

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**HYDERABAD BENCH**

**HYDERABAD**

**O.A. No.10 of 2013**

**Date of CAV:16.03.2018**

**Date of Order :05.04.2018.**

**Between :**

R.Satyanarayana, s/o late R.Krishna Murthy,

aged 61 yrs, Occ:Office Superintendent (Retd.),

O/o the SSE (Tele/wireless), South Central Railway,

Vijayawada, r/o 24-28-4-110/1, BRTS Road,

Opp:STPM Railway Colony, Durgapuram, Vijayawada.

... Applicant

And

1. Union of India, rep., by the

General Manager, South Central Railway,

Rail Nilayam, Secunderabad.

2. The Divisional Railway Manager,

South Central Railway,

Vijayawada Division, Vijayawada.

3. The Deputy Chief Signal &

Telecommunications Engineer (Projects),

South Central Railway,

Vijayawada Division, Vijayawada.

4. The Senior Divisional Personnel Officer,  
South Central Railway,  
Vijayawada Division, Vijayawada. .... Respondents

Counsel for the Applicant ... Mr.K.R.K.V.Prasad

Counsel for the Respondents ... Mr.M.Venkateswarlu, SC for Rlys.

**CORAM:**

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)**

**THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

**ORDER**

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant submits that while working as Senior Clerk in the office of the Senior Divisional Signal Telecommunications Engineer (Maintenance) at Vijayawada, he was transferred on his request to the office of the Senior DSTE (C)-I, Vijayawada. Although, he was a Senior Clerk, he was posted against a higher grade post vacated by an Office Superintendent Grade-II. He joined the post on 24.08.1998. The applicant contends that although he was very junior, he was forced to take charge of the S&T (Stores) without any proper handing over or taking over of the material. He worked as Stores Incharge from 24.08.1998 to 29.02.2008 for more than 9 years in the capacity of Senior Clerk and Head Clerk. It is the applicant's contention that the Stores Incharge post ought to have been handled by supervisory staff working as Office Superintendent/Signal Inspector Grade-I in the pay scale of Rs.6500-10500/-, and that although he was posted against the post of Office Superintendent, he was never given the benefits associated with the said post.

2. It is submitted by the applicant that as he belongs to the ministerial cadre and was unaware of the sizes and description of the stores that was to be received/stacked/accounted and issued, he was facing considerable difficulty in discharging his functions as Stores Incharge. He, therefore, submitted representations in November 2004, June 2005 and May 2006 for his transfer from Stores Department. The applicant states that he performed the duties without any demur and protest in the hope that the administration would sanction suitable allowance in his favour in view of the onerous responsibilities given to him. The applicant was finally relieved from the post of Stores Incharge on 29.02.2008. He was also promoted to the post of Office Superintendent Grade-II just before his retirement on 31.03.2012.

3. The case of the applicant is that even though the respondents extracted work of Stores Incharge for more than 9 years, he was not granted the officiating pay of the

Office Superintendent Grade-I. The respondents continued to pay him the salary of the lower post of Senior Clerk in the pay scale of Rs.4500-7000/- (V CPC)/Head Clerk in the scale of Rs.5000-8000/- (V CPC). The non-granting of officiating pay and allowances has affected his pay fixation on his promotion as Head Clerk and Office Superintendent and also his settlement dues including his pension. In addition to this, the respondents also initiated recovery of Rs.3,34,100/- on account of a stock sheet raised by the Accounts Branch. He challenged the said recovery in OA.No.527/2010 on the ground that the recovery was being effected while the major penalty proceedings was still pending. The disciplinary proceedings against the applicant concluded with the imposition of a minor penalty of cut of two passes and recovery of an amount of Rs.3,34,100/- by off-setting the already recovered amount of Rs.1,34,100/- from his salary.

4. The applicant also submits that he gave Annexure.A-9 representation on 01.09.2012 for grant of the officiating allowances for performing the duties of Office Superintendent while working in the grade of Senior Clerk. He submits that he suffered financial loss, loss of health and loss of pensionary benefits on account of the disciplinary proceedings initiated against him. As there has been no response to his representation, he has filed this OA praying for a direction to the respondents to grant him officiating pay/allowance in the scale of Rs.6500-10500/-(V CPC)/Rs.9300-34800/- with Grade Pay of Rs.4600/- and pay him the arrears and also revise his pension.

5. In their reply statement, the respondents have taken a preliminary objection that the OA is barred by limitation, delay and laches as the cause of action arose during 1998 and the applicant has never represented for officiating pay till 2012. They submit that as per Annexure.R-I codal provision, Officiating means that the Railway servant officiates in a post where he performs the duties of a post on which any other person

holds a lien or a competent authority appoints him to officiate in a vacant post on which no other Railway servant holds lien. They state that the ministerial staff in the Construction Units were drawn from the open line adjoining divisional units. Depending on the work, they are being rotated from one section to another and one seat to other. There is no earmarking to the effect that a particular work should be done only by a Head Clerk or Senior Clerk or Junior Clerk. Further, officiating allowance will be granted to a Railway servant only when there are any casualty or vacancies. As there were no casualty or vacancies, the question of sanction of the officiating allowance does not arise. The mere fact that his predecessor was working in a higher grade does not entitle him for payment of officiating allowance. The incumbents are rotated on their existing pay and scale from one seat/unit to another seat/unit duly maintaining the overall sanction of posts.

6. The respondents also state that the applicant worked as Senior Clerk in Stores for over 6 years and on promotion to Head Clerk in 2004, he served for three years. It is also submitted that prior to the applicant, the stores was maintained by Senior Section Engineer, Office Superintendent and Head Clerk during different periods. The applicant also never expressed his inability to work in the said post. All his representations for transfer are made only on the ground of workload. The respondents have also refuted the contention of the applicant that the non-grant of officiating pay has a cascading effect on his pay fixation, as officiating allowance will not be counted for the purpose of pay fixation.

7. The respondents reiterate that the applicant did not raise the issue of officiating pay from 1998 onwards and has for the first time represented this matter on

01.09.2012 after his retirement from service and after a lapse of 14 years. This would show that his prayer is only to cover the recovery that has been initiated against him for certain lapses and losses. It is also stated that the payment of officiating allowance is not a continuous cause of action and that the applicant cannot raise the issue which relate to 1998. They also state that he is estopped from claiming officiating allowance if he had worked in the said post without any objection.

8. The applicant has filed a rejoinder stating that the subject matter of the OA gives rise to the continuous cause of action as the issue involves not paying proper emoluments, which has a bearing on the pensionary benefits. Further, having entrusted him with the work of Office Superintendent, the respondents cannot deny his claim for higher emoluments even if he had not expressed his inability at the relevant point of time. He also states that as per law already settled, he is not estopped from claiming officiating allowance as it is trite law that there is no estoppel against illegality.

9. Heard the learned counsel on both sides and perused the record.

10. The learned counsel for the Applicant relied on the judgment of the Hon'ble High Court of Delhi in W.P.(C) No.1842/2008 in *Union of India v. Sushila Singh* (2010 SCC Online Del 1046) and the judgment of the Hon'ble Madras High Court in *Union of India v. The Registrar, Central Administrative Tribunal, Chennai*, in W.P.No.8620/2010.

11. The learned Standing Counsel, on the other hand, relied on the judgment of the Principal Bench of the Central Administrative Tribunal in O.A.No.3926/2011 with O.A.No.3913/2011, dated 24.09.2012 in which the Principal Bench had in a similar case dismissed the OA filed for grant of pay scale in the higher post on the ground of limitation and also the non-applicability of the principle of "quantum meruit".

12. The question that falls for consideration in this OA is as to whether the applicant, who was a Senior Clerk performing the duties of Stores Incharge from 24.8.1998 to 29.02.2008, is entitled to officiating pay in the post of Office Superintendent Grade.II for the period he worked as Stores Incharge.

13. The applicant's contention is that he was posted against a higher grade post vacated by an Office Superintendent Grade-II and that he is entitled to officiating pay in the Office Superintendent Grade-I post.

14. The respondents have opposed the prayer on the ground of limitation, delay and laches and have pointed out that the applicant never raised the issue of grant of officiating pay while he was working as Stores Incharge for more than 9 years. He has first raised this issue in 2012 after his retirement. Hence, the OA is to be dismissed on the ground of limitation, delay and laches. On merit also, the respondents have pointed out that the mere fact that the applicant's predecessor was working in a higher grade does not entitle him for payment of any officiating allowance. They have also denied his contention that he was posted against a higher grade post as there is no earmarking of any particular type of work in the ministerial cadre and that the incumbents are rotated from one seat to another seat while maintaining the overall sanctioned strength. They also point out that prior to the applicant, the Stores was maintained by Senior Section Engineer, Office Superintendent and Head Clerk, which goes to prove that there is no earmarking of work for any particular cadre of employees. They have also pointed out that non-grant of officiating pay will not have any bearing on his pay fixation as officiating allowance will not be counted towards pay fixation. Further, payment of officiating allowance is not a continuous cause of action.

15. It is not in dispute that the applicant has never raised the issue of grant of officiating pay in a higher post even though as per his own admission he worked as a Stores Incharge for more than 9 years for the period from 24.08.1998 to 29.02.2008 in the capacity of both Senior Clerk and Head Clerk. If the applicant had a grievance that he was being made to discharge the duties of a higher post without any monetary benefit, he would have represented the matter to the authorities at the appropriate time. From the material on record, it is seen that he has submitted representations for transfer on the ground that he has been working for a very long period and he has never represented for the grant of officiating allowance. It is only after his retirement in 2012 that he has first raised the issue even though the cause of action arose in 1998. We are unable to accept the contention of the applicant that there is a continuous cause of action in this regard and we hold that he has raised this issue only after the respondents have resorted to recovery proceedings pursuant to the disciplinary proceedings initiated against him. Therefore, this OA is liable to be dismissed on the ground of delay and laches.

16. The learned counsel for the applicant has relied on the judgment of the Hon'ble High Court of Delhi in W.P.(C) No.1842/2008 in *Union of India v. Sushila Singh* (2010 SCC Online Del 1046), in which the Hon'ble High Court while dismissing the Writ Petition filed by the Railways held that the plea of limitation is unsustainable in law. On a close scrutiny of this judgment, it is seen that the Hon'ble High Court had held that once a judicial forum had granted liberty in 2006 itself to treat the original application as a representation, the plea of limitation becomes unsustainable. The facts and circumstances of the aforesaid case are entirely different and have no applicability as the applicant has approached this Tribunal only in 2013 after the lapse of more than 14 years.

17. Coming to the question as to whether the applicant is entitled for officiating allowance for the period he worked as Stores Incharge, it is necessary to examine as to whether the applicant was discharging the duties of a higher post. From the material on record, it is seen that the post has been held at various times by Senior Section Engineer, Office Superintendent and Head Clerk. The applicant also held this post both as Senior Clerk and also on his promotion as Head Clerk. This, therefore, supports the contention of the respondents that there is no specific earmarking of duties/responsibilities of the maintenance of Stores against any particular post. Therefore, just because the predecessor of the applicant happened to be working in the grade of Office Superintendent, it cannot be said that the post of Stores Incharge was exclusively earmarked for an Office Superintendent. In W.P.(C) No.1842/2008, the respondents had admitted that Ms.Sushila Singh, who was working as Enquiry-cum-Reservation Supervisor in the grade of Rs.5500-9000/-, was directed to officiate as Chief Reservation Supervisor/Records in the place of one Mr.Shiv Kumar Chadha, who went on leave. A reading of the judgment of the Hon'ble Madras High Court also shows that the respondent in the WP, who was of the rank of Assistant Station Master in South Central Railway, had discharged the functions of Station Master Grade-I only on the directions of the authorities. Therefore, the Hon'ble High Court had held that the petitioners after extracting work from the 2<sup>nd</sup> respondent are not justified in denying him the officiating allowance for the period that he discharged the functions as Station Master Grade-I. Thus, in both these cases, it has been admitted that the applicants therein had discharged the duties of a higher post.

18. However, in the instant case, there is nothing on record to show that the applicant has discharged the duties of a higher post. The respondents have

categorically denied that the post of Stores Incharge has to be given only to an officer, who is in the cadre of Office Superintendent. The respondents have also stated that there is no specific earmarking of the work of Stores Incharge to an Office Superintendent. The very fact that the same responsibilities have been held at various times by a Senior Section Engineer, an Office Superintendent and a Head Clerk, would point to the fact that the responsibility of Stores Incharge has not been assigned to an Office Superintendent. The applicant has also not produced any material evidence in support of his contention that while working as Senior Clerk, he was posted against the higher grade post of Office Superintendent. Hence, there is no justification for the applicant to claim that he was discharging the functions of the higher post of Office Superintendent, which would make him eligible for the grant of Officiating Pay.

19. Having regard to the aforesaid discussions, the OA is liable to be dismissed on the ground of limitation as well as merit and is accordingly dismissed with no order as to costs.

**(MINNIE MATHEW)  
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO )  
MEMBER (JUDL.)**

Dated: this the 05th day of April, 2018

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