

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

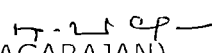
Date of Order: 03.03.2014

OA No. 254/2010

Mr. C.B. Sharma, counsel for applicant.
Mr. Amit Mathur, proxy counsel for
Mr. R.B. Mathur, counsel for respondents.

Arguments heard.

Order is reserved.


(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

03.03.2014

The order is pronounced
in the open court today.

Q

Draft order in OA No. 254/2010 (Smt. Indubala Jain vs. Union of India & Others) is submitted herewith for consideration.

Anil Kumar
(Anil Kumar)
Member (A)

Hon'ble Member (J)

I agree
H. J. Patil

~~~~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 254/2010

ORDER RESERVED ON 03.03.2014

DATE OF ORDER 6-3-2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

Smt. Indubala Jain wife of Shri Shanti Kumar Jain, aged about 55 years, resident of 92/34, Durga Path, Patel Marg, Mansarovar, Jaipur -302020 and presently working as Social Security ASection Supervisoristant, Office of Employees Provident Fund Organization, Regional Office, Nidhi Bhawan, Jyoti Nagar, Jaipur.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Ministry of Labour, Shram Shakti Bhawan, New Delhi.
2. Central Provident Fund CommiSection Supervisorioner, Employees Provident Fund Organization, Bhavishya Nidhi Bhawan, 14, Bhikha ji, Cama Palace, New Delhi.
3. Regional Provident Fund CommiSection Supervisorioner (I), Rajasthan, Regional Office, Employees Provident Fund Organization, Nidhi Bhawan, Jyoti Nagar, Jaipur.
4. ASection Supervisoristant Provident Fund CommiSection Supervisorioner (Administration), Regional Office Rajasthan, Employees Provident Fund Organization, Nidhi Bhawan, Jyoti Nagar, Jaipur.

... Respondents

(By Advocate: Mr. Amit Mathur proxy to Mr. R.B. Mathur)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

- “(i) That the respondents may be directed to allow the applicant to hold the promotional post of Section

Anil Kumar

- Supervisor in the pay band -2 of Rs.9300-34800 with grade pay of Rs.4200 with due benefits and seniority w.e.f. 11.06.2002 by quashing order dated 22.07.2009 with the letter dated 06.08.2009 (Annexure A/1 & A/15) with all consequential benefits.
- (ii) That respondents be further directed to hold good promotion orders in respect of applicant issued vide orders dated 16.01.2009 and 22.05.2009 (Annexure A/2 & A/6) with the seniority as allowed vide Annexure A/7 by quashing letter dated 23.02.2010 (Annexure A/21).
 - (iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
 - (iv) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was promoted to the post of Section Supervisor against vacancy for the year 2002-03 vide order dated 16.01.2009 (Annexure A/2). In compliance of this order, the applicant submitted his joining report on 21.01.2009. The applicant further requested that if any rotational transfer be ordered, the same on the basis of seniority and further the applicant be continued at Jaipur, as her husband is serving in the State Government at Jaipur (Annexure A/3).

3. The respondent no. 3 treated the request of the applicant as conditional joining and directed the applicant to submit an unconditional joining report (Annexure A/4). In compliance of this letter, the applicant submitted an unconditional joining report.

4. The office order was issued on 04.03.2009 (Annexure A/5) to this effect.

Anil Kumar

5. Subsequently, the respondent no. 3 passed the promotion order dated 22.05.2009 on regular basis. The applicant was also promoted. The date of regularization of the applicant has been shown as 02.03.2009.

6. The respondents also issued a seniority list of Section Officers on 25.06.2009 in which the name of the applicant has been shown at sr. no. 138. In this seniority list, the date of the regular promotion of the applicant has been shown as 06.11.2002 but in the remark column, it has been stated that monetary benefits payable w.e.f. 02.03.2009.

7. The applicant represented before respondents that her joining be treated as 21.01.2009 instead of 02.03.2009 vide letter dated 07.07.2009 (Annexure A/8). The respondents rejected the request of the applicant. This rejection has been issued by an incompetent authority.

8. The applicant was transferred from Regional Office, Jaipur to Sub Regional Office Udaipur vide office order dated 09.07.2009 (Annexure A/11). She was to be relieved from Jaipur on 10.07.2009. Subsequently on her request, the date of relieve was extended upto 17.07.2009 vide office order dated 09.07.2009 (Annexure A/12).

Anil Kumar

9. The respondents issued the transfer order of the applicant from Jaipur to Udaipur without any base. However, the applicant requested the respondent that due to her ill-health, she is not able to join at Udaipur and, therefore, she sought reversion from the post of Section Supervisor to the post of Social Security Assistant at Jaipur. The respondents accepted the request of the applicant and issued reversion order dated 22.07.2009 (Annexure A/1). This order of acceptance of reversion is passed by an incompetent authority as RPFC-1 is competent to pass this order but only the Assistant PF Commissioner (Adm.) has issued this order.

10. Subsequently, the applicant requested the respondents that she wants to withdraw her request for reversion vide letter dated 28.07.2009 (Annexure A/14). This request was also rejected by an incompetent authority vide letter dated 06.08.2009 (Annexure A/15).

11. The applicant submitted that her joining dated 26.08.2009 on the basis of promotion order dated 22.05.2009 (Annexure A/6). However, the respondent no. 4 vide letter dated 29.09.2009 rejected the same (Annexure A/18).

12. The applicant made a representation dated 08.10.2009 to the effect that her reversion order has not been issued by a competent authority and that the condition that she will not be considered for promotion to the post of Section Supervisor for one

Anil Kumar

year is not according to the rules as she did not forgo her promotion. She accepted the promotion and subsequently asked for reversion (Annexure A/19).

13. Under the Right to Information Act, she has been informed that 06.11.2002 is the date of her notional promotion as she was eligible for promotion from that date whereas her actual date of promotion is 02.03.2009.

14. The respondents vide letter dated 23.02.2010 (Annexure A/21) rejected her request and also denied her monetary benefits from the date of her promotion. Therefore, the action of the respondents in not allowing the applicant to join on the post of Section Supervisor after her promotion order dated 22.05.2009 (Annexure A/6) is arbitrary, and that further not allowing the pay fixation as per rules is also arbitrary and illegal. Therefore, the OA be allowed.

15. On the other hand, the learned counsel for the respondents submitted that the applicant was promoted to the post of Section Supervisor vide order dated 16.01.2009. In the case of applicant, it has been mentioned in the promotion order itself that her promotion would be from the actual date of assumption of charge to the post of Section Supervisor. This was the notional promotion on regular basis.

Anil Kumar

16. She submitted the joining report on 21.01.2009 but it was a conditional joining with the request to retain her at Jaipur. The conditional joining was not acceptable. Therefore, she was requested to submit unconditional joining report. She submitted the unconditional joining report and this was accepted by the respondents vide order dated 04.03.2009 (Annexure A/5). Thus her joining would be effective from 02.03.2009 and not from 21.01.2009 when she submitted the conditional joining. The respondents have admitted that vide promotion order dated 16.01.2009, the applicant was promoted against the vacancy of the year 2002-03 and that in the seniority list published on 25.06.2009 (Annexure A/7), the name of the applicant appears at sr. no. 138. Even in the promotion order dated 22.05.2009, the period of regularization of the applicant has been mentioned as 02.03.2009, which was her actual date of joining. Even in the seniority list, it has been mentioned that the applicant will be entitled for the actual benefits from the date of her joining.

17. The learned counsel for the respondents further submitted that there was no difference in the order dated 16.01.2009 (Annexure A/2) and order dated 22.05.2009 (Annexure A/6) so far as it relates to the applicant. No additional benefit was given to the applicant in the order dated 22.05.2009 (Annexure A/6). Therefore, the applicant has no reason to be aggrieved about her date of joining as she gave unconditional joining only w.e.f. 02.03.2009.

Anil Kumar

18. The learned counsel for the respondents further submitted that her application dated 07.07.2009 (Annexure A/8) has been rejected by the competent authority. He drew our attention to the order dated 22.07.2009 (Annexure A/1) which clearly states that this office order was issued with the approval of RPFC-1, who is the competent authority to pass the reversion order. The Assistant PF Commissioner (Adm.) has only communicated the order. Therefore, he submitted that the reversion order has been passed by a competent authority and there is no illegality in this order.

19. The learned counsel for the respondents further submitted that the applicant could not have made a request to join on the post of Section Supervisor on the basis of office order dated 22.05.2009 (Annexure A/6) because it was only a review DPC for the consideration of those people who have represented to the Department. The status of the applicant remains unchanged. The order dated 22.05.2009 was not a new order. No new benefits was advanced vide order dated 22.05.2009. That apart, the order dated 22.05.2009 was duly published and notified on the notice board. Therefore, there was no question for taking action over the alleged joining report on 26.08.2009. The aforesaid report is of no use.

20. The applicant's demand for the withdrawal of order after it was accepted against the principles of estoppel and her demand was illegal.

Anil Kumar

21. The learned counsel for the respondents further submitted that while applying for the reversion, the applicant stated that she was ill on medical grounds and was unable to go to Udaipur. This letter is dated 16.07.2009 but suddenly on 28.07.2009 she becomes hale & hearty and, therefore, requested for withdrawal of request for reversion.

22. With regard to the fixation of pay, the learned counsel for the respondents submitted that from the date of her joining dated 02.03.2009 till the date of her reversion i.e. 22.07.2009, she has been paid the pay of Section Supervisor, the post on which she actually worked. Since she sought reversion, her pay could not have been fixed notionally w.e.f. 02.03.2009. Had she continued on the post of Section Supervisor then her pay would have been fixed accordingly. Therefore, this OA has no merit and it should be dismissed with costs.

23. The applicant has also filed the rejoinder.

24. Heard the learned counsel for the parties and perused the documents on record.

25. It is not disputed that the applicant was promoted on the post of Section Supervisor vide order dated 16.01.2009 (Annexure A/2). From the perusal of Annexure A/3, which is the

Amal Kumar

joining report of the applicant, it is clear that it is a conditional joining report. She made request that she may be retained at Jaipur. The respondents duly communicated to the applicant vide letter dated 24.02.2009 (Annexure A/4) that conditional joining report is not acceptable as promotion matter is separate from routine transfer policy and both may not be linked. No relaxation in the transfer policy has been prescribed by Head Office. She was advised to submit unconditional joining report within three days from the date of receipt of this order. Subsequently she submitted an unconditional joining report and the respondents allowed her to join to the post of Section Supervisor on regular basis w.e.f. 02.03.2009. Therefore, we are of the opinion that the request of the applicant to treat her to have joined on the post of Section Supervisor w.e.f. 21.01.2009 cannot be accepted. She was duly informed by the respondents that conditional joining is not accepted and in compliance she submitted an unconditional joining report. Therefore, now the applicant cannot turn back and ask for being treated as joined on the post of Section Supervisor from 21.01.2009. Thus we do not find any infirmity in the action of the respondents to treat the applicant to have joined to the post of Section Supervisor w.e.f. 02.03.2009.

26. From the perusal of the record, it is clear that the applicant herself made a request for reversion from the post of Section Supervisor to Social Security Assistant vide letter dated 16.07.2009 on medical grounds (Annexure A/13). This request was accepted by the respondents vide order dated 22.07.2009.

Anil Kumar

We have carefully perused the order passed by the respondents. It clearly states that this order has been issued with the approval of RPFC-1. It was not disputed by the learned counsel for the applicant that RPFC-1 is not competent authority to issue such order. The contention of the learned counsel for the applicant that order dated 22.07.2009 should have been signed by the competent authority i.e. RPFC-1 but it is signed by Assistant PF Commissioner (Adm.). Therefore, this order is illegal. However, we are not inclined to agree with the submission made by the learned counsel for the applicant in this regard. The learned counsel for the respondents has pointed out that office order dated 22.07.2009 has only been communicated under the signature of Assistant PF Commissioner (Adm.). Further the order itself states that it has been issued with the approval of RPFC-1. It cannot be said that it has been issued by an incompetent authority. We are fully in agreement with the arguments of the learned counsel for the respondents that since the order has the approval of the competent authority, therefore, mere communication by a lower authority would not make the order illegal and hence the contention of the applicant that the impugned order suffers for want of competency is rejected. Thus we do not find illegality/infirmity in the order dated 22.07.2009 (Annexure A/1) vide which the applicant's reversion order has been passed on her own request. Therefore, the applicant is not entitled for any relief on this ground.

Anil Kumar

27. The learned counsel for the respondents denied that order dated 07.07.2009 was rejected by an incompetent authority. We have carefully perused the promotion order dated 22.05.2009 (Annexure A/6). This promotion order is based on the recommendations of the Review Departmental Promotion Committee. It is not a fresh promotion order. The name of the applicant in this promotion order is at sr. no. 23. In this promotion order also, the date of regularization of the applicant has been shown as 02.03.2009. Therefore, the contention of the applicant that the joining report of the applicant 26.08.2009 has a separate cause of action, cannot be accepted. Moreover this order was dated 22.05.2009 when the applicant was already working as Section Supervisor and after passing of order dated 22.05.2009, she decided to seek reversion vide his letter dated 16.07.2009 (Annexure A/13). Vide this promotion order, 79 employees were promoted. Therefore, the contention of the applicant that she was not aware of the order dated 22.05.2009 cannot be accepted. The letter dated 26.08.2009 appears to be an afterthought. Therefore, she is not entitled for any relief on her joining report dated 26.08.2009 (Annexure A/16).

28. Thus we are of the considered opinion that the applicant is not entitled for any relief with regard to her reversion from the post of Section Supervisor to Social Security Assistant.

29. With regard to fixation of pay, the learned counsel for the respondents submitted that since the applicant sought reversion,

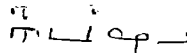
Anil Kumar

therefore, her pay could not be fixed taking into account the year of vacancy 2002-03. We are not inclined to agree with the contention of the respondents. It is not disputed that the applicant joined on the post of Section Supervisor w.e.f. 02.03.2009. Therefore, from date she joins on the promotional post, till such time she reported in the reverted post she is entitled for salary in the promotional post on the ground that she worked in the promotional post and discharged the duties attached to the promotional post. Hence, She is entitled to such pay as she would have been, if she had continued on that promotional post till the date of her reversion i.e. 22.07.2009. Therefore, we are of the opinion that she is entitled for fixation of pay according to the rules for the period between 02.03.2009 and 22.07.2009. We make it clear that the pay of the applicant is also required to be refixed in the pay scale attached to the post to which she is reverted from the date on which she reported in reverted post. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order.

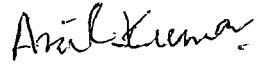
30. The learned counsel for the applicant also submitted at Bar that in the reversion order, it has been mentioned that she will not be considered for promotion at least for a period of one year. This order is dated 22.07.2009. Therefore, the applicant is entitled for consideration for promotion after 22.07.2010. Since there is no specific prayer in this regard in the OA, therefore, we leave this matter to the respondents to consider as per rules..

Anil Kumar

31. With these directions and observations, the OA is disposed of with no order as to costs.


(M. NAGARAJAN)
MEMBER (J)

AHQ


(ANIL KUMAR)
MEMBER (A)