

**Central Administrative Tribunal
Madras Bench**

OA/310/00633/2013

Dated the 8th day of January Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

N.Ramaswamy,
S/o S.Natchimuthu,
No.125, Asiriyar Nagar,
Chinnachettypalayam,
Erode 638 002. .. 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 Principal 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. .. Respondents
By Adovacte **Mr.R.S.Krishnaswamy**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant in this case is a Postal Assistant who was granted TBOP and BCR. He was promoted as Lower Selection Grade (LSG). He was also given Higher Selection Grade II (HSG II) and while he was working as Assistant Postmaster he was ordered to officiate as Senior Postmaster, Erode HO on 07.1.08. He officiated as Senior Postmaster in between 08.1.2008 to 20.4.08 and from 07.7.08 to 31.10.08. According to the applicant, he is entitled to get the officiating pay for the said period and the respondents had not paid the duty pay attached to the post. Eventhough he had given a representation for considering his request for granting duty pay, the respondents had not acceded to it. According to the applicant, since he had retired from the post of Senior Postmaster, Erode HO he is entitled to get 50% of his pay for pension or 50% of the average emoluments received during the last 10 months for calculating his pension. But the respondents in this case had not taken into account the pay eligible for him while he had officiated in the Senior Postmaster, Erode HO for fixing his pension and terminal benefits. He mainly rely upon the decision of ***Selva Raj v. Lt. Governor of Island, Port Blair & Others [1999 AIR (SC) 838]*** in support of his case. So he prays for the following relief:-

“To direct the respondents to pay the duty pay (difference of pay) for the service rendered as Senior Postmaster, Erode by the applicant from 08.1.2008 to 20.4.2008 and from 07.7.2008 to 31.10.2008 and thereby further directs to revise and re-fix the pension

and other service benefits by taking into scale applicable to the post of Senior Postmaster and to pay the difference of arrears of monthly pension and other terminal benefits to the applicant; and

To pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case.”

2. The respondents entered appearance and filed a detailed reply contending that the applicant is not entitled to get any duty pay as claimed by him when he was put in as acting Senior Postmaster, Erode HO. According to them, the said arrangement was only an office arrangement and it was only for a short period till a regular hand joins the post. There is no dispute regarding the period in which the applicant has acted as Senior Postmaster as claimed in the application. According to them, he is not eligible to be promoted to the said post and not eligible to get the pay of Senior Postmaster cadre. According to them, the arrangement was only an internal arrangement. The Senior Postmaster is a gazetted post and it has to be filled up by PS Group B Cadre. Only Postal Inspectors can hold the post of PS Group B cadre through departmental examination as per RR and that also on passing the LDCE from the feeder category. There was only a short term vacancy and there is no appointment order as such made in favour of the applicant. He was only asked to hold the charge of SPM since vacancies arose due to retirement, transfer etc. The applicant is not eligible for appointment to the post of SPM and any appointment dehors the RR cannot be regularised. So, according to the respondents, the applicant is not entitled to get any duty pay as claimed by him.

3. The counsel for the applicant mainly rely upon Annexure A1-A6 documents for proving that he was appointed as officiating SPM Erode HO. Annexure A1 is the proceedings of the Department of Posts showing the transfer of SPM Erode HO Shri A.Annamalai dt. 07.1.08. As per Annexure A1, the department has permitted the SPM to retire after handing over charge of his office to Shri N.Ramasamy, APM. The said SPM had handed over the charge of his office to N.Ramasamy as per Annexure A2 charge report in the Afternoon of 07.1.08. Thereafter, one Shri J.Louis was appointed as SPM Erode HPO in the Forenoon of 21.4.08 and the applicant had handed over the charge which he was holding to the said J.Louis (Annexure A3). Thereafter, on 05.7.08 the post of SPM became vacant and N.Ramasamy, the applicant herein was put in charge when J.Louis was transferred. Thereafter the applicant held the charge of the post till 31.10.08 and handed over the charge to one B.Chandrika on 31.10.08 i.e. on his retirement. Another document produced by the applicant is the memo issued on 24.10.08 showing the applicant as acting SPM, Erode HO and permitting to retire on 31.10.08. Annexure A7 is the representation given to the respondents to pay officiating pay of SPM Erode HO and Annexure A8 is a forwarding letter sent by SSPO to the PMG. Annexure A9 is an RTI reply showing the applicant holding the charge of SPM, Erode HO from 08.1.08 to 26.2.08, 03.3.08 to 20.4.08 and 06.7.08 to 31.10.08. The counsel for the applicant had filed a memo stating that a Full Bench of this Tribunal in OA 1215/2012 had allowed the claim for service benefits out of such posting on the basis of “quantum meruit” and submitted that the OA may be disposed of in accordance with the order in OA 1215/12

regarding the officiating pay. As regards the pension benefits he will be satisfied if the law laid down by the Hon'ble High Court in WP 39187/15 is implemented.

4. The counsel for the respondents mainly contend that the applicant in this case was never promoted or ordered to officiate in the post to SPM at any point of time. The word officiate means “a Government servant officiate in a post when he performs the duties of a post on which another person holds the lien. The Central Government may, if it thinks fit, appoint a Government servant to officiate in a vacant post on which no other government servant holds a lien.” This is the meaning given in FR 9. On going through the said meaning, it can be seen that a person has to be appointed to a particular post whether eligible or not for claiming officiating pay. In this case there is no appointment as such to officiate as SPM, Erode HO. What is provided is when one A.Annamalai, SPM Erode HO retired, he was ordered to hand over his charge to the then APM at Erode i.e. the applicant. Thereafter, when a new incumbent J.Louis came to the station as SPM, the applicant handed over the charge to the said Louis as per order of the department. Thereafter when Louis was also transferred, charge was again entrusted to the applicant and he held the charge till 31.10.08 when he retired. On going through Annexure A1, A2, A3 & A4, it can be seen that there is no order passed by the respondents appointing the applicant to officiate in the post of SPM which is a senior post when compared to his post. There is also no evidence produced to show that he has performed all the duties of SPM and there is no merit in the contention that he is entitled to get the officiating pay in this case.

5. We have carefully gone through the pleadings and documents produced in this case. The only point which arose for consideration is whether the applicant was ordered to officiate as SPM, Erode HO and whether he is entitled to get the scale of pay attached to the said post for the said period. The counsel for the applicant mainly rely upon the decision of the Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma [CDJ 1998 SC 006]***. On a perusal of the said decision, it can be seen that the applicant therein was promoted as Junior Engineer-I and thereafter he was not paid the pay for that post. Here, the applicant was not appointed as SPM and he was also not ordered to perform all the duties of SPM by the respondents. There is no evidence adduced to show that the applicant was posted to officiate in the post of SPM. So, the above decision is not applicable to this case. Another decision cited by the counsel for the applicant is ***Union of India & Ors. v. Sher Singh [WP 6659/07 dt. 10.11.09]*** of the Hon'ble Delhi High Court. On going through the said decision also, it can be seen that the respondent Sher Singh was ordered to officiate as SPM in HSG-I in Hauz Khas Post Office, New Delhi and he was not paid the pay for the said post. The counsel for the applicant also cited the decision of this Bench in OA 1017/2010 in support of his case. On a perusal of the said order, it can be seen that the applicant who was working as Accountant in Narnakkal Head Office was deputed to Tiruchengodu Head Office to work as Accountant during the month of September, 2004 and he was also ordered to officiate as Assistant Postmaster, Accounts in the HSG Grade II and he was denied the benefit of pay and the Tribunal has ordered the same. The facts and circumstances of this

case is not similar. There is no order showing that the applicant was ordered to officiate in the post of SPM, Erode HO. The only document available is the document holding the charge of SPM on retirement or transfer for a period till a regular incumbent joins the post. So, the facts of this case is different from ***P.Arthanari v. UOI & Anr. In OA 1017/2010.*** The counsel also invited out attention to the decision in ***Union of India & Others v. M.Bhagyalakshmi & Another.*** In that case also the respondent M.Bhagyalakshmi was ordered to look after the duties of HSG I Sub-Post Master, Sowcarpet Mail Delivery Sub Post Office during various spells. This was a case where this Bench had granted relief to M.Bhagyalakshmi for claiming the higher pay scale to which she was appointed to officiate. The Hon'ble High Court has confirmed the said decision in the above order. The next case produced by the applicant is ***N.Devarajan v. Union of India & Others in OA 1215/12*** passed by the Full Bench of this Tribunal. The applicant in the above case while working as Public Relations Inspector at Thiruvannamalai HO was ordered to officiate in the HSG I as Post Master at Thiruvannamalai HO for various periods and finally he retired from that post. He claimed the officiating pay as well as considering the said pay for his pensionary benefits. This Tribunal allowed the said OA on the principle of “quantum meruit” but at the same time held that he cannot get the fixation of pension on the basis of officiating appointment as it is against Rule 33 of CCS (Pension) Rules read with Rule 9(22) of FR. So, the Tribunal has disallowed the second part of the relief i.e. refixation of benefit of pension. Here also it can be seen that the present applicant's case is considerably different. There is no order as

such passed by the respondents directing the applicant to officiate in the post of SPM.

In that earlier case, the applicant was directed by the postal authorities as follows:-

“Consequent on the retirement of Shri P.Muthusamy II, HSG.I (officiating) H.S.A., in Madurai RMS/3B w.e.f. 31.12.2009, 'the following posting and transfer is ordered with immediate effect.

Shri V.S.Thirumalai, SA BCR Supervisor in Madurai RMS/3B to work as H.S.G.I(officiating) H.S.A. In Madurai RMS/3B without any additional remuneration.

This arrangement ordered is purely temporary and will be inforce till a regular HSG-I official or an eligible LSG official with BCR becomes available.”

From the above, it can be seen that in the above case also there is a specific order passed by the postal authorities to officiate in a particular post. So, this case also differs from the applicant's case. Another case referred to by the applicant is ***State of Punjab & Anr. v. Dharam Pal [Civil Appeal No.1549/2011 decided on 05.9.17]*** wherein a three Bench of the Hon'ble Supreme Court had held that “if a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post.” In the above case the respondent was appointed as Clerk on 22.5.1970 and he was promoted to the post of Senior Assistant on 22.9.1980. Thereafter, he was given the officiating charge of the Superintendent Grade II by order dt. 09.12.04 and thereafter, he was also directed to function as Superintendent Grade I vide Government Order dt. 26.5.07. He superannuated from service on 31.3.08. It is in that circumstances the Hon'ble Supreme Court has considered the case of the applicant therein and granted officiating pay. The said decision also does not apply to the facts and circumstances of this particular case. In ***Selva Raj v. Lt. Governor of Island, Port Blair & Others [1999 (2) SCT 286]*** an officer was asked to

officiate as Deputy Director w.e.f. 14.3.1996 and he had been continuously posted to equivalent posts such as Additional Deputy Commissioner (D), and till his superannuation the officiating charge was never withdrawn and the Court granted the claim of higher pay scale in that case. So, the circumstances of this case is also entirely different from what is mentioned in the present case. In this particular case there is absolutely no order passed by the postal department appointing the applicant to officiate as SPM, Erode HO and there is no evidence to show that he had in fact attended all the duties of SPM during the various spells in which he held the charge. On a perusal of Annexures A1 to A4, it can be seen that the applicant was asked to hold the charge of SPM, Erode HO on the transfer of A.Annamalai and he held the charge of the SPM till one J.Louis took charge of SPM on 21.4.08. It shows that he was holding the charge of the post of SPM in between 08.1.08 and 20.4.08. Thereafter the said J.Louis was transferred and again the then APM of Erode HO i.e. the applicant was asked to hold the charge of SPM from 07.7.08 to 31.10.08 and then one Selvi B.Chandrika took the charge from him.

6. The main argument put forward by the respondents is that at no point of time the applicant was appointed in the post of SPM, Erode HO and Annexures A2 to A4 only shows that he held the charge of SPM owing to retirement or transfer for a short period. This was done as an internal arrangement and there is no specific order passed directing the applicant to officiate as SPM. We find merit in the contentions of the respondents in this case. The applicant was never ordered to officiate in the post of SPM as claimed by him. There is no record to show that he was doing all the

duties of SPM during the period mentioned by him.

7. From the above discussion, it can be seen that the applicant is not entitled to get officiating pay as claimed by him for the above periods given in the OA. The next relief claimed by the applicant in this case is that, he is entitled to get refixation of pension on the basis of the above officiating pay which he had claimed. Since the applicant has failed to prove that he is entitled to get officiating pay, there is no scope of considering whether he is entitled to get refixation on the said basis. If we go through the Full Bench decision of this Tribunal in OA 1215/12, it can be seen that officiating pay cannot be considered as pay for the purpose of calculation of pension as per rules.

8. From the above discussion, it can be seen that the applicant is not entitled to get any relief as claimed by the applicant. The OA will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

08.01.2020

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Annexures referred to by the applicant in OA No.633/2013:

Annexure A1: Memo of the 4th respondent dt. 07.1.08.

Annexure A2: Charge report dt. 07.1.08.

Annexure A3: Charge report dt. 21.4.08.

Annexure A4: Charge report dt. 05.7.08.

Annexure A5: Charge report dt. 31.10.08.

Annexure A6: Memo of the 4th respondent dt. 24.10.08.

Annexure A7: Representation to the respondent dt. 22.11.2012.

Annexure A8: Letter of the 2nd respondent dt. 07.1.13.

Annexure A9: Reply under RTI dt. 31.1.13.

Annexure A10: Letter of the 2nd respondent dt. 08.2.13.