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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 657/2014

this the 2nd, day of December, 2016

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)

Kapila Chandra Das aged about 43 years S/o late Shri Madhusudan Das at Madhupur, PO Keradagarh, Via Madanpur, District Kendrapara now at present working as GDSMD, Keradagarh BO under Pattamundai Sub Division, Kendrapara HO, At/PO/Dist. Kendrapara.

...Applicant

By the Advocate :Mr. T. Rath

-VERSUS-

1-Union of India represented through its Secretary - cum - Director General (Posts), At Dak Bhawan, Sansad Marg, New Delhi
2-Chief Post Master General, Odisha Circle, At/PO Bhubaneswar, District Khurda- 01.

3-Superintendent of Post Offices, Cuttack North Division, At/PO/District Cuttack - 01.

4-Sub Divisional Inspector (Post) Pattamundai Sub Division, At/PO Pattamundai District Kendrapara.

...Respondents

By the Advocate : Ms. S. Mohapatra

O R D E R

PER R.C.MISRA, MEMBER(A) :

The applicant who is working as Gramin Dak Sevak Mail Carrier [GDSMD], Keradagarh BO in the District Kendrapara in the State of Odisha, has approached this Tribunal praying for the following reliefs :

"(i) That the order under Annexure-A/5 and the part of the order under Annexure-A/6 directing to release TRCA of the GDSMD post only w.e.f. 15.10.2012 be quashed.

(ii) Direction be issued to the respondents to release the TRCA in the scale of Rs. 1740+DA w.e.f. 15.04.2005 with appropriate replacement scale w.e.f. 01.01.2006 in the post of GDSMD, Keradagarh B.O. with arrears.

(iii) Pass such other order/orders/ directions as deem fit and proper to the facts and circumstances of the case to give complete relief to the applicant."

2. The brief facts of the case are that the applicant was appointed as Extra Departmental Mail Carrier [EDMC] in the scale

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of pay of Rs. 1545-25-2020 in Keradagarh BO vide order dated 01.01.1994, and he was designated as Gramin Dak Sevak Mail Carrier [GDSMC] after promulgation of Gramin Dak Sevak (Conduct and Employment) Rules, 2001. In the year 2005, he was asked to hold the post of GDSMD in the scale of pay of Rs. 1740-30-2640 in the same BO by a letter dated 01.04.2005 of SDI (Post), Pattamundai due to retirement of a regular incumbent. The applicant has been performing duties attached to the post of GDSMD of the same BO w.e.f. 15.04.2005 till date. However, he was not paid TRCA meant for the post of GDSMD, but is being paid TRCA attached to the post of GDSMC. This is against the terms and conditions of the order dated 01.04.2005, and is causing financial loss to the applicant. At present, he is also given the duty of GDSBPM in the same BO, since 23.04.2011 without giving payment of combined duty allowance and stationery and office maintenance allowance.

3. The applicant submitted his grievance several times before respondent No. 4, i.e. Sub Divisional Inspector(Post), Pattamundai, and also raised his grievance through the Service Union, but all such efforts did not yield any result. Therefore, the applicant filed OA No. 572/2013 before this Tribunal, and this was disposed of by an order dated 30.08.2013 directing respondent No. 3, i.e. Superintendent of Post Offices, Cuttack North Division, to consider the pending representation dated 15.10.2012 of applicant within 30 days of date of receipt of the order. In compliance of the orders of the Tribunal, the respondent No. 3 passed an order dated 15.10.2013 in which it was held that applicant was provisionally appointed in the post of GDSMD by an order of Inspector of Posts, Pattamundai Sub Division with a direction of payment of TRCA @ Rs. 1740/- + DA. This according to order dated 15.10.2013, was

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not within the competence of the ~~S~~ Sub Divisional Inspector. It is stated that 'such type of order issued by the Inspector Posts, Pattamundai Sub Division is faulty'. Therefore, the respondent No. 3 directed that statistics pertaining to the post of GDSMD, Karadagarh BO should be collected as per rules. Subsequently, respondent No. 1 has passed an order dated 15.04.2014 (Annex.A/6) in which it is mentioned that IP, Pattamundai Sub Division collected the statistics as directed. The respondent No. 3, on receiving the statistics, considered the representation of applicant in the light of rules and ordered that "the applicant is entitled to get the TRCA in the pay scale of Rs. 4220-75-6470 for the post of GDSMD, Keradagarh BO, w.e.f. 15.10.2012. In spite of this order, the Post Master, Kendrapara HO has not disbursed the TRCA in the scale of Rs. 4220-75-6470 to applicant.

4. In the counter-affidavit, respondents have pleaded that applicant was directed to manage the work of GDSMD in addition to his duties w.e.f. 15.04.2005 till regular appointment is made to that post, by an order dated 01.04.2015 of SDI, Pattamundai. In compliance of the orders of the Tribunal in the earlier OA, respondent No. 3 after studying the statistics, and the representation of the applicant with reference to rules, passed orders that TRCA in the scale of Rs. 4220-75-6470 w.e.f. 15.10.2012 was to be paid to the applicant. In the order dated 01.04.2015 (Annex.A/1) applicant was directed to manage the work temporarily till appointment of regular incumbent. Therefore, applicant was not entitled to scale of Rs. 4220-75-6470 w.e.f. 15.04.2005. The order of the SDI, Pattamundai to the Drawing & Disbursing Officer to pay to the applicant @ Rs. 1740 + DA was without authority and competence of the concerned official. Further, it is submitted that the admissible Combined Duty

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Allowance and Office Maintenance Allowance for the period for which applicant managed the duties of GDSBPM, has already been passed. TRCA in the pay scale of Rs. 4220-75-6470 for the post of GDSMD w.e.f. 15.12.2012 as ordered by respondent No. 3, has been drawn by the DDO on 01.10.2014, and paid to applicant on 07.10.2014. On submitting these facts, respondents have pleaded that applicant is not entitled to any relief claimed in this O.A.

5. In the rejoinder filed by applicant, it is pleaded that applicant worked in the post of GDSMD from 15.04.2005 as per the direction of the respondents. This post carried the TRCA of Rs. 1740-30-2440 as communicated in the order of appointment. Therefore, fixation of TRCA from 15.10.2012, ignoring the period from 15.04.2005 to 14.10.2012 is illegal. The applicant was appointed as GDSMD w.e.f. 15.04.2005 and is continuing in this post, and therefore, fixation of his TRCA in the scale of pay attached to the post of GDSMD was very much within the authority and competence of SDI, Pattamundai. The applicant has thus argued that the order of the Tribunal passed in the earlier OA has not been carried out in letter and spirit.

6. Having heard learned counsels of both sides, we have perused the records. It is admitted that applicant was given provisional appointment to the post of GDSMD, since regular incumbent had been retired. The applicant at that time was working as GDSMC. This arrangement was made w.e.f. 15.04.2005 till appointment is made on a regular basis. In this order dated 01.04.2005, respondent No. 4 also gave direction that applicant should be paid TRCA of Rs. 1740+DA as admissible for the post of GDSMD. It is also admitted that applicant has been so far continuing to work in this post. In the order dated 15.04.2014 impugned in this O.A.,

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respondent No. 3 decided that TRCA in the pay scale of GDSMD shall be admissible to applicant w.e.f. 15.10.2012. The issue before us is whether applicant was entitled to TRCA of GDSMD from the date of his appointment, in spite of the fact that appointment was provisional and it was not a regular appointment. A concomitant issue is whether TRCA of the post of GDSMD will be admissible only from 15.10.2012, and not from 15.04.2005. It is to be examined whether respondent No. 3 had a justifiable basis for taking such a decision.

7. The normal principle is that an employee should be paid the remuneration attached to the post in which he is working. This is in conformity with "equal pay for equal work". The order of provisional appointment mentions that the applicant would receive TRCA as admissible to the post of GDSMD. The respondents have called this order as faulty and without authority. When applicant has been working against the post of GDSMD since the year 2005, calling the order dated 01.04.2005 by which the applicant is working as faulty, appears to be an after thought, and in any case, respondents have not given any reasons for their conclusion. The respondent No. 3 collected statistics about the post and decided that TRCA for GDSMD was to be paid to the applicant from 15.10.2012. What exactly were the statistics based upon which, respondent took such a decision, are not made available by the authorities. Why was the TRCA allowed from 2012, and not from 2005, from a date when applicant started working, is left to imagination, since there is no reason mentioned in the order. It, therefore, appears that respondents have come to an arbitrary conclusion, unsupported by logic and reason. We are not provided with any facts that would justify the decision of respondents to exclude the period from 2005 to 2012 from

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consideration for payment of TRCA admissible for the post against which applicant has been working till today.

8. An important question that crops up is whether the applicant can be denied the remuneration attached to his post because he was not regularly appointed but was provisionally appointed. On this question, the learned counsel for applicant has brought to our notice a judgment of Hon'ble Supreme Court in the case of **Selvaraj Vs. Lt. Governor of Island, Port Blair** dated 16th March, 1998 (AIR 1999 SC 838) in which it was decided as follows :

"Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of Rs. 1640-2900. Consequently, on the principle of quantum mer it the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher scale of pay during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promote. This limited relief is required to be given to the appellant only on this ground".

9. In the case of **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Ors.** [1998 SCC (L&S) 1273], the Hon'ble Apex Court has observed as follows :

"It is true that the respondent to begin with was promoted in stop-gap arrangement as Junior Engineer-I, but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on this post of Junior Engineer-I since 1998, and promotion for such a long period of time cannot be treated to be a stop-gap arrangement".


10. The underlying principle that emanates from the judgments pronounced by the Hon'ble Apex Court in the context of similar situation, is that if any employee is made to work against a post in a temporary capacity, he may not be allowed a right of being regularly posted, since such a right does not follow from an

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appointment that is made to fulfill the requirement of a temporary administrative necessity. But, there will be no justification to deny him the remuneration that is attached to the post. In the case cited 1998 SCC (L&S) 1273 (supra), it is held that even if in a case an undertaking is obtained that employee will not claim higher remuneration on a stop-gap arrangement of officiating in a promotional post, such an undertaking will be against the law, and the Government in its capacity as model employer, cannot be allowed to raise such an argument. There is however, no such undertaking in the case. In fact, in the present case, the respondents in the offer of provisional appointment had directed that TRCA attached to the post of GDSMD would be paid to the applicant. They have, however, not disbursed the same to the applicant. After the intervention of the Tribunal, respondents allowed the claim of TRCA for the post of GDSMD to be drawn in favour of the applicant from 15.12.2012, thus partially redressing his grievance. We, however, do not find any justifiable ground for not allowing the TRCA for the post of GDSMD from the date of his working in the post, i.e. since 15.04.2005. The applicant in our opinion is entitled to be paid TRCA for the post of GDSMD from 15.04.2005, and the amount as admissible should be paid to him for the said period, i.e., 15.04.2005 to 15.12.2012 within a period of three months of receiving a copy of this order. The respondents are accordingly directed to make the payment within the stipulated time frame.

11. The O.A. is allowed to the extent ^{e d} stated above. No costs.


[S.K.Pattnaik]
Member(J)


[R.C.Misra]
Member (A)