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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 205/98

Cuttack, this the 25th day of August, 2000

Chandramani Rout

Applicant

Vrs.

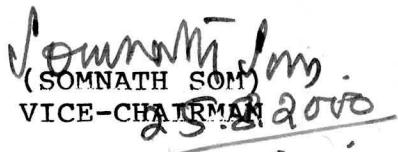
Union of India and others ...

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
25.8.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 205 OF 1998
Cuttack, this the 25th day of August, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Chandramani Rout, Senior Superintendent of
Post Offices (Retired), At-Anantapur, PO-Kamakshyanagar,
District-Dhenkanal-759018... Applicant

Advocate for applicant - Mr.D.P.Dhal-
samant

Vrs.

1. Union of India, represented through the Secretary, Department of Post, Government of India, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar-751001.
3. Deputy Director of Accounts (Postal), Orissa, Cuttack-753 005... Respondents

Advocate for respondents-Mr.U.B.Moha-
patra, ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for a direction to the respondents to treat the period from 20.7.1988 to 11.8.1988 as duty in the rank of HSG-I and to pay the applicant in HSG-I. The second prayer is for a direction to the respondents to treat the duration of the vacancy for making short term arrangement irrespective of the period of one's officiation against the vacancy. The third prayer is to treat the fixation of pay of the applicant as final and to finalise the pension accordingly and to grant interest on the balance amount of pension. The last prayer is to treat the period of his appointment to the post of APMG(PLI) in the office of CPMG, Bhubaneswar, as an appointment to Senior Time Scale

of Indian Postal Service. The respondents have filed counter opposing the prayers of the applicant. For considering this matter it is not necessary to go into too many facts of this case.

2. The admitted position is that the applicant was promoted to the post of ASPO in order dated 12.3.1986 (Annexure-1). In order dated 20.7.1988 the applicant along with two others were given officiating promotion to the rank of HSG-I Post Master on ad hoc basis. At that time the applicant was undergoing training and this order provided that after completion of his training he is posted as Post Master, Puri Head Office. It was also stated that the appointment is on ad hoc basis and will not confer on the applicant and two others any right for permanent absorption in HSG-I cadre. After completing the training the applicant joined as HSG-I Post Master in Puri Head Office on 12.8.1988. On 10.8.1988 Director General, Posts, issued order promoting the applicant to Postal Service Group-B cadre basing on which CPMG, Orissa Circle, Bhubaneswar, issued order dated 16.8.1988 (Annexure-3) indicating that the applicant on promotion to Postal Service Group-B cadre is allotted to Bihar Circle. It was also provided that he would be relieved on 18.8.1988 positively by local arrangement and he would report to P.M.G., Bihar Circle by 9.9.1988. The applicant handed over charge on 19.8.1988 and went on leave till 2.9.1988. His leave was sanctioned in Orissa Circle and in the leave sanction order it was certified that had he not proceeded on leave, he would have continued in HSG-I cadre. After the applicant joined in Postal Service Group-B Cadre in Bihar

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his pay was fixed taking into account his pay in HSG-I cadre. In order dated 3.4.1996 the applicant was promoted to Junior Time Scale of Indian Postal Service. This order is at Annexure-6. Consequent upon this, CPMG, Orissa Circle under whom the applicant was at that time working as Senior Superintendent of Post Offices, Sambalpur Division, issued order dated 15.4.1996 posting him as APMG(PLI) in the Circle Office, Bhubaneswar. The applicant retired on superannuation on 30.4.1996 after a fortnight.

3. While settling the retiral benefits of the applicant it was pointed out by audit that pay received by the applicant as HSG-I in Puri Head Office should not have been taken into account while fixing his pay in Postal Service Group-B because he officiated in HSG-I cadre on ad hoc basis only from 12.8.1988 to 18.8.1988 which was only seven days. The audit apparently pointed out that for vacancy lasting less than 14 days officiating ad hoc arrangements are not required to be done. The other point of objection was that after getting relieved from HSG-I post on 19.8.1988 the applicant availed leave till 2.9.1988 and thereafter joined Postal Service Group-B in Bihar Circle. His leave from 19.8.1988 to 2.9.1988 was also sanctioned. The point made by the audit is that while sanctioning leave for this period, the leave sanctioning officer had wrongly certified that had the applicant not proceeded on leave he would have continued in HSG-I cadre. It is stated that on 19.8.1988 the applicant was relieved from the establishment in Orissa for joining his new promotional post in Bihar and therefore this certificate could not have been given to him. In view of the above it is stated that his pay was wrongly fixed in Postal Service Group-B cadre and

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thereafter again wrongly fixed when he was promoted to Junior Time Scale of Indian Postal Service from which he retired. Because of such fixation, overpayment has been made to the applicant which was worked out as Rs.27,271/- and in letter dated 9.2.1998, i.e., after two years of his superannuation the applicant was asked to refund the above amount, failing which it was indicated that the same would be recovered from his terminal dues. The applicant's further representation was also rejected. Before proceeding further it is to be noted that during hearing the learned counsel for the petitioner had submitted a letter dated 8.1.1999 issued by the office of Deputy Director/Director of Accounts (Postal), Cuttack, in which it has been mentioned that the amount recoverable from the applicant due to overpayment because of wrong fixation of pay is Rs.25,187/-. Earlier the figure noted in Annexure-9 was Rs.27,271/-. Besides this, another Rs.3564/- being overpayment of provisional pension was also ordered for recovery.

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4. The respondents have filed counter opposing the prayers of the applicant. It is not necessary to record the averments made by the respondents in the counter as we have already mentioned the facts admitted between the parties. The averments made by the respondents in support of their stand will be referred to while considering the submissions made by the learned counsel of both sides.

5. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have also perused the records. It

will be convenient to consider the submissions made by both sides in the context of the different prayers made by the petitioner in the O.A.

6. The last prayer made by the petitioner is for a direction to the respondents to treat the period of appointment of petitioner as APMG(PLI) as an appointment in the Senior Time Scale of Indian Postal Service. From the facts recorded earlier it is noted that the applicant was appointed to Junior Time Scale of IPS in order dated 3.4.1996. In this order his actual posting order was not given. The Chief Post Master General, Orissa Circle, Bhubaneswar, in his order dated 15.4.1996 issued the posting order and the applicant, who was Senior Superintendent of Post Offices, Sambalpur Division, was posted as Assistant Post Master General (PLI), Circle Office, Bhubaneswar, from which post he retired fifteen days later on 30.4.1996. Thus the applicant had worked for about 15 days in Junior Time Scale of IPS. He has stated that the post which was held by him as APMG(PLI) in the Circle Office was a post downgraded from the Senior Time Scale of IPS and therefore the respondents should be directed to treat him to have been promoted to Senior Time Scale of IPS for the above period of 15 days. The contention is wholly without any basis. The applicant was appointed to Junior Time Scale of IPS in order dated 3.4.1996 and he cannot claim that after his joining as APMG(PLI) 12 days later in order dated 15.4.1996 he should be treated to have been promoted from Junior Time Scale to Senior Time Scale of IPS. This submission is therefore rejected.

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7. The main controversy in this case is with regard to fixation of his pay in Postal Service Group-B in Bihar by taking into account his pay in HSG-I. Initially this pay was actually taken into account for fixing his pay in Postal Service Group-B. Later on when it was held that this has been wrongly done and refixation of pay was made and consequential order of recovery was passed, the applicant represented. One of the grounds for rejecting his representation was that he was not promoted to HSG-I on regular basis but only on ad hoc officiating basis. The respondents have fairly conceded in their counter that this contention is not valid because the applicant was promoted in order dated 20.7.1988 when FR 22-C was in force. This was replaced by FR 22(I)(a)(i) only on 30.8.1989. The distinction between the previous FR 22-C and FR 22(I)(a)(i) is that in FR 22-C the word "regularly" was not there and the stand taken that the applicant was not entitled to higher pay fixation because he was not appointed to HSG-I on regular basis is not valid since at that time FR 22-C was in force which did not envisage regular appointment to the higher post. It is not necessary to go further into the matter in view of the fair concession on this point by the respondents. Thus the moot point is whether the applicant should have been given the benefit of higher pay fixation by taking into account his pay in HSG-I. The respondents' point is that the applicant had worked as HSG-I only for 7 days from 12.8.1988 to 18.8.1988. From the order dated 20.7.1988 (Annexure-2) promoting the applicant to officiate in HSG-I cadre on ad hoc basis it is seen that in this order it is stated that the

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applicant after completion of his training is posted as Post Master, Puri Head Office. Accordingly after completion of training the applicant joined as Post Master, Puri Head Office on 12.8.1988. The learned counsel for the petitioner has pointed out that the applicant should have been given the benefit of promotion even during his training period as provided in Ministry of Finance's Office Memorandum dated 14.3.1978. The gist of this O.M. has been printed at pages 192 and 193 of Swamy's Compilation of FRSR, Part-I General Rules (Tenth Edition). In this O.M. it is mentioned that a question has been raised as to whether a Government servant who, while undergoing training or instruction in India, is treated as on duty under FR 9(6)(b), can be promoted to the next higher grade during such training or instruction, if he is otherwise entitled to such promotion and if so, how to regulate his pay on such promotion. The O.M. states that it has been decided that in such cases, there should be no objection to the promotion of the employee to the next higher grade with effect from the date he would have been so promoted had he not proceeded on training subject to fulfilment of two conditions; firstly that he has been approved for promotion to the next higher grade, and secondly that all his seniors, except those regarded as unfit for promotion to the particular higher grade, available have been promoted to that grade. The O.M. also provides that in such cases he should be allowed to draw such officiating pay. On the basis of this O.M. the applicant's prayer is that he should be allowed the pay of HSG-I from 20.7.1988, the date of issue of the promotion order at Annexure-2 till 11.8.1988, i.e., the date preceding his joining as Post Master, Puri Head Office.

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In the case of the applicant both the conditions mentioned in the O.M. and noted by us above are fulfilled because obviously he had been approved for promotion to HSG-I because in order dated 16.8.1988, i.e., within four days of his joining as HSG-I cadre on officiating and ad hoc basis he was promoted to Postal Service Group-B. As a matter of fact the order of the Director-General, Posts, giving him promotion to Postal Service Group-B is dated 10.8.1988, even prior to his joining in HSG-I on 12.8.1988. The second condition was also apparently fulfilled in the case of the applicant. The respondents in paragraph 14 of the counter have merely stated that OM dated 14.3.1978 is not applicable to the instant case as the applicant was promoted to HSG-I on completion of training. They have not specifically denied that the first condition that all persons who were senior to the applicant had been promoted was fulfilled in this case. From the order dated 12.3.1986 at Annexure-1 which is an order promoting Inspectors to the cadre of ASPO we find that the name of the applicant is at Serial No.1. The other two persons promoted to HSG-I along with the applicant in order dated 20.7.1988 (annexure-2) did not figure in Annexure-1 and presumably they must be senior to the applicant. Amongst the rest the applicant appears to be the seniormost.

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8. The next question which arises for consideration is, on the applicant fulfilling the two conditions, whether he should have been promoted to HSG-I while he was under training. The O.M. dated 14.3.1978 specifically provides for this. The respondents in their counter have not urged any ground why in the order dated

20.7.1988 it was provided that only on completion of the training, he would be promoted to HSG-I. As a matter of fact the order dated 20.7.1988 merely provides that on completion of training the applicant is posted as Post Master, Puri Head Office, which is apparently in HSG-I cadre. It does not specifically provide that the promotion of the applicant to HSG-I cadre will take effect only on his joining the post of Post Master, Puri Head Office. It is also to be noted that the instructions do provide that he could have been given the promotion even when he was on training. In view of this, the applicant's promotion to the post of HSG-I must be deemed to have been effective from 20.7.1988. The applicant has asked for pay of this period in HSG-I cadre from 20.7.1988 to 11.8.1988. We are not inclined to grant the pay because he has come up a decade after the order was issued. But he should be deemed to have been promoted to HSG-I cadre from 20.7.1988 and we order accordingly. With such promotion his officiating period in HSG-I cadre would be more than 14 days and therefore, this ground for ordering refixation of his pay and recovery would no longer be available.

Swm 9. The second point urged by the respondents is that after handing over charge of the office of Post Master, Puri Head Office in HSG-I cadre on 19.8.1988 the applicant availed leave upto 2.9.1988 and thereafter joined the promotional post in Postal Service Group-B in Bihar Circle. While sanctioning his leave, the leave sanctioning authority gave a certificate that had the applicant not proceeded on leave he would have continued in HSG-I cadre. The audit's point is that as the applicant was relieved on 19.8.1988 for joining his

promotional post in Bihar Circle, he was no longer available in the establishment of Orissa Circle and therefore such a certificate could not have been given. The respondents in their counter have stated that the certificate given is invalid. This contention is wholly untenable for the following reasons. In order dated 16.8.1988 at Annexure-3 it was ordered that the applicant on his promotion to Postal Service Group-B and posting in Bihar Circle, should be relieved positively by 18.8.1988 by local arrangement and he should report to Post Master General, Bihar Circle, Patna and assume charge by 9.9.1988. This order by itself is somewhat unusual because normally orders are passed about relief of officer by a certain date and thereafter the officer concerned has the usual joining time/journey time to join his new assignment. In this case the Chief Post Master General, Orissa Circle, specifically directed that the applicant should be relieved by 18.8.1988 and he was actually relieved on 19.8.1988. He also directed that the applicant should join his new post by 9.9.1988. In view of this, it is clear that for the intervening period the applicant would have been in the establishment of Chief Post Master General, Orissa Circle. The applicant has actually taken leave from 19.8.1988 to 2.9.1988 and joined thereafter in Bihar Circle. The pleadings do not indicate when he has joined in Bihar Circle. But obviously if he had not taken any further leave beyond 2.9.1988 of which there is no mention in the pleadings of both sides, then he must have joined his new post in Bihar Circle either by 9.9.1988 as ordered or within a few days thereafter. As the applicant was given time till 9.9.1988 to join his new post, it must be held that even

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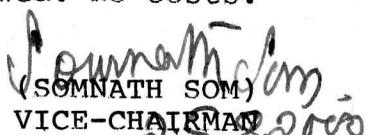
21 after relief on 19.8.1988 he would be in the establishment of Chief Post Master General, Orissa Circle. This contention is also without any merit.

10. In consideration of all the above, we hold that both the grounds for ordering refixation of the pay of the applicant in Postal Service Group-B and thereafter without taking into account his pay in HSG-I cadre are not tenable. We also hold that there is no question of recovery of the amount of Rs.27,271/- or Rs.25,187/-, whichever is the correct figure, from the applicant.

11. The next prayer of the applicant is for a direction to the respondents to finalise his pension and to grant interest on the balance amount due to him. In view of our findings above, we direct the respondents that in case the pension of the applicant has not been finalised till date, then the same should be finalised within a period of 60(sixty) days from the date of receipt of copy of this order. But in the circumstances of the case where the respondents have acted on a genuine misconception of rules and instructions and under advice of the audit, we do not think that a case for payment of interest is made out. This part of the claim is accordingly rejected.

12. In the result, therefore, the Original Application is partly allowed. No costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
25.8.2000