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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2793/2003

NEW DELHI THIS....19th.....DAY OF MAY 2004

HON'BLE SHRI S.A. SINGH, MEMBER (A)

Ramji Tripathi,
S/o Late Sh. G P Tripathi,
aged about 61 years,
R/o 19/308 Satyam Khand,
Vasundhara, Ghaziabad (UP)

.....Applicant

(By Shri Nalin Tripathi, Advocate)

VERSUS

1. Secretary
Ministry of Information & B'casting,
A Wing Shastri Bhawan, New Delhi,
2. Pay & Accounts Officer, IRLA
Min. of Information and B'casting,
AGCR Building, Indraprastha Estate,
New Delhi
3. Pay & Accounts Officer,
Central Pension Accounting Officer,
M/o Finance, deptt. of Expenditure,
Trikot II, Bhikaji Cama Place,
New Delhi

.....Respondents

(By Sh. M M Sudan, Advocate)

O R D E R

The applicant, who was an officer of Indian Information Service, superannuated from the service on 28.2.2002. Vide order dated 15.2.2000, the applicant was posted as a Special Correspondence at Dubai in JAG and his status was in the rank of Counsellor in the Embassy of India. Vide order No. 72/2001-IIS, applicant and two other, viz. S/Shri P. John Churchill and R S Shukla were given proforma promotions to the rank of SAG. However, the promotions were subject to the proviso as under:

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"As per the terms and conditions governing the appointment of PBC, special correspondent abroad, the above mentioned officers cannot avail the benefit of their promotion to SAG of IIS Group 'A', during their assignment abroad. They are therefore, being promoted on proforma basis with the stipulation that their actual promotion will be effective from the date they join duty in India. Their pay etc. will be notionally fixed without consequential financial benefits w.e. f. 9.3.2001 when their juniors took over charge of the post of SAG of IIS Group 'A'."

2. Vide order dated 9.5.2002 the applicant was intimated his pensionary benefits and the basic amount of pension was fixed as Rs.9,200/-. However, vide order dated 7.11.2003 Senior Accounts Officer of PAO of the Ministry of I&B intimated to the Dy. Secretary, Ministry of I&B that the pension of the applicant had been erroneously finalised by allowing fixation of pay in the scale of Rs.18400-500-22400/- and accordingly the pension was being revised by restricting his pay drawn upto 28.2.2002. This had been done as the grant of proforma promotion, in the scale of Rs. 18400-500-22400/-, was conditional. It was subject to the conditions that the actual promotion will be effective from the date the applicant joined duty in India. As applicant had not joined duty in India therefore he was not entitled for fixation of pay in the pay scale of Rs.18400-500-22400. The pension of the applicant was, therefore revised from Rs.9200/- 8,070/- vide order dated 28.2.2001. The applicant has impugned this order and prayed for its quashing as being arbitrary, malafide and discriminatory.

3. The applicant claimed that his pension had been correctly fixed in terms of the promotion order wherein he had been given proforma promotion w.e.f.

9.3.2001 i.e. the date from which his juniors have taken up their SAG Grade. The applicant claims that once his pension had been fixed it cannot be revised after nearly 20 months except as per the Rules 8 and 9 of the CCS (Pension Rules) 1972. These rules are reproduced here as under:

" Except in cases covered by Rules 8 & 9 of CCS (Pension) Rules, 1972, Pension once authorised after final assessment should not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently. If such error is detected after a period of two years from the date of authorisation of pension, concurrence of Department of Personnel and Training is necessary for the revision, if it is to the disadvantage of the pensioner - Rule 70".

4. From the above reading of the Rule, the applicant, urged it is clear that the pension once authorised should not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error. In this case there is no error and as such revision of the pension was not permitted by the rules and it was arbitrary. The applicant pleaded vigorously that he was posted for a tenure of three years and he could not have come back before completion of his tenure. It was respondents' discretion to transfer him back to India but did not do so and hence he should not suffer on this ground. He was entitled to promotion in SAG Grade from 9.3.2001. He was, in terms of promotion order, not asking for any financial benefits but only for correct fixation of his pension benefits based on the pay fixation in the SAG Grade in terms of the performance promotion earned by him.



5. Applicant also relied upon rule 32 next below rule wherein an officer in a post (Whether within the cadre of his service or not) is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs, he may be authorized by special order of the appropriate authority pro forma officiating promotion into such scale or grade and thereupon be granted the pay of that scale or grade, if that be more advantageous to him, on each occasion on which the officer immediately junior to him in the cadre of his service (or if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or forgoes officiating promotion of his own volition to that scale or grade then the officer next junior to him (so passed over) draws officiating pay in that scale or grade".

6. The respondents have strongly contested the averments made by the applicant and pointed out that the terms and conditions approved by the Ministry of External Affairs while posting the applicant as special correspondent in Dubai do not entitle him to benefit of promotion. They have taken support of para 2 of his posting order which is reproduced below:

" Shri Ramji Tripathi has been equated with an officer of the rank of Counsellor in the Embassy of India Dubai for the purpose of drawing compensatory allowance. The equation of the officer will not be upgraded in the course of his posting abroad due to any reason such as revision of pay scale from a retrospective or prospective effect, earning of annual increment(s), promotion in the parent

cadre etc. He will also not be entitle to benefit of promotion which would have otherwise been due to him during the period of deputation in accordance with Ministry of Finance's OM No.2(10)-E-III/60 dated 17.11.1960."

7. From the above it is clear that the applicant cannot claim his fixation of pay in the grade of SAG for the purpose of pension. This right would have accrued to him after he had returned to India, which is apparent from the aforesaid promotion order. Therefore, the revision is in line with Rule 70 of the CCS(Pension) Rules, which allow revision in case of clerical mistake. The applicant was entitled to the fixation in the SAG Grade from the date of his proforma promotion provided his taking up the grade in India before his retirement. As the applicant did not return to India to fulfil this requirement, he was, thus, not entitled to be fixed in the SAG grade. The pensionary benefits have been correctly revised.

8. After having heard learned counsel for the parties and going through the documents brought on record, the basic fact that the applicant had been given proforma promotion into the grade of SAG w.e.f. 9.3.2001 is not contested. It is also not contested that the applicant was posted as special Correspondent in Dubai and retired from Dubai itself without taking up his SAG appointment in India. The respondents have indicated in their counter, which has not been denied in the rejoinder by the applicant, that before issue of the promotion order dated 13.6.2001 it was ascertained from the applicant whether he would like to return prematurely from his foreign posting to take up his

promotion in SAG, in case he was empanelled . He had indicated that he would not like to return prematurely from foreign assignments and would like to avail only proforma promotion and actual promotion on return to India.


9. It is therefore clear that the applicant preferred to accept proforma promotion and actual promotion only on return from his foreign posting.

10. The applicant was aware of the conditions attached to the proforma promotion and thus cannot claim at this stage that if he had been asked to return to India he would have done so, and that it was for the respondents to offer this option, which they failed to do. Once the conditions attached to the proforma promotion are accepted, it is too late in the day to, now, claim that had he asked to return to India before his retirement to take up his promotion in SAG Grade he would have done so. I cannot agree with the averments/pleadings of the applicant that his pay should have been notionally fixed in SAG Grade from the date of his proforma promotions w.e.f. 9.3.2001 and that he was entitled to this fixation for purpose of pensionary benefits even though he had not actually taken up this promotion because the promotion in to SAG was conditional to his returning and joining duty in India . Therefore the proforma fixation of pay was consequent upon his taking up his duty in India. As this did not happened, I am inclined to agree with the respondents that no claim for fixation in the SAG Grade for pensionary benefits has arisen.

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11. As far as the question of applicability of CCS (Pension) Rule 70 is concerned , it deals with revision of pension after authorisation. In the present case it is not a question of revision of pension but correction of error apparent on the face of the record. As such Rule 70 does come to the rescue of the applicant. Consequently the OA must fail.

12. In view of the foregoing the ~~g~~OA is without merit and accordingly dismissed. No costs.


(S.A. Singh)
Member (A)

Patwal/