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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.88 of 2009

Narayan Bharasagar Applicant

Versus

Union of India & Others Respondents

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Order dated : 01-04-2010.

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

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The case of the Applicant is that on his promotion to the grade of LSG on 21.8.2007 in the time scale of pay of Rs.4500-125-7000/- on regular basis he was posted to Bolangir HO in which place he reported on 29.8.2007 whereupon he was deputed to Sonepur Raj MDG (HSG II) as Postmaster as the said post was lying vacant. As he was posted outside his headquarters on deputation basis he was entitled to deputation/daily allowance for the days he worked there. As such, by making representation he claimed sanction of the said allowance in his favour. But the said representation was rejected by the Superintendent of Post Offices, Bolangir Division on the ground that as the posting of the Applicant as PM Sonepur Raj MDG was on adhoc basis being senior LSG official but for technical purposes he was ordered to assume the charge against APM Bolangir HO. It is the further case of the Applicant that by making representations although he substantiated his entitlement no action was taken thereon and while his representations were pending he retired from service w.e.f. 31.5.2008. Thereafter vide letter under

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Annexure-A/7 dated 3.6.2008, the Applicant was intimated that he is not entitled to deputation allowance as he was posted as Postmaster Sonepur on adhoc basis and it was further informed to him that his transfer TA bill from BMPur to Sonepur has already been sanctioned vide Memo dated 2.6.2008. Being aggrieved by such action of the Respondents, the applicant has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985 seeking to quash the letter under Annexure-A/7 dated 3..6.2008 so far as denying him to sanction the deputation allowance and to direct the Respondents to sanction the deputation/daily duty allowance for the period of his work as Postmaster of Raj MDG (HSG II).

2. Counter claim of the Respondents is that while the applicant was working as SPM, BMPur SO, he was promoted to LSG cadre vide Memo dated 20.7.2007. As the post of SPM, BM Pur SO is a time scale one, the applicant was required to be transferred from there. At that time LSG posts were lying vacant at Bolangir HO and hence the official was shown transferred as APM Bolangir HO. By that time some HSG II posts which is the next higher cadre of LSG post, were lying vacant and approved HSG II officials or LSG officials were not available to work against such HSG II posts. Therefore, the applicant was ordered to assume the charge of LSG cadre as APM Bolangir HO at Sonepur and directed to manage the work of HSG II post i.e. Postmaster Sonepur MDG without any extra remuneration. Accepting the conditions

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mentioned in the memo the applicant assumed the charge at Sonepur and managed the work of Postmaster Sonepur MDG without claiming any extra remuneration during that period. HSG II cadre is a circle cadre and such senior officials of the circle who have completed three years of regular service in LSG cadre are promoted to HSG II cadre. Moreover the HSG II posts are filled up by posting approved HSG II officials on the order of Regional Office/Circle office. Whenever such posting orders are not available the senior most officials of the Division are ordered on local arrangement by Divisional Supdt. to manage the work of HSG II posts. Applicant was not the approved HSG II official nor had he completed 3 years of regular service in LSG cadre. Therefore, the applicant was not posted as Postmaster, Sonpur MDG. He was only ordered by the Divisional Superintendent to manage the work of Postmaster Sonepur MDG with clear instruction that he would not be entitled to any financial benefit for working against such post. Such being the case the CPMG, Orissa, Bhubaneswar vide letter dated 16.4.2009 rejected the claim of the applicant. Applicant preferred transfer TA claim from Birmaharajpur to Sonepur which was sanctioned by Respondent No.5 vide Memo dated 2.6.29008. As the applicant had not practically come to Bolangir and joined at Bolangir HO, question of deputation of the applicant from Bolangir to Sonepur did not arise and hence his claim for sanction of deputation allowance made vide application dated 25.4.2008 was rejected as intimated to him under Annexure-A/7. Accordingly, Respondents

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while opposing the claim of the Applicant have prayed for dismissal of this OA.

3. Learned Counsel appearing for both sides have reiterated their stand taken in their respective pleadings and having heard them at a considerable length, perused the materials placed on record including the Rules relied on the subject by the parties.

4. Law is well settled in a plethora of judicial pronouncements and suffice to quote one such decisions of the Hon'ble Apex Court in the case of **Mohinder Singh Gill v. Chief Election Commissioner**, AIR 1978 SC 851 that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated in additional grounds. Further it is well established principles that if condition imposed is on any order is contrary to Rules or any of the Government of India decision, cannot debar an employee to claim the benefit which one is entitled to as per Rules/Govt. of India decision. Admittedly, the applicant was posted on temporary duty/on deputation to discharge the duty of Postmaster of Raj MDG (HSG II), Sonepur though on his promotion he was permanently posted to Bolangir HO. Such posting of Bolangir HO has never been rescinded to by the Respondents not even after his representation. The grounds taken in the counter in support of the stand



that the applicant was not entitled to, as it appears from the order of rejection, were not the grounds taken by the Respondents in the order of rejection. Therefore, it is to be examined whether the claims of the applicant are covered by any of the Rules and in my opinion the appropriate provision is embodied under SR 71 & 72 on perusal of which it makes the matter amply clear that the Applicant was entitled to DA during the period he worked as Postmaster of Raj MDG (HSG II), Sonepur. Hence, since there has been miscarriage of justice caused to the Applicant in the decision making process of rejecting his claim without looking to the provision of SR 71 & 72 and Government of India's orders produced below these rules the Respondent No.1 is hereby directed to reconsider the claim of the applicant and grant him the DA for the period he worked as Postmaster, Raj MDG (HSG-II) Sonepur at an early date preferably within a period of thirty days from the date of receipt of this order; especially because the applicant has already retired from service long since.

5. In the result, this OA stands allowed to the extent stated above. No costs.



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