

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.395/2010

Reserved on 30.10.2014.

Pronounced on 26th November 2014.

HON'BLE MR. NAVNEET KUMAR, MEMBER (J).
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Jhagroo Pd. Aged about 62 years, son of late Shri Gokul Pd. Retired HSGPM Hardoi R/o M-80/1 Sanjay Gandhi Puram, Faizabad Road, Lucknow.

...Applicants.

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India, through the Secretary, Department of Post, New Delhi.
2. Chief Postmaster General, U.P. Lucknow.
3. Senior Superintendent of Post Offices, Lucknow.

...Respondents.

By Advocate: Sri Rajendra Singh.

ORDER

Per Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“(a). That this Hon'ble Tribunal may kindly be pleased to quash the order dated 27.07.2010 as contained in Annexure No.A-1 and direct opposite parties to pay the pay and allowances as HSG-1 cadre for the period from 31.12.2005 A/N to 06.07.2006 and from 05.08.2006 to 23.04.2008 alongwith consequential benefits including pension and all retiral

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dues based on such salary with interest @ 18% on all arrears.

(b). Any other relief as deemed just and proper in the circumstances of the case with cost of O.A. in favour of the applicant."

2. The facts relevant to this case as averred by the applicant are that the applicant was initially appointed as Posta Assistant on 10.03.1972. He was promoted to OTBP (LSG) cadre with effect from 20.06.1988 vide order dated 07.08.1989 and HSG-II (BCR) cadre w.e.f. 01.07.1998 vide order dated 30.08.1999. He was approved for promotion to HSG-1 cadre vide order dated 06.06.2005 and the PMG Bareilly region posted the applicant as Dy. P.M., Hardoi vide order dated 16.6.2005 (Annexure A-7 and A-8).

3. The post of SPM Mahanagar is in HSG-1 grade against which Sri I.S. Srivastava was working and on attaining the age of superannuation on 31.12.2005 he handed over the entire charge of SPM Mahanagar HSG-I P.O., Lucknow vide SSPOs, Lucknow Memo dated 20.12.2005 (Annexure A-2) to the applicant. Thereafter, Sri Vishwa Nath Prasad worked as SPM Mahanagar, who on his transfer from Mahanagar Post Office to GPO, Lucknow vide order of the CPMG, U.P., Lucknow dated 28.07.2006 handed over the charge of SPM Mahanagar to the applicant on 05.08.2006 vide O.B. No.208 dated 05.08.2006. The applicant was thereafter continuously working as SPM Mahanagar Post Office till he was relieved on 23.04.2008 for Bareilly region. The applicant had earlier filed O.A.No.78/2008 for pay and allowances

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of HSG-I post w.e.f. 31.12.2005 to 6.7.2006 and 05.8.2006 to 23.04.2008. The same was with a direction that his representations may be decided. The representations so made by him were rejected by the impugned order dated 04.04.2008 (Annexure A-9). In a similar case where the respondents are not paying pay and allowances of HSG-I cadre to one Sri R.B. Singh who officiated as sub postmaster HSG-I, New Hyderabad Post Office, Lucknow filed O.A.No.7/2005 wherein the respondents were directed to pay the pay and allowances for HSG-I cadre even for a period of less than one month. The applicant, on the other hand has actually worked in HSG-I cadre as SPM, Managar for one year nine months and is legally entitled for pay and allowances of HSG-I cadre. The copy of judgment and order dated 06.09.2005 is at (Annexure A-10).

4. The respondents have denied the claim of the applicant by means of filing their Center Affidavit stating that the applicant was inducted in the department as Postal Assistant in Lalbagh Post Office, Lucknow on 20.06.1972. He was allowed first Financial Upgradation under TBOP Scheme w.e.f. 20.06.1988 and IIInd Financial Upgradation w.e.f. 01.07.1998. The applicant was further promoted to HSG-II (NB) cadre vide C.O. Memo dated 02.06.2005 with the condition that no disciplinary /criminal case is pending or any of the penalty prescribed under item (11 to VII) of Rule 11 of CCS (CCA) Rules, 1965 is current against any of the official so promoted. The applicant was further promoted as HSG-I cadre vide C.O. Memo dated 06.06.2005 again with the same condition that no disciplinary/criminal

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case is pending or any of the penalty prescribed under item (II to VII) of Rule 11 of CCS (CCA) Rules, 1965 is current against any of the officials promoted. It had come to the notice that the applicant was awarded the punishment of reduction of pay by three stages from Rs.6500/- to Rs.6200/- for three years with the condition that he will not earn increment during this period of reduced by SSPOs, Lucknow vide Memo dated 11/26.09.2003 in a major penalty proceedings. Further, it is submitted that as per condition of promotion order dated 02.06.2005, the promotion was not given effect to and accordingly the applicant was not relieved to join on higher post. Copy of order dated 11/26.03.2003 is at (Annexure CR-1). As the applicant was the senior most employee available at Mahanagar therefore, he was ordered to work on HSG-II (NBZ) cadre post purely on temporary and ad-hoc basis as per local arrangement by SSPOs, Lucknow and posted as ASPM, Mahanagar Post Office, Lucknow vide order dated 02.11.2007. Subsequently, Sri B.K. Bimal was posted as SPM, Mahanagar Post Office, Lucknow vide order dated 25.01.2008. Being aggrieved by such an action of the respondents the applicant filed O.A.No.78/2008 before the Tribunal seeking the quashing of the posting of Sri B.K. Bimal. The said OA was finally decided vide judgment and order dated 04.04.2008. The operative portion of the order reads as follows:-

"In view of the above circumstances, O.A. is disposed of with a direction to the respondent no.3 i.e. CPMG, U.P. Circle, Lucknow to relieve the applicant from the present place of posting as Sub-Postmaster Mahanagar, Lucknow to Bareilly Region in view of earlier order

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dated 6.6.2005 covered under Annexure -6 and in respect of remaining claims of the applicant and other allowances, he is at liberty to file separate representation to the respondent no.3 within a period of two weeks from the date of this order with a direction to the respondents to consider and dispose of the same with a reasoned order and as per rules within a period of two months from the date of receipt of copy of the order. The respondent no.3 is also directed to relieve the applicant within 2 weeks from the date of receipt of copy of the order."

5. The applicant was thereafter relieved for Bareilly Region w.e.f. 23.4.2008. The applicant kept silent for about two years and then sent an application dated 29.3.2010 stating that his representation dated 08.04.2008 had not been decided. Finally, after obtaining the factual position from SSPOs, Lucknow, his representation was decided vide Office Memorandum dated 27.07.2010 against which the present OA has been filed. Basically, the case of the respondents is that the applicant was never been actually promoted to HSG-II cadre due to currency of punishment up to 30.09.2006 and his promotion to HSG-I cadre was not admissible to him because the actual promotion was not given to him till 23.04.2008 due to currency of two punishments. The details of which are given in the following table, which is as under:-

Sl.No.	Order No.	Date of issue of charge sheet	Date of issue of punishment order	Punishment awarded	Period upto which remained in operation
1.	L/SB/CPMG/25/CH.II		11/20.9.2003	The punishment of reduction of pay from the stage of Rs.6650/- to the stage of Rs.6200	September 2006

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				for three years with immediate effect and recovery of Rs.4800/- in 8 installments	
2.	G/Jhagroo Pd/DP/07-08		22.1.08	Withholding his next one increment for 06 months	1.1.09 to 30.6.09 retired on 30.6.09

6. In so far as the applicant claim is that he had worked as SPM, Mahanagar on retirement of Sri A.P. Srivastava on 31.12.2005 is purely a local arrangement as he was the senior most official in the Post Office. Moreover, Sri Vishwanath Prasad, the then SPM (HSG-I) , Mahanagar on his transfer to Lucknow GPO, handed over the charge of SPM to the applicant as he was the senior most Postal Assistant in the Post Office. He was never posted to the post by CPMG, U.P. Circle, Lucknow. This was purely temporary arrangement done by SPM, Mahanagar at his own level.

7. The applicant has filed the Rejoinder reply more or less reiterating his contentions as raised in the OA stating therein that the applicant was given full charge of the post of ASPM HSG-II (NB), Mahanagar, Lucknow on 15.7.2005. He was given full charge of the post of SPM, Mahanagar, Lucknow (HSG-I) on the retirement of Sri A.P. Srivastava, SPM, HSG-I, Mahanagar, Lucknow on 31.12.2005 after noon till further orders by SSPOs, Lucknow. This arrangement continued till 06.07.2006 for 6 months and 6 days when the SSPOs, Lucknow ordered one Sri Vishwa Nath Prasad to work as SPM, Mahanagar, Post Office, Lucknow (HSG-I). Sri

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Vishwanath Prasad was also transferred from Mahanagar Post Officer, Lucknow to GPO, Lucknow. He handed over full charge of the post of SPM, Mahanagar, Post Officer, Lucknow on 05.08.2006 to the applicant. He continued as SPM Mahanagar, Post Office, Lucknow HSG-I till his relief for Bareilly Region on 23.04.2008. He was joined as HSG-I cadre at Hardoi on 24.04.2008. The disciplinary order dated 11/26.03.20003 is not relevant as the applicant was given the charge of the post of ASPM HSG-II (NB) Mahanagar, Post Office, Lucknow on 15.07.2005 as SPM Mahanagar Post Office, Lucknow as HSG-I on 31.12.2005. The applicant has stated that he was entitled for the pay and allowances for the HSG-I post on which he has actually worked. The applicant has further stated that he was initially appointed as Postal Assistant on 10.03.1972 in the department although; no joining report is available in the file.

8. We have heard the learned counsel for the parties and have also perused the pleadings on record.

9. The applicant has basically claimed the benefit of salary attached to the post on which he has been officiating as the applicant was given charge of the post of ASPOM HSG-II (NB) Mahanagar, Post Office on 15.07.2005 and SPM Mahanagar Post Office, Lucknow as HSG-I on 31.12.2005 after noon and has worked upto 06.07.2006 and thereafter w.e.f. 05.08.2006 till 23.04.2008. It is not the case of the applicant that he was duly drawing the salary of HSG-I cadre. Had it be the case there would be no question for claiming the salary attached to the 2 different post of which the charge was handed over the applicant. In this claim the applicant

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has failed to produce a copy of the order passed by the competent authority. He has produced the copy of the charge sheet handing over report dated 31.12.2005 wherein he was given full charge of the post of SPM, Mahanagar, Lucknow (HSG-I) on the retirement of Sri A.P. Srivastava, SPM, HSG-I, Mahanagar, Lucknow on 31.12.2005 after noon till further orders by SSPOs, Lucknow. This arrangement continued till 06.07.2006 for 6 months and 6 days when the SSPOs, Lucknow ordered one Sri Vishwanath Prasad to work as SPM, Mahanagar, Post Office, Lucknow (HSG-I). Sri Vishwanath Prasad was also transferred from Mahanagar Post Officer, Lucknow to GPO, Lucknow. He handed order full charge of the post of SPM, Mahanagar, Post Officer, Lucknow on 05.08.2006 to the applicant. He continued as SPM Mahanagar, Post Office, Lucknow HSG-I till his relief for Bareilly Region on 23.04.2008 wherein the designation of the applicant is not mentioned. Similarly, there is copy of charge handing over report by which the then SPM Sri B.K. Bimal handed over the charge to the applicant as being senior most official in the Post Office. Once again his actual designation is not mentioned. In this case without entering into any other controversial issue, we would like to peruse the copy of the rules of the department which governs the payment of salary for a person, who is drawing a salary at lower level and later on he asked to take the charge of higher level. Different department has different set of rules. In many instances person are drawing lower salary and shouldering responsibilities of higher post without getting commensurate salary at the

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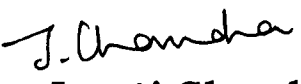
higher level. In same instance, the persons shouldering responsibilities of higher post are drawing lower salary.

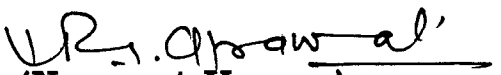
10. Section 101 of Indian Evidence Act 1872 reads as follows:-

“101. Burden of Proof- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

11. As per Section 101 of the Indian Evidence Act 1872, the burden of proof squarely lies on the applicant to prove his case and in the present case the applicant has completely fails to prove his claim.

12. In this case, the applicant has failed to produce copy of any enabling rule/order/memorandum, which would help us to decide the case in his favour. The burden of proof is always upon the applicant. The applicant has failed to prove that his claim for officiating on higher level is justified on the ground of relevant rules. Therefore, the OA deserves to be dismissed and is accordingly dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-