

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 641 of 2014

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

Bibhuti Bhusan Patnaik, aged about 56 years, S/o late Govinda Ranjit Patnaik, serving as APM (Mails), (HSG-II) Berhampur HO, officiating as DPM (HSG-I), Berhampur HO. At/Post-Berhampur, Dist.- Ganjam.

.....Applicant

VERSUS

1. Union of India, represented through the Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 1100011.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar, Dist.-Khurda.
3. The Post Master General, Berhampur Region, Berhampur, Dist.- Ganjam.

.....Respondents.

For the applicant : Mr.G.K.Behera, counsel

For the respondents: Mr.D.K.Behera, counsel

Heard & reserved on : 20.1.2020

Order on : 04.02.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has sought for the following reliefs in this OA :

- “(i) Hold/declare the impugned Order No. St/26-14/2013, dtd. 03.02.2013 in not acceding the representation of the applicant for sanction of higher scale of pay for the period the applicant officiating the higher post and in not making payment of the differential arrear dues is bad & illegal;
- (ii) Direct the respondents to sanction the higher scale of pay i.e. Rs.9300-34800/- (PB-2) with Grade Pay of Rs.4600/- from 02.11.2012 to till date the applicant has been officiating in the higher post i.e. the DPM, Berhampur HO, HSG-II and to make payment of the differential arrear dues within a short period;
- (iii) And pass any such other order(s) as may be deemed fit and proper in the bonafide interest of justice.”

2. The applicant was first appointed as Postal Assistant on 13.2.1990 and then was promoted to LSG cadre on 16.3.2005. On 20.7.2009 he was granted promotion to HSG-II but he declined the promotion because of personal reasons. On 29.8.2011 he was posted as APM (Mails) Berhampur and then on 10.9.2011 he joined in the post of DPM, Berhampur HO which was HSG-I post on local arrangement and he claims to have been officiating against the said post. On 3.11.2011 he was allowed ad hoc promotion to HSG-I cadre and was posted as DPM, Berhampur vide the order dated 3.11.2011 (Annexure A/1). On

1.11.2012 he was reverted to HSG-II post as APM (Mails) although the DPM post was lying vacant. On 10.6.2013 he submitted representation for sanction of higher scale of pay from 2.11.2012 since he was officiating as DPC Berhampur against HSG-I post. Copy of the representation is at Annexure A/4. Since no action was taken he filed OA No. 697/2013 which was disposed of vide order dated 29.11.2013 with direction to respondent No.2 to consider the representation of the applicant dated 10.6.2013 (Annexure A/4).

3. Respondent No.2 passed the order dated 3.2.2014 (Annexure A/6) rejecting the claim of the applicant by stating as under :

“The fact of the case in brief is that Shri B.B.Patnaik has joined in HSG-II cadre on 16.8.2011. Although he had not completed 3 years regular service in HSG-II cadre, he was given ad hoc promotion to HSG-I cadre for a period of 11 months vide Circle Office memo No. ST/26-15/2003/Ch.II dated 03.11.2011 and was posted as DPM, Berhampur HO since the post was vacant in the light of Directorate letter No. 4016/2002-SPB-II dated 01.05.2009 relaxing the minimum service rendered in norm based HSG-II on regular basis (without prescription of any minimum service in HSG-II cadre). However, after receipt of instruction from the Directorate vide letter No. 4-16/2002-SPB-II dated 23.08.2012, the applicant was reverted to HSG-II cadre vide COP memo No.ST/26-15/2003-Ch-II dated 18.10.2012. Accordingly, he was reverted to HSG-II cadre on 01.11.2012 vide RO, Berhampur Memo No. ST/12-48/12/Sub -I dated 01.11.2012.

Thereafter, no order has been issued in favour of the applicant by the Circle Office for officiating on ad hoc basis as DPM, Berhampur HO. His claim for his continuation as DPM, Berhampur HO in HSG-I cadre is a local arrangement. The applicant had earlier represented on 11.6.2013 to the Postmaster General, Berhampur Region, Berhampur which was forwarded by the PMG, Berhampur to CPMG, Odisha circle, Bhubaneswar vide RO letter No. ST/12-48/12/Sub-I dated 18./6.2013 for taking a decision. The decision of the CPMG, Odisha Circle, Bhubaneswar was communicated to PMG, Berhampur Region, Berhampur vide CO memo no. ST/26-14/2013(Postal) dated 23/24.7.2013. the same was communicated to the Sr. Postmaster, Berhampur HO vide RO, Berhampur No. ST/12-48/2012/Sub-I dated 08.08.2013 with the instruction that the official (applicant) may be intimated accordingly. The decision of Circle Office, Bhubaneswar communicated to RO, Berhampur on 23/24.07.2013 reads as follows :

‘With reference to the subject cited above, I am directed to intimate that the official Shri B.B.Patnaik has not completed 3 years regular service in HSG-II cadre to officiate in HSG-I cadre. His arrangement to work as DPM, Berhampur HO is a local arrangement.

As per Para 6 of Directorate letter No. 137-64/2010-SPB-II dated 28.07.2011 circulated vide C.O. letter No. ST/26-29/2011 dated 27/28.10.2011, the official is not entitled for HSG-I pay as claimed by him as the official does not fulfill the criterion laid down in the Recruitment Rules for such post as prescribed.’”

4. The grounds advanced by the applicant in the OA are that for earlier period, when he officiated against higher post in different stations he was allowed higher pay scales. Hence, it is claimed that there is no impediment to sanction his claim for HSG-I from 2.11.2012.

5. In the counter filed by the respondents, it is stated that the applicant was promoted to HSG-II cadre on regular post on 16.8.2011 and he has not completed three years of regular service as on 1.1.2013 and hence, he was not eligible for consideration of ad hoc promotion to HSG-I cadre. In support of

such contention, the respondents have referred to the Recruitment Rules notified on 30.9.1976 (Annexure R/1) and the letter dated 28.7.2011 of the DG Posts (respondent No.1). With reference to the contentions at para 4(xiii) of the OA it is stated that the order dated 1.5.2009 of the Department of Posts the relaxation from minimum required service for promotion to HSG-I post was allowed for one year. It has been clarified in the letter dated 23.8.2012 of the respondent No.1 (Annexure R/6 to the Counter) that the vacancy in HSG-I arising out of issue of instruction dated 1.5.2009 cannot be filled up in the light of those instructions which were applicable only for vacancies as on 1.5.2009.

6. No rejoinder has been filed by the applicant. We have heard learned counsels for the applicant and respondents and gone through the pleadings by the parties. The circular of respondent No.1 dated 28.7.2011 states as under :

“In view of the above position, officiating arrangements may be made in accordance with Rule 27 of 50 of Postal Manual Vol. IV or as per the instructions of DOP&T and Ministry of finance, as the case may be. Such an official who fulfill the criteria laid down in the Recruitment Rules prescribed for such post and is thus eligible to be appointed to higher post is posted to officiate against the norm based supervisory post in LSG, HSG-II and HSG-I cadre on a whole time basis should be remunerated by allowing the pay and allowances in the pay scale/pay band + grade pay attached to the higher posts, for the period the official continues to officiate in it, provided the provisions of FR-35 are not invoked by the appointing authority which is normally done in case of ineligible officials being appointed to the higher posts in exigency of service.”

7. In this OA the order dated 28.7.2011 of the respondent No.1 based on which the respondent No.2 has passed the impugned order dated 3.2.2014 (Annexure A/6), has not been challenged. It is also found that the decision of the respondents not to grant HSG-I promotion on ad hoc basis to the applicant is in accordance with the Recruitment Rules and the instructions of the respondent No.1.

8. In the circumstances, we do not find any merit in the OA so as to justify any interference in the matter. The OA is accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)