

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 360 of 2020

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)**

1. Krushna Chandra Chinara, aged about 61 years, S/o late Kedarnath Chinara, at-Srikrishna Vihar (Dibati), PO-Jhinkiria, Via-Bentakara, PS-42 Mouza (Sadar), Dist.-Cuttack, retired as Supdt. of Post Offices.
2. Chandrmani Mohapatra, S/o Baidhyanath Mohapatra, Ward No.2, near Police Field, At/PO-Ratanpur, via/PS/Dist-Nayagarh, presently retired as Superintendent of Post Offices.
3. Jayakrushna Jena, aged about 66 years, S/o Late Bhikari Ch. Jena, Flat No. 302, Ekram Villa, Ekram Nagar, PO-Bhubaneswar-2, Dist-Khurda, presently retired as Asst. Supdt. of Posts.
4. Ramdas Soren, aged about 66 years, S/o Late Laxman Soren, At-Ward No.28, Karatbasa, PO-goudadiha, Via-Takatpur, PS-Bripada Town, Dist.-Mayurbhanj, presently retired as Supdt. of Post Offices.
5. Girish Chandra Sahoo, aged about 64 years, S/o Late Purna Chandra Sahoo, At-Housing Board Colony, Po-Dhaipur, Via/PS-Athgarh, Dist-Cuttack and retired Supdt. PSD, Bhubaneswar.

.....Applicants

VERSUS

1. Union of India represented through the Secretary to Govt. of India, Ministry of Communications & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda, Pin-751001.

.....Respondents.

For the applicant: Mr.S.K.Ojha, counsel

For the respondents: Mr.G.R.Verma, counsel

Heard & reserved on : 14.12.2020

Order on : 05.02.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- (i) To quash the orders contained under Annexure A/4 series holding the same is against the decision of the Govt. of India and also opposing the judicial pronouncements made from time to time.
- (ii) To direct the Respondent to grant Grade Pay of Rs.5400/- to the applicants from the date of completion of four years Gr.B regular service in the GP Rs.4800/-.
- (iii) to allow this OA with costs."

2. The facts in brief are that all the applicants were promoted to the cadre of Assistant Superintendent of Post Offices, which is a Gazetted Group 'B' post

in the department of Posts carrying the pay scale of Rs.6500-200-10,500/- as per 5th CPC report. After the 6th CPC report pay scale of the applicants were revised w.e.f. 1.1.2006 and they were placed in the Pay Band 2 i.e. Rs.9300-34,800/- with Grade Pay of Rs.4600/-. The applicants were granted financial upgradation to the Grade Pay of Rs.4800/- after completion of 30 years of service. As per the resolution, Group 'B' officers of Department of Posts will be granted Grade pay of Rs.5400/- on non-functional basis after 4 years of regular service in the Grade pay of Rs.4800/- in PB-2. But even after completion of required period of 4 years in Group 'B' service with Grade pay of Rs.4800/-, the department has not extended the time bound advancements to the applicants. As a result the applicants are sustaining financial loss in pay and pension. The applicants submitted representations to the Chief PMG, Odisha Circle on different dates (Annexure A/3 series) but the same were rejected vide impugned order dated 19.8.2020 (Annexure A/4 series) relying on the letter of the department of Posts dated 4.11.2008 (Annexure A/5). Hence the applicants have approached this Tribunal in the present OA.

3. The ground taken by the applicants is that the letter dated 4.11.2008 citing which the representations were rejected is liable to be quashed because the same contravenes the resolution of Govt. of India and the department cannot issue any such letter by way of clarification either adding or eliminating anything from the decision of Govt. of India. This point is well settled by the law laid down by Hon'ble Apex court in the case of Union of India -vs- N.R.Parmar & Ors. (Civil appeal No. 7514/2005 disposed of on 27.11.2012). Hence the letter dated 4.11.2008 is void ab initio and non-existent in the eye of law. The applicants have also relied upon the following judgments in support of their case :

- i) Principal Bench of this Tribunal vide order dated 6.8.2010 in OA 2662/2009 (R.K.Jain & Ors. -vs- UOI & Ors.) has directed the respondents to accord grade pay of Rs.5400/- in PB-II after completion of four years regular service in grade pay of Rs.4800/-.

ii) Hyderabad Bench of this Tribunal in order dated 14.9.2015 in OA 296/2014 (B.Udaya Shankar Rao & Ors. -vs- Department of Posts) directed the respondents to extend the benefits as has been granted in OA 1051/2020 decided on 30.3.2012 as per the reasons stated therein. The department filed WP No. 31576/2016 before Hon'ble High Court of Hyderabad against the order dated 14.9.2015 in OA 296/2014, which was dismissed vide order dated 6.11.2018.

iii) Cuttack Bench of this Tribunal in OA 146/2019 (Kartik Chandra Ghadei & Ors. -vs- UOI & Ors.) vide order dated 28.2.2020 directed the respondents to extend Grade pay of Rs.5400/- on non-functional basis on completion of 4 years of service in the Grade Pay of Rs.4800/-.

The applicants have averred that since they are similarly situated with the applicants in OA 296/2014, OA 1051/2010 and OA 146/2019, they are entitled to the benefits granted to those applicants.

4. Respondents have filed their Counter. It is submitted by the respondents that Group 'B' officers in the Department of Posts who render 4 years regular service in the post of Superintendent in the erstwhile scale of Rs.7500-12,000/- the corresponding scale being Rs.9300-34,800/- with Grade Pay Rs.4800/- are eligible to get Rs.5400/- Grade pay. The post of Assistant Superintendent of Posts is not equal with that of Superintendent of Posts. Further the Postal Directorate vide letter dated 22.4.2019 has clarified that the proposal to grant NSFG to Assistant Superintendent of Posts on completion of four years of service cannot be recommended. By way of mere placement in grade pay of Rs.4800/- by virtue of MACP, one ASP cannot be of the status of Gr-B and so completion of 4 years in such Grade Pay will not confer eligibility for grant of Grade pay of Rs.5400/-. While working as ASP the applicants were granted financial upgradation under MACP-III. Therefore the applicants are not entitled to Grade Pay of Rs.5400/- after completion of 4 years in grade pay of Rs.4800/- granted on account of MACP. The respondents have also stated that the applicant has claimed Grade pay of Rs.5400/- treating his case as similar to that of Kartik Chandra Ghadei (applicant in OA 146/2019). It is submitted

that the matter had to be referred to the Postal Directorate and the decision is awaited.

5. We have gone through the pleadings and citations relied upon by the learned counsels for both sides.

6. It is seen from the materials on record that the applicant has not completed four years as Superintendent of Post as Group B officer. Simply because he has completed four years in his capacity as Asst. Supdt. of Post cannot make him equal with that of Superintendent of Posts . In this regard clarification has also been issued by Postal Directorate vide letter dated 22.4.2019 and 4.11.2008. The letter dated 4.11.2008 was cited while rejecting the representation of the applicant. In none of the cited decisions as relied upon by the learned counsel for the applicant the concerned employee has worked as Asst. Supdt of Posts and was granted the relief in question without working as Supdt. of Posts for four years. In the case of one Kartika Chandra Ghadei cited by applicant cannot be any help to him since the said matter has been referred to the Postal Directorate by the department and a decision is awaited. Relief if any granted without following due procedure and without fulfilling the required norms, cannot be cited as precedent to grant relief in favour of the applicant on the principle of negative equality, as the same is not permissible.

7. According the OA stands dismissed. There will be no order as to costs.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)