

18

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.768 OF 2013

Cuttack this the 22nd day of JUNE, 2017

CORAM

HOH'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Kunja Bihari Rath, aged about 64 years, S/o. late Kanhu Charan Rath, retired Deputy Divisional Manager, Postal Life Insurance Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, presently residing at Shantinagar, Nuapada, Cuttack-753 004

....Applicant

By the Advocate(s)-M/s.Sanjib Mohanty
B.Biswal

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001
2. The Chief Post Master General, Orissa Postal Circle, At/PO/PS-PMG Square, Bhubaneswar-751 001, Dist-Khurda
3. The Director, Postal Accounts, Mahanadi Vihar, Cuttack-753 004

...Respondents

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

ORDER

R.C.MISRA, MEMBER(A):

Applicant is a retired Postal employee. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following relief.

- i) To quash the orders of Respondent No.1 dated 22.05.2012 vide Annexure-8 and allow



19

STS Pay scale from 16.08.2006 to 30.04.2009 attached to the post as the applicant has discharged his duty and taken the responsibility.

- ii) The applicant be given all the financial and consequential benefit
- iii) To pass such other reliefs/orders may be deemed fit and proper in the interest of justice.
- iv) To order and direct the Respondents to pay the cost of litigation of Rs.10,000/- to the applicant who is a retired employee of Dept.

2. It reveals from the record that earlier applicant had approached this Tribunal in O.A.No.603 of 2010. The Tribunal, on the prayer made by the applicant, confined the relief sought for vide Paragraph-8(A) and (B), which reads as under.

(A) To quash the orders of Respondent No.3 dated 18.1.2010(Annexure-7) recovering the amount of Rs.19,236/- being the overpaid salary.

(B) To allow the applicant 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.


3. This Tribunal vide order 03.03.2012 discussed the point in issue and disposed of the aforesaid O.A. as under.

"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 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 Sale 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 Senior Time Scale 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.

 3

For the discussions made above, the Respondents are hereby directed to release the withheld amount of Rs.19,236/- and pass appropriate orders in regard to payment of STS scale within a period of 30(thirty) days from the date of receipt of copy of this order.

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

4. In the above backdrop, the Respondents while complying with the aforesaid direction of this Tribunal vide order dated 22.05.2012(A/8), turned down the claim of the applicant for grant of Senior Time Scale, the relevant part of which reads as under.

"As regards payment of Senior Time Scale to Shri K.B.Rath is concerned, it is observed that Shri Rath was a regular PS Group B officer and he worked in the post of DDM(PLI) on purely temporary and ad hoc basis. Moreover, the post of STS & JTS are interchangeable. Shri Rath was not fulfilling the service condition to get the higher pay of Sr.Time Scale grade. He was only officiating in Junior Time Scale grade on purely temporary basis. The selection in Senior Time Scale has made from amongst the officers who have rendered four years regular service in the JTS grade on the recommendations of a duly constituted Departmental Promotion Committee as per provisions in the statutory IPoS Group 'A' Recruitment Rules based on All India seniority and not on circle level arrangements. The claim of Sh.Rath for STS scale is merely an over expectation from the government and thus, it has not been found admissible".

5. Aggrieved with this, applicant has moved this Tribunal seeking for the relief, as referred to above.



6. We have heard the learned counsel for both the sides and perused the pleadings. We have also gone through the rejoinder filed by the applicant as well as written notes of submission filed by the parties concerned.
7. Admittedly, while the applicant working as PS Group-B officer was ordered to officiate as Deputy Divisional Manager (PLI), O/o.CPMG, Orissa Circle, Bhubaneswar in JTS Group-A cadre purely on temporary and ad hoc basis vide order dated 16.08.2006(A/1) in the scale of Rs.8000-13500/- until further orders and it was made clear that such ad hoc promotion would continue for a period of one year from the date of assumption of charge or till posting of a regular approved officer whichever is earlier. In this capacity, applicant continued for the period from 16.08.2006 to 29.01.2007, as Manager, Postal Printing Press, Bhubaneswar from 20.01.2007 to 01.02.2007 and again as DDM(PLI), Circle Office, Bhubaneswar from 02.02.2007 to 27.04.2008. Thereafter, applicant was reverted to his substantive post of PS Group-B vide order dated 14.02.2008(A/4) and as submitted by the respondents in the counter, applicant consequent upon such reversion was posted as Assistant Director(Staff) on 28.04.2008 and again he was ordered to work as DDM(PLI) with effect from 29.04.2008 to 30.04.2009. From the above, it is quite apparent that applicant's continuance in DDM(PLI) or Manager, Postal Printing Press, as the case may be, was not continuous. Therefore, the prayer of


23

the applicant to grant Senior Time Scale for the period from 16.08.2006 to 30.04.2009, prima facie, appears to be misconceived. It is a fact that applicant vide order dated 16.08.2006 was promoted purely on temporary and ad hoc basis to officiate as Deputy Divisional Manager(PLI) in the scale of Rs.8000-13500/- which corresponds to Grade Pay Rs.5400/-. This ad hoc officiating beyond having not got approved by the DOP&T, the drawal of pay in JTS grade from 16.8.2007 to 27.4.2008 was objected to in view of DOP&T O.M. dated 30.3.1988, as a result of which an amount to the tune of Rs.19,230/- was recovered from the gratuity of the applicant, which however, was quashed by this Tribunal vide order dated 3.3.2012 in O.A.No.503 of 2010. Knowing very well that the post of DDM(PLI)/Manager, Postal Printing Press being a Senior Time Scale carrying Grade Pay Rs.6600/-, applicant accepted the order of ad hoc promotion dated 16.08.2006(A/1) to the post of DDM(PLI) in JTS cadre, in which it was mentioned that the scale of ^{pay} for the said post is Rs.8000-13500/- which corresponds to Grade Pay Rs.5400/- without any demur. Therefore, by quashing the impugned order of recovery, this Tribunal in O.A.No.603 of 2010, in effect, held that the applicant was entitled to JTS Group-A scale carrying Grade Pay Rs.5400/- beyond the period of one year of his ad hoc promotion notwithstanding the fact that the same did not receive the approval of DOP&T. It is to be noted that feeder grade for

promotion from PS Group-B is to JTS Group-A cadre, the next promotion being STS Group-A. It is also not in dispute that the STS and JTS are interchangeable. It is a case where the applicant has been allowed to discharge his duties against a post which is two steps higher than his substantive post with the scale of pay of the next higher post. Applicant has not challenged grant of scale of Rs.8000-13500/- (GP Rs.5400) of the post of JTS Group-A, while he was promoted to officiate in the grade of DDM(PLI) purely on ad hoc basis which is an STS Group-A post carrying the scale of Rs.10,000-15,000 (GP Rs.6600). As noted above, the post of STS and JTS being interchangeable, applicant is deemed to have discharged his duties in the post of JTS Group-A carrying the scale of Rs.8000-13500(GP Rs.5400) for the period in question and therefore, the claim as laid in the O.A. amounts to superimposition of claim.

8. For the reasons discussed above, the O.A. is held to be without any merit and the same is accordingly, dismissed. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNIK)
MEMBER(J)

Meheta