

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 19/11/2001

OA No. 466/1999

Km. Nilima Jauhari D/o P.C.Jauhari r/c F-32, Gautam Marg, Vaishali Nagar Jaipur at present employed as Managing Director of Rajasthan Small Industries Cooperative Ltd. Udyog Bhawan, Jaipur.

.. applicant

Versus

1. Union of India through Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, New Delhi.
2. Secretary, Department of Personnel, Govt. of Rajasthan, Secretariat, Jaipur

.. Respondents

Mr. Satish Khandelwal, proxy counsel to Mr. R.P.Garg, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

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

Hon'ble Mr. A.P.Nagrath, Administrative Member

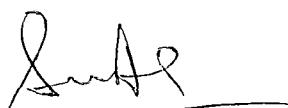
Order

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

The grievance of the applicant in this OA is that vide order dated 19.11.98 (Ann.A1), the applicant was allowed Super Time Scale of IAS (Rs. 18400-500-22400) w.e.f. 6.12.95, the date from which her junior Mrs. Meera Maharshi, IAS was granted, but the actual payment was made to the applicant from the date of her joining back in the State Cadre i.e. from 31.7.1998. The applicant submitted representation dated 21.11.1998 and Notice for Demand of Justice dated 6.9.1999 to respondent No.2 for grant of difference of salary from 6.12.1995 to 30.7.1998 alongwith interest at the rate of 15% per annum, but with no result.



2. The facts of the case, as stated by the applicant, are that the applicant is a member of IAS (Rajasthan Cadre) 1979 batch and Government of Rajasthan gave Super Time Scale of IAS to all officers of 1979 batch w.e.f. 1.12.1995. It is stated that on 17.11.1998, an order was issued by the Government of Rajasthan by which applicant was given Super Time Scale of IAS w.e.f. 6.12.1995 but the payment was made to the applicant from the date of joining the State Cadre i.e. from 31.7.1998 and in this way the applicant was deprived the actual payment of Super Time Scale of IAS w.e.f. 6.12.1995 to 30.7.1998. It is stated that as per the directions of the Ministry of Personnel, if Super Time Scale is granted to the officer of a particular batch, any officer senior to the officer proposed to be promoted must be given option for serving back to the present cadre for getting promotion, but the Government of Rajasthan did not ask the applicant for submitting option for reverting back to the Rajasthan Cadre. It is stated that applicant was on medical leave in December, 1995 till early January, 1996 and when the applicant came to know about the promotion of the officers of 1979 batch in Super Time Scale of IAS, the applicant informed the Chief Secretary of the Government of Rajasthan about not having received the option, but no satisfactory answer was given to the applicant. It is also stated that applicant was always ready and willing to be reverted back to the State Cadre but no option was given to the applicant reverting back to the State Cadre. When the applicant was reverted back to the State Cadre on 31.7.1998, thereafter vide order dated 17.11.1998 the Super Time Scale of IAS was granted to the applicant w.e.f. 6.12.1995 but the actual payment was to be made w.e.f. 31.7.1998 resulting the loss of Rs. 1,05,578/- to the applicant. It is also stated that applicant was deprived from her legitimate claim. Therefore, action of the respondent No.2 is arbitrary, discriminatory and in violation of Article 14 and 16 of the Constitution of India. Therefore,



applicant filed this OA for the reliefs as above.

3. Reply was filed. In the reply it is stated that applicant had not shouldered the responsibility of the Super Time Scale post, therefore, she was not entitled to actual payment w.e.f. 6.12.1995 to 30.7.1998. It is denied that the applicant was deprived of her legitimate claim or there was any arbitrariness or mala-fide on the part of the respondents. It is stated that when the applicant had learnt about promotion of the officers of 1979 batch in the Super Time Scale of IAS, she ought to have approached the Establishment Officer, Department of Personnel and Training for exercising option to revert her to the State Government and the applicant has not explained why she did not approach the Establishment Officer for her reversion to the State Government. Therefore, the applicant is not entitled to actual payment in respect of Super Time Scale w.e.f. 6.12.1995 to 30.7.1998 and the applicant is not entitled to the reliefs sought for.

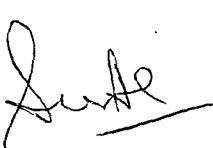
4. Heard the learned counsel for the parties and also perused the whole record.

5. After perusal of the averments of the parties and letter dated 8.9.94 issued by the Government of India, Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training), New Delhi, it becomes abundantly clear that whenever an IAS officer serve at the Centre on tenure deputation basis and his case is cleared for promotion for the Super Time Scale in the Cadre, an immediate intimation of the same could be conveyed by the concerned State Government to the Establishment Officer in the Department of Personnel and Training. The Establishment Officer in turn could provide an option to the concerned officer through his Central Administrative Ministry to revert to his Cadre in order to



avail of the actual benefits of the promotion. If the officer so opts, the Establishment Officer would take steps to revert the officer to the State concerned. If, however, the officer opts to continue at the Centre, he would be eligible to draw only the pay of the post held by him at the Centre. The instructions contained in the letter dated 8.9.1994 issued by the Ministry of Personnel, Public Grievances and Pensions makes it clear that officer would be eligible to draw the pay of the post held by him at the Centre, if he opts to continue at the Centre. But, in the instant case the officer has not been asked to submit his option. Therefore, denying the actual benefits of Super Time Scale to the applicant is not only arbitrary, unjust and unreasonable but it is also violative of Article 14 and 16 of the Constitution of India being in gross violation of the directives issued by the Government of India, Ministry of Personnel etc.

6. Admittedly, the applicant in this case was not given any option of reverting back to the Parent Cadre and getting the promotion. As per the instructions contained in the letter dated 8.9.1994, it was obligatory on the part of the State Government to seek options from the officer concerned for his/her reverting back to Parent Cadre. The burden of submitting option cannot be shifted to the applicant as the applicant has clearly stated that she was on medical leave in December, 1995 till early January, 1996 and when she came back for duty in January, 1996, then only she came to know the promotion of the officers of 1979 batch and thereafter she wrote to the Chief Secretary, Government of Rajasthan about not having received the option. Therefore, in the facts and circumstances as narrated before us by the applicant and the Department, we are of the opinion that denial of actual payment of Super Time Scale of IAS to the applicant w.e.f. 6.12.1995 to 30.7.1998 was not in accordance with the instructions contained in the letter dated 8.9.94 and applicant was entitled to actual



payment of the Super Time Scale of IAS w.e.f. 6.12.1995 to 30.7.1998.

7. The learned counsel for the respondents has argued that the applicant did not shoulder the responsibility of the higher post, therefore, denying him the actual payment of the Super Time Scale was perfectly legal. In support of his contention he has referred the order passed by this Tribunal on 10.4.2000 in OA No. 86/97, Kanhaiya Lal Vs. Union of India and ors. But in the facts and circumstance of the present case, the case relied upon by the learned counsel for the respondents is distinguishable as the case referred to by the learned counsel for the respondents pertains to a railway employee whose case was specifically covered by the provisions given in Rule 228 of the IREM. On the other hand, it was not sufficient to deny the actual payment of the Super Time Scale only on the ground that applicant did not shoulder the responsibility of the higher post. The Department has to examine the facts and circumstances of each case and then use its discretion for granting back wages, but in no case discretion used by the Department should be unreasonable.

8. The learned counsel for the respondents also referred the case of Shri Vinod Bharti v. State of Bihar, 2000 SCC (L&S) 417 but looking to the facts and circumstances of this case, this citation also does not help the respondents, in any way. On the other hand, Hon'ble the Supreme Court in Hukmi Chand v. Jhabua Cooperative Central Bank Ltd., Jhabua (M.P.) and Anr., 1998 SCC (L&S) 509 held that employer has the discretion to grant back wages according to the facts and circumstances of each case. At the same time, it is also held that such exercise of discretion shall not be unreasonable and the grant of back wages will depend on the facts and circumstances of each case. In C.R. Samajpati v. State of



Gujrat, Gandhinagar, (1990) 12 ATC 471, the Ahmedabad Bench of the Tribunal relying on the decision of the Hon'ble Supreme Court in State of Mysore v. C.R.Seshadari held that when a promotion has been deemed to have been given with retrospective effect, the benefit of pay and other emoluments from that date cannot be denied and the plea that the government servant has not worked in the said promotion post cannot be accepted.

9. In the instant case, it becomes abundantly clear that the State Government failed to seek an option from the applicant as per the instructions contained in the letter dated 8.9.1994 and for non compliance of the instructions issued for this purpose, does not give any discretion to the respondent Department to deprive the applicant from the benefits of actual payment of the scale of pay applicable to the applicant.

9. We, therefore, allow this Original Application and direct the respondents to pay arrears of pay and allowances etc. consequent on fixation of pay of the applicant w.e.f. 6.12.1995 in pursuance of the order dated 19.11.1998 alongwith interest at the rate of 12% per annum. No order as to costs.

Thyrs
(A.P.NAGRATH)

Adm. Member

S.K. Agarwal
(S.K.AGARWAL)

Judl. Member