

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.599/95

Date of order: 18.12.1996

Bhim Singh Meena : Applicant

Vs.

1. Secretary, Union of India, Deptt. of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Post Master General, Southern Region, Ajmer.
4. The Post Master, Head Post Office, Ajmer.

..Respondents.

Mr.S.K.Jain : Counsel for applicant.

Mr.M.Rafiq : Counsel for respondents.

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HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Bhim Singh Meena has sought a direction to respondent No.4, the Post Master, Head Post Office, Ajmer, not to make any recovery from the applicant and not to reduce his monthly salary by any amount. A further direction sought by him is that any orders which do not provide benefits to the applicant in respect of pay fixation in the matter of promotion may be declared null and void.

2. The case of the applicant is that he was initially appointed as Postal Assistant in the Department of Posts on 1.3.1975. Thereafter he passed the competitive departmental examination for promotion to the post of Inspector of Post Offices (IPO) in 1989. Thereafter the applicant was promoted to the cadre of Inspector Post Offices vide PMG Rajasthan, Western Region, Jodhpur, memorandum dated 4.7.91. The applicant joined the promotional post on 29.7.91 (Annex.A1). Prior to his promotion as IPO the applicant was drawing pay at the stage of Rs.1520/- in scale Rs.1400-1800. On promotion to the post of IPO his pay was fixed at the stage of Rs.1600 on 30.7.91, by

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granting benefit of FR 22-C in view of the fact that the post of IPO is a promotional post carrying duties of higher responsibility and greater importance.

3. Further according to the applicant although his pay has been fixed under FR 22-C as above, since 29.7.91, yet in November 1995 the Post Master Ajmer Head Post Office revised the pay fixation of the applicant, reducing his pay by two increments from the date of promotion. He further ordered recovery of a sum of Rs.1595/- being the alleged excess amount paid to the applicant through his initial wrong fixation, at the rate of Rs.150/- per month. It was held while revising the applicant's pay downwards that since he was in the same scale of pay before promotion in which he continued on/after promotion, he is not entitled to the benefit available under Rule FR 22-C. The applicant's contention is that the post of IPO has greater importance and the duties attached to the post carry higher responsibilities. The applicant was allowed the higher scale of pay Rs.1400-2300 on completion of 16 years of service as Postal Assistant, under the one time bound promotion scheme introduced by the Department earlier. The promotion under the one time bound scheme and placing him in the scale of Rs.1400-2300 cannot be equated with his being granted the scale of pay on promotion as IPO as the latter post carries higher responsibilities and duties of greater importance. The IPO's post can be acquired only after passing a departmental competitive examination and the IPO acts as a disciplinary authority and appointing authority as per the schedule, he conducts inspection of Post Offices manned by postal officials of LSG and HSG-II grade and even can impose penalty, etc. Therefore, his plea is that his appointment to the post of IPO should be treated as appointment on promotion from the post of LSG scale Rs.1400-2300 held by him earlier and

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there should be no recovery of the alleged excess payment made to him.

4. The respondents in their reply have stated that the applicant while working on the post of Accountant was promoted to the next higher post of LSG in scale Rs.1400-2300 w.e.f. 1.3.91 under the one time bound promotion scheme on completion of 16 years service and his pay was fixed at the stage of Rs.1520/- . Subsequently, the applicant, being an approved candidate in the IPO's cadre, was appointed to the post of IPO in scale Rs.1400-2300 vide order dated 4.7.91 and assumed charge on the said post on 30.7.91. On appointment to the IPO's post, his pay was fixed at Rs.1600/- under the provision of FR 22-C, now renumbered as FR 22 1(a)(i), treating the post of IPO as carrying higher responsibilities and as being of greater importance, compared to the post of LSG. Thereafter, instructions were issued by the Director General Posts vide communication dated 31.5.95, providing that in view of the Department of Personnel & Training, Govt of India, notification dated 30.8.89 below FR 22, an appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which the appointment is made carries the same scale of pay as the post which the government servant holds on a regular basis at the time of his promotion or appointment on a scale of pay identical to that which the government servant enjoys before his appointment or promotion. Further, the Pay Commission had recommended only one scale of pay for both the posts of LSG and IPO. Therefore, these posts will have to be treated either as merged, equated or equivalent. Thus the concept of promotion from the grade of LSG to that of IPO after 1.1.86 is ipso facto null and void. Accordingly in pursuance of the instructions received from the D.G Posts as referred to above, the pay fixation of the

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applicant was revised and his pay was refixed at Rs.1520/-, by holding that the post of IPO does not carry responsibilities of higher order or of greater importance. On the basis of the revised fixation of pay, over payment of Rs.4595/-, for the period from 30.7.91 to 31.5.95 was worked out and recovery was effected in monthly instalment of Rs.150/- per month beginning with deduction from the pay for November 95. Before refixation of the applicants pay, the instructions received from the DG Posts as referred to above were ^{made} known to him. In view of the instructions of the DG Post, the appointment to the post of IPO shall not be deemed to involve the assumption of duties and responsibilities of greater importance since both the post from which the applicant was appointed to the post of IPO and the post of IPO carry the same scale of pay.

5. The applicant has also filed rejoinder to the reply filed by the respondents.

6. During the oral arguments, the learned counsel for the applicant drew attention to the order Anx.A1 dated 4.7.91 by which the applicant had been appointed as IPO. This order, according to him, clearly stated that appointment of the applicant was a promotion to the post of IPO. According to him the post of IPO carries the duties and responsibilities of a higher order than those of an LSG, the post from which the applicant had been promoted, as clarified in the O.A itself. He also relied upon the two judgments of the Tribunal to support his case. One is Pamesh Chand Vs. Union of India & Anr, 1993 (2) SLJ (CAT) 95 and the other is Dhyaneshwar Nandanwar Vs. Union of India, 1993 (2) SLJ (CAT) 305 which, according to him, are directly on the point. He, therefore, prayed that the order of the respondents revising the pay of the applicant and ordering recovery of the alleged excess amount paid may be quashed. The learned counsel for the respondents cited before

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us a judgment of the Tribunal in V.K. George Vs. Union of India & Ors, (1992) 19 ATC, 686 in which the Tribunal had noted that where two posts had been held to be equivalent by the Pay Commission and also by the Department, it would not be proper for the Tribunal to tinker with such equivalence. In the instant case, according to him, the Pay Commission had recommended same scales of pay for the post of LSG and that of IPO and since the Govt had granted the same scale of both, the post of IPO could not be considered carrying higher responsibilities than that of LSG. He also drew attention to the judgment of the Hon'ble Supreme Court in State of U.P Vs. J.P. Chourasia (1989) 1 SCC 121 which had been relied upon by the Tribunal while delivering the judgment in V.K. Gaur case. In this judgment the Hon'ble Supreme Court had held, amongst others, that the court should not try to tinker with such equivalence unless it is shown that it was made with extraneous considerations.

6. I have heard the learned counsel for the parties and have perused the material on record including the judgments cited before us.

7. On 26.12.95 the Tribunal had issued an interim direction to the effect that the respondents should not reduce the applicant's present pay and not effect recovery of Rs.4595. The said direction continues till date.

8. In the order of appointment on the post of IPO (Annex. A1) it is clearly stated that it is an appointment on promotion. The relevant portions of order Annex. A1 are reproduced below:

"(4)(i) The promotion of Shri Bhim Singh Meena to the IPOs cadre is subject to the condition that you have completed prescribed induction training of four weeks as well as the field training and that no vigilance/disciplinary case is pending/contemplated against him. If any such case is pending/contemplated, a detailed report should be sent to this office before promotion of

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the official.

(ii) The promotion of Shri Bhim Singh Meena is on a probation for a period of two years and further continuance in IPOs cadre will be adjudged on satisfactory completion of the probation period."

The facts that the applicant was to complete prescribed induction training of 4 weeks for appointment to the post of IPO, he was placed on probation for a period of 2 years and his further continuation in the post of IPO was dependent upon his satisfactory completion of the probationary period all cumulatively show that it was a case of promotion of the applicant to the post of IPO. The respondents have themselves treated appointment of the applicant on the post of IPO as promotion. Since that is the position, the applicant will be entitled to fixation of pay under the old FR 22-C and under its present equivalent rules on the ground that he has been appointed to a promotional post, even though the promotional post and the earlier post from the applicant had been promoted carry the same scale of pay. The two judgments cited by the learned counsel for the applicant are directly with regard to the grant of pay on promotion to the post of IPO. In both the judgments the recommendations of the 4th Pay Commission have been taken note of. However, the duties and responsibilities attaching to the posts of LSG and the qualifications for appointment there to have been noted in these judgments. After considering all these matters, the Principal Bench in Ramesh Chand case and the Jabalpur Bench in Dhyaneeshwar Nandanwar case have held that the post of Inspector carries higher duties and responsibilities and therefore the incumbent to the post of IPO is entitled to fixation of pay under FR 22-C or its subsequent equivalent FR 22(a)(ii). The judgments cited by the learned counsel for the respondents is in respect of the question of

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equivalence of posts of Stenographer and Inspector in the Income Tax Department. It is no doubt true that equivalence of posts is determined by bodies like the Pay Commission and a court or Tribunal should not ordinarily interfere with what has been determined by such a body. However, the question here is not that whether the Inspector is entitled to a higher scale of pay compared to LSG employees. The question here is whether appointment to the post of IPO is promotion from the post of LSG. There could be situations where appointment to another post in the same scale of pay could be a promotion. From the facts and circumstances of the present case and seen in the light of the judgments cited by the learned counsel for the applicant, it is clear that appointment to the post of IPO from that of LSG is a case of promotion. The learned counsel for the respondents referred to the circular letter of the D.G Posts to which reference has been made in the reply of the respondents. According to him the DG Posts letter dated 31.5.95 contemplated a situation in which appointment to the post of IPO though on promotion did not involve assumption of higher responsibilities and duties in the post of IPO. But since the complete letter dated 31.5.95 issued by the DG Posts had not been made as an enclosure, nor was it shown during the hearing, it is not possible to make any comments with regard to its contents. On a consideration of all the facts and circumstances of the case, the action of the respondents in lowering the pay of the applicant and ordering recovery of an amount of Rs.4595/- is set aside.

9. The O.A is allowed. No order as to costs.

(O.P.Sharma)

Administrative Member.