

**Central Administrative Tribunal
Principal Bench**

OA No.30/2015

Reserved on : 15.03.2016
Pronounced on : 18.03.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Sh. Nafe Singh
aged about 61 years.
S/o Shri Rattan Singh
R/o H. No.1036,
Ward No.25, Gali No.6,
Badli Road, Ranjit Colony,
Bahadurgarh, Distt. Jhajjar, Haryana,
Presently in Delhi
Retired as a Junior Store Keeper
Red Cross Warehouse, Bahadurgarh, Applicant.

(By Advocate : Ms. Jasvinder Kaur)

Versus

1. Indian Red Cross Society
National Head Quarters,
1, Red Cross Road,
New Delhi 110 001.
Through its General Secretary.
2. Director
(Personnel & Administration)
Indian Red Cross Society
National Head Quarters,
1, Red Cross Road,
New Delhi 110 001. ... Respondents.

(By Advocate : Shri L. R. Khatana)

: O R D E R :

Ms. Nita Chowdhury, Member (A) :

Brief facts of this case relevant for a decision on the same are that the applicant, Shri Nafe Singh, joined the Indian Red Cross Society (IRCS) as Packer on contract basis on 19.09.1975. Subsequently, he was regularized vide Letter No.18/Estt./Dt.

18.06.1979, and further promoted to the post of Lower Division Clerk, Stores on 06.03.1984.

2. The applicant contends that he was given additional charge of Medical & Transport spare parts Store in 1986 and he looked after this charge till 1989, but was not given additional remuneration for this work which was in addition to what was his original charge. He further alleges that in 1989, his duty was changed and the charge of Medical & Transport spare parts Store was changed to that of General Store which was handled by him till 1992. He further contends in the absence of Store Keeper Shri P. Nath, he was fully in charge of the functions of Store Keeper on the instructions of the IRCS for the period 1992-1995.

2.1. The applicant was promoted on 01.11.1995 as Junior Store Keeper and in January, 2000 after his continuous working as Store Keeper in the absence of a full time Store Keeper, he was given an incentive of Rs.100 per month for this additional charge and he continued to discharge this function till he retired from service after attaining the age of superannuation on 31.12.2013, as Junior Store Keeper. The applicant also informs that he made enumerable representations to the IRCS to give him 10% additional allowance for shouldering higher responsibility of Store Keeper at Bahadurgarh Ware House, but he was aggrieved when the respondents society instead of accepting his request, offered him promotion at a far flung place in Vikhroli Warehouse.

2.2. On 14.03.2012, the applicant appeared for the post of Assistant Superintendent of Stores but he was not selected.

Thereafter, again he gave a representation dated 24.07.2013 through his immediate senior officer, i.e., Assistant Store Superintendent for awarding him ACP and 10% additional allowance for shouldering higher responsibility of Store Keeper at Bahadurgarh. The respondents did not favourably consider any of his representations for grant of extra allowance from 1995 till 2013, neither did he get the benefit of ACP/MACP Scheme, nor has he been given any reasonable and legally tenable grounds for not accepting the same. Hence, based on the fact that he had been given representation at enumerable times, he has filed this OA.

3. The grounds of his appeal are as follows:-

3.1 That Respondent No.2 has wrongly equated regular promotion of the applicant from LDC to Junior Store Keeper as financial upgradation under the ACP Scheme. However the respondent society adopted the ACP scheme on 03.01.2003 and, therefore, the reason given for first financial upgradation is wholly misplaced and legally untenable.

3.2 It is contended on behalf of the applicant that revision of pay scale upon the recommendations of Central Pay Commission do not fall under financial upgradation as defined under ACP Scheme.

3.3 That the applicant was not only performing routine duties of the post of Store Keeper but was also in charge of codal duties, i.e., maintenance of stocks and records of the Stores. The duties performed by the applicant were substantive in nature and were

codal duties, and, therefore, he would be entitled to presumptive pay under FR FR 49 (iii), which reads as under:-

“F. R.49- The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows:-

- (i) Where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post ;
- (ii) Where a Government servant is formally appointment to hold dual charges of two post in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge:

Provided that if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay.

- (iii) Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post or of the highest post if he holds charge of more than two posts in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 45 days but not exceeding 3 months:

Provided that if in any particular case it is considered necessary that the Government servant should hold charge of another post or posts for a period exceeding 3 months, the concurrence of the [Department of Personnel & Training] shall be obtained for the payment of the additional pay beyond the period of 3 months;

- (iv) Where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed Rs.80,000.
- (v) No additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge;
- (vi) If compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such

compensatory or sumptuary allowances as the Central Government may fix:

Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts.”

4. The applicant has also challenged the impugned order dated 13.01.2014 passed by the respondents, which reads as under:-

“No.B-11016/01/13/P&A/161 13th January, 2014

Shri Naffe Singh
Ex-Junior Store Keeper
Indian Red Cross Society,
Zonal Warehousing Complex,
Bahadurgarh (Haryana)

This is in reference to your representation dated 24th July, 2013 regarding grant of financial upgradation under ACP Scheme. In this regard, it is informed to you that your request for granting financial upgradation under ACP Scheme has been considered carefully by the competent authority and it has been observed that :-

1. Appointed as Lower Division Clerk w.e.f. 06.03.1984 in the pay scale of Rs.260-400 (3rd Pay Commission) revised to pay scale Rs.3050-4590 (5th Pay Commission from 01.01.1996).
 2. First Financial upgradation (Promoted as Junior Store Keeper) granted w.e.f. 01.11.1995 in the next higher pay scale Rs.330-560 (3rd pay commission) revised to pay scale Rs.4000-6000 in 5th Pay Commission.
 3. Second financial upgradation granted under ACP Scheme w.e.f. 01.03.2008 in the pay scale of Rs.4500-7000 (5th Pay commission).

As per above you have been granted two financial upgradation after completion of 24 years of service from the date of appointment as Lower Division Clerk from the year 1984.

It is further inform you that under MACP Scheme there are three financial upgradation available after completion of 10, 20 & 30 years of regular service in one category w.e.f. 01.09.2008 and thus you become entitled for third financial upgradation under MACP Scheme only after completion of 30 years of service which you will complete on 06.03.2014.

Since you retired from the services of the Society on 31.12.2013 and not completed 30 years of service, you are

not entitled for third financial upgradation under MACP Scheme.

/sd/
Director (P & A)"

5. The respondents are present in court and denied and disputed all the averments made by the applicant in the OA and submitted that their preliminary objection is with regard to maintainability of the OA. They pointed out that the applicant has sought multiple reliefs as is clear from the pleadings given by him and the prayer clause of the OA, and hence the present OA is liable to be dismissed on this ground alone.

6. The respondents further submits that the OA is badly barred by limitation as provided under Section 21 of the Administrative Tribunals Act, 1985 and the alleged cause of action is sought to be fabricated on the basis of the respondents letter dated 13.01.2014 and a non-existent and stale issue is sought to be raked up about a year after the applicant's retirement on superannuation on 31.12.2013. They further crave leave to refer and rely on the facts and law on the subject during the course of arguments.

7. On the merits of the matter, the respondents have stated that the applicant was initially engaged as Packer, later he was placed in the regular pay scale of LDC, further upgraded as Junior Store Keeper w.e.f. 01.11.1995, and retired on superannuation from the said post. Therefore, he was legally and rightfully accorded 2nd financial upgradation w.e.f. 01.03.2008. Further, it is contended that he was neither performing the duties of Store keeper nor he was ever appointed as Store Keeper on superannuation of the

previous incumbent Shri P. Nath. In fact, the respondents contend that the allegation of the applicant that he was holding higher charge is absolutely false, baseless, wrong, misleading and misconceived.

8. The applicant has not shown any law that he has any legal right to enforce in the present case and further he has sought multiple reliefs which are barred under the law. Therefore, the present OA is barred by limitation and the respondents sought its dismissal *ab initio*. Further the respondents in their reply emphasized that the IRCS is under the supreme authority of its managing body and the same is having complete control of the Administration and Finance society. Government of India rules do not apply *ipso facto* to the society till, if and from the date on which said rules are accepted by the Managing Committee. Hence, the respondents submitted that the applicant cannot claim benefits of government rule whether it is in the matter of ACP or with regard to FR 49 which basically deals with the power of the Central Government to appoint a government servant already holding a post in a substantive and officiating capacity. Hence, quoting of rules which do not apply to the IRCS to obtain financial benefits is not as per entitlement of law.

9. After hearing both sides and examination of the entire file, the OA is dismissed for the following reasons:-

- The preliminary objection raised by the respondents that the present OA is not maintainable inasmuch as the applicant has sought multiple reliefs is found to be correct.

Further the contention of the respondents that the OA is wholly barred by limitation as provided under Section 21 of the Administrative Tribunals Act, 1985 because the cause of action - if it can be termed as such - started according to the applicant's own averment from 1986 when he was given, as per his plea, the additional charge of Medical & Transport Spare Parts Store and subsequently additional charge of General Store etc.

- Further the cause of action in the OA cannot be racked up simply because the applicant superannuated on 31.12.2013.
- Clearly, the applicant has been unable to show any order by which he was asked to take over the charge of Store Keeper on the superannuation of previous Store Keeper Shri P. Nath. The applicant was unable to provide any orders made in this regard. The respondents have shown from records made available with them with regard to the orders given to Shri P. Nath dated 11.12.1995 of Supdt. of Stores, Bahadurgarh Warehouse, wherein, it was ordered to P. Nath that he would properly complete handing over/taking over formalities to Shri Nafe Singh, Junior Store Keeper. Copy of the same was endorsed to Shri Nafe Singh. It is clear from the order that Shri Nafe Singh received this copy and was addressed as Junior Store Keeper for taking over charge from Shri P. Nath, Store Keeper.

- Our attention was also drawn to subsequent order dated 18.11.1996, which reads as follows:-

“Bahadurgarh Warehouse
18.11.1996

Shri Charan Singh, Jr. Store Keeper, will have to proceed to Vikhroli Store Depot, shortly on temporary transfer for 3 months as per NHQ Memorandum no.6/BG/ESTT/96/811 dt. 14.11.96.

In this connection handing over/Taking over formalities between Shri Charan Singh and Shri Nafe Singh, should be completed by 21.11.96 and submit all related documents to the undersigned by 21.11.96.

/sd/
Supdt. of Stores.

Copy to :-

1. Shri Charan Singh, Jr. Store Keeper, with request to hand over all his charge to Shri Nafe Singh, Jr. Store Keeper with proper documents till (Shri Charan Singh, Jr. Store Keeper) resumes his duties at Bahadurgarh Warehouse.
2. Shri Nafe Singh, Jr. Store Keeper, with request to take over all charges from Shri Charan Singh, Jr. Store Keeper with proper documents, till Shri Charan Singh, Jr. Store Keeper, resumes his duties at Bahadurgarh Warehouse.
3. A.D. (Relief) for information, please.

/sd/
Supdt. of Stores”

10. In the above order also, Shri Nafe Singh is addressed as Junior Store Keeper and asked to take over the charge of the store till the relieving officer resumes his duty. Special attention was drawn to the order dated 29.11.1996 of Handing Over/Taking Over of Transport Spare Parts Stores by Shri Nafe Singh wherein it has been clearly stated that the applicant is taking over the charge of Jr. Store Keeper.

11. It is vehemently contended on behalf of the respondents that Shri Nafe Singh is not only addressed as Junior Store Keeper in all the communications received from IRCS, but he has also taken over the charge as Junior Store Keeper.

12. For the reasons stated above, and the OA being filed belatedly, on the ground of limitation also, the same is dismissed, but without costs.

(Ms. Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

/pj/