

25

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A. No.467 of 2011

Cuttack, this the 11th day of July, 2013

CORAM

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

HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

.....

Sri Narayan Moharana,
Aged about 58 years,
S/o.Somanath Moharana,
At/Po.Sahaspur,
Via-Gunthpara,
PS-Aska,
Dist.Ganjam,
Working as Postmaster (HSG-I),
Bhanjanagar Head Office,
Dist.Ganjam.

....Applicant

(Advocate(s):-M/s.D.P.Dhalsamant,N.M.Rout)

-Versus-

Union of India represented through –

1. The Director General of Posts,
Government of India,
Ministry of Communications,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi-110 001.

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2. Chief Postmaster General,
Odisha Circle,
Bhubaneswar,
Dist.Khurda-751 001.
3. Postmaster General,
Berhampur Region,
Dist.Berhampur.
4. Superintendent of Post Offices,
Aska Division,
Dist. Berhampur.
5. Superintendent of Post Offices,
Phulbani Division,
Dist. Phulbani.

.....Respondents

(Advocate(s)-Mr.P.R.J.Dash)

O R D E R**A.K. PATNAIK, MEMBER (J):**

The case of the Applicant, in nut shell, is that on 12.07.¹1971 he joined as Clerk in the Postal Department and on 1.5.2001 he was promoted to LSG cadre. On 11.1.2007 he was promoted to HSG II carrying the scale of pay of Rs.5000-8000/- and on 5.4.2007 he was promoted to HSG -I carrying the scale of Rs.6500-10,500/- which was revised to Rs.9300-34800/- (PB II) with grade pay of Rs.4600/-. On 12.4.2007 he was posted as Deputy Postmaster, Puri. Thereafter on 29.6.2007 he was posted as



Postmaster HSG I Chhatrapur. He was transferred and posted as
Postmaster HSG I Bhanjanagar Head Post Office on 22.5.2008.

On 20.12.2010 option was called for appointment in the post of Postmaster Grade I, II and III and on 3.1.2011, the applicant submitted his option to work in newly introduced Postmaster cadre. On 13.5.2011 (**Annexure-A/8**) the applicant was promoted to Postmaster Grade II in the pay band of Rs.5200-20200/- in PB II with GP Rs.4200/- by Respondent No.3 and consequently he was posted as Postmaster Boudhraj MDG. On 19.5.2011 (**Annexure-A/9**) the Respondent No.5 posted the applicant as Postmaster Grade II Boudhraj MDG in the scale of pay of Rs.9300-34800/- in PB II with GP Rs.4200/-. On 24.5.2011(**Annexure-A/10**) he was promoted and posted as Postmaster Boudhraj MDG by the Respondent NO.4 and on 26.5.2011 the applicant represented to Respondent No.4 praying to allow him to continue in his promotional cadre of HSG II or PM Grade III. In letter dated 6.7.2011 the Superintendent of Post Offices, Aska Division, Aska (Respondent No.4) issued instruction

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28

to relieve the applicant immediately on office arrangement from the post of Postmaster (Grade II), Boudhraj MDG.

It is in the above context, being aggrieved, he has filed the instant OA praying therein to quash the order dated 13.5.2011 of the Respondent No.3 (Annexure-A/8) and the consequential order dated 19.5.2011 (Annexure-A/9), order dated 24.5.2011 (Annexure-A/10) order dated 6.7.2011 (Annexure-A/12) and to direct the Respondents to appoint him to the cadre of Postmaster Grade III.

2. According to the counter filed by the Respondents the applicant joined the Department of Posts, India as Postal Assistant on 12.7.1972. Because of his seniority he was promoted to LSG cadre and then to HSG II cadre on regular basis. Thereafter he was promoted to HSG I cadre temporarily purely on adhoc basis. As Recruitment Rules for selection to HSG I cadre has not been finalized, extension of the adhoc appointments in HSG I cadre upto 19.11.2011 pending finalization of Recruitment Rules was issued vide Annexure-R/1 by the competent authority. As per Gazettee Notification dated 9.9.2010 at Annexure-R/2, Postmaster Cadre

(Signature)

(with the posts of Sr. Postmaster, Postmaster Grade III, Postmaster Grade II and Postmaster Grade I) was created in which it was provided that willing officials holding postal services Group B posts on regular basis will be posted as Sr. Postmaster, willing officials holding charge of HSG I posts on regular basis will be posted as Postmaster Grade III and willing officials holding charges of HSG II posts on regular basis will be absorbed as Postmaster Grade II. Thereafter the remaining vacant posts will be filled up as per the provisions contained in the said Gazetteee Notification. Accordingly, the applicant who was promoted to the cadre of HSG II on regular basis (but holding the charge of HSG I Postmaster, Bhanjanagar HO was promoted to the cadre temporarily purely on adhoc basis was asked vide letter under Annexure-R/3 to submit his willingness for absorption in equivalent substantive appointment grade in Postmaster Cadre. In pursuance thereto, the applicant submitted his willingness for working in newly introduced Postmaster Cadre. As the applicant was continuing on regular basis in Gr. II, as per Rules under Annexure-R/2, he was approved to be absorbed in Postmaster



Grade II cadre vide Annexure-R/4 and accordingly he has been posted as Postmaster, Boudhraj MDG as per Memo under Annexure-R/5. The Respondent No.4 vide Memo dated 24.5.2011 under Annexure-R/6 directed the applicant to be relieved on office arrangement on his selection to Postmaster (Grade II) and Postmaster Boudhraj MDG. As the Applicant did not get relieved by handing over the charge, as per letter under Annexure-6 he was directed to be relieved immediately on transfer to Boudhraj MDG vide letter dated 6.7.2011 under Annexure-R/7. The Applicant was relieved on medical ground on 14.7.2011 (AN) by handing over the charge to the next senior official in the office. The Superintendent of Post Offices, Aska Division, Aska (Respondent No.4) vide his letter dated 15.7.2011 (Annexure-R/8) directed the applicant to join at his new place of posting i.e. Postmaster Boudhraj MDG on expiry of his leave. It is in the above context, contended by the Respondents that there being no miscarriage of justice caused to the Applicant in the decision making process and they have taken the action in accordance with Rules this OA devoid of any merit and, therefore, is liable to be dismissed.



3. Applicant has filed rejoinder to which the Respondents have also filed reply.

4. By drawing our attention to the pay slip placed at Annexure-A/13, it has been contended by Mr. D.P.Dhalsamanta, Learned Counsel for the Applicant that the Applicant was promoted to HSG I Postmaster cadre on ad hoc basis w.e.f. 7.5.2007 in the pay scale of Rs.6500-10500/- (pre-revised) and in revised scale of pay of Rs.9300-34800/- with GP Rs.4600/- but the Respondent No.3 vide memo dated 13.5.2011 promoted the applicant to the Postmaster Grade II cadre in Pay Band of Rs.5200-20,200/- in PB II with GP Rs.4200/-. In case of promotion no one can be placed in the lower scale of pay than the existing one. It has been contended that the Applicant has not exercised his option to be posted in the cadre of Postmaster Grade II but has given his option to work in newly introduced Postmaster Cadre. Since the applicant had worked continuously for more than three years' w.e.f. 7.5.2007 in the HSG I cadre, he is entitled to be confirmed in HSG I cadre after completion of three years ad hoc service as per old recruitment Rules Hence the applicant be appointed in

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Postmaster Grade II as per his option dated 3.1.2011. It has further been contended that option was called for in pursuance of the introduction of Postmaster cadre in Postal wing by the Respondent No.1 vide Memo dated 22.11.2010 specifically mentioning therein that LSG, HSG II, HSG I and PS Group B of the existing general line cadre post in Postal wing have been designated as Postmaster Gr.I,II,III and Senior Postmaster respectively. The officials who are left with minimum two years of service to retire may apply in order to avoid their dislocation at the end of their service. Further it has also been provided therein that the application of eligible employees would be placed before the screening committee and those who are found suitable can be appointed in respective grade of Postmaster as they enjoy in the general line. The Respondents in their order have stated that the case of the applicant has been recommended by the DPC and approved by the competent authority for promotion to Postmaster Grade II. It is well settled law that promotion can be given to higher post or rank but not to equivalent post or lower post. Hence the order dated 13.5.2011 and all other orders issued thereto are liable to be set aside. It has been



stated that the applicant is going to retire from service on superannuation on 31.3.2013 and therefore he has left with less than two years' service for which he should not have been disturbed from his present place of posting. Next contention of Mr.Dhalsamanta, Learned Counsel for the Applicant is that the action of the Respondents by promoting the applicant to a lower grade i.e. from HSG I (Rs.9300-34800/- with GP Rs.4600/-) to Postmaster Grade II (Rs.9300-34800/- with GP Rs.4200/-) cannot be sustained in the eyes of law. Hence the order of promotion to the cadre of Postmaster Grade II is liable to be set aside. The Applicant has opted to work in newly introduced Postmaster Grade but not for the Postmaster Grade II whereas the Respondents have stated in their order that the applicant has exercised his option to the cadre of Postmaster Grade II and on the basis of the said wrong conception the applicant was promoted to Postmaster Grade II which cannot be sustained in the eyes of law. Accordingly, Learned Counsel for the Applicant has prayed for grant of the reliefs claimed in this OA.

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On the other hand, by specially drawing our attention to the Gazettee Notification placed at Annexure-R/2, the Learned Additional CGSC, Mr.P.R.J.Dash, besides reiterating the stand taken in the counter, has contended that since the substantive appointment of the applicant was in Gr.II, as per the provisions made in Annexure-R/2, his absorption was rightly approved by the competent authority in Postmaster Gr. II. Further it was contended by him that the applicant has admitted that his continuance in the higher grade was on ad hoc basis and as per the law, an adhoc appointee has no right to claim/regularization merely because he has continued for a longer time and in the instant case for three years. The sum and substance of the contention of Mr.Dash, Learned Additional CGSC appearing for the Respondents is that as the absorption of the applicant in Postmaster Gr.II is in accordance with the Rules there is hardly any scope for this Tribunal to interfere in the same. Accordingly, Mr. Dash while objecting to the stand of the Applicant has prayed for dismissal of this OA being devoid of any merit.



5. We have considered the rival submissions advanced by Mr.D.P.Dhalsamanta, Learned Counsel appearing for the Applicant and Mr.P.R.J.Dash, Learned Additional CGSC appearing for the Respondents and gone into pleadings of the respective parties and materials placed in support thereof. But we do not find any flaw on the action of the Respondents in absorbing the Applicant in Postmaster Gr.II grade as his substantive appointment was in the Gr.II. But at the same time we find a thin line on the rival contentions of the parties which is that according to the Applicant there are vacancies in the grade of HSG I in which grade he was continuing on adhoc basis since three years and that he was left with two years' service to retire when he submitted his option. If it is so, while absorbing the Applicant in Postmaster Grade II on regular basis, the Respondents should have allowed the applicant to continue in the HSG I on adhoc basis which would have saved the wastage of time and exchequer's money in fighting the litigation. We have been given to understand that the date of retirement of the applicant was 31.3.2013 and that the applicant proceeded on medical leave while continuing in the HSG I grade.



In the said view of the matter, we are of the considered opinion that ends of justice would be met if we direct the Respondent No.1 to consider treating the applicant to have retired while continuing in HSG I on adhoc basis and communicate the outcome of such consideration in a well-reasoned order to the Applicant within a period of ninety days from the date of receipt of copy of this order. With the aforesaid observations and directions this OA stands disposed of. There shall be no order as to costs.



(R.C.MISRA)
Member (Admn.)



(A.K.PATNAIK)
Member (Judicial)