

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A NO.060/01144/2014 **Date of decision :** 12.5.2015

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
 HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

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Chaman Lal Kainth son of Shri Dev Raj, aged 76 years, Deputy Postmaster (Retired) resident of House No.2/12, Grover Colony, Basti Guzan, Jalandhar City-144002 (Punjab).

...APPLICANT

BY ADVOCATE: Shri Manohar Lal

VERSUS

1. Union of India through Secretary, Ministry of Communications and Information Technology, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Punjab Circle, Sector 17-E, Chandigarh.
3. Senior Superintendent of Post Offices, Jalandhar Division, Jalandhar-144001.
4. Deputy Director of Accounts (Postal) Kapurthala (Punjab).

...RESPONDENTS

BY ADVOCATE: Shri G.S. Sathi

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ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

Challenge in this Original Application is to letters dated 27.09.2013, 25.02.2014 and 28.07.2014 whereby the claim of the applicant for revising his pension by taking into account his last pay drawn in the pay scale of Deputy Postmaster-I has been rejected. The applicant has further sought issuance of a direction to the respondents to revise his pension in terms of OM dated 28.01.2013 to Rs.8145/- per month being 50% of the sum of minimum pay in the pay band and the grade pay corresponding to the pre-revised pay scale (Rs.6500-10500) from which he had retired and to pay him arrears of pension w.e.f. 1.1.2006 along with 18% interest per annum.

2. What can be gathered from a conjunctive perusal of the pleadings of the parties is that the applicant who was working with the respondents as Assistant Postmaster on a substantive vacancy in the pay scale of Rs.1640-2660 (un-revised) was put to officiate as Deputy Postmaster-I w.e.f. 11.01.1996 at headquarter Jalandhar City. He retired as such on 31.01.1996. The applicant submitted his claim based upon OM dated 28.01.2013 for re-fixation of his

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pension on the last pay drawn as Deputy Postmaster-I. His request was declined by the respondents vide impugned letters on the ground that he was not actually promoted to the post of Deputy Postmaster-I (HSG-I) and as such his pension cannot be fixed by taking into account the emoluments drawn on that post. Since he was working substantially on the post of Assistant Postmaster, therefore his pension is to be fixed in that pay scale only.

3. Shri Manohar Lal, learned counsel appearing on behalf of the applicant submitted that since the applicant worked on the post of Deputy Postmaster-I and retired as such, then he becomes entitled for fixation of pension in the higher grade. He placed reliance upon various communications issued by the department to substantiate his claim. He also staked his claim in terms of Rule 49 of CCS (Pension) Rules, 1972 and also sought to draw benefit from Rule-33, Chapter-IV, which deals with definition 'emoluments' and 'average emoluments' and mentions that last pay drawn is the determinative factor for grant of pension etc.

4. The respondents have contested the claim of the applicant by filing a written statement, stating therein that they have rightly rejected the claim of the applicant by passing the

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impugned order, as the applicant, who was actually working as Assistant Postmaster, was put to officiate as Deputy Postmaster-I on 11.01.1996 at Jalandhar headquarter from where he retired on attaining the age of superannuation on 31.01.1996 and that was for the reason that the earlier person Shri Mehar Chand, who was also similarly situated like applicant, proceeded on leave to whom also the officiating charge was given, as the regular incumbent proceeded on long leave. Therefore, neither the applicant nor Shri Mehar Chand, who also officiated on that post, became entitled for re-fixation of pension in the pay scale of Deputy Postmaster-I. It is also submitted that both the orders, giving officiating charge, have not been passed by the competent authority and have been passed by the local authority without approval of the Director, Postal Services, who is the appointing authority.

5. We have heard learned counsel appearing for the respective parties and given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel appearing for the respective parties.

6. Before proceeding further to deal with the matter, we think it appropriate to refer to the relevant provision of the CCS (Pension)

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Rules, 1972. Rule 3 (c) of the CCS (Pension) Rules, 1972 defines "emoluments" to mean emoluments as defined under rule 33. Rule 33 of CCS (Pension) Rules being relevant is reproduced as under:-

"The expression '*emoluments*' means basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death ; and will also include non-practising allowance granted to medical officer in lieu of private practice.]

Dearness relief is defined under rule 3 (1)(cc) of the CCS (Pension) Rules, 1972, to mean relief as defined in Rule 55-A. Rule 55-A deals with Dearness Relief on Pension / Family pension. It provides :-

"Relief against price rise may be granted to the pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time".

Rule 9(21)(a) of Fundamental Rules defines "Pay" to mean the amount drawn monthly by a Government servants as -

"(i) the pay, then special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position on a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President.

The above rule makes it clear that pension is to be fixed on the basis of last pay drawn by a government servant. In the case in hand, the applicant was substantially appointed and working as APM, though for few months as per local arrangement, he discharged duties of the higher post of DPM-I, Therefore, suffice

would to be record that he was never promoted as DPM-I, whose pay scale he is asking. Therefore, as per above rule formation his pension is to be fixed on the last pay drawn. As we could not find fault with the impugned order, accordingly the OA is liable to be dismissed being devoid of merit.

7. We are in agreement with the submission made on behalf of the respondents for the simple reason that the applicant has failed to show any order, promoting him as Deputy Postmaster-I.

Rather the respondents as well as applicant's case is that applicant was actually working substantially on the post of Assistant Postmaster. Merely because he was allowed to officiate on higher post does not make him entitled for the grant of pay scale attached to that post and/or resultant retiral dues also on that basis. It has been explained and not controverted by the applicant that the applicant was never appointed by the competent authority as he was asked to officiate as DPM-I against leave arrangement only.

The appointing authority for that post is the Director Postal Services, Circle Office, Chandigarh. Said authority has not passed any order qua promotion of the applicant, even on officiating basis. Thus, the applicant is not entitled to any benefit of pay and allowances of the higher post for officiation for the relevant period as he was not appointed by the competent authority. This view of

ours is in conformity with the law declared by the Hon'ble Apex Court in the case of **Mohd. Swaleh vs Union Of India & Ors,** reported at 1997 (4) Service Law Reporter 608 in which it was held that sanction of Central Government (competent authority) was necessary for payment of the additional remuneration under Fundamental Rule 49 and since the concerned officer was not appointed by the competent authority to work on a higher post, his claim was declined.

8. We, therefore, do not find any merit in the Original Application, which is accordingly, dismissed, leaving the parties to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh

Dated: 12.5.2015

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