

Central Administrative Tribunal
Madras Bench

OA/310/00034/2014

Dated *the 26th* day of February Two Thousand Sixteen

P R E S E N T

Hon'ble Mr.R.Ramanujam, Member(A)

S.A.Shanmuga Sundaram
S/o. S.Annamalai Mudaliar,
5, Valusamy Street,
Erode-638 004.

.. Applicant

By Advocate M/s.R.Malaichamy

Vs.

1. Union of India, rep by the
Director General of Posts,
Dak Bhavan, Sansad Marg,
New Delhi 110 001.
2. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
3. The Postmaster General,
Western Region(TN),
Coimbatore 641 002.
4. The Senior Superintendent of Post Offices,
Erode Division, Erode 638 001.
5. The General Manager,
Postal Accounts & Finance,
Ethiraj Salai, Chennai 600 008.

.. Respondents

By Advocate Mr.C.Kulanthaivel

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The case of the applicant is that while he was working as Sub-Postmaster (SPM-LSG) at Surampatti SO he was ordered to officiate as Deputy Postmaster in the Higher Selection Grade-I (HSG-I) at Bhavani HPO from 15.4.2005 to 30.6.2005 and 08.11.2005 to 30.6.2006. He was paid pay and allowances applicable to HSG-I cadre. He retired on superannuation on 30.6.2006 and his pension was also calculated taking into account the last pay drawn by him in the HSG-I cadre and accordingly he was paid the retirement benefits.

2. The applicant is aggrieved that while implementing the VI Pay Commission Recommendations in the year 2009, the basic pay of Rs.7700/- drawn by the applicant in the BCR cadre was taken into account for drawal of duty pay from January 2006 to June 2006 and not the officiating pay of Rs.7900/- drawn in HSG-I. Accordingly, the 5th respondent revised and refixed the retirement benefits including pension w.e.f. 1.7.2006. The applicant made several representations to the respondents to revise his pension on the basis of the pay applicable to the post of HSG-I for the periods he was officiating in that capacity. The applicant was informed that the matter had been taken up with the 1st



respondent for approval. But it ended in vain. The applicant submits that as he was paid the officiating duty pay for the said periods and the subsequent arrears of pay and allowances was also drawn in HSG-I scale, he is entitled to re-fixation of pay as per Rule 33(1) of CCS (Pension Rules) read with Rule 9(21)(a)(i) of Fundamental Rules. Hence this OA seeking direction to the respondents to revise and re-fix his pension taking into account the last pay drawn by the applicant in the officiating cadre of Deputy Postmaster, HSG-I as per the recommendation of the 6th CPC in the scale applicable to HSG-I Grade Post, w.e.f. 01.01.2006 and consequently pay the difference of arrears on such revision of pay.

3. The respondents resist the relief claimed on the ground that as per the recruitment rules for HSG-I, officials who had completed minimum 3 years of service in HSG-II cadre alone are eligible for promotion to HSG-I cadre. Others are not eligible for adhoc/officiating arrangement in HSG-I cadre. HSG-I pay is admissible only to the eligible officials. The applicant was not holding HSG-II post and hence HSG-I pay was not admissible to him. The pay of the official was wrongly fixed in HSG-I cadre for the period he worked in HSG-I post and pension was calculated on that basis erroneously. Consequent on the implementation of VI CPC, while re-fixing the pay in the revised pay band, it was noticed by the 5th respondent that the applicant was not

eligible for fixation of pay in the pay band applicable for HSG-I as he was not eligible for promotion to that cadre either on regular or adhoc basis. The substantive pay Rs.7700/- (BCR Pay) was taken for revision and the pension was fixed as Rs.9265/-. Though the applicant was drawn and paid with the duty pay applicable to HSG-I cadre in the new scale of pay as per the VI CPC for the period he worked in HSG-I post, his pension was regulated as per the substantive (BCR) cadre post.

4. Heard the learned counsel for the applicant and the respondents and perused the pleadings and material produced by the rival parties.

5. Learned counsel for the applicant submitted that once the applicant was paid with duty pay, his terminal benefits including pension would have to be calculated by taking into account 50% of emoluments (last pay drawn) or 50% of average emoluments received during the last 10 months, whichever is more beneficial to the applicant.

6. Learned counsel for the respondents, however, pointed out that the applicant was not given any adhoc promotion to HSG-I cadre but was only ordered to look after the duties of HSG-I cadre. The pay and allowances applicable for HSG-I cadre were drawn by the applicant as per V CPC. On retirement the pension and other benefits were also sanctioned with the last pay drawn in the HSG-I cadre and the same was approved by the 5th respondent and the pension was paid w.e.f.

01.7.2006. Only on implementation of the VI CPC the 5th respondent noticed that the applicant's pension was fixed erroneously as he was not eligible for fixation applicable to HSG-I cadre. This Tribunal has passed orders in similar issues that the arrangement made for the higher post out of functional necessity when a regular incumbent was on leave or otherwise which is not as per recruitment rules, cannot be treated as a promotion. Such short term arrangement of an incharge duty de hors the rules would not confer the right to claim officiating pay or pension.

7. I have carefully considered the matter in terms of the facts of the case and the applicable rules. It is not in dispute that the applicant was two levels below HSG-I and not eligible for promotion to that level at the relevant time. Nor was he promoted to the said post of Deputy Postmaster (HSG-I) even on an adhoc basis. It is seen from the Memos of the Office of the Senior Superintendent of Post Offices dated 31.3.2005 (Annexure R1) and 24.3.2006 (Annexure R2) that the applicant was subjected to an 'officiating arrangement' to be a Dy. Postmaster and the arrangement was purely temporary. It was clearly stated in the said Memos that the arrangement would not confer any right of regularization or benefits such as seniority etc. on a future date. Though termed loosely as an officiating arrangement, this is not the same as an appointment to a post on officiating basis. It can easily be

distinguished from a promotion to the post on officiating, adhoc or even short term basis under the relevant recruitment rules which would have resulted in an entitlement for pay and consequent fixation of pension on that basis.

8. The question of whether an employee is entitled to treat his last pay drawn as 'emoluments' for the purpose of pension had been dealt with by the Full Bench of this Tribunal in OA 1215/2012 in their order dated 02.6.2015. The following observations therein are relevant and applicable to the instant case:-

"21. However, we are of the opinion that an employee is entitled to treat his last pay drawn as 'emoluments' for the purpose of pension as defined under Rule 33 of CCS (Pension) Rules, read with Rule 9(21) of FR only if he has been a duly qualified employee under the Recruitment Rules. If an unqualified person is allowed to count on a higher pay received by him on a fortuitous basis, Recruitment Rules framed under Article 309 of Constitution of India will become otiose, paving way for ineligible candidates to claim higher pension based on the higher 'emoluments' they have received. As stated earlier, in this case, the last pay received by the applicant has to be treated as a pay given by to the applicant on the principle of quantum merit, rather than as truly eligible pay granted to him as duly qualified for that post.

22. As the applicant was posted as HSG-I not in accordance with the Recruitment Rules, it has to be held that he cannot claim any service benefit out of such posting except the monetary benefit of salary on the basis of the legal principles of quantum merit. We are of the view that pension

should commensurate with the service rendered by the Govt. servant on regular basis, not on fortuitous basis. If the Government servant is posted in a higher post, for which he is not qualified, he cannot take advantage of the irregular posting on the eve of his retirement for claiming pension: Pension Rules and Fundamental Rules are applicable to employees in regular services and not for pensions given postings by way of a stop gap arrangement.

23. Therefore, we answer the reference that though the applicant has received the higher pay of HSG-I during such posting, the pay drawn by him for such post cannot be considered as 'emoluments' as defined in Rule 33 of CCS (Pension) Rules, read with Rule 9(22) of FR, due to his being inherently unqualified for the same."

I see no reason to revisit the same question or to take a different view in this OA. Any contrary view cannot but create a perverse incentive to seek and obtain such arrangements especially at the fag end of service with a view to securing a pensionary windfall and make nonsense of recruitment rules that prescribe hierarchical levels and minimum residency at each level to qualify for advancement. It would also be hugely unjust to seniors and occupants of higher levels who are not favoured with such 'officiating arrangements'.

9. In terms of the ratio of the aforesaid case, the action of the respondents in re-fixing his pension on the basis of his pay in the substantive post cannot, therefore, be faulted. The applicant had received an undue and fortuitous benefit which could not be continued

for life. The respondents are not only justified but duty bound to withdraw the benefit that was granted inadvertently. The relief claimed in the OA cannot, therefore, be granted. Accordingly the OA is dismissed. No order as to costs.