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Central Administrative Tribunal
Principal Bench

O.A. No.592/2003

New Delhi this the 3rd day of February, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri Sarweshwar Jha, Member (A)

Shri Sukhbir Singh
S/o Shri Ragh Ram
R/o Vill & P.O. Karala,
Delhi-81.

(By Advocate: Shri Gopal Dutt) -Applicant

Versus

1. Director General
All India Radio
Akashvani Bhawan, Parliament Street
New Delhi.
2. Superintendent Engineer
HPT, Kings Way Camp
Delhi.

(By Advocate: Shri B.S. Jain) -Respondents

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

At the outset, applicant's counsel states at Bar that he is not claiming benefit of fixation of pay as per the ACP Scheme.

2. Claim of the applicant is directed against order dated 25.7.1997 collectively, order dated 7.5.2002 and 1.3.2002 rejecting the claim of the applicant for grant of pay scale of Head Security Guard as well as order dated 17.7.2002 fixing his pay and directing recoveries.

3. Applicant who has been posted in one of the stations of All India Radio and working as Security Guard was appointed on 26.2.1980.

4. Earlier, before introduction of ACP Scheme, applicant was accorded in situ benefits in the pay scale of Rs.775-1025 w.e.f. 1.2.95 and by an order dated 7.5.2002 was granted in the scale of Rs.825-1200 with consequent fixation of pay.

5. ACP Scheme introduced on 9.8.1999 was adopted to all Group D employees of HPT AIR Kingsway but the applicant has not been accorded the benefit of Scheme after completion of 12 years service. This has been represented too, which remained unanswered, giving rise to the present OA.

6. According to Shri Gopal Dutt, learned counsel for applicant as per the Recruitment Rules for Security Guard, scale of pay for those Head Security Guard posted in the Headquarters is 950-1500 and for Head Security Guard is 950-1400. In this backdrop, it is stated that the hierarchy of Guards for the post of Head Security Guard and financial upgradation is to be accorded in the hierarchy of a cadre. According to him, scale of Rs.775-1025 or 825-1200 does not exist in hierarchy of Security Guards. According to Shri Gopal Dutt, referring to OM dated 18.7.2001 pertaining to in situ promotions and more particularly in Doubt-47 as to recovery of benefit of higher grade accorded prior to 9.8.1999 and its withdrawal, the same had been clarified not to be withdrawn and this would be a switchover from the existing scheme to the ACP scheme.

7. According to Shri Gopal Dutt, learned counsel for applicant the only pay scale for Head Security Guard in other station is 950-1500, which had

not been given. In this backdrop, it is stated that unless the statutory rules are amended, respondents who had through their circular dated 18.11.2002 stated that the scale of Rs.825-1200 is without jurisdiction and any administrative instruction which runs contrary to supplant statutory rule is nullity.

8. On the other hand, Shri B.S. Jain, learned counsel for respondents states that on recommendation of 5th Central Pay Commission, pre-revised scale does not exist. Accordingly, the same was abolished and in the exigency of service to bring conformity in the pay scales, vide Circular dated 18.11.2002 the pay scale of Head Security Guard posted at stations of AIR had been fixed as 825-1200 w.e.f. 1.1.86 which is revised as per 5th CPC as 2750-4400 and the applicant has been accorded the same. Moreover, it is stated that applicant had been promoted as LDC w.e.f. 29.11.2001 and placed in the pay scale of Rs.3050-4590. Having granted in situ promotion as per para 5.1 of Annexure-1 of OM dated 9.8.99 which is a regular promotion, applicant is not entitled to the benefit of ACP Scheme.

9. We have carefully considered the rival contentions and perused the material on record.

10. In situ promotion, admittedly, is equated with regular promotion to be reckoned in ACP Scheme. Having availed two promotions, applicant is not entitled to the benefits of ACP Scheme. In so far as in situ promotion is concerned though the upgradation is in the next available higher scale but as per the

Recruitment Rules who have been posted at Headquarters, the pay scales are 950-1500 and the pay scale of other Head Security Guards is 950-1400.

11. These rules were notified in 1985, having regard to the revision of pay scale by 5th CPC, the aforesaid scale does not exist in the hierarchy. To streamline, in the administrative exigency, the pay scales have been revised and by Circular dated 18.11.2002, the pay scale has been made for Head Security Guards in stations as 825-1200 which has been revised as per 5th CPC as Rs.2750-400 w.e.f. 1.1.1996.

12. Aforesaid is not supplanting the rules but in view of 5th CPC recommendations its a Clarification by way of Circular on account of anomalies in the pay scale. If the pay scales recommended by 5th CPC have been adopted by the Government and have become statutory rules in the form of revised pay rules 1997 such a decision cannot be said to be against law or rules. This has to operate to smoothen the administrative exigency, i.e., pay fixation of Head Security Guards. We do not find the aforesaid Circular in any manner contrary to the statutory rules even without an amendment. The pay scale can be regulated as recommended by 5th CPC in case of any anomaly which exists in the present case.

13. Learned counsel for applicant has also failed to point out the fact that a person though posted at stations of AIR had been given the pay scale of Rs.950-1400, in that event this would have been a case of hostile discrimination. We are convinced that

all other similarly circumstance, i.e., Head Security Guards at stations had been given the pay scale of Rs.825-1200, which has also been provided to the applicant.

14. We do not find any infirmity in the action of the respondents. However, in so far as on refixation the recovery is concerned, the aforesaid refixation is not at all attributable to the applicant. ^W None of his misrepresentation or fault resulted in such a recovery.

15. As held by the Apex Court in *Shyam Babu Vs. Union of India* 1994 (2) SLJ SC 99, the recovery cannot be effected.

16. In the result, OA is partly allowed upholding the fixation of pay. Any recovery ordered against the applicant is set aside. Respondents are directed not to effect any recovery on account of excess payment on refixation of pay of the applicant. No costs.



(Sarweshwar Jha)
Member (A)



(Shanker Raju)
Member (J)

cc.