

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR

11th day ~~December~~ two thousand three (11.12.2003)

Original Application No. 42/2002

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

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Sulh Ram Meena
S/o Shri Jansi Lal Meena
Government Quarter,
Sub Post Master,
Phoota Kot Post Office
Karauli

: Applicant

rep. by Mr. C. B. Sharma : Counsel for the applicant.

versus

1. Union of India, through Secretary
to the Government of India
Department of Posts,
Ministry of Communication,
Dak Bhawan, New Delhi 110 001
2. Chief Post Master General,
Rajasthan Circle,
Jaipur 302 007
3. Superintendent of Post Offices,
Swai Madhopur Postal Division
Sawaimadhopur.
4. Post Master, Hindaun Head Post
Office, Hindaun Dist. Karauli. : Respondents.

Mr. B.N. Sandu : Counsel for the respondents.



ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri Sukh Ram Meena has filed this O.A. under Sec. 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- i) that the entire record relating to the case be called for and after perusing the same respondents may be directed to fix the pay of the applicant at the stage of Rs. 6200/- as on 1.1.2000 with all consequential benefits including arrears of pay and allowances.
- ii) That the respondents be further directed to allow the applicant pay and allowances by way of financial benefits of two increments as on 1.1.98 and 1.1.99 at the rate of Rs. 125/ per month + other allowances which were not allowed during the currency of punishment.

2. We have heard the learned counsel for the parties and have carefully perused the records of this case.

3. The controversy involved in the instant case is at a very narrow compass. The applicant was initially appointed as clerk on 10.7.71, and thereafter he enjoyed the OTBP benefit on completion of 16 years, in the year 1987. He was faced with a charge sheet under Rule 16 of the CCS(CCA) Rules, 1965, which culminated into the penalty of reducing the pay of the applicant by one stage from Rs. 1900/- to Rs. 1760/- in the pay scale of Rs. 1400-2300, with immediate effect vide order dated 16.6.97 with a further condition that he would earn his due increments during the period of reduction and that on expiry of this period, the reduction will not have the effect of his postponing his future increments. The appeal and revision petition filed against the same did not yield any fruit.

4. There was revision of pay in the year 1995 as a result of the implementation of the recommendations



of the 5th Pay Commission. His pay was fixed at Rs.5375/- with the date of next increment as 1.1.97, in the scale of pay of Rs. 4500-7000. His pay was supposed to be fixed at Rs. 5500/-, which came to be reduced by one stage of Rs.125/- as on 1.6.97 and fixed at Rs.5375/-, while implementing the punishment order dated 16.6.97 (Annex. A.1). He represented to the authorities for the release of his normal increments due on 1.1.98 and 1.1.99. At one stage it was released but subsequently, the same were ordered to be recovered. The respondent No. 3 directed respondent No. 4 that the recoveries made from the applicant was not correct, but still respondent No. 4 did not allow due increments during the currency of punishment. Subsequently vide communication dated 5.4.99, both the increments were allowed after the currency of the penalty despite the specific direction that the applicant would earn his normal increments. ~~Further during~~ the period of reduction the applicant has been allowed higher scale of pay of Rs.5000-8000, on completion of 26 years and the applicant opted for pay fixation with effect from 1.1.2000, but the same was not done as per his option. The O.A has been filed on a number of grounds mentioned in para 5 and its sub-paras of the O.A. We shall deal with them in the later part of this order. ✓

5. ~~It has been averred in~~ the reply that as per instruction No. 2 below PR 29, increments falling due during the currency of punishment were not to be drawn till the expiry of the punishment and it was pointed out that the increments released were irregular and as per the provisions of Government of India

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No. 17 below rule 11 of the CCS(CCA) Rules, 1965, recovery of the said amount was in order. As per the said instructions, increments during the period of reduction are to be allowed after the expiry of two years i.e. in May 1999. Since the applicant has opted to retain his old date of increment, his pay fixation has been done and this punishment did not come in the way of fixation of his pay on promotion to BCR. The grounds have been generally denied. The respondents have prayed for the dismissal of the O.A.

6. Both the learned counsel have reiterated their pleadings and there is absolutely no quarrel on the factual aspect of the matter and it is only the legal aspect that is required to be looked into in this case.

7. To appreciate, the controversy involved in the instant case, we find it expedient to extract the relevant provisions relating to the reduction of pay by way of punishment as under:

11. Penalties

Minor Penalties

- | | | |
|-----------|--|----|
| 1) | XX | XX |
| ii) | XX | XX |
| iii) | XX | XX |
| (iii) (a) | reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension. | |
| iv) | XX | XX |



Major Penalties-

- v) save as provided for clause (iii) (a), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

The penalty which has been imposed is in the following terms:

" The charge levelled against Sukh Ram Meena are very grave in its nature and the way of submitting his representation of defence no where stands to save him from the charges. I therefore, S. M. Basanwal, SPO, SWM having been satisfied with resulting of proving of charges imposed the penalty upon Shri Sukh Ram Meena SPAM Bonli and ordered the pay of Shri Sukh Ram to be reduced by one stage from Rs.1800/- to Rs.1750/- in the scale of Rs.1400-40-1800-EE-50-2300 with immediate effect for a period of 2 years. It is further ordered that the said Shri Sukh Ram Meena will earn increments of pay during the period of reductions and that on the expiry of this period, the reduction will not have postponing his future increment of his pay. "

A conjoint reading of the penalty order vis-a-vis the relevant rule would reveal that certain discretion had been given to the competent authority, i.e. the Disciplinary Authority, who is required to specify as to whether the reduction of would have the effect of postponing his future increments or the reduction would effect of not have/postponing his future increments and the individual could earn increments during the currency of penalty and a specific order has to be passed in this regard. A simple reading of the operative portion of the punishment order makes it clear that Shri Sukh Ram will earn increments of pay during the period of reduction.

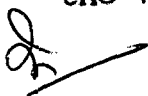
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The authorities cannot now turn round and interpret the order contrary to its version. The law on the point of interpretation of the documents is well settled by the Hon'ble Supreme Court in the case of Mohinder Singh Gill and another vs. The Chief Election Commissioner New Delhi and others (AIR 1973 SC 251), wherein their Lordships have held that the order is to be read as it is and nothing can be added and nothing can be subtracted from it and the same cannot be changed by issuing a corrigendum or by fresh affidavits. The relevant portion reads as under:

" When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge get validated by additional grounds later brought out (AIR 1952 SC 16, Rel. on)

8. Applying the aforesaid principles of law we have no doubt that the applicant would be entitled to his normal increments during the currency of penalty and denying the same is ex-facie arbitrary and unfair. Therefore the contention of the learned counsel of the applicant is well founded and has our concurrence.


9. As regards the instruction which are being relied upon by the learned counsel for the respondents at Annex. R.3, are concerned, the same cannot come in the way of the applicant and the submissions of the learned

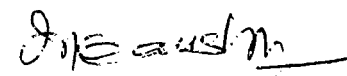


counsel for the respondents cannot stand and we are
unable to subscribe ^{to} them.

10. Before parting with the case we would enter
into the caveat with the respondents that the respondents
should ~~not~~ interpret their orders in a fanciful manner
~~dragging~~ the employees into litigation and we hope
and trust that they shall be very careful in future.

11. The upshot of the afore said discussion
is that we find ample substance and merit in this
application and the same stands allowed. The applicant
would be entitled for release of two increments due on
1.1.98 and 1.1.99 respectively along with other
allowances and shall also be entitled to all consequential
benefits. This order shall be complied within a period
of three months from the date of receipt of a copy
of this order. In the facts and circumstances of
this case, we leave the parties to bear their own
costs.


(A.K. Bhandari)
Administrative Member


(J.K. Kaushik)
Judicial Member.

jsv.