

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 77 of 2014

This the 09th day of April, 2018

Hon'ble Mr. Justice V.C. Gupta, Member-J

Kanhaiya Lal Pandey, aged about 54 years, S/o Late Sunder Lal Pandey, R/o Pradhan Dak Ghar Colony, Sitapur, presently posted as Public Relation Inspector, Sitapur Headquarters, Sitapur

.....Applicant

By Advocate : Sri D. Awasthi

Versus.

1. Union of India through Secretary, Ministry of Communication & I.T. Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Director General, Government of India, Ministry of Communication & I.T., Department of Posts, Dak Bhawan, Sansad Marg, Lucknow.
3. Chief Post Master General, U.P. Circle, Lucknow.
4. Superintendent of Posts Offices, Sitapur Division, Sitapur.
5. The Post Master, Head Post Office, Sitapur.

.....Respondents.

By Advocate : Sri A.K. Pandey for Sri G.K. Singh.

O R D E R (Oral)

Heard the learned counsel for the applicant as well as learned counsel for the respondents and perused the records.

2. This O.A. has been filed by the applicant under Section 19 of Administrative Tribunal Act, 1985 claiming following relief(s):-

- “(A) The Hon’ble Tribunal may graciously be pleased to quash the impugned orders dated 3.4.2013 and 9.1.2014 passed by the Assistant Director General (SPN), Government of India, Ministry of Communication and I.T., Department of Posts, New Delhi and post Master Sitapur respectively as contained in Annexure No. 1 and 2 to this Original Application.*
- (B) The Hon’ble Tribunal may further graciously be pleased to direct the respondent no.1 to grant ex-post facto approval in respect of the applicant for the post of Inspector from 17.10.1997 to 7.8.2000 within the stipulated time as this Hon’ble Tribunal deem just and proper.*
- (C) The Hon’ble Tribunal may issue any such other order or direction which this Hon’ble Tribunal may deem just and proper in the circumstances of the case.*
- (D) Allow the claim petition with costs.”*

3. Brief facts giving rise to this Original Application are that the applicant was working as Postal Assistant at Sitapur Head Post Office. One Sri K.R. Jaiswal, who was working on the post of Sub-Divisional Inspector, Central Sub Division, Sitapur, went on long medical leave. As a consequence thereof, Superintendent of Post Offices, Sitapur vide its order dated 15.10.1997 directed the applicant to officiate on the post of Complaint Inspector in place of Sri K.R. Jaiswal as he was meeting all the requisite criteria for the post of Complaint Inspector. The applicant took over charge of the said post on 17.10.1997 and he worked as such till 7.8.2000. He was relieved from the charge of Complaint Inspector by letter dated 7.8.2000 issued by the respondent no.4 and as such it is crystal clear that the applicant had performed his duties on the post of Complaint Inspector on officiating basis from 17.10.1997 to 7.8.2000 and hence he was entitled for payment of the post on which he was working on officiating basis. He was also paid the salary of the aforesaid post for the aforementioned period.

4. During the audit in the year 2004, an objection has been raised regarding the working of the applicant on the said officiating post and as a consequence thereof, the recovery to the tune of Rs. 15055/- from his salary was directed to be made as the same was without sanction of the competent authority.

5. The respondent no.5, in pursuance of audit objection, wrote a letter dated 13.1.2004 to the respondent no.4 regarding regularization of officiating period of the applicant. The applicant also moved an application on 5.7.2004 to respondent no.4 to regularize his officiating working period as Complaint Inspector and also not to proceed to recover the over-payment of Rs. 15055/-. The respondent no.4 again wrote a letter dated 11.8.2004 to the respondent no.3 for regularizing the services of the applicant for the officiating period of his services on the post of Complaint Inspector. On 11.8.2005 the office of respondent no.3 i.e. Chief Post Master General, U.P. Circle, Lucknow wrote a D.O. letter to the respondent no.4 to submit all the relevant facts of the applicant's case with regard to grant of ex-post facto approval for the work done by the applicant on officiating capacity on the post of Complaint Inspector.

6. The respondent no. 4 asked the relevant documents again by his letter dated 12.5.2006 from the respondent no.4. The respondent no.4 submitted the requisite documents. When the recovery order was going to be issued, then the applicant made a representation to the Assistant Post Master General (Staff), Office of CPMG, U.P. Circle, Lucknow, but no information regarding ex-post facto approval was received. Thereafter, the applicant sought information under Right to Information Act, 2005 and in pursuance thereof a letter was sent to the applicant by the respondent no.3 informing therein that his case regarding approval of officiating arrangement on the post of Complaint Inspector, Sitapur for the period from 17.10.997 to 7.8.2000 was sent to Postal Directorate vide letter dated 31.5.2006 for obtaining approval from Department of Posts & Telegraph, but the same is still awaited. Thereafter, the impugned order dated 3.4.2013 has been passed by the respondent no.2 on the ground that grant of ex-post facto approval for officiating period made beyond one year is irregular as informed vide office letter dated 30.11.2012. The impugned order was communicated to the applicant on 18.6.2013. Thereafter, by order dated 9.1.2014 (Annexure-2) the recovery to the tune of Rs. 31,493/- was raised against the applicant. In pursuance of rejection of ex-post facto approval, an appeal was preferred by the applicant against the order of recovery to the Director General, Department of Posts, New Delhi by quoting certain case laws of Hon'ble Supreme Court as well as Hon'ble High Court in a similar matter, but the appeal was not disposed of. It was contended that no opportunity of hearing or show cause has been given to the applicant and the recovery was going to be made for want of seeking ex-post facto approval within the stipulated period by the respondent no.4 for which the applicant cannot be held responsible.

7. Counter Affidavit has been filed wherein this fact has not been denied by the respondents that the applicant had worked for the aforementioned period as Complaint Inspector, but the stand taken that for the arrangement beyond one year the approval of the competent authority has not been obtained and the competent authority has rejected the claim, hence the applicant is not entitled for payment of salary of the post on which he had worked on

officiating basis. A plea has also been taken that the applicant was punished with 'Censure' entry vide order dated 23.6.2011.

8. Rejoinder Affidavit has also been filed reiterating the stand taken by the applicant in his Original Application.

9. From the relief(s) as well as from the pleadings and material available on record, it is clear that the applicant had actually worked on the post of Complaint Inspector commencing from 17.10.997 to 7.8.2000. It is also not in dispute that the applicant was competent and eligible to act on the post of Complaint Inspector and as such he was given the responsibility of higher post by the respondent no.4. It is also not in dispute that the respondent no.4 is higher authority of the applicant and he is bound to obey the order passed by the respondent no.4 and discharged all those orders. The applicant performed his duties as Complaint Inspector. It is the mistake on the part of the respondent no.4 as he had failed to discharge the legal duties cast upon him not to obtain the approval of the competent authority when the period exceeded beyond one year for officiating arrangement of the applicant on the post of Complaint Inspector and in this process, the applicant cannot be held responsible. What ever wrong has been committed that was committed by the respondent no.4 and not by the applicant. It is strange that no action has been taken against the respondent no.4 for his negligence in performing his job and a person who had performed his duties diligently on the instructions of higher authority, has been punished. It is also important to mention her that the amount which has been paid as salary in such circumstances for the work actually performed by the applicant cannot be allowed to be recovered from the applicant.

10. In view of the above, this O.A. deserves to be allowed and is accordingly allowed. The impugned order dated 3.4.2013 and consequential order dated 9.1.2014 (Annexure nos. 1 & 2) are set-aside and quashed. As no recovery has been made, therefore, the question of payment of any salary or any amount to the applicant does not arise. There shall be no order as to costs.

(Justice V.C. Gupta)
Member-J