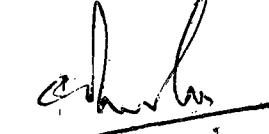
4. We have heard the learned counsel for the parties and perused the material on record.

5. The applicant apparently has been given the benefit of BCR scheme w.e.f. 1.10.91 whereas it was later on found that in view of his having opted to remain in the defunct pay scale admissible to Post Office/ RMS Accountants, he was not entitled to the benefit of the BCR scheme as it prevailed at the relevant time. Subsequent to change in the policy of giving benefit under the BCR scheme, the applicant has been given such benefit w.e.f. 1.12.92. However, respondents have made recovery of the over-payment made to the applicant in the higher pay scale under BCR scheme. It is now settled law that reduction of the pay scale of an employee and making recovery on account of such reduction without notice and without



affording a chance to the employee to have his say, is violative of principles of natural justice. In the instance case, no notice was given to the applicant at all and by impugned order Ann. Al a recovery of Rs. 3750/- is alleged to have been made.

6. In view of above, we dispose of this Original Application with a direction to respondents to refund the sum of Rs. 3750/- (or whatever amount actually recovered) to the applicant. This direction may be complied with within the period of 2 months from the date of receipt of a copy of this order. No order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member