

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.
T.A. No. 161/96

199

DATE OF DECISION 18/1/2022

Phanu Kumar Bhardwaj Petitioner

Mr. P.V. Calla Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

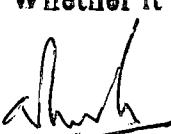
Mr. V.S. Gurjar Advocate for the Respondent (s)

CORAM :

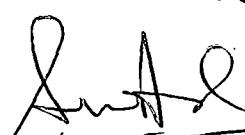
The Hon'ble Mr. S.K. Agarwal, Member (J)

The Hon'ble Mr. N.P. Newani, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No


(N.P. Newani)

Member (A).


(S.K. Agarwal)
Member (J).

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.Nc.161/96

Date of order: 18/1/2000

Phanu Kumar Bharwaj, S/o Shri Murari Lal Sharma, R/o Plot No.3, Gayatri Nagar, Scale, Jaipur, presently posted as Junior Hindi Translator, C/o Addl. Director, CGHS, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary, Ministry of Health & Family Welfare, Deptt. of Health, Govt. of India, New Delhi
2. Director, CGHS, Directorate General of Health Services, Nirmal Bhawan, New Delhi.
3. Additional Director, CGHS, Hotel Radha Krishna Building, Near Railway Station, Jaipur.

...Respondents.

Mr.P.V.Calle - Counsel for applicant

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

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

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

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes prayer to quash and set aside the decision of the respondents to reduce the basic pay of the applicant from Rs.1560 per month to Rs.1400 per month w.e.f. June 95 and to direct the respondents not to recover any amount and interest thereon from the salary of the applicant as over payment and to fix the pay of the applicant as if the applicant is in the pay scale of Rs.1400-2300 w.e.f. 6.11.90.

2. Facts of the case as stated by the applicant are that he was initially appointed on the post of IDC in June 1983 in the pay scale of Rs.950-1500. The applicant appeared in the selection test of Junior Hindi Translator in the pay scale of Rs.1400-2300 and he qualified for the same. Thereafter, he was appointed on transfer on deputation basis in the pay scale of Rs.1400-2300 vide order dated 6.11.90. It is stated that he continued to work on the said post till he was regularised vide order dated 9.1.95. It is further stated that on the date of regularisation, the applicant was getting Rs.1560 per month as his basic pay which was reduced to Rs.1400 on his joining in pursuance of the order dated 9.1.95. The applicant filed representation dated 31.7.95 but no avail. It is also stated that on absorption, the applicant was entitled to the protection of pay and no recovery could be made from the salary.

[Signature]

of the applicant as over payment. Therefore, the applicant has filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that the applicant was appointed after selection on ex-cadre post of Junior Hindi Translator which was filled-up on transfer on deputation basis. The applicant was given an option to opt for pay scale of the post or deputation allowance but the applicant opted for pay scale of the post of Jr. Hindi Translator and he was paid salary in the pay scale Rs.1400-2300. Accordingly he was also paid annual increments in the pay scale, as per rules. Thereafter, the applicant was asked to submit an option whether he wants to be absorbed on the post of Jr. Hindi Translator or he wants to be reverted back to his parent department. The applicant opted for his absorption on the post of Junior Hindi Translator and he was absorbed accordingly w.e.f. 9.11.94 in the pay scale Rs.1400-2300. Therefore, the applicant was eligible for the payment of salary in the pay scale of Rs.1400-2300 w.e.f. 9.11.94 only and not from the date from which he was working on the post of Jr. Hindi Translator on transfer on deputation basis. Therefore, the relief claimed by the applicant is not sustainable in law and this O.A is devoid of any merit.

4. Rejoinder was also filed reiterating the facts stated in the O.A which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The concept of 'deputation' is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on temporary basis. After the expiry of period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules.

7. It has been held by the Supreme Court in State of Mysore vs. M.H. Bellary, AIR 1965 SC 868, that

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 'the service of an officer on deputation in another department is treated by the rule as equivalent to service in the parent departments and it is this equation between the services in the two departments that forms the basis

of rule 50(b). So long therefore, as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actual fills, should be deemed to be rendered in the parent department also so as to enable him to promotions which are open on seniority cum merit basis. What is indicated here is precisely what is termed in official language the 'next below rule' under which an officer on deputation is given a paper promotion and shown as holding a higher post in the parent department if the officer next below him there is being promoted.'

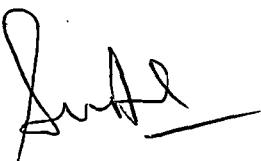
8. Thus it is clear that whenever an employee is on deputation to another department and has been repatriated to his parent department, he is entitled to all the service benefits which his junior has been given in the parent department. If the junior of the petitioner has been promoted, the petitioner also must get promotion from the date when his junior has been promoted on the basis of 'next below rule'.

9. It is also a settled principle of law that seniority or absorption will be determined as per service rules/bye-laws, conditions of service regulations.

10. It is an admitted fact that in this case appointment to the post of Junior Translator was made from an ex-existing post and not by way of promotion. It is also an admitted fact that in view of the notification dated 13.8.85, a circular dated 28.5.90 was issued inviting applications from eligible candidates and the applicant appeared in the written test held on 17.8.90 and the applicant was declared successful. Thereafter the DPC recommended the name of the applicant for appointment on the post of Junior Hindi Translator and the applicant was appointed on the post vide order Annex.A2.

11. The grievance of the applicant in the instant case is that the pay of the applicant was fixed in the pay scale of Rs.1400-2300, treating the applicant as fresh appointee which resulted in the reduction of his basic pay from Rs.1560 to Rs.1400 per month. Order at Annex.A2 clearly reveals that the applicant was appointed on the post of Jr. Hindi Translator on transfer deputation basis in the pay scale of Rs.1400-2300. On the perusal of the pleadings of the parties it also became abundantly clear that the applicant was absorbed on the post of Jr. Hindi Translator vide order dated 9.1.95 w.e.f. 9.11.94.

12. The learned counsel for the applicant has argued that the applicant is entitled to protection of his pay at Rs.1560 on his absorption on the post of Jr. Hindi Translator. On the other hand the learned counsel for the respondents has submitted the



on absorption the applicant has been treated as a fresh appointee and his pay was accordingly fixed in the pay scale Rs.1400-2300.

13. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record and the written submissions filed by the learned counsel for the respondents.

14. This fact cannot be lost sight of that the applicant was appointed after due selection i.e. after written test and interview and was appointed on the post of Junior Hindi Translator on transfer on deputation basis in the grade Rs.1400-2300 and he was also allowed increments for the period he remained on deputation. It is also an admitted fact that ultimately the applicant was absorbed on the post of Jr. Hindi Translator vice versa dated 9.1.95 w.e.f. 9.11.94. No doubt the applicant cannot claim seniority on the post from the date of his appointment on deputation but he can claim protection of his pay if he ^{got} absorbed on the same post.

15. In the facts and circumstances of the instant case, we are of the considered opinion that pay of the applicant cannot be fixed as treating him a fresh appointee on the post, therefore, pay of the applicant cannot be reduced on his absorption on the same post on which he was working before absorption. It is worthwhile to mention here that we have directed the learned counsel for the respondents to furnish relevant rules of fixation of pay of the applicant in the instant case but only a written note was submitted by the learned counsel for the respondents in which it has been made specific that the applicant was treated as a fresh appointee and his pay was fixed accordingly, resulting the reduction of his pay. But this contention is not at all acceptable as no Fundamental Rule in its support has been furnished by the learned counsel for the respondents. The applicant after due selection was recommended for the appointment on the post of Jr. Hindi Translator on transfer on deputation basis, there he worked for four years and earned increments, thereafter he was absorbed on the same post without any repatriation. Therefore, we are of the considered view that pay of the applicant cannot be reduced in such circumstances.

16. We, therefore, allow this C.A and direct the respondents to fix the pay of the applicant at Rs.1560/- on the date of his absorption and not to recover any amount from his salary as over payment and to pay arrears if any to the applicant within



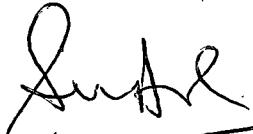
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3 months from the date of receipt of a copy of this order.

17. No order as to costs:


(N.P. Nawani)

Member (A).


(S.K. Agarwal)

Member (J).