

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.326/2015

CORAM:

**HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. ANAND MATHUR, MEMBER(A)**

Sri Balaram Jena, aged about 65 years, S/o Late Madhusudan Jena, resident of Vill.PO-Dola Sahi, PS-Tihidi, Dist-Bhadrak, Odisha, PIN-756127.

.....Applicant

VERSUS

1. Union of India represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. The Director Accounts (Postal), Mahanadi Vihar, Cuttack-753004.

.....Respondents.

For the applicant : Mr. C.P. Sahani

For the respondents: Mr. M.R. Mohanti

Heard & reserved on : 06.01.2021 Order on :01.04.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This Original Application has been filed by the applicant the following relief(s):-

“To direct the respondent(s) to pay the differential salary in grade pay of Rs.6600/- from July, 2010 to December, 2010 along with all consequential benefits with interest quashing the impugned order No.11-8/2015-SPG dated 20.04.2015 at Annexure-A/8.

And any other order as the Hon'ble Court deem just and proper in the interest of justice.”

2. The facts of the present O.A. are that while the applicant was working as Supdt. Of Post Offices, Bhadrak Division being approved in PS Group 'B' Cadre on regular basis w.e.f. 17.06.2003 with PB-2 and GP Rs.4800/- till 04.08.2007. After four years of regular service in PS Gr.'B', the Grade Pay of the applicant was upgraded from Rs.4800/- to Rs.5400/- w.e.f. 05.08.2007 vide D.G. Posts OM dated 04.11.2008 read with the CPMG, Odisha Memo dated 22.04.2009(Annexure-A/1). It is submitted that while the applicant was working as Supdt. Of Posts, Bhadrak Division, the respondent No.2 vide Memo dated 01.07.2010 (Annexure-A/2) posted the applicant as Manager, Postal Printing Press, Bhubaneswar on ad-hoc basis citing as JTS Gr. 'A' though the post is of STS Cadre. Thereafter, the applicant joined as Manager, Postal Printing Press on 07.07.2010 which is STS post.

3. It is submitted that the applicant retired as Manager, Postal Printing Press on 31.12.2010 on attaining age of superannuation but was not paid GP Rs.6600/- which is admissible to STS posts like Manager, PPP, Bhubaneswar. Thereafter, he made representations dated 24.03.2014(Annexure-A/6) to D.G. Posts and CPMG(O) and another representation dated 02.06.2014 (Annexure-A/7) to D.G. Posts. As the departmental respondents did not allow the payment of GP Rs.6600/- to the applicant despite repeated representations, the applicant filed O.A. No.993/14 before this Tribunal. This Tribunal vide order dated 12.01.2015 disposed of the O.A. with a direction to Respondent No.1 to consider the representations of the applicant within 90 days.

4. It is further submitted that respondent No.1 vide order dated 20.04.2015 (Annexure-A/8) rejected the representation of the applicant on the ground that the applicant is not eligible for promotion to the STS cadre and taken the plea that the posts of JTS/STS are interchangeable. It is further mentioned that the

CPMG(O) in his Memo dated 27.01.1994(Annexure-A/9) transferred one Shri Bhagaban Patra to the post of Manager, Postal Printing Press, Bhubaneswar and clearly mentioned in the above said memo that the post is Senior Time Scale (STS) Cadre. It is submitted that by not giving the GP of Rs.6600/- to the applicant attached to the STS post in which the applicant actually worked, is clearly against the doctrine of equality enshrined in Articles 14 and 16 read with Article 39(d) of Constitution of India and also against the Principle of "equal pay for equal work". This principle has been emphatically said and explained by the Hon'ble Apex Court as the goal of our Constitution in Randhir Singh Vs. Union of India, (1982) 1 SCC 618.

5. It is further submitted that the (1) Hon'ble Apex Court of India in a decision reported in the AIR 1999, SC 838 i.e, in the matter of Selveraj Vs. Lt. Governor of Island, Portblair & Ors., (2) Civil Appeal No.2521 of 2013 (Arising out of SLP (C) No.7420 of 2012) in the matter of Arindam Chattopadhyaya & Ors. Vs. State of West Bengal & Ors. allowed the appeal directing the respondents to pay salary to appellants. (3) Judgment of CAT Cuttack Bench in O.A.602/2010 in the matter of Gourang Jena Vs. UOI & Ors. allowed the OA and directed the respondents to consider the matter in the light of what has been observed by the Hon'ble Apex Court. This judgment was upheld by the Hon'ble High Court of Orissa in order dated 26.02.2014 in WP(C) 25056 of 2012. It is submitted that the denial of the Respondent(s) to grant Grade Pay Rs.6600/- causes financial loss to the applicant. Hence, the present O.A with the prayer as above.

6. The respondents have filed their counter, wherein it is mentioned that the applicant vide representation dated 24.03.2014 had represented to DG (Posts), New Delhi to grant him higher Grade Pay of Rs.6600/- which was pending for

consideration. In the meantime, the applicant had filed O.A. No.993/14 before this Tribunal. The said OA was disposed of by this Tribunal vide order dated 12.01.15 with direction to respondent No.1 to consider and dispose of the representations dated 24.03.2014 (Annexure-A/6) and dated 02.06.2014(Annexure-A/7) within 90 days. In obedience to the order of this Tribunal the representations of the applicant were considered in accordance with the rules and guidelines of the department and disposed of vide order dated 20.04.2015. Being aggrieved with the said order the applicant has filed the present O.A.

7. It is further submitted that though the post of Manager, Postal Printing Press, Bhubaneswar is STS Group 'A' Cadre, the applicant was not posted in STS cadre as per Annexure-A/2 of the OA where the applicant was posted as Manager, Postal Printing Press, Bhubaneswar on adhoc promotion to JTS Group 'A' Cadre, his substantive cadre was PS Group 'B' only. It was Circle level arrangement to meet the local requirements. As per Department of Posts, New Delhi Memo dated 27.07.1999 (Annexure-R/1), a post will be deemed to be in JTS if the post holder is having Group 'A' Service up to four years and in STS as and when he is promoted to the STS Grade through DPC after four years of service. Since the applicant worked as JTS Officer purely on adhoc basis while discharging the duties of Manager, Postal Printing Press, Bhubaneswar he got the benefits of JTS. The status of the Manager post does not matter as JTS/STS posts are interchangeable. Therefore, the applicant is not entitled for STS Group 'A' Scale.

8. It is further submitted that the applicant was promoted to JTS of Indian Postal Service Group-A cadre purely on temporary and adhoc basis carrying Grade Pay of Rs.5400/- and posted as Manager, Postal Printing Press,

Bhubaneswar. The representation of the applicant were considered by the competent authority and disposed of as per instructions contained in Postal Directorate letter dated 17.10.2001(Annexure-R/2) wherein it has been clarified that "JTS officers completing 4 years of regular service as on 1st January of vacancy year are eligible for holding STS cadre posts. The post will be deemed to be in JTS if the officer holding the post in JTS. The post will be deemed to be in STS as and when the officer is promoted to the STS grade through DPC.

9. It is further submitted that the applicant was promoted to JTS of Indian Postal Service, Group-'A' purely on temporary and adhoc basis and posted as Manager, Postal Printing Press, Bhubaneswar vide Circular dated 01.07.2010. As per assumption charge report, he joined his promotional post on 07.07.2010. The posts of JTS/STS are interchangeable depending upon the status of the incumbent. Since the applicant worked as a JTS officer while discharging the duties of Manager, Postal Printing Press, Bhubaneswar he got the benefits of JTS. In view of the above, the applicant is not entitled to any reliefs as sought for. And hence the OA having no merit is liable to be dismissed with cost.

10. The applicant has filed the rejoinder to the counter filed by the respondents. It is submitted that the applicant is not claiming promotion to the STS cadre but he is only claiming the differential salary in GP of Rs.6600/- attached to the post in which he worked. The respondents admitted that the post of Manager, Postal Printing Press, Bhubaneswar is STS Group'A' Cadre. But the respondents have taken the plea that the applicant was not posted in STS Cadre as per Annexure-A/2. It is submitted that although the applicant was promoted to JTS Group'A' Cadre on adhoc promotion, he was posted as Manager, Postal Printing Press, Bhubaneswar which is a STS post as per Annexure-A/9. Therefore the applicant shouldered higher administrative,

disciplinary and financial responsibilities. Therefore it is the legitimate claim of the applicant to get the pay attached to the post as per the repeated judgments of the Hon'ble Apex Court cited in the OA. It is further stated that the Annexure-R/1 of the counter is regarding the staffing of STS post and permitting the JTS officers to work in STS posts. But nowhere in the posting order at Annexure-A/2, it has been mentioned that the applicant would shoulder statutory powers like disciplinary/financial matters etc. of JTS Cadre.

11. It is further submitted that the applicant was ordered to work against the STS post. Therefore, the Annexure-R/1 and R/2 of the counter are not relevant in this case on the reason that the applicant is not claiming any promotion but the differential salary. It is pertinent to mention that the STS posts carry higher administrative, disciplinary and financial responsibilities than JTS posts. Hence, applicant is entitled to get differential salary in higher grade pay of Rs.6600/- in the light of the reported judgements of the (1) Hon'ble Apex Court of India in a decision reported in the AIR 1999, SC 838 i.e, in the matter of Selveraj Vs. Lt. Governor of Island, Portblair & Ors., (2) Civil Appeal No.2521 of 2013 (Arising out of SLP (C) No.7420 of 2012) in the matter of Arindam Chattopadhaya & Ors. Vs. State of West Bengal & Ors. and Randhir Singh Vs. UOI (1982) 1 SCC 618 and (3) Judgment of CAT Cuttack Bench in O.A.602/2010 in the matter of Gourang Jena Vs. UOI & Ors.

In view of the above submissions, the orders passed by the departmental respondents at Annexure-A/8 is illegal, against the principles of natural justice and liable to be quashed. And this O.A deserves to be allowed by this Tribunal granting the relief prayed for.

12. The respondents have filed their written note of submission. It is submitted that the applicant while continued as PS Gr-B officer was promoted

on dated 01.07.2010 to the cadre of JTS Gr-A purely on temporary and ad-hoc basis for a period of 11 months with pay band Rs.15600-39100 with grade pay Rs.5400/- with a condition that 'The ad-hoc promotion will continue for a period of 11 months from the date of assumption of charges or till order/posting of regular JTS Gr-A officer whichever is earlier, after completion of 11 months this ad-hoc promotion shall automatically lapse. The ad-hoc promotion does not confer any claim for permanent absorption or seniority in the JTS Gr-A cadre and the officer shall be reverted to PS Gr-B cadre at any time without assigning any reason". It is submitted that after ad hoc promotion of applicant to JTS Gr-A he has taken charge on dated 07.07.2010 as Postal Printing Press Manager which is a Senior Time Scale post and he has also superannuated from the said post on 31.12.2010.

13. It is further submitted that the Postal Printing Press Manager is a Senior Time Scale post carrying grade pay of Rs.6600/- for which applicant claims grade pay Rs.6600/- as he has been taken charge of Postal Printing Press Manager for the period 07.07.2010 to 31.12.2010 but the circular bearing No.4-27/97-SPG dated 27.07.1999 & 4-49-SPG dated 17.10.2001 clarifies that Senior Time Scale posts are filled up in accordance with Recruitment Rules and the promotion of JTS officers to the STS grade is to be made after completion of 4 years of regular service in JTS grade, then the JTS officers will be promoted through DPC. Further also clarified that the status of the post in Group "A" (JTS/STS) of Indian Postal Service Group 'A' is linked to the status of officers and there is no question of ad hoc promotion of JTS officers to STS grade.

14. It is further submitted that the applicant after completion of 4 years in Group-B he has been given ad hoc promotion to the cadre of JTS Gr-A on temporary basis for a limited period at circle level to meet the local requirements

and the applicant joined and continued as Postal Printing Press Manager only 5 (five) months as stop gap arrangement but his substantive cadre was Group-B only and the posts of JTS/STS are interchangeable depending upon the status of the incumbent. Further the applicant being a Group-B cadre officer claiming benefits of STS i.e., grade pay higher than the next promotion post. It is submitted that the grade pay of Group-B officers is Rs.4800-5400 and the Grade Pay of JTS is also Rs.5400/- and the applicant also received the Grade Pay of Rs.5400 as Group-B as well as well as JTS officer. The applicant neither object nor challenge the GP of Rs.5400/- received as JTS which has received as Group-B officer prior to ad hoc promotion.

15. It is further submitted that the prayer of the applicant has already been decided by this Tribunal in O.A. No.768/13 on dated 22.06.2017 and CAT Lucknow Bench in OA No.245/2011 on dated 06.07.2015 the details of the citations are mentioned below. It is further submitted that on 22.06.2017 the CAT Cuttack Bench decided in OA No.768/13 (Kunja Bihari Ratha Vrs. UOI) wherein the applicant prayed for STS pay scale & Grade pay Rs.6600/- for the period he discharged his duty and taken the responsibility and the Hon'ble Tribunal clearly held in para 7 page 7 that feeder grade for promotion from PS Group-B is to JTS Group-A cadre, the next promotion being STS Group-A. It is also not in dispute that the STS and JTS are interchangeable. It is the case where the applicant has been allowed to discharge his duties against a post which is two steps higher than his substantive post with the scale of pay of the next higher post. Applicant has not challenged grant of scale of Rs.8000-13500(GP Rs.5400/-) of the post of JTS Group-A.

16. It is further submitted that vide order dated 06.07.2015 passed in O.A. No.245/2011 by the CAT Lucknow Bench in the case of O.P. Verma Vrs. UOI

wherein it was held that since the applicant was given the charge until further orders on purely temporary and ad hoc basis on circle level arrangement in the public interest as such the applicant cannot claim the benefit of pay for the post of CPMG Group-A STS, accordingly we are not inclined to interfere in the present O.A. Accordingly, OA is dismissed.

17. It is further submitted that the Hon'ble Apex Court passed order in Civil Appeal No.2521/2013 Arising out of SLP No.7420/12 held in Para 13 that the stop gap arrangement for few months or the applicants had been given additional charge of the post for a fixed period then the applicant could not have legitimately claimed salary in the scale of higher post. In view of the above the applicant's prayer is not sustainable in the eye of law and liable to be dismissed.

18. Applicant has filed his written note of submission in which it is submitted that as per Section-20 of Indian Postal Service (Group 'A') Rules, 1987 (Annexure-A/10), the officers of Postal Superintendents in Group 'B' cadre who are on the approve list for promotion to the Junior Time Scale and have rendered not less than 7 years in Group 'B' or higher post may also be promoted and appointed to the cadre of STS purely on temporary measure till such time officers from Junior Time Scales are available for regular promotion to the Senior Time Scale. Under this provision the applicant who has completed more than 7 years in Group 'B' cadre was promoted and posted on ad-hoc basis to the post of Manager, Postal Printing Press, Bhubaneswar is in the cadre of Group 'A' (STS). It is further submitted that as per the FR-22(1) (a) (1) (Annexure-A/11) in cases where a Government Servant is promoted to higher post carrying higher duties and responsibilities in substantive, temporary or officiating capacity, his pay in the time scale of higher post shall be fixed.

19. It is further submitted that the claim of the applicant in the present case is based on well settled principle of 'equal pay for equal work' and two persons cannot be paid differently while doing the same duties and responsibilities which ultimately violates the Article 14, 16 and 39 (d) of Constitution of India. It is further submitted that a recent judgment dated 26.10.2016 the Hon'ble Supreme Court in Civil Appeal No.213 of 2013 in the matter of State of Punjab & Ors. Vs. Jagjit Singh & Ors extended the benefit of principle of 'equal pay for equal work' to the temporary employees. The Hon'ble Supreme Court after discussing it's various judgments on the subject observed that the test of doctrine of 'equal pay for equal work' lies on whether two persons carries equal duties and responsibilities or not. The Hon'ble Apex Court further observed that the comparison merely based on designation or cadre of posts is misconceived.

20. It is further submitted that in the matter of Jaipal & Ors Vs State of Haryana & Ors, (1988) 3 SCC 354, the Hon'ble Supreme Court vide the judgment dated 02.06.1988 at Para-6 held that " If two class of persons do same work under the same employer, with similar responsibility, under similar working conditions the doctrine of 'equal work equal pay' would apply and it would not be open to the state to discriminate one class with the other in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work."

In view of the above facts and circumstances, the applicant prays to quash the rejection order at Annexure-A/8 and direct the departmental respondents to give the minimum pay in the time-scale of Group 'A' (STS) cadre with GP of Rs.6600/- for the period he worked as Manager, Postal Printing Press, Bhubaneswar.

21. Ld. Counsel for the applicant relied on few citations including the following:-

- (1) Hon'ble Apex Court of India in a decision reported in the AIR 1999, SC 838 i.e., in the matter of Selveraj Vs. Lt. Governor of Island, Portblair & Ors.,
- (2) Civil Appeal No.213 of 2013 in the matter of State of Punjab & Ors. Vs. Jagjit Singh & Ors.
- (3) In the matter of Jaipal & Ors. Vs. State of Haryana & Ors., 1988 3 SCC 354.
- (4) Civil Appeal No.2521 of 2013 (Arising out of SLP (C) No.7420 of 2012) in the matter of Arindam Chattopadhyaya & Ors. Vs. State of West Bengal & Ors.
- (5) Randhir Singh Vs. UOI (1982) 1 SCC 618.
- (6) Judgment of CAT Cuttack Bench in O.A.602/2010 in the matter of Gourang Jena Vs. UOI & Ors.

22. Ld. Counsel for the Respondents relied on few citations including the following:-

- (1) CAT, Cuttack Bench in O.A. No.768/2013 (Kunja Bihari Ratha Vrs. UOI.)
- (2) CAT, Lucknow Bench in O.A. No.245/2011 (O.P. Verma Vrs. UOI)

23. We have heard learned counsels for the applicant and the respondents, gone through the pleadings and citations relied upon by them. Learned counsel for the applicant submitted that the circulars and decision as relied by learned counsel for the respondents are not applicable to the facts and circumstances of the present case, since those are applicable to persons who have got regular promotion but in the present case the applicant has got adhoc promotion. He further submitted that the decision as relied by learned counsel for the respondents i.e. OA No. 768/2013 should not be relied upon since it is decision per incuriam as the Tribunal while passing the said order was not aware of the decision of Hon'ble Supreme court reported in (AIR) 1999 SC 837 (Selva Raj Vs. Lt. Governor of Island, Port Blair & ors).

24. It is seen that the decision as relied by learned counsel for the applicant are not applicable to the facts and circumstances of this case. It is further seen

that principle of equal pay and equal work is not applicable to the facts and circumstances of the present case, as the applicant as a matter of right cannot claim equal pay for since he was not regularly promoted to the post in question by any selection committee but was given adhoc promotion to work purely on temporarily basis for a period of 11 months. In fact he had worked as Postal Printing Manager on ad-hoc and temporary basis for about five months i.e. from 07.07.2010 to 31.12.2010, as he retired on attaining the age of superannuation on 31.12.2020 as seen from Annexure A/5 . There has also been delay in filing this OA since it was filed in the year 2015 after the applicant had filed representation in the year 2014, although he had retired in the year 2010. The said delay has not been properly explained by the applicant.

25. The postal printing manager is senior time scale post carrying grade pay of Rs. 6600/-. As per the circular dated 27.07.1999 (Annexure R/1) and dated 17.10.2001 (Annexure R/2) the senior time scale post is filled in with accordance to recruitment rules. The promotion of JTS officer to STS grade is to be made after completion of four years regular service in JTS grade. Learned counsel for the respondents by referring to annexure R/1 & 2 had submitted that the status of post in group A (JTS /STS) of the Indian Postal Services Group A is linked to status of officers. The applicant was posted to the post in question for limited period at circle level to meet the local requirements on stop gap arrangement, but his substantive cadre was PS Group B only. The post of JTS and STS are interchangeable depending upon the status of the incumbent. The applicant being PS Group B officer cannot claim benefit of STS i.e. grade pay higher than next promotion post. The grade pay of Group B officer is Rs 4800 to 5400/-. The grade pay of JTS is also Rs. 5400/-. It is submitted by learned counsel for the respondents that the applicant has also received grade pay of Rs. 5400/- as

Group B as well as JTS officer and he had not objected to the same at that time. It was further submitted by learned counsel for the respondent that the applicant cannot claim as a matter of right the scale of pay which is two steps higher than his substantive post.

26. It is seen from Annexure A/2 that the applicant was promoted to the post of Manager, Postal Printing Press purely on temporary and adhoc basis for a period of 11 months from the date of assumption of charge or till order/posting of regular JTS Gr – A Officer whichever is earlier. It was further stated in Annexure A/2 that after completion of 11 months this adhoc promotion arrangement shall automatically lapse. Since the posting was purely on temporary and adhoc basis the applicant having worked for about 5 months cannot claim the benefit of pay for the post of STS as prayed for. The citations as relied upon by learned counsel for the applicant are not applicable to the facts and circumstances of the case.

27. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order to cost.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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