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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O.A No. 603 of 2010

Cuttack, this the 3rd day of March, 2012

Sri Kunja Bihari Rath Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(A.K.PATNAIK)
MEMBER (JUDICIAL)


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

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CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

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THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Kunja Bihari Rath, aged about 62 years, Son of Late Kanhu Charan Rath retired Deputy Divisional Manager, Postal Life Insurance Office of the Chief Postmaster General, Orissa Circle, Bhubaneswar presently residing at Shantinagar Nuapada, Cuttack-753 004.

.....Applicant

By legal practitioner: M/s.Sanjib Mohanty,
S.Satpathy,C.Sethy,
Counsel.

-Versus-

1. Union of India represented Secretary Department of Post, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Orissa Postal Circle, Bhubaneswar-751 001.
3. The Director Postal Account Mahanadi Vihar, Cuttack-753 004.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC.

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ORDER

C.R.MOHAPATRA, MEMBER (A):

While working as Deputy Divisional Manager,
Postal Life Insurance in the Office of the Chief Postmaster
General, Orissa Circle, Bhubaneswar, the Applicant retired
from service, on reaching the age of superannuation, on

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30.4.2009. By filing this OA he has sought the following reliefs:

- “(A) To quash the orders of Respondent No.3 dated 18.1.2010 (Annexure-7) recovering the amount of Rs.19, 236/- being the over paid salary;
- (B) To allow the Applicant to draw the pay scale attached to the post of Senior Time Scale in Indian Postal Services – Group –A as per Annexure-4 for the entire period 16.08.2006 to 30.04.2009 as he has actually worked in the post as per orders of the Respondent No.2;
- (C) To allow the due increment on 1st July of 2007 and 2008 as per the recommendation of 6th CPC in pay scale of Senior Time Scale Group A post;
- (D) To approve the applicant in Junior Time Scale Indian Post Office Service Group A at par with the juniors to the Applicant as per Annexure-12;
- (E) To order for awarding DAK SEVA Award as declared by CPMG Orissa;
- (F) To pass any such other reliefs/orders may be deemed fit and proper in the interest of justice.”

2. Respondents have filed their counter in which it has been stated that the Applicant is not entitled to any of the reliefs claimed in this Original Application. It has been stated that the applicant, a regular PS Group B Officer was promoted to officiate in JTS Group cadre and worked as DDM (PLI) in the office of the Chief Postmaster General, Orissa Circle, Bhubaneswar from 16.08.2006 to 29.1.2007, then Manager, Postal Printing Press, Bhubaneswar in JTS Group A cadre from 30.1.2007 to

01.02.2007 and again as DDM (PLI) from 02.02.2007 to 27.04.2008. He worked continuously in JTS Group A cadre from 16.8.2006 to 27.04.2008. Thereafter he was reverted to PS Group B cadre and worked as AD (Staff) vide Memo dated 14.02.2008. He was again promoted to JTS Group A cadre purely on ad hoc and temporary basis and again continued as DDM (PLI) from 29.4.2008 to 30.04.2009/till his retirement. He has not been approved in JTS Group A cadre and as such he was not entitled to any financial benefit as prayed for in STS cadre as per the DGP Letter No. 4-27/97-SPG dated 27.7.1999 (Annexure-R/1) in which it was provided that "A post will be deemed to be in JTS if the holder is having a Group A Service upto four years and in STS as and when he is promoted to STS Grade through DPC after four years of service". The Applicant has not been promoted to STS Grade.

Further stand of the Respondents is that the applicant while working in PS (Group B) cadre was allowed to officiate in JTS Group A on purely temporary and ad-hoc basis vide Memo dated 16.8.2006 and the

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applicant joined duty on the same day. In the said Memo it was clearly provided that the ad-hoc promotion will continue for a period of one year from the date of assumption of charge whereas the applicant has drawn his pay in JTS grade/scale upto 27.4.2008. The discrepancy having been noticed clarification was sought whether such continuance of the applicant on ad-hoc basis in the grade of JTS beyond one year has been approved by the DOP&T. In response, Respondent No.2 informed that officiating period in JTS Group A beyond 15.08.2007 has not been approved in respect of the Applicant. Hence drawal of pay in JTS grade from 16.8.2007 to 27.4.2008 was objected to in view of the DOP&T OM dated 30.3.1988 in which it has been provided that "the total period for which the appointment/promotion may be made on ad-hoc basis will be limited to one year only. The practice of giving break periodically and appointing the same person on ad-hoc basis may not be permitted. In case there are compulsions for extending any ad-hoc appointment/ promotion beyond year, the approval of the

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DOP&T may be sought at least two months in advance before the expiry of the one year period. If the approval of the DOP&T to the continuance of the ad-hoc arrangement beyond one year is not received before expiry of the one year period, the ad-hoc appointment/promotion shall automatically cease on the expiry of one year term". In view of the above, the excess pay drawn by the applicant in JTS Group A beyond one year from 16.8.2007 to 30.4.2008 was ordered to be recovered. In so far as the prayer of the applicant for grant of increment is concerned it has been stated by the Respondents that as per the recommendations of the 6th CPC Annual Increments are granted on 1st July and not in August as averred by the Applicant. The Annual increment due on 1.7.2007 was allowed to the Applicant by Respondent No.3 vide Memo dated 11.11.2010 on receipt of clarification from the Postal Directorate. The Applicant was not entitled to increment on 1.7.2008 as he has drawn pay in the same stage (Rs.26460/-) for a minimum period of six months as on 1.7.2008. He was allowed pay in the stage of Rs.26460/- for

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only three and half months as on 1.7.2008. Accordingly, Respondents have prayed for dismissal of this OA.

3. Applicant has controverted the stand taken by the Respondents that the continuance of the applicant in JTS Group 'A' cadre was not approved by the competent authority. By relying on Annexure-11, he has stated that his service in JTS Group A cadre was approved by the DPC and he is at Sl. No. 39 of the panel for 2008-09. It has been stated by him that when an employee is ordered to look after higher post even though temporarily and officiating capacity is entitled to get the salary attached to higher post without treating it as promotion. Since he has discharged his duties in the STS grade, he is entitled to get the scale attached to the post. In this connection he has placed reliance on the decisions of the Hon'ble Apex Court in the cases of **Selvaraj V Governor Andaman Nikobar Island Port Blaire and others**, AIR 1999 SC 838 & **Dwarika Prasad Tiwari V M.P.State RTC and others**, 2002 SCC (L&S) 91. The Applicant was working as DDMPLI from 16.08.2006 to 30.04.2009 which was a senior time scale

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post in Indian Postal Services Group A carrying the scale of pay of Rs.15,600-39,100 with GP Rs.6,600/- but the applicant was allowed the scale of pay of Rs.15600 to Rs.39,100/-with GP Rs. 5400/-. Since the Applicant was allowed to discharge the duty in the higher grade of STS post he was entitled to GP Rs. 6600/-. In so far as grant of increment is concerned, it has been stated that he was allowed increment on 1.7.2007 and then he continued to work in the higher post till 27.4.2008 and reverted for one day i.e. on 28.4.2008 and again he continued in higher post till his retirement on 30.04.3009. As such he is entitled for one increment on 1.7.2008 as he has worked in higher post for one year except one day break on 28.4.2008.

4. In course of hearing, Learned Counsel for the Applicant fairly submitted that he would confine prayer for his relief as in paragraph 8 (A) & (B) only and not press for the other reliefs claimed in this Original Application. Mr.U.B.Mohapatra, Learned Senior Standing Counsel appearing for the Respondents raised no objection to the said prayer. Accordingly, this OA is confined to the



consideration of the reliefs claimed at paragraph 8(A) & (B). In view of the above, we have restricted our consideration as such and heard the parties. Learned Counsel appearing for both sides reiterated the stand taken in their respective pleadings and having heard them at length, perused the materials placed on record.

5. We find that there are two issues which need to be decided in this Original Application viz; (a) recovery of Rs. 19,236/- from the gratuity amount of the Applicant which is stated to have been paid in excess and without authority for the relevant period from 16.08.2007 to 30.04.2008; (b) payment of salary in the Senior Time Scale (STS grade) for the period from 16.08.2006 to 30.04.2009 during which he had performed the duties in the Senior Time Scale post of DDMPLI. As regards issues at (a) above, the Applicant has drawn the pay of JTS grade having been promoted on Ad-hoc basis. The fact that the Department did not take the approval of the Ad-hoc promotion beyond one year is not disputed and the fault is not attributable to the Applicant. Hence, his continuance

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in the JTS grade beyond one year without the approval of the DOP&T though irregular, the applicant who has shouldered higher responsibility of the post cannot be penalized and is entitled to the salary drawn; especially when it is not the case of the Respondents that the amount was paid due to the misrepresentation by the Applicant. Rather it was a fault of the Department that without taking the approval from the DOP&T they have allowed him to continue in the JTS grade beyond one year. **As such we set aside the order of recovery from the gratuity amount of the applicant.**

As regards payment of Senior Time Scale to the Applicant for the period claimed by the Applicant is concerned, we may state that as per the instructions of the DGP Letter No. 4-27/97-SPG dated 27.7.1999 (Annexure-R/1) 'A post will be deemed to be in JTS if the holder is having a Group A Service upto four years and in STS as and when he is promoted to STS Grade through DPC after four years of service.' But the fact of the matter is that the applicant had worked in the post of DDMPLI which is a

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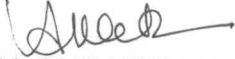
Senior Time Scale of post but with a break. Nonetheless, the Department has accepted in its counter that the applicant performed the duty of Senior Time Scale post with break. Hence in our opinion the applicant should have been duly compensated for having discharged the higher responsibility for the relevant period. But it is noticed that the claim for getting Senior Time Scale with higher GP has been made by the applicant belatedly i.e. on 22.1.2010 after his retirement having acquiesced in the pay scale of JTS with lower GP. Against this background we leave it to the Respondents to consider the grievance of the Applicant for compensating him appropriately as per rules for having discharged his duties in the Senior Time Scale though he was substantively holding a Gr.B post in the Department.


6. For the discussions made above, the Respondents are hereby directed to release the withhold amount of Rs. 19,236/- and pass appropriate orders in regard to payment of STS scale within a period of

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30(thirty) days from the date of receipt of copy of this order.

7. With the aforesaid observation and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judicial)


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