

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00839/2014

Dated the 10th day of October Two Thousand Eighteen

PRESENT

HON'BLE MR. T. JACOB, Member (A)

A.Mani,
S/o late Arumugam,
Old No. 1, New No. 25,
Arunachala Reddy II Street,
Arakkonam,
Pin 631001.

....Applicant

By Advocate M/s. R. Malaichamy

Vs

1.Union of India,
Rep by the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600002.

2.The Director of Postal Service,
Chennai City Region,
Chennai 600002.

3.The Senior Superintendent of Post Offices,
Chennai City North Division,
Chennai 600008.

....Respondents

By Advocate Mr. M. Kishore Kumar

Order reserved on : 19.9.2018

Order pronounced on : 10.10.2018

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA seeking the following reliefs:

- “1. To call for the records of the 3rd respondent pertaining to his order which is made in C3/N/Pen Misc/dlgs dt. 13.08.2013 and the order of 1st respondent made in No. STA/2-79/OA/2013 dated 03.12.2013 and set aside the same; consequent to,
2. Direct the respondents to revise and refix the pension of the applicant by taking into the last pay drawn by him in the officiating cadre of Sub-Postmaster, HSG I at Kilpauk SO,
3. Direct the respondents to pay the difference of arrears of pension etc, to the applicant and
4. To pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. The applicant was initially appointed as Group D w.e.f. 21.6.1966 and on passing the exam he was promoted to the cadre of Postal Assistant w.e.f 5.4.1972. The applicant was given financial upgradation under TBOP and BCR on completion of 16 years and 26 years on 5.4.1988 and 1.7.1998 respectively and subsequently he was given promotion to LSG cadre w.e.f 27.11.2003. While he was working as Public Relations Inspector, the 3rd respondent directed the applicant to officiate in the HSG-I cadre of Sub Postmaster at Kilpauk HO from 15.03.2005 to 31.03.2006. The applicant retired from service on attaining the age of superannuation on 31.3.2006. He was paid pay and allowances as applicable to HSG-I cadre. His pension was calculated by taking into account the last pay drawn by him in HSG-I cadre and was settled all retirement benefits. He was also paid arrears of pay and allowances as per the recommendation of VI

Pay Commission for the service rendered by him as officiating Post Master HSG-I at Kilpauk SO. According to the applicant, the same has not been taken into account to revise and re-fix his pension and other retirement benefits w.e.f 1.1.2006. The respondents revised and re-fixed the pension by taking into account the pay applicable to the Postal Assistant (BCR). He submitted representations to the respondents to revise his pension by taking into account the revised pay applicable to the post of HSG-I in accordance with VI Pay Commission recommendation. There being no positive action on his representations, he invoked the jurisdiction of this Tribunal under Sec.19 of the Administrative Tribunals Act, 1985 and sought for the reliefs stated supra.

3. For better understanding of the grievance of the applicant we deem it appropriate to refer paras 7 and 8 of the application and they are thus:-

“7. The case of the applicant is that he was paid duty pay for the period he was asked to officiate in the higher grade. Hence, his grievance is to revise and re-fix his pension and to pay arrears etc by taking into account of the pay applicable to the post of HSG-I as recommended by the 6th Pay Commission. The applicant further states that he has not requested the respondents to give him promotion to post of HSG-I.

8. The applicant states that as per the CCS(Pension) Rules, the provision for payment of pension is at 50% of emoluments (pay last drawn) or 50% of average emoluments received during the last 10 months whichever is more beneficial to the retiring employee. Therefore, he is entitled for revision of his pension by taking into account of last pay drawn by him (duty pay) in the revised scale applicable to HSG-I cadre. Hence, this application.”

4. The respondents filed reply statement. It is stated in the reply that the applicant was not eligible to be promoted to the post of HSG-I and as on the date

of retirement, he was in LSG cadre. Therefore, the Department is justified in calculating the pension based on the pay drawn by him in the post of Postal Assistant (BCR). The local arrangement made by the 3rd respondent where under the applicant had been asked to look after the duties of the Sub Post Master HSG-I cadre could not be construed as either promotion or officiating position. The local arrangement was made for just functional necessity. For regular adhoc or officiating promotions, it is the Director of Postal Services who is competent and not the 3rd respondent. As per the P&T Selection Grade Posts Recruitment Rules, 1976, for filling up of HSG-I post and the guidelines for DPC procedure, regularly promoted HSG-II official with 3 years of service only were eligible for promotion/post in HSG-I cadre. Due to non-availability of eligible HSG-II officials with 3 years experience, the applicant who was only granted financial upgradation under BCR Scheme w.e.f 1.7.1998 was allowed to look after the duties of the vacant HSG-I post for functional necessity by the 3rd respondent. For the period for which the applicant looked after the HSG I, he was allowed pay and allowances applicable to HSG-I cadre. On his retirement, his pay was fixed by the General Manager, Postal Accounts and Finance, Chennai taking into account the average emoluments drawn by him for the last 10 months. In the meanwhile instructions were issued by the 1st respondent in letter no. STA/40-2/2006 dated 24.4.2007, even if an HSG II official is asked to look after the duties of HSG-I, it should be without any extra remuneration. In the subsequent instructions issued in Circle office letter no. STA/2-79/2008/OA dated

29.12.2008, even HSG II official with less than 3 years of service are not eligible for drawal of HSG I pay. On receipt of orders of 6th Pay Commission Recommendations, while revising the pension, the General Manager, Postal Accounts and Finance, Chennai observed that the applicant was not a regularly promoted HSG II official with 3 years of service and therefore while revising the pension, took into account the substantive pay in BCR scale.

5. The respondents also relied on the decision of this Tribunal in OA 878/2011 wherein similar claim was dismissed which was upheld by the Hon'ble High Court of Madras also in its order dt. 26.7.2013 in WP no. 26803/2012 filed by the applicant Shri. M.Anandam. The respondents also submitted that the Hon'ble Supreme Court also in the judgment dated 30.1.1990 in Civil Appeal no. 701(N) of 1975 in the case of Ramakant Shripad Sinai Advalpalkar Vs. Union of India, dismissed such a similar claim. Further, the respondents cited the judgment of the Hon'ble Supreme Court dt. 15.1.2010 in the case of UOI Vs. Karthik Chandra Mandal wherein it was held that illegal and irregular appointments cannot be quoted to sustain the plea of respondents. In support of their contention, the respondents cited the decision of the Chandigarh Bench of this Tribunal in OA 128/PB of 2011 filed by Devan Chand Singla Vs Ministry of Communications & IT and the recent judgment of the Hon'ble Madras High Court dt. 13.8.2014 in WP 15512/2013.

6. The applicant filed rejoinder. In the rejoinder, the applicant submitted that he has not sought promotion to the cadre of HSG-I but only duty pay as per the

VI Pay Commission recommendation applicable to HSG-I cadre for which he officiated with intermittent breaks from 04.01.2006 to 28.2.2007. Further the applicant submitted that the scale of pay of the post of HSG II and BCR is one and the same and the Tribunal allowed similar number of case in OA 55/2015 by order dt. 5.7.2016. The applicant further submitted that his case is squarely covered by the judgments of the Hon'ble Supreme Court in the cases of State of Punjab & anr Vs Dharam Pal dt. 5.9.2017 and State of Punjab Vs. B.K.Dhir dt. 5.9.2017. He also relied on the order of the Ernakulam Bench of this Tribunal in OA 526/2016 dt. 16.3.2017.

7. The respondents filed reply to rejoinder and submitted that similar claims were also rejected by the Madras Bench of this Tribunal in OA Nos. 718/2008, 1148/2011, 878/2011, 1373/2014, Chandigarh Bench in OA 128/PB of 2011, Hon'ble Madras High Court in WP 24444-24451/2001. Further, the Hon'ble High Court in a recent judgment dt. 5.10.2017 in WP 26044/2017 has dismissed the similar claim observing that the official had performed the duty only on functional necessity and it could not be termed as officiation or adhoc arrangement.

8. The point for consideration is as to whether the applicant who was asked to officiate in the post of HSG I for the period 15.9.2005 to 31.3.2006 could claim the pensionary benefits and other retiral benefits based on the scale of pay of HSG I.

9. Heard the learned counsel for the applicant and the respondents.

10. It is contended by the learned counsel appearing for the applicant that the applicant discharged the duties of Postmaster HSG-I cadre as on the date of his retirement and, therefore, the pay drawn by him in the officiating post of HSG-I cadre is to be taken into consideration for the purpose of deciding the quantum of pension. In support of his contention reliance has been placed on the judgment of the Hon'ble High Court of Madras in the case of Union of India and others Vs M. Bhagyalakshmi and another reported in CDJ 2014 MHS 4334. In the cited Judgment the High Court held that the respondents therein who is the applicant in OA 1089/2010 is entitled to the benefit of OM dated 2.9.2008 and clarificatory OM dated 11.12.2008 which provided that the pension of the employee shall be calculated on the basis of the last pay and average of emoluments received during the last 10 months which is more beneficial. In the cited judgment there is no reference to the CCS (Pension) Rules.

11. Learned counsel for the applicants produced a number of citations to argue that the applicant is entitled to pay and allowances as applicable to the HSG I post and could claim the pensionary benefits. He relied on the following decisions:

- I. Judgment dt. 21.10.1983 in the case of Sher Singh Vs. UOI and others.
- II. Judgment dt. 31.07.1987 in the case of Bhanwan Dass & ors Vs. State of Haryana & ors.
- III. Order dt. 16.3.1998 in CA Nos. 1568-1569 of 1998 (CDJ 1998 SC 142).
- IV. Order dt. 29.4.1998 in CA No. 5546 of 1995 (CDJ 1998 SC 006).

- V. Order dt. 10.11.2009 of Hon'ble Delhi High Court dt. 10.11.2009 in WP (C) No. 6659 of 2007
- VI. Order dt. 24.11.2011 of CAT-Madras Bench in OA 1017 of 2010.
- VII. Order dt. 18.10.2012 in WP 28689 of 2012.
- VIII. Order dt. 10.11.2014 in WP 7163 of 2012.
- IX. Order dt. 2.6.2015 in OA 1215 of 2012 (Full Bench)
- X. Order dt. 6.10.2015 in OA 1215 of 2012 (Division Bench)
- XI. Order dt. 5.7.2016 in OA 55 of 2015.
- XII. Order dt. 15.9.2010 in OA 1121 of 2009.

12. Learned counsel for the respondents also pointed out that in the most recent order the Hon'ble Madras High Court in WP 26044/2017 dt. 5.10.2017, the issue has been decided against the applicant. It was also pointed out that the ratio of the Full Bench order was followed in OA 1215/2012 decided by this Tribunal by order dt. 6.10.2015.

13. I have carefully considered that matter in the light of the various judgments/orders as well as the facts of the case. The various judgments cited by the respondents and the applicant have been considered threadbare in the Full Bench decision of this Tribunal in OA 1215/2012, I do not consider it necessary to go into the issue of reconciliation of these decisions in in this order afresh. The matter came to be referred to the Full Bench of this Tribunal and the Full Bench by order dated 2.6.2015 answered the reference that the applicant has received the higher pay of HSG-I during such posting, the pay drawn by him for

such posting cannot be considered as emoluments as defined in Rule 33 of CCS(Pension) Rules read with Rule 9 (22) of FR due to his being inherently unqualified for the same. Paras 22 & 23 of the orders needs to be noted and they are thus:-

“22. As the applicant was posted as HSG-I not in accordance with the Recruitment Rules, it has to be held that he cannot claim any service benefit out of such posting except the monetary benefit of salary on the basis of the legal principles of quantum meruit. We are of the view that Pension should commensurate with the services rendered by the Government servant on regular basis, not on fortuitous basis. If the Government servant is posted in a higher post for which he is not qualified, he cannot take advantage of the irregular posting on the eve of his retirement for claiming pension. Pension Rules and Fundamental Rules are applicable to employees in regular services and not for persons given postings by way of a stop gap arrangement.

23. Therefore, we answer the reference that though the applicant has received the higher pay of HSG-I during such posting, the pay drawn by him for such post cannot be considered as 'emoluments' as defined in Rule 33 of CCS(Pension) Rules read with Rule 9(22) of FR, due to his being inherently unqualified for the same.”

14. The Full Bench of this Tribunal answered the matter keeping in view the definition of emoluments for the purpose of pension as contained in Rule 33 of CCS(Pension) Rules read with Rule 9(21) of the Fundamental Rules. In view of the findings recorded by the Full Bench of this Tribunal that the applicant is not entitled to claim pensionary benefits basing on the position held by him as on the date of his retirement which was not in conformity with the Recruitment Rules, the relief sought for in the OA cannot be granted. Additional charges are purely local arrangements and seniors functioning elsewhere may not be given the additional charge and rank junior may be getting it under local arrangements.

This cannot entail a permanent benefit by having the pension calculated on the higher pay while all others senior to him slog with lower quantum of pension. Further, the Hon'ble High Court of Madras in a recent judgment dt. 5.10.2017 in WP No. 26044/2017 has dismissed the similar claim observing that the official has performed the duty only on functional necessity and it cannot be termed as officiation or adhoc arrangement.

15. In view of the above, the relief sought for in the OA cannot be granted. Accordingly, the OA fails and it is hereby dismissed. No order as to costs.

(T.Jacob)
Member(A)
10.10.2018

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