

(Reserved on 19.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00577/2017

This the **09th** day of **October, 2018**

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Nandlal Kushwaha, aged about 71 years, S/o R.B. Kushwaha, R/o – SA-17/144/15, M. Agrasen Nagar, Pahariya, District - Varanasi.

.....Applicant

By Advocate: Shri Nand Lal Kushwaha, the applicant in person

Versus

1. Union of India through the Secretary / Director General, Ministry of Communication, Department of Posts, India, Dak Bhawan, Sansad Marg, New Delhi.
2. Director of Accounts (Postal), Aliganj, Lucknow.
3. Sr. Accounts Officer, o/o the Director of Accounts (Postal), Aliganj, Lucknow.

.....Respondents

By Advocate : Shri Anand Kumar Pandey

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for following main relief :-

“1. to direct the respondents to restore the pay of the applicant Rs. 455/- on 26.02.1977 and his further pay and pension may also be fixed and drawn on the basis of his pay Rs. 455/- on 26.02.1977.”

2. The applicant has filed the present OA against his pay fixation Rs. 425/- as on 26.02.1977 in place of Rs. 455/-. It is stated in the OA that the applicant, who was initially appointed as Postal Clerk in pay scale of Rs. 110-180, was posted as Accountant in Head Post Office, Mirzapur in pay scale of Rs. 240-360 and while working as such, he was allowed to officiate as Assistant Post Master (in short APM) Accounts w.e.f 11.02.1977 as the regular incumbent of the post proceeded on leave. The contention of the applicant is that the minimum scale of APM Accounts was higher than the maximum pay scale of the Accountant, for which his pay was fixed at Rs. 425/- w.e.f. 11.02.1977 in the light of FR 22-1(a)(2) (Annexure A-4). It is stated that while working as officiating APM, the applicant was promoted and joined as Complaint Inspector Post Office in Banda Division on 26.02.1977 after being relieved as APM on 17.02.1977 and on the basis of officiating pay Rs. 425/-, the pay of the applicant on the post of Complaint Inspector was fixed at Rs. 455/- under FR 22(c) (now revised to FR 22-1(a)(1) (Annexure A-5). But, the respondents No. 2, as per annexure A-2, reduced the pay of the applicant from Rs. 455/- to Rs. 425/-. Thereafter, treating the pay of the applicant Rs. 425/- on 26.02.1977, the Director of Postal Accounts, Lucknow has fixed the pay and pension of the applicant. The applicant represented the respondent No. 2 vide representation dated 13.02.2017 (Annexure A-6) followed by reminder dated 01.04.2017 (Annexure A-7) for restoration of his pay from Rs. 425/- to Rs. 455/-.

3. Having received no response to his letter dated 13.02.2017, the applicant has filed the instant original application mainly on following grounds :-

- The pay of the applicant as Complaint Inspector in Banda Division was fixed at Rs. 455/- on the basis of officiating pay on the post of APM (Accounts), Mirzapur, which was made as per FR 22(c) (now revised to FR (a)(1)).
- The respondent No. 2 arbitrarily and without any show cause notice, reduced the pay of the applicant from Rs. 455/- to Rs. 425/-, although he had no authority to withdraw the benefit given under FR-1(a)(1)(2).

4. The respondents filed Counter Affidavit (in short CA) stating therein that the applicant was drawing pay Rs. 324/- in Postal Clerk / Accountant cadre in substantive capacity and his pay at Rs. 425/- was fixed when the applicant was allowed to work as APM purely temporary and adhoc basis. It is further stated that the pay of the applicant was wrongly fixed by the Post Master, Banda HO at Rs. 455/- under FR-C after his promotion as Complaint Inspector after taking into account his adhoc pay Rs. 425/- as APM which the applicant enjoyed from 11.02.1977 to 25.02.1977. It is contended that on the objection raised by the Inspection Party of Director of Accounts (Postal), Lucknow, the wrong fixation of pay of the applicant was corrected by fixing at Rs. 425/- as per provisions of FR 22-C (Annexure -B to the CA).

5. The applicant has filed Rejoinder Affidavit stating that if a person is asked to officiate on higher post on temporary basis, he is entitled for all the benefits applicable to the higher post. In support of his claim, the applicant has referred to Rule 50 of Postal Manual Vol. IV which provides procedure for officiating arrangement. He has also referred to the instructions of DG (Posts) dated 28.07.2011 (Annexure RA-2). The applicant has also cited an order dated 25.02.2013 passed by Hon'ble High Court at Jabalpur in W.P. No. 6284/2008 (S) – UOI & Ors. Vs. Radhe Lal Gaud (Annexure RA-1) in support his claim that he was entitled to the basis pay of Rs. 425 w.e.f. 11.01.1977 after he joined as APM on officiating basis.

6. Shri Nand Lal Kushwaha, the applicant in person and Shri Anand Kumar Pandey, learned counsel for respondents were heard. We have also considered the written arguments filed by the applicant as well as the learned counsel for respondents, in which the averments in their respective pleadings are reiterated.

7. We have considered the pleadings as well as the materials available on record. The applicant had retired on 31.05.2006 and his pay has been

corrected/ reduced around that time after it was pointed out by the Inspection team of the department and the pension of the applicant was fixed in 2006 on the basis of the revised / reduced pay and the applicant did not protest about it for more than 10 years till he submitted the representation dated 11.02.2017 to the respondents about the reduction of his basic pay w.e.f. 1977 and when no action was taken, he filed this OA. There is no application for condonation of delay.

8. On merits, the applicant has furnished the letter dated 28.07.2011 of DG (Posts) with the Rejoinder. A plain reading of this circular will indicate that it does not specify how the pay of an employee, who is posted to a higher post, is to be fixed. Further, this letter dated 28.07.2011 will not have retrospective effect so as to cover the applicant's claim of higher basic pay of Rs. 425/- w.e.f. 11.02.1977 when he was posted as APM on officiating basis.

9. The applicant has referred to the FR 22-c in his OA and the rule 50 of the Postal Manual Vol. IV in para 4(ii) of the Rejoinder to justify his claim. Regarding the applicant's claim of officiating promotion for the period of about 7 days from 11.02.1971 till 17.02.1977 to the post of APM (Accounts) in pay scale of Rs. 425-15-560-20-640 to be correct, it is seen that no order of his appointment as APM (Accounts) on officiating promotion has been furnished by the applicant. It is noted that he was regularly promoted to the post of Complaint Inspector in the pay scale of Rs. 425-15-500-EB-15-560-20-700 w.e.f. 18.02.1977. The benefit under FR 22-c is available in case the applicant would have been formally promoted to the post of APM (Accounts) in officiating capacity as claimed by him. Since no such order is issued in his favour or no such order has been furnished by him, the applicant would not get the benefit of the FR 22-c. Further, the rule 50 of the Postal manual Vol. IV as stated in para 4(ii) of the Rejoinder, specifies under what circumstances, the benefit of the promotional post would be allowed. The applicant has failed to furnish any document / evidence to prove that he is entitled to such

benefit for his working as APM (Accounts) for the period from 11.02.1977 to 17.02.1977. .

10. The applicant has cited the judgment of Hon'ble Madhya Pradesh High Court dated 25.02.2013 in the case of UOI & Ors. Vs. Radhe Lal Gaud in WP No. 6284/2008(S) in which the issues were whether the petitioner would be entitled for higher pay for officiating duty against a higher post and whether the officiating pay would be taken into account in fixing his pension. It was held that an employee is entitled for higher pay scale applicable for the post in which he was working on officiating promotion and it will also be taken into account while working out average emoluments for the purpose of fixing the pension. In that case, the petitioner had officiated against the higher post for more than six months till his retirement. As discussed in para 9 above, the applicant will not be entitled for higher pay scale w.e.f. 11.02.1977 as no promotion order on officiating basis has been furnished by the applicant in support of his claim. The respondents in para 9 of their Counter Affidavit have stated that the applicant wrongly claims the benefit of initial pay of Rs. 455/- as Inspector taking into account his adhoc pay for working as APO (Accounts) against leave vacancy which is against the provisions of FR 22-c. In reply, the applicant has reiterated his averment in the OA without furnishing any evidence of officiating promotion as APM (Accounts).

11. To sum up the above discussions, copy of the order in which the applicant was instructed to look after the duty of the post of APM (Accounts) w.e.f. 11.02.1977 has not been enclosed by the applicant to substantiate his averment that he was allowed promotion on officiating basis as APM (Accounts). The respondents in para 9 of the Counter Affidavit have claimed it to be an adhoc arrangement for which the benefit of FR 22-c is not available. In absence of any order in the pleadings to show if the applicant was actually allowed promotion by the competent authority to the post of APM (Accounts) w.e.f. 11.02.1977 on officiating basis allowing him the benefit of the scale of pay applicable to

APM (Accounts), it is not possible to accept the applicant's plea that he was holding the post of the APM on temporary / officiating basis. If the pay of the applicant was fixed wrongly, it is open for the respondents to rectify it as and when the mistake is detected.

12. In view of above, we are of the considered opinion that the applicant is not entitled to the benefit of FR 22-c [now revised to FR 22-1(a)(1)] based on the materials / documents produced before us and the applicant has failed to furnish adequate justification to call for any interference in this matter. Therefore, the OA being devoid of merit, is dismissed. No costs.

(RAKESH SAGAR JAIN) (GOKUL CHANDRA PATI)
MEMBER-J MEMBER-A

Anand...