

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.727 of 2011

Cuttack this the 14th day of November, 2017

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Raj Kishore Sahoo, aged about 67 years, S/o. late
Chandramani Sahoo, At:Ichhapur, PO-Sri Baldevjew, Dist-
Kendrapara

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Secretary cum Director General of Posts, Dak Bhawan, Sansad marg, New Delhi-110 001
2. The Chief Post Master General, Orissa Circle, At/PO-bhubaneswar, Dist-Khurda-751 001
3. Superintendent of Post Offices, Cuttack North Division, At-P.K.Parija Marg, PO-Cuttack GPO, Dist-Cuttack, Orissa-753 001

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant retired as HSG-II (Postal Assistant) of Pattamundai Mukhya Dak Ghar on 31.3.2004. While working in that post, the regular post of HSG-I (Postmaster) of Pattamundai Mukhya Dak Ghar had fallen vacant with effect from 4.2.2003 and the applicant was ordered to work in the vacant post as he was the senior most HSG/BSR/HSG-II official of Pattamundai Mukhya Dak Ghar. The applicant submits that he had worked holding the charge of the duties of HSG-I Postmaster from 4.3.2002 to 31.3.2004.

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2. Applicant had filed O.A.No.234 of 2006 before this Tribunal which in its order dated 23.7.2009 directed the respondents to take a decision within three months from the date of receipt of the order. Accordingly, the Chief Post Master General, Orissa Circle (Respondent No.2) passed an order dated 27.9.2010 rejecting the claim of the applicant. Aggrieved by this, applicant has filed this O.A. praying for a direction to the Respondents to pay the higher scale of pay of the HSG-I for the period from 1.8.2003 to 31.3.2004 and to fix his pension in that scale of pay and pay arrears of pension and retirement dues with 9% compound interest.

3. The Respondents filed their counter-reply on 10.1.2012 in which they have objected to the claim of the applicant on the ground that the applicant was not in the HSG-II cadre at the time of holding the charge of the post of Postmaster, Pattamundai Mukhya Dak Ghar. He was appointed as a Postman on 17.9.1966 and promoted to Postal Assistant cadre on 08.09.1971. After completion of 16 years of regular service, the applicant was given the benefit of higher scale of pay at par with LSG under the Time Bound One Promotion Scheme with effect from 8.9.1987. Thereafter on completion of 26 years of regular service, the applicant was given the benefit of 2nd higher scale of pay at par with HSG-II under the BCR Scheme with effect from 1.1.1998. Although the applicant was given the benefit of higher scale of TBOP/BCR Scheme, he was not

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promoted to LSG/HSG-II cadre. He was asked to take charge of the post of Postmaster, Pattamundai Mukhya Dak Ghar from 31.3.2003(A.N.) as a temporary local arrangement since there was no approved HSG-I or HSG-II official in the Division. It is the contention of the Respondents that HSG-II officials whether approved notionally or on regular basis with requisite period of service in the grade are eligible to officiate on ad hoc basis in HSG-I vacancy with financial benefits, otherwise, the BCR officials officiating in HSG-I vacancies are not entitled to get the financial benefits on local arrangement. Therefore, although the applicant had drawn the officiating pay and allowance in the cadre of HSG-I for the period from 4.4.2003 to 30.3.2003 and 1.4.2003 to 31.7.2003, further payment was stopped to him from 1.8.2003 to 31.3.2004.

4. We have heard the learned counsels from both the sides and perused the documents submitted by them. The order dated 27.09.2010(A/3) passed by the CPMG, Orissa Circle, Bhubaneswar reads as follows:

"Sri Rajkishre Sahoo, Ex-BCR, Postal Asst. and acting Postmaster, Pattamundai MDG filed O.A.No.234/2006 before the Hon'ble CAT, Cuttack Bench, Cuttack. The Hon'ble Tribunal vide order 23.07.2009 directed the Respondent to take a decision within three months from the date of the receipt of the order. The prayer of the applicant is that he should be paid HSG-I pay for the period from 01.04.2003 to 26.10.2003 and 10.11.2003 to 30.10.2004 and 01.02.2004 to 31.03.2004 and to fix his pension accordingly.

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The fact of the case in nutshell is that the ex-official joined in the Department as a Postman on 17.09.1966 was promoted to Postal Asst. on 08.09.71. After completion of 16 years of service the applicant was given the benefit of TBOP on 008.09.1987 and on completion of 26 years of service was given benefit of BCR pay. The applicant was never promoted either to norm based LSG or HSG-II. He was allowed to look after the work of Postmaster being the senior most official.

As per Recruitment Rules officials having three years of service in HSG-II cadre are eligible to work as HSG-I Postmaster, Sri Sahoo was neither promoted to norm based LSG nor promoted to HSG-II, hence he was not eligible to officiate in the same post i.e., Postmaster. As a temporary measure and owing to non availability of eligible officials such local adhoc arrangement was made by the Supdt. , Cuttack North Division which should not be construed as a regular arrangement.

In view of the foregoing paragraphs the undersigned hereby order that the applicant was not regularly appointed in the norm based post having the requisite eligibility. Hence, he is not entitled for the higher scale of pay as claimed by him".

5. To support his claim, at Para-5.3 of the O.A., the applicant has relied on the decision of the Hon'ble Apex Court in Selva Raj vs. Lt. Governor of Island, Port Blair & Ors. (1999 AIR SC 838) in which it has been held that an employee ordered to look after higher post even though temporarily and officiating capacity is entitled to salary attached to higher post without treating it as promotion. He has also relied on the decision in Dwarika Prasad Tiwari vs. M.P. State Road Transport Corporation & another [2002 SCC (L&S) 9] in which it has been held by the

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Hon'ble Supreme Court that for the period the applicant therein had discharged the duties attached to a higher post, he should be paid salary of the higher post. In Radhelal Gouda vs. Union of India & Ors. reported in 9/2009 Swamy's News 87 (Jabalpur), CAT Jabalpur Bench held that a postal employee ordered to perform higher duties even if he is not eligible to hold that post, by a written order is entitled for emoluments of the higher post and if retires while working in that post, he is entitled for pensionary benefits based on emoluments at the time of retirement.

6. We have perused the judgments cited by the applicant. We reject the contention of the Respondents that since the applicant was not holding the even regular post of HSG-II he will not be entitled for the HSG-I scale of pay for the period he was holding the charge of the post of HSG-I (Postmaster), Pattamundai Mukhya Dak Ghar. If the applicant was indeed not eligible to hold the post even as In-charge official, the Respondents should not have appointed him to look after the post. The crucial issue is whether the applicant was discharging the duties of the Postmaster (HSG-I) and if so, is he eligible for higher remuneration commensurate with the higher post held as In-charge.

7. The Hon'ble Supreme Court in a catena of judgments has upheld the principle of equal pay for equal work. In State of

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M.P. vs. Pramod Bhartiya [(1993) 1 SCC 539], the Hon'ble Apex Court has laid down the following principle:

"It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities".

In Surinder Singh vs. Engineer-in-Chief, CPWD [(1996) 1 SCC 639], the Hon'ble Supreme Court has emphatically held:

"So long as they are performing the same duties, they must receive the same salary and conditions of service as Class-IV employees".

In V.Markendeya vs. State of A.P. [(1989) 3 SACC 191], the Hon'ble Apex Court held as under:

"In view of the above discussion we are of the opinion that where two classes of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the court will strike down the discrimination and grant relief to the aggrieved employees".

In State of Haryana v. Tilak Raj [(2003) 6 SCC 123], the Hon'ble Supreme Court has clarified:

"6.The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. In Federation of All India Customs and central Excise Stenographers (Recognized) vs. Union of India (1988) 3 SCC 91, this Court explained the principle of "equal pay for

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equal work" by holding that differentiation in pay scales among government servants holding the same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation".

In Food Corpn. Of India vs. Ashis Kumar Ganguly [(2009)

7bSCC 734], the Hon'ble Apex Court has observed:

"Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purpose of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of

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the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to the evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court, is on the basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors".

8. The applicant in so far as he was officiating in the post of HSG-I (Postmaster) of Pattamundai Mukhya Dak Ghar is eligible to get the officiating pay and allowance as drawn by similarly placed HSG-I Postmasters of Mukhya Dak Ghars. This is in no way due to a promotion given to him nor is it going to be a substantive pay attributable to the applicant. It is only to ensure that he gets equal pay for equal work rendered by all HSG-I Post Master. The Respondents have already given officiating pay and allowance to him for the period from 04.03.2003 to 30.03.2003 and 01.04.2003 to 31.7.2003.

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Although the applicant did not have the substantive post of HSG-II, he was still considered eligible for holding the post of Post of HSG-I and carried out his duties in that post for the period from 04.03.2003 to 31.03.2003 except for few days' leave. For this period, he is entitled to additional pay and allowance drawn by similarly placed persons discharging the duties of HSG-I Postmaster. However, this being only an additional remuneration for the additional work done by him and for shouldering higher responsibilities, applicant is not entitled to a raise in his substantive pay nor will it be calculated for pensionary benefits.

9. The Respondents are directed to pass an order sanctioning officiating pay and allowances to the applicant for the entire period for which he was holding the charge of HSG-I Postmaster of Pattamundai Mukya Dak Ghar. The officiating pay and allowances already paid to him should be adjusted against the payment for the entire period. An order to this effect may be passed by the respondents within a period of eight weeks from the date of receipt of this order. The applicant, however, will not be entitled to any revision in his substantive pay nor on his pensionary benefits as a result of this order.

10. The O.A. is disposed of as above. No costs.

(DR. MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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