

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 132 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Gouranga Jena, aged about 63 years, S/o Late Nilakantha Jena retired Deputy Divisional Manager, Postal Life Insurance, Office of the CPMG Orissa Circle, Bhubaneswar presently residing at Plot No. 2638, Santinagar, Jharpada Canal Road, Bhudheswori Colony, Bhubaneswar-761006 .

.....Applicant

VERSUS

1. Union of India represented through its Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Odisha Circle, Bhubaneswar.
3. The Director, Postal Accounts, Mahanadi Vihar, Cuttack-753004.

.....Respondents

For the applicant : Mr.S.Mohanty, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 29.11.2019 Order on : 24.12.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicant has prayed for the following reliefs :

"Therefore, it is prayed that this Hon'ble Court may kindly be pleased to admit the case and issue notice to the respondents to file their show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed and in view of the submission made by the applicant in the above mentioned para and for the ground para-5, the applicant most humbly prays this Hon'ble Tribunal be graciously pleased to grant the following relief in the interest of quashing and to set aside the order passed by the Chief Postmaster General Orissa Circle, Bhubaneswar vide Annexure-18 dtd. 8.5.2014 as the same is not sustainable in the eye of law.

B. and further direction be given to the respondents to allow the applicant to draw the pay scale attached to the post of STS (DDM, PLI) in the Indian Postal Service Group –A as per Annexure-10 and judgment of this Hon’ble Tribunal passed in OA No. 602 of 2010 for the entire period actually worked in the post of STS of Indian Postal Service Group-A and further direction be given to the respondent No.2 to revise pensionary benefit from the date of retirement of the applicant.

C. and further necessary order be passed for imposition exemplary cost on the respondents as the respondent has flouted the order in an indirect way when the same impugned order has been quashed and it has been confirmed by the Hon'ble High Court of Orissa.

And/or pass necessary order(s) which deems fit and proper for adjudication of the case.

And for this act of kindness, the applicant shall be ever prayed."

2. The applicant, while in service had been provisionally posted to a higher post of senior superintendent of post and deputy divisional manager (PLI), which were in senior scale posts, on officiating basis from 29.3.2002 till his retirement on 31.1.2007. The applicant filed a representation to be allowed the senior time scale (in short STS) pay as applicable for the posts against which he was posted on officiating basis from 29.3.2002 to 31.1.2007. Admittedly, the applicant had retired while on junior time scale (in short JTS) pay before any promotion to STS rank. His representation for being allowed the STS pay on the ground that he was officially against STS post was rejected vide order dated 6.7.2010 (Annexure-13 of the OA). The applicant had filed the OA No. 602/2010, which was disposed of vide order dated 10.9.2012 (Annexure-16 of the OA), directing the respondents to reconsider the applicant's case as per the judgment of Hon'ble Apex Court in the case of **Selva Raj vs. Lieutenant Governor of Island, Port Blair & Ors. (AIR 1999 SC 838)**. The respondents challenged the said order of the Tribunal before Hon'ble High Court in W.P. (C) No. 25056/2012, which was dismissed vide order dated 26.2.2014 of Hon'ble High Court.

3. Thereafter, the respondent No. 2 reconsidered the matter as per the direction of the Tribunal and rejected the case of the applicant for higher pay vide impugned order dated 8.5.2014 (Annexure-18 of the OA). The applicant challenges the order dated 8.5.2014 in this OA mainly on the ground that his case has not been considered as per the judgment of Hon'ble Apex Court in the case of Selva Raj (supra) as per the order dated 10.9.2012 (Annexure-16) of the Tribunal in OA No. 602/2010, by which, the rejection orders at Annexure 13 and 15 of the OA were quashed.

4. Another ground mentioned in the OA vide Para 5(vii) is as under:-

"That the stand taken by the respondent regarding postal directorate memo No. 427/97/SPG dated 27.07.1999 and memo No. 4-49/2001 SPG dated 17.10.2011 have specified that the Post Jr. Time Scale and Sr. Time Scale are inter-changeable i.e the post will be deemed to be in JTS of the officer holds the post is in JTS. Similarly the post will be deemed to be in STS as and when the officer promoted to the STS grade through D.P.C. In other word, the status of the post in Group-A(JTS/STS) of Indian Postal Service Group-A is attached with the status of the officer and there is no question of ad hoc promotion to the STS grade at Circle level. The above finding of the respondent is perverse and is not supported by any sound principle of law. It is also not as per the proceeding laid down by the pay commission or any letter or order of the DOPT. It is the respondent himself has violated and manipulated the order of the Hon'ble Tribunal only to harass the old retired applicant".

5. The respondents have resisted the OA by stating that the posts in which he was asked to officiate were the posts of the STS or JTS depending on the

status of the officer who is posted in accordance with the Postal Directorate's circulars dated 27.7.1999 (Annexure-R/1 of the Counter) and dated 17.10.2001 (Annexure-R/2 of the Counter). It is averred in the Counter that although the applicant was posted to the STS posts on ad hoc basis, his substantive cadre till his retirement was in JTS Group-B and he was not eligible for regular promotion to STS Group-A cadre as per the Group-A Amendment Rules, 1977. It was, therefore, averred in the Counter that the applicant was not entitled for the pay scale applicable for the STS post and that the case of the applicant is not in conformity with the ratio of the decision in the case of Selva Raj (supra).

6. The Rejoinder filed by the applicant, besides reiterating the grounds mentioned in the OA, has stated in reply to the averment relating to the circular at Annexure-R/1 and R/2 that the respondents had taken the same plea in OA No. 602/2010 and the Tribunal had rejected the plea vide order dated 10.9.2012 (A/16), for which, the plea cannot be agitated again. It is further stated that there is nothing in the rules to disallow higher salary to an employee who has discharged the duty against a higher post.

7. Heard learned counsel for the applicant and the respondents. While the applicant's counsel submitted that the applicant is entitled for the reliefs as claimed in the OA in view of the order of the Tribunal dated 10.9.2012 (Annexure-A/16), the learned counsel for the respondents submitted that as mentioned in the speaking order dated 8.5.2014 (Annexure-18).

8. Learned counsel for the respondents has submitted a written note on argument citing the order of this Tribunal in the case of Sri Lokanath Sahani vs. Union of India & others in OA No. 936/2014 of this Bench of the Tribunal and reiterating the grounds taken in the Counter. Learned counsel for the applicant has also filed written notes of argument, reiterating the grounds mentioned in the pleadings of the applicant and distinguishing the case of Lokanath Sahani (supra) cited by the respondents since in the cited case, the employee concerned had worked against the higher post only for 34 days, whereas the applicant has worked from 29.3.2002 to 31.1.2007 for which he was entitled for the salary attached to the post.

9. **The question to be decided in this case is whether the applicant is entitled for the pay and allowances as applicable to a post in STS in the light of the judgment in the case of Selva Raj (supra).** The applicant's contention is that as per the order dated 10.9.2012 of the Tribunal passed in his first OA No. 602/2010, his case should have been considered as per the judgment of Hon'ble Apex Court in the case of Selva Raj (supra) and he will be

entitled for the same. On the other hand, the contention of the respondents is that as per the circular of the DG, Posts at Annexure-R/1 and R/2, the applicant is not entitled for the claim, which has been rightly rejected vide the speaking order at Annexure-18.

10. The order dated 10.9.2012 of the Tribunal (Annexure-16) stated as under:-

“In view of the settled principles of law, we have no hesitation to quash the impugned orders as at Annexure-13 and 15 to the O.A. with direction to Respondent-Department to reconsider the matter in the light of what has been observed by the Hon’ble Supreme Court(Supra) and ass a reasoned order within a period of 120 days from the date of receipt of this order under intimation to the applicant. Ordered accordingly.”

11. The direction to the respondents was to reconsider the case of the applicant in the light of the observations in the judgment in the case of Selva Raj. The impugned order dated 8.5.2014 (Annexure-16) states the reason for rejecting the applicant’s case as under:-

“Appointment to the Senior Time Scale of Indian Postal Service Group A is made by promotion of Officers in the Junior Time Scale of the service with four years of regular service in that grade in the order of seniority subject to the rejection of the unfit on the recommendations of a duly constituted Departmental Promotion Committee as per the Provisions in the statutory Indian Postal Service Group A Recruitment Rules based on All India seniority and not on Circle level arrangements. The established procedure and statutory Recruitment Rules cannot be twisted or tweaked in favour of the applicant.

Postal Directorate Memo No. 4-27/97-SPG dated 27.07.1999 and Memo No. 4-49/2001-SPG dated 17.10.2001 have specified that the post of Junior Time Scale and Senior Time Scale are interchangeable i.e the post will be deemed to be in JTS if the officer holding the post is in JTS. The Post will be deemed to be in STS as and when the officer is promoted to the STS grade through DPC . In other works, the status of the post in Group A(JTS)/STS) of Indian Postal Service Group A is linked to the status of the officer and there is no question of ad hoc promotion to STS grade at circle level.

Accordingly, the instant case of Shri Jena is not in conformity with parameters as decided by the Hon’ble Supreme Court in Selva Raj Vrs. Lt. Governor of Island, Port Blair & Others so far as the status of the posts of SSPOs, Bhubaneswar Division and DDM(PLI), Circle Office are concerned. As per the provisions mentioned above, the posts of SPOs, Bhubaneswar Division and DDM(PLI) were of JTs grade of Indian Postal Service Group A during incumbency of Shri Jena initially by virtue of his ad hoc promotion to JTS Group A cadre and subsequently on regular promotion to the cadre worked in these two posts for which he had drawn the salary attached to the post and was never denied his due.”

12. The applicant had filed a Contempt Petition for violation of the order dated 10.9.2012 after passing of the speaking order dated 8.5.2014 (Annexure-18 of the OA). The said contempt petition was dropped vide order dated 29.10.2014 (Annexure-19 of the OA) of the Tribunal, with the findings as under:-

"On being confronted with a question that the order dated 08th May, 2014 gives rise to a fresh cause of action, Mr. Mohanty submitted that there cannot be any end to the litigation as every time the authorities may consider or reject the claim on one ground or the other. However, following the Judicial pronouncements of Hon'ble High Court and the Hon'ble Supreme Court, we are also of the considered view that the order dated 08th May, 2014 gives rise to a fresh cause of action and, therefore, there is no deliberate or wilful disobedience committed by the respondent-department or the alleged contemnors. Accordingly, the Contempt Petition is dropped and the notices are discharged."

The above order of the Tribunal implies that the impugned order dated 8.5.2014 was not considered to be a violation of the order dated 10.9.2012 of the Tribunal. Hence, the contention of the applicant in para 5(iv) of the OA that the said impugned order is disobedience of the Tribunal's order is not tenable.

13. The applicant has argued that the respondents have rejected the applicant's claim relying on the circulars dated 27.7.1999 (Annexure-R/1 of the Counter) and dated 17.10.2001 (Annexure-R/2) and the same plea taken by the respondents in the OA No. 602/2010 was rejected by the Tribunal, for which, it is not open for the respondents to take such ground while passing the impugned order dated 8.5.2014 or to oppose this OA. We are unable to accept such an argument of the applicant for the reasons that there was no findings of the Tribunal recorded in the order dated 10.9.2012 (Annexure-16) about the applicability of the circulars dated 27.7.1999 and 17.10.2001 to the applicant's case as the Tribunal vide order dated 10.9.2012 directed for reconsideration of the matter in the light of the judgment in the case of Selva Raj (supra). Further, the finding that the order dated 8.5.2014 (Annexure-18 of the OA) is a fresh cause of action has been recorded by the Tribunal in order dated 29.10.2014 (Annexure-19) in the Contempt Petition, which has been accepted by the applicant without any challenge. The direction in order dated 10.9.2012 was, therefore, to reconsider the case in the light of the judgment in the case of Selva Raj (supra), without expressing any opinion about the applicability of the circulars dated 27.7.1999 (R/1) and dated 17.10.2001 (R/2) to the case.

14. In the case of Selva Raj (supra), Hon'ble Apex Court has held as under:-

"2. A limited notice was issued in the SLPs which has resulted into these appeals. It was to the effect "whether the petitioner is entitled to draw the salary attached to the post of Secretary (Scouts) during the time he actually worked on that post pursuant to the order at Annexure 'E' dated 28-1-1992 at page 32 of the Paper-Book. And if so, what was the scale of pay for the said post according to him". When we turned to the order dated 28-1-1992 under which the appellant was called upon to look after the duties of the Secretary (Scouts) we find the following recitals as per Order No. 276, dated 28-1-1992. "The Director of Education, A & N Islands is pleased to order the transfer to Shri Selveraj, Primary School Teacher attached to Middle School, Kanyakumari to Directorate of Education (Scouts Section) to look after the duties of

Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77."

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground."

15. From above, it is clear that the petitioner in the case of Selva Raj (supra) was a teacher who was posted as Secretary (Scout) for a temporary period with specific order of the competent authority that his pay will be drawn as Secretary (Scout) under GRF 77 as mentioned in paragraph 2 of the judgment extracted above. The prayer for the relief in that case was limited to the differential pay for the period the petitioner had worked as Secretary (Scout) and this prayer for limited relief was allowed by Hon'ble Apex Court in the background that the posting order had mentioned that the pay of the post of Secretary (Scout) will be allowed under GFR 77. In the present OA, there was no order of the respondents to the effect that the applicant would be entitled for the pay applicable for the STS post during the period in question. On the other hand, the circular dated 27.7.1999 (R/1) of the respondent No.1. which has been relied on by the respondents, stipulated that when a JTS officer is posted against a STS post, the STS post in question will be temporarily included in JTS, implying that the said STS post will have the same pay as applicable to JTS and not STS. **Hence, factually the case of the present applicant in this OA is distinguishable from the Selva Raj case and we agree with the contention of the respondents (vide the order dated 8.5.2014) that the applicant's case is "not in conformity with the parameters as decided by the Hon'ble Supreme Court in Selva Raj....."**

16. The applicant, in para 5(vii) of the OA has opposed to the contention of the respondents that as per the circular dated 27.7.1999 of respondent No.1 (Annexure-R/1), the STS post will be temporarily downgraded to JTS, which

is "not supported by any sound principle of law". No reason or authority has been furnished by the applicant explaining why the circular dated 27.7.1999 will not be applicable to his case and why such contention of the respondents that he was not eligible on account of this circular is not legally valid. It is also noticed that the applicant has failed to challenge the circulars dated 27.7.1999 (Annexure-R/1) or 17.10.2001 (Annexure-R/2) in this OA.

17. Paragraphs 2 and 3 of the circular dated 27.7.1999 of the respondent No.1 which are applicable in this case, state as under:-

"2. It has now been decided that on the same analogy, the posts in Junior Time Scale may be added temporarily to the Senior Time Scale and filled up in accordance with the Recruitment Rules.

3. A post will be deemed to be in JTS if the post holder is having Group 'A' service upto four years and in STS as when he is promoted to the STS grade through DPC after four years of service deployment of Junior Time Scale officers of Indian Postal Service against Group 'A' Posts may be decided accordingly."

18. It is clear from the above stipulations of the circular dated 27.7.1999 that when a JTS officer is posted against a STS post, then such STS posts are temporarily added to JTS cadre. Hence, the applicant, while posted on officiating basis against the STS post, carried his pay scale in JTS as per the circular dated 27.7.1999 and he cannot claim the higher pay applicable to STS post as these STS posts are deemed to be added temporarily to the JTS posts.

19. In the circumstances, we are unable to agree with the applicant's contentions that he is entitled for similar reliefs in the light of the judgment of Hon'ble Apex Court in the case of Selva Raj (supra) and that application of the circulars dated 27.7.1999 (Annexure-R/1) and dated 17.10.2001 (Annexure-R/2) of the respondent No. 1 to his case was not based on sound legal principle. The question framed at paragraph 9 of this order is answered in negative. The grounds advanced in the OA do not justify any interference of this Tribunal in the matter. The OA is, accordingly, dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

