

20

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.602 of 2010
Cuttack this the 10th day of September, 2012

Sri Gouranga Jena Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTION

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

21

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CORAM:

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR. A.K.PATNAIK, MEMBER (J)

...

Sri Gouranga Jena, aged about 63 years, Son of late Nilakantha Jena retired Deputy Divisional Manager, Postal Life Insurance, Office of the CPMG Orissa Circle, Bhubaneswar on 31.01.2007 presently residing at Plot No.2638, Santinagar, Jharpada Canal Road, Budheswori Colony, Bhubaneswar-761006

...Applicant

By the Advocates:M/s.Sanjit Mohanty, S.Satpathy & C.Sethy

-Versus-

1. Union of India represented by Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar.
3. The Director, Postal Accounts, Mahanadi Vihar, Cuttack-753 004.

...Respondents

By the Advocates:Mr.S.B.Jena, ASC

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O R D E R

C.R.MOHAPATRA, MEMBER (A):

The factual matrix of the case is that the applicant, while working as Deputy Divisional Manager (PLI) under the Respondent-Department, retired on superannuation with effect from 31.01.2007. His grievance is that while working as Assistant Manager(Admn.), Postal Printing Press, Bhubaneswar, he was directed by the Chief Post Master General (Respondent No.2) vide Annexure-A/5 dated 28.3.2002 to officiate in the post of Senior Superintendent of Post Offices(in short SSPOs) Bhubaneswar Division purely on temporary and ad hoc basis against the leave vacancy of one Shri B.Gurudas, SSPOs, who had been granted 45 days commuted leave. It was further ordered that Shri Jena would be entitled to draw pay in JTS, Group- A cadre during the aforesaid

82

period and the arrangement would terminate on joining of said Shri Gurudas or posting of any approved officer. While the matter stood thus, vide order dated 13.8.2002(Annexure-A/6) applicant was again posted to work against the post of Deputy Divisional Manager(PLI), Circle Office, Bhubaneswar on ad hoc basis with the admissibility of pay in JTS, Group A cadre. While working as such, pursuant to Postal Directorate, New Delhi Memo dated 13.1.2006, applicant was appointed vide Annexure-A/7 dated 27.1.2006 to officiate on regular basis in JTS of Indian Postal Service, Gr.A in the scale of Rs.8000-275-13500/- with effect from the date of assumption of charge until further orders. While this was the state of affairs, applicant retired from service on superannuation with effect from 31.01.2007(AN).

2. As revealed from the record, after about more than two and half years of his retirement, applicant submitted a representation dated 7.12.2009(Annexure-A/12) to the Chief Post Master General (Res.No.2) for grant of pay scale of Sr.Time Scale, Group-A cadre for the period from 27.3.2002 to 31.01.2007. The request of the applicant having not been acceded to vide Annexure-A/13, he again preferred a petition dated 10.5.2010(Annexure-A/14) before the Member(Personnel), Postal Directorate, New Delhi and simultaneously moved this Tribunal in the present O.A. While the matter was *subjudice*, consequent upon the direction issued by the D.G.Posts, New Delhi, to settle the matter, the CPMG(Res.No.2) issued a speaking order dated 4.11.2011(Annexure-A/15) rejecting the prayer of the applicant. In the above background, applicant's prayer for amendment with a

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23

view to bringing the impugned Annexure-A/15 dated 4.11.2011 within the ambit of this O.A. was allowed and the applicant filed a consolidated O.A. seeking the following relief.

- i) To set aside order passed vide Annexure-13 and Annexure-15 as the same is not sustainable in the eyes of law.
- ii) And further allow the applicant to draw the pay scale attached to the post of STS in Indian Postal Services Group-A as per Annexure-10 for the entire period actually worked in the posts of STS of Indian Postal Service Group-A as per the order of Respondent No.2 and consequently of revise of the pensionary benefit from the date of retirement of the applicant".

Per contra, Respondent-Department have filed their counter and additional counter. Since the averments made in the counter and additional counter are ~~about~~^{almost} the same as contained in order dated 4.1.2011(Annexure-A/15), it would be profitable to reproduce the gist of the said order hereunder.

"Shri Gouranga Jena, Red. DDM(PLI), O/o. Chief PMG, Orissa Circle, Bhubaneswar has submitted representation dtd. 10.05.2010 to the Member(P) requesting for regularization of his pay during the period of working in JTS Gr.A against post of STS Gr.. The DG Posts in his letter no.F.no.2-29/2010-PAP Dated 21.10.2010 has directed the Chief Postmaster General, Orissa Circle, Bhubaneswar to settle the matter with a speaking order.

Brief History of the Case:

Shri jena officiated as SSPOs, Bhubaneswar for the period from 29.03.2002 to 13.08.2002 and DDM(PLI), CO, Bhubaneswar from 14.08.2002 to 31.01.2007. He was Gr.B officer officiating in the post of JTS till he is approved in JTS cadre Gr.A vide DG Posts memo no.4-2003-SPG dated 13.01.2006. He retired on superannuation as DDM(PLI), CO, Bhubaneswar on 31.01.2007. He has claimed higher pay attached to the post of STS and pensionary benefit for the period from 29.03.2002 to 31.01.2007.

I have carefully gone through the case as well as the relevant records. According to DG Posts letter No.4-27/97SPG dated 27.7.1999, the post of STS which cannot be filled on account of officers with requisite years of service in JTS not being available

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can also be added temporarily to the JTS and filled up by promotion in accordance with recruitment rules 1997. It is again clarified that a post will be deemed to be JTS if the post holder is having Gr.A service up to 4 years and in STS when he is promoted to STS grade through regular DPC after 4 years of service. Shri Gouranga Jena was approved for promotion to JTS Gr.A cadre on regular basis vide Directorate memo no.4-2003-SPG dated 13.01.2006 communicated vide CO memo No.ST/2-34(1)/03 dated 30.01.2006. He retired on superannuation on 31.01.2007 and has not completed four years of continuous service from the date of joining on 30.10.2006 after approval in JTS Gr.A cadre. Hence I find no reason to consider the representation of the officer in allowing him higher grade pay in STS Gr.A cadre as per his claim.

In view of this, his representation has no merit and is rejected".

3. By filing rejoinder, applicant has emphasized his claim on the decision of the Hon'ble Supreme Court in Selva Raj vs. Lieutenant Governor of Island, Port Blair & Ors. (AIR 1999 SC 838) wherein it has been held that if an employee ordered to look after duties of higher posts has actually worked in higher post though temporarily and in an officiating capacity, then he is entitled to salary attached to the higher post.

4. We have heard Shri Sanjib Mohanty, learned counsel for the applicant and Shri S.B.Jena, learned Addl. Standing Counsel appearing on behalf of the Respondents and perused the materials on record.

5. It is not in dispute that the applicant had worked against the post of Senior Superintendent of Post Offices and Deputy Divisional Manager(PLI) carrying the Senior Time Scale (in short STS) from 29.03.2002 to 31.01.2007. It is also not in dispute that he had been allowed to draw pay in JTS, Group- A cadre. The claim of the applicant for STS has been rejected solely on the ground that by the time he retired on superannuation on 31.01.2007 had not completed

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four years of continuous service from the date of joining in JTS Gr.A cadre. To buttress his claim applicant has relied on the decision of the Hon'ble Supreme Court in Selva Raj (supra). While granting relief to the appellant therein, Hon'ble Supreme Court in Paragraph – 4 held as under:

“The decision of the Central Administrative Tribunal rejecting the claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29.1.1992 to 19.9.1995 during which time the **appellant actually worked**. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. ...”

6. 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 pass a reasoned order within a period of 120 days from the date of receipt of this order under intimation to the applicant. Ordered accordingly.

7. With the above observation and direction, this O.A. is disposed of.

No costs.

A.K. Patnaik
(A.K.PATNAIK)
MEMBER(JUDL.)

C.R. Mohapatra
(C.R.MOHAPATRA)
MEMBER(ADMN.)