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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT JAIPUR BENCH
J A I P U R.

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OA No. 225/1996

Date of order: 3.2.97.

N.L.Khandelwal S/o Late Shri Ram Niwas Khandelwal, aged about 49 years, resident of Plot No.1346-B, Jai Path Barkat Nagar, Tonk Phata, Jaipur-302 015 and presently working as Accountant, Jaipur G.P.O.

: Applicant

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication, New Delhi-110 001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302 007.
3. Senior Superintendent of Post Office, Jaipur City Postal Division, Jaipur - 302 007.
4. Senior Post Master, Jaipur, G.P.O. Jaipur-1.

: Respondents

Mr. C.B.Sharma, counsel for the applicant
Mr. M. Rafiq, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R
(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

Shri N.L.Khandelwal, the applicant herein has approached the Tribunal under Section 19 of the Administrative Tribunal's Act, 1985, to claim the following reliefs :-

- i) that Annexure A-1 dated 12/2/3.96 rejecting the claim made by the applicant and the Audit Inspection Report Annexure A-10 holding the fixation of the applicant as irregular be quashed with all consequential benefits;
- ii) the respondents be directed to fix the pay of the applicant at the appropriate stage in the scale of Rs. 425-640 (Rs.1400-2300)

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after counting the special pay towards the fixation as allowed in 1986, or from the subsequent date of completion of three years continuous service as Accountant and as an alternate to restore the pay fixation as allowed in 1986;

iii) the respondents be further directed to pay arrears etc., after allowing fixation claimed in para 2 above;

iv) the respondents be directed not to recover any amount already paid to the applicant in the year 1986 and 1987 after a lapse of eight years.

2. Facts leading to this application which are not largely in dispute are that the applicant was initially appointed as Time Scale Clerk now designated as Postal Assistant on 1.6.1966. He appeared in the examination of P.O. & R.M.S. Accountant held in the year 1973, qualified the same and the result of it was communicated to the applicant by respondent No.3 vide their letter dated 9.10.1973 (Annex. A-2). It is the case of the applicant that while working in Time Scale, the respondent No.3 utilised the services of the applicant for the periods detailed below in Leave Vacancy and against clear vacant post from time to time:

6.10.69	to	24.12.69
1.1.70	to	22.1.70
25.8.70	to	23.9.70
3.11.73	to	16.12.73
9.9.74	to	28.11.74
21.1.75	to	9.3.75

It is also the case of the applicant that he drew special pay for the aforesaid periods in addition

to his pay and allowances. In the year 1983 One Time Bound Promotion Scheme was introduced by respondent No.1 which provided promotion to next higher scale of Lower Selection Grade (L.S.G.) after completion of 16 years service vide letter dated 17.12.1983. This scheme was made effective w.e.f. 30.11.1983. It is further the case of the applicant that before the implementation of the aforesaid scheme he was promoted and posted as Accountant GPO Jaipur by respondent No.3 on the clear vacant post vide Memo dated 7.4.1984 (Annex.A-3) and he occupied the said post of Accountant on 15.4.1984 and has been continuously working on the same post. After consideration of the candidature of the applicant for promotion to the lower selection grade under the One Time Bound Promotion Scheme, respondent No.3 issued promotion orders of the applicant dated 16.4.1984 (Annex.A-4) made effective from 30.11.1983. At the time of promotion to LSG the applicant was holding the post of Accountant as is evident from Annexure A-4 wherein the name of the applicant finds place at serial No.64. It is also the case of the applicant that after promotion in LSG he was drawing Special Pay @ Rs. 45/- per month (revised Rs. 90/-) prior to his promotion which was not taken into consideration towards fixation of his pay in higher scale Rs. 425-640 (Rs. 1400-2300) on the ground that the applicant had not completed three years continuous service as Accountant on the date of promotion and was not holding the post of Accountant on 30.11.1983 i.e. the date of the implementation of the One Time Bound Promotion Scheme. In the year 1986, respondent

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No.1 issued instructions in connection with One Time Bound Promotion Scheme for counting Special Pay towards fixation after receiving option vide letter dated 26.5.1986 (Annex.A-5). The applicant in response to it gave his option to continue in the old scale with Special Pay till the completion of period of three years on 1.7.1986 (Annex.A-6). After receipt of the option given by the applicant, respondent No.4 referred the matter to the Deputy Director Accounts (Postal) Jaipur for guidance and it was intimated vide letter dated 14.8.1986 (Annex.A-7) that the matter be taken up with the administrative authorities. On receipt of communication dated 14.8.1986 the matter was referred to the appointing authority i.e. respondent No.3 which accepted the option exercised by the applicant and ordered for fixation of pay accordingly vide letter dated 19.9.1986 (Annex.A/8). In pursuance of this letter dated 19.9.1986 (Annex.A/8) the applicant was allowed to draw pay in Old Scale Rs. 260-490 with Special Pay at that time and the applicant was further allowed to cross Efficiency Bar at the stage of Rs. 420/- in old scale vide respondent No.4's Memo dated 27.9.1986 (Annex.A-9). The applicant while exercising the option in the year 1986 vide Annexure A-6 had been requested that he has completed three years as Accountant on 8.6.1986 after counting the periods worked as Accountant between 1969 to 1975 and to allow for fixation w.e.f. 9.6.86 in higher scale of Rs. 425-640 (Rs. 1400-2300) and the same request/option was accepted by respondent No.3 vide their letter dated 19.9.1986 (Annex.A/8). Accordingly,

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the pay of the applicant was fixed in the higher scale after taking into consideration the quantum of Special Pay which was drawn by the applicant upto 8.6.1986 in the old scale Rs. 260-480. His pay was fixed w.e.f. 9.6.1986 instead of 30.11.1983 after approval of the competent authority i.e. respondent No.3 and no benefit of higher scale was extended to him w.e.f. 30.11.1983 upto 8.6.1986.

3. It is the grievance of the applicant that during the course of inspection of GPO Jaipur in the year 1987 the inspecting authorities on behalf of Deputy Director of Accounts (Postal) observed that the fixation of the applicant is irregular on the plea that the order of promotion were w.e.f. 30.11.1983 in the higher scale and at that time the applicant was not drawing special pay. Inspecting authority is, therefore, also ordered for recovery of over payment to the applicant in his inspection report Para 12 (Annex. A-10). It has, therefore, been urged on behalf of the applicant that since his fixation has been done after approval of the competent administrative authorities vide Annexure A-8, action of the inspecting authorities vide Annexure A-10 is illegal, unjustified and also against the principles of estoppel. It is also the grievance of the applicant that after the inspection report of the inspecting authorities, respondent No.4 Senior Post Master, Jaipur GPO Jaipur has re-fixed the pay of the applicant in the higher scale without counting Special Pay

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towards fixation and has also calculated recovery of over payment. The applicant made a representation Annexure A-11 to respondent No.2 but it was rejected in the year 1991 and on his petition made to respondent No.1 in the same year his petition has been rejected vide Annexure A-1 dated 12/12.3.1996. Aggrieved, the applicant has filed this OA to claim the aforesaid reliefs.

4. Respondents have contested this application by filing a written reply. Although the respondents have not denied the factual position stated by the applicant in his OA and also fixation of his pay vide Annexure A-8 dated 19.9.1986, yet they have averred that the Internal Check Party of Postal Accounts in the year 1987 had objected to the pay fixation of the applicant as irregular and accordingly as per the instructions of the Internal Check Party of the Postal Accounts, the pay fixation of the applicant has been modified. It is denied that action of the answering respondents in modifying the fixation of the applicant is violative of the provisions of Articles 14 & 16 of the Constitution of India. It is also urged that the principle of estoppel has no application to the facts and situation of the present case and hence the OA deserves rejection.

5. I heard the learned counsel for the applicant Shri C.B.Sharma and Shri M. Rafiq for the respondents at great length and have examined the record in great detail. There is no denial on part of the respondents

that vide letter dated 26.5.1986 (Annex. A-5) from the Government of India, Ministry of Communication, Department of Posts, New Delhi guidelines were issued in connection with the Time Bound One Promotion Scheme. The relevant portion of this letter lays down as under:-

"As in the case of incumbents holding tenure posts (like W.L.I.s and Treasures) the P.O. and R.M.S. Acctt. holding non tenure posts can also exercise their option to continue as P.O. and R.M.S. Acctt. drawing pay plus special pay for a period of 3 three years and accept the promotion to L.S.C. Cadre after completion of 3 years.

This issue with the concurrence of FA(P) vide their I.D. No.1699/CA(P)/86 dated 6.5.86."

Consequent upon this letter dated 26.5.1986, options were sought from the applicant and he submitted his option on 1.7.1986 (Annex. A-6). In his option, the applicant has clearly stated that "at present he is working as Acctt. Jaipur G.P.O. hereby elect to continue to draw the pay of time scale viz. 260/480 plus special pay till I completed three years service on the post of Acctt. Carrying special pay i.e. upto 8.6.86 as per provision of D.G. Posts instructions contained in his letter No.43-14/84-PE-1 Dated 26.5.86. A statement showing period during which I worked as Acctt./Asstt. Acctt. is enclosed." After the receipt of his option, the matter was considered by the higher authorities and ultimately vide letter dated 19.9.1986 (Annex.A-8) it was directed that the option given by the applicant be accepted and consequently his pay was fixed. Further vide order

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dated 27.9.1986 (Annex. A-9) he was allowed to cross Efficiency Bar at the stage of Rs. 430/- in the old scale. This factual position stated by the applicant has also been admitted by the respondents in their reply Paras 4(vi) to 4(viii) and 4(x). It has been specifically admitted by the respondents that the option of the applicant was accepted by the Senior Superintendent of Post Offices, Jaipur City Division, Jaipur and he was allowed as he opted. The only basis on which the respondents are holding the fixation made in favour of applicant in consequence of the option exercised by him ^{as irregular} vide Annexure A-6/ is that since Internal Check Party of Postal Accountant has objected that the pay fixation of the applicant ^{has been} / irregular as at the time of promotion the applicant was working on the post of Time Scale Clerk on 30.11.1983 and as such on promotion to the higher post his fixation of pay was to be done under the provisions of FR 22 (C). It having not been done so, it was ordered to revise the pay fixation of the applicant. Except the objection raised by the Internal Check Party of the respondents, the respondents have not been able to clarify as to whether the guidelines issued on 26.5.1986 (Annex. A-5) have been superseded by any competent authority. The applicant has in pursuance of the option sought for by the respondents in consequence of the guidelines dated 26.5.1986 (Annex. A-5) submitted his option on 1.7.1986 (Annex. A-6) which was subsequently referred to all the competent authorities and ultimately accepted vide Annexure A-8 dated 19.9.1986. In view of this, the stand taken by the respondents has no substance.

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They having taken into consideration the Special Pay of the applicant while fixing his pay after obtaining option in pursuance of the guidelines issued on 26.5.1986, now cannot retrace their action merely on the ground that the Internal Check Party of the Postal Accountant had objected to the pay fixation made in favour of the applicant.

6. In view of above, I am of the considered opinion that there is no justification for the respondents to reject the claim made by the applicant vide Annexure A-1 and further to revise/modify the fixation of pay of the applicant in pursuance of the objection raised by the Internal Check Party of the Postal Accountant vide Annexure A-10. Both the aforesaid orders dated 12/22.3.1996 (Annex. A-1) and Para of I.F. 1987 of Jaipur G.P.O. (Annex. A-10) do not stand the taste of law and are hereby quashed.

7. Consequently, while quashing Annexure A-1 dated 12/22.3.1996 and the Audit Inspection Report Annexure A-10 issued by the respondents, the OA is allowed. The respondents are directed to fix the pay of the applicant at the appropriate stage as per his option given by the applicant on 1.6.1986 (Annex. A-6) and to calculate and pay to the applicant arrears etc., if any, after fixation as per his option. The respondents shall comply with these directions within a period of three

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months from the date of communication of a copy of this order.

8. The respondents are further directed not to recover any amount already paid to the applicant during the year 1986 and 1987.

9. No order as to costs.

Ratan Prakash
(RATAN PRAKASH)
MEMBER (J)