

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.453 OF 2011

Jabalpur, this Wednesday, the 16th day of May, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Prem Narayan Shukla, Aged about 61 years,
S/o late Shri Chhotelal Shukla, R/o 2, Gangotri,
Purana Circuit House Tiraha,
Chhatarpur-471001 (MP)

- APPLICANT

(By Advocate – **Shri Vijay Tripathi**)

Versus

1. Union of India through its Secretary
Ministry of Communication, Department of Post,
Dak Bhawan, New Delhi-110 001.

2. Chief Post Master General, M.P.Circle,
Hoshangabad Road, Bhopal-462012.

3. Director, Postal Services (HQ),
O/o Chief Post Master General,
M.P.Circle, Hoshangabad Road,
Bhopal-462012.

4. Superintendent of Post Offices,
Chhatarpur Division, Chhatarpur-471001

- RESPONDENTS

(By Advocate – **Shri A.T.Faridee**)

(Date of reserving the order: 29.11.2017)

ORDER

By Navin Tandon, AM-

This is the second round of litigation. Earlier, the applicant had filed Original Application No.858 of 2010 before this Tribunal, which

was disposed of vide order dated 25.11.2010 (Annexure A-13) with a direction to the respondents to consider the whole grievance of the applicant as raised by him in his pending representation/reminder and pass a reasoned order.

2. The applicant's grievance is about non-payment of salary attached with the post of Post Master (HSG), Chhatarpur for certain period.

3. The brief facts of the case are that the applicant was initially appointed as Postal Clerk on 21.01.1971 and posted at Chhatarpur. He was given financial upgradation under the One Time Bound Promotion Scheme after completion of 16 years of service with effect from 01.06.1988. Thereafter, he was given second financial upgradation under the Biennial Cadre Review Scheme, on completion of 26 years of service, with effect from 01.01.1997. The applicant states that in terms of the directions issued by the Superintendent of Post Offices, Chhatarpur he worked as Post Master, Chhatarpur in the pay scale of Rs.6500-10500 with effect from 26.06.2004 and he continuously worked as such from 26.06.2004 to 30.11.2006, 07.12.2006 to 04.01.2008 and thereafter from 24.04.2008 to 31.03.2009. The Superintendent of Post Offices, Chhatarpur, respondent No.4 has issued a letter dated 03.03.2005 (Annexure A-5) instructing to deploy the applicant as Post Master Chhatarpur on temporary basis. However, on an audit objection, the

respondent No.4 has issued an order dated 19.1.2007 (Annexure A-1) whereby recovery of Rs.12741/- was directed to be made from him. His representation dated 08.09.2008 regarding non-payment of salary for the officiating period in HSG-I cadre was rejected vide order dated 17.10.2008 (Annexure A-8) on the ground that the applicant was working in LSG cadre since 23.5.2007 and, therefore, he was not eligible for promotion to HSG-I cadre. In terms of the directions issued by this Tribunal in Original Application No.858 of 2010 dated 25.11.2010 (Annexure A-13), the applicant's further representation dated 12.10.2009 and reminder dated 25.02.2010 were duly considered and rejected by the Director Postal Services vide speaking order dated 18.01.2011 (Annexure A-2) by stating that "as per relevant recruitment rules, officials of HSG-II, having 3 years of regular and satisfactory service can be considered for promotion to HSG-I on selection basis. The applicant was not holding the HSG-II post which is the feeder grade for HSG-I. Thus, the applicant is not entitled for promotion and consequent benefit of higher pay of HSG-I cadre".

4. By filing this Original Application the applicant has sought for the following reliefs:

“8(i) Summon the entire relevant record from the respondents for its kind perusal.

(ii) Quash and set aside the impugned order dated 19.1.2007 Annexure A/1, 17.10.2008 Annexure A/8 and dated 18.01.2011 Annexure A/2.

(iii) Direct the respondents to refund Rs.12,741/- along with interest to the applicant.

(iv) Direct the respondents to pay salary attached with the post of HSG-I for performing the duties of Post Master (HSG-I) Chhatarpur;

(v) Direct the respondents to recalculate retiral dues and pension of the applicant treating that the applicant was receiving salary in the pay scale of Rs.6500-10500/-

(vi) Direct the respondents to provide all consequential benefits to the applicant;

(vii) Any other order/orders, which this Hon'ble Court deems, fit proper;

(viii) Award cost of the litigation in favour of the applicant".

5. The learned counsel for the applicant vehemently argued that the applicant was required to perform the higher nature of duties in the interest of department, therefore, in all fairness the respondents should have paid him the pay of the post of Postmaster (HSG-I) and the respondents be directed to recalculate retiral dues and pension of the applicant treating that the applicant was receiving salary in the pay scale of the post of Postmaster of Rs.6500-10500/-.

5.1. The learned counsel for the applicant has placed reliance on the decision of the Hon'ble Supreme Court in the matters of **Selvraj Vs. Lt.Governor of Island, Port Blair and others**, (1998) 4 SCC 291 and **Dwarika Prasad Tiwari Vs. M.P.State Road Transport Corporation and another**, (2001) 8 SCC 322 for the analogy that if an employee had

discharged duties attached to a higher post, he should be paid emoluments attached to that higher post.

6. On the other hand, the respondents have submitted that before 26.04.2004 the applicant was working as Marketing Executive, Chhatarpur Head Office. The applicant had taken over the charge of the Post Master Chhatarpur Head Office for short period (w.e.f. 26.06.2004 to 10.07.2004, 06.11.2004 to 16.11.2004, 11.12.2004 to 28.12.2004 as a senior official of the office under office arrangement without any order from competent authority. On 03.03.2005 a letter was issued to Post Master Chhatarpur HO to handover charge of Post Master HO on temporary basis to the applicant being senior most BCR PA. Accordingly, applicant joined on above post on 09.03.2005 and continued up to 04.01.2007. Thereafter, the applicant continued to work as Post Master Chhatarpur HO w.e.f. 24.04.2011(sic) till his retirement i.e. on 31.03.2009 and no order for giving the extra benefit during the arrangement to the applicant was ever issued. The respondents have further submitted that as per relevant recruitment rules on the subject officials of HSG-II cadre having 3 years of regular and satisfactory service can be considered for promotion to HSG-I cadre which is by way of selection but the applicant was not holding HSG-II post, which is the feeder grade of HSG-I. Thus, the applicant is not entitled for promotion

and consequential benefit of higher grade of HSG-I cadre because applicant was only LSG official not entitled to get benefit of HSG-I cadre. The competent authority has already considered the issue in question and passed reasoned and speaking order dated 18.01.2011 (Annexure A-2). In regard to averments made by the applicant in respect of one Shri G.P.Sharma, the respondents have submitted that salary of HSG-I drawn to Shri G.P.Sharma was already approved by the competent authority. Shri G.P.Sharma was an employee of HSG-II cadre fulfilling all conditions for promoting to HSG-I cadre. Hence he was posted as Postmaster (HSG-I) Chhatarpur on temporary basis. As such the case of the applicant and Shri G.P.Sharma is not identical. Thus, there was no infirmity or any sort of wrong in paying the salary of the aforesaid grade to Shri G.P.Sharma. Since the applicant was not holding post of HSG-II, the question does not arise of pay of HSG-I to be provided to the applicant.

7. Heard the learned counsel of parties and carefully perused the pleading of the respective parties.

8. The short issue involved in this case is whether the applicant who was BCR PA (LSG) official is entitled to salary of higher post of Post Master (HSG-I) for the period he had performed the duties attached to the post of Post Master. The respondents' main contention is that since

the applicant was only BCR PA in LSG cadre he is not entitled to salary of the higher post of Post Master (HSG-I).

9. In this regard, we may reproduce the relevant extract from the decision of the Hon'ble Supreme Court in the matter of **Selvraj** (supra), relied upon by the applicant, as under:

“(2). A limited notice was issued in the SLPs which has resulted into these appeals. It was to the effect “whether the petitioner is entitled to draw the salary attached to the post of Secretary (Scouts) during the time he actually worked on that post pursuant to the order at Annexure ‘E’ dated 28-1-1992 at page 32 of the Paper-Book. And if so, what was the scale of pay for the said post according to him”. When we turned to the order dated 28-1-1992 under which the appellant was called upon to look after the duties of the Secretary (Scouts) we find the following recitals as per Order No. 276, dated 28-1-1992.

“The Director of Education, A & N Islands is pleased to order the transfer to Shri Selveraj, Primary School Teacher attached to Middle School, Kanyapuram to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77.”

(3). *It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily*

and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground”.

10. On perusal of the above order we find that in the case of **Selvraj** (supra) by a specific Order No. 276, dated 28-1-1992 the Director of Education, A & N Islands had transferred the appellant to look after the duties of Secretary (Scouts) with immediate effect with a clear direction that his pay will be drawn against the post of Secretary (Scouts) and considering the fact that his salary was to be drawn against the post of Secretary (Scouts) and still he was not paid the said salary for the work done by him as Secretary (Scouts) on the principle of ‘*quantum meruit*’ the Hon’ble Supreme Court held that respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts).

11. Whereas in the present case no specific order was passed in favour of the applicant, as has been passed in the case of **Selvraj** (supra), for

discharging the duties of the higher post of Postmaster with a specific direction for payment of salary of the higher post. Only a letter was issued on 03.03.2005, by the Superintendent of Posts, Chhatarpur, respondent No.4, to which much reliance has been placed by the applicant, to the Post Master Chhatarpur HO to handover charge of Post Master HO on temporary basis to the applicant being senior most BCR PA. However, when the applicant had drawn the salary of the higher post of Postmaster for a short period of officiating, on an audit objection, the respondent No.4 himself has issued an order dated 19.1.2008 whereby recovery of Rs.12741/- was directed to be made from him. The applicant's representation dated 08.09.2008 regarding non-payment of salary for the officiating period in HSG-I cadre was duly considered and rejected vide order dated 17.10.2008 (Annexure A-8) on the ground that the applicant was working in LSG cadre since 23.5.2007 and, therefore, he was not eligible for promotion to HSG-I cadre. In terms of the directions of this Tribunal in Original Application No.858 of 2010 dated 25.11.2010 (Annexure A-13) the applicant's further representation dated 12.10.2009 and reminder dated 25.02.2010 were also considered and rejected by the Director Postal Services vide a detailed order dated 18.01.2011 (Annexure A-2) by stating that as per relevant recruitment rules, officials of HSG-II, having 3 years of regular and satisfactory

service can be considered for promotion to HSG-I on selection basis. Since the applicant was not holding the HSG-II post which is the feeder grade for HSG-I, he was rightly held to be not entitled for promotion and consequential benefits of higher pay of HSG-I cadre. Fundamental Rule 49(v) stipulates that “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”. Therefore, considering the facts of the present case and those in the case of **Selvraj** (supra), we are of the considered view that the reliance placed by the learned counsel for the applicant on the decision of the Hon’ble Supreme Court in the matters of **Selvraj** (supra), is not applicable in the instant case.

12. We have also gone through the decision in the matters of **Dwarika Prasad Tiwari** (supra), relied upon by the applicant, relevant paragraphs of which read thus:

“(8). Under the relevant Standing Orders employees have been classified as permanent, permanent seasonal, probationer, badlis, apprentices and temporary; a permanent employee has been defined to be an employee who has completed six months’ satisfactory service in a clear vacancy. Standing Order, therefore, relates to employment as such and not to the category of posts in which a person is employed. There is a clear distinction between the nature of employment and the hierarchy of the post in which the person is employed. The relevant Standing Order categorises the nature of employment and it does not classify the individual employees in different posts according to the hierarchy created in a department. Thus, the employees have been classified according

to the nature of their employment as permanent, permanent seasonal, probationer, badlis, apprentices and temporary. Proviso to the Standing Order does not apply to promotions or regularisations in higher posts. It applies only to temporary employees as defined in the standard Standing Order and on fulfilling the requirement of the proviso such employees get the status of a permanent employee. If the proviso is applied to promotions, it will affect the future of several other employees because promotions are dependent upon conditions of service laid down for uniform application. If the permanent status is granted to officiating employees without applying the conditions of service only on the basis that such employees were required to work for six months or over in officiating capacity which is only a stopgap arrangement made without following the due procedure for promotions, such a conclusion would be wholly unfair and would allow those who were in a fortuitous circumstance of being available at a station or depot to be put in charge of a higher post without considering the claims of other eligible employees. Hence, if any other conclusion is reached, it would lead to disastrous consequences. Therefore, the line of reasoning adopted by the High Court is perfectly in order.

(9). However, Dr T.N. Singh, learned Senior Advocate appearing for the appellants drew our attention to the decision of the High Court in *V.K. Jain v. Kamal Singh Thausing*. 1978 MP LJ 664 (HC). In that case the workman concerned was working as Supervisor for nearly 14 years but the management had not given him either the post or pay of a Supervisor. Therefore, the workman approached the Labour Court for directing the employer to classify him as Supervisor and grant him pay accordingly. It was contended on behalf of the management that the workman was claiming promotion and, therefore, the Labour Court had no jurisdiction, the function being within the jurisdiction of the management. It was held in that case that what the workman was asking for was not promotion but for appropriate classification under Rule 2 of the Standing Orders and that case was covered by Items (i) and (vi), Schedule II of the M.P. Industrial Employment (Standing Orders) Rules and the Labour Court had jurisdiction. In that case, there was no detailed consideration of the nature of Standing Order 2 as has been done as closely as in *K.K. Krishnan case* 1992 MP LJ 570 (HC) and *Narain Singh Rathore case* 1994 MP LJ 959 (FB) wherein the entire scheme of the provision was

considered. We have applied our mind to relevant provisions and the view of the High Court and we have also analysed the provisions vis-à-vis the arguments of the learned counsel for the appellants. We think, the view expressed by the High Court in this respect appears to be correct and calls for no interference as all aspects on which the learned counsel for the appellants argued are covered by the passages quoted by us above. We think that the basis upon which the conclusions have been reached is sound. We further make it clear that for the periods for which the appellants had discharged their duties or are discharging their duties attached to the higher post, they should be paid emoluments as attached to that higher post.

(10). Subject to what is stated above, these appeals deserve to be and are dismissed. No costs”.

13. On perusal of the above order we find that the in the matter of **Dwarika Prasad Tiwari** (supra) the Hon’ble Supreme Court had not accepted the case of the employee and dismissed the appeal, however, while dismissing the appeal, the Hon’ble Supreme Court observed that *“for the periods for which the appellants had discharged their duties or are discharging their duties attached to the higher post, they should be paid emoluments as attached to that higher post”*. However, we find that in the matters of **State of Punjab and another Vs. Dharam Pal**, (2017) 9 SCC395, the Hon’ble Supreme Court held thus:

“(9). The said orders have to be tested on the anvil of the Rules. It needs no special emphasis to state that if the orders are in consonance with the Rules indubitably the respondent cannot put forth a claim unless the Rules are declared unconstitutional. Our attention has been invited to Rule 4.13 which occurs under the heading “Pay of Officiating Government Employees”. The relevant part of the said Rule reads as follows:

“Rule 4.13. (1) Subject to the provisions of rules 4.22 to 4.24, a Government employee who is appointed to officiate in a post shall not draw pay higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which he is appointed to officiate is one enumerated in the schedule to this rule or unless the officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post on which he holds a lien:

Provided that the competent authority may exempt from the operation of this rule, any service which is not organised on a time-scale basis and in which a system of acting promotions from grade to grade is in force at the time of the coming into force of these rules:

Provided further that the competent authority may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions of this rule and subject to such conditions as the competent authority may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide and may thereupon be granted the same pay (whether with or without any special pay, if any, attached to such posts) as they would have received if still in the ordinary line.

(2) For the purpose of this rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibilities of greater importance if the post to which it is made is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien, or on a scale of pay identical therewith.”

(10). Certain Notes have been appended to the said Rule but they are not relevant for adjudication of the present controversy. On a close scrutiny, it is noticeable that the said Rule postulates that the government employee appointed to an officiating post shall not draw pay higher than his substantive pay in respect of a permanent post unless the post in which he is appointed to officiate is one enumerated in the Schedule to the Rules and further the officiating appointment involves assumption of duties and responsibilities of greater importance than those attached to the post. It is not in dispute that the posts of Superintendent Grade II and Grade I are covered under the Schedule. Be it mentioned,

the extension of benefit is subject to the provisions of Rules 4.22 and 4.24.

(11). In view of the aforesaid Rule position, it is necessary to reproduce Rule 4.22 and Rule 4.24. They read as follows:

“4.22. The competent authority may appoint one Government employee to hold substantively, as a temporary measure or to officiate in, two or more independent posts at one time. In such cases, the Government employee shall draw the highest pay to which he would be entitled if his appointment to one of the posts stood alone:

Provided that the employee must fulfil the requisite qualifications and conditions for services for both the posts.

** * * * **

4.24. When a Government employee holds current duty charge of another post, in addition to that of his own substantive post, he does not officiate in the former post and as such is not entitled to any additional remuneration.”

(12). As we understand the said Rules, they categorically convey that the employee who holds the higher post must fulfil the requisite qualifications and conditions for service for both the posts. It is not controverted at the Bar that the respondent was eligible to hold the post of Superintendent Grade II and Grade I. In this context, the learned counsel for the appellants has commended us to Rule 4.16. The said Rule reads as follows:

“Rule 4.16. A competent authority may fix the pay of an officiating Government employee at an amount less than that admissible under these rules.

Note 1.—One class of cases falling under this rule is that in which a Government employee merely holds charge of the current duties and does not perform the full duties of the post.

Note 2.—When a Government employee is appointed to officiate in a post on a time-scale of pay but has his pay fixed below the minimum of the time-scale under this rule he must not be treated as having effectually officiated in that post within the meaning of rule 4.4 or having rendered duty in it within the meaning of rule 4.9.

Such a Government employee, on confirmation, should have his initial pay fixed under rule 4.4 (b) and draw the next increment after he has put in duty for the usual

period required, calculated from the date of his confirmation.

Note 3.—The power conferred by this rule is not exercisable save by a special order passed in an individual case and on a consideration of the facts of that case. A general order purporting to oust universally the operation of rule 4.14 would be ultra vires of this rule. Although, the practice of passing ostensibly special order on every individual case would not be ultra vires of this rule it would constitute the grossest possible fraud thereon.”

13.1 On a perusal of the above order of the Hon’ble Supreme Court we find that in the said case since the respondent-employee was eligible for higher post, performed duties of higher responsibility attached to said posts, and a formal order of posting was duly passed, he was held to be entitled to the benefit of pay scale of officiating post.

14. In the instant case, we find that the respondents have specifically stated, which has not been controverted by the applicant, that the applicant was working in LSG cadre and, therefore, he was not eligible for promotion to HSG-I cadre. There was no formal order of posting of the applicant in HSG-I cadre. As per relevant recruitment rules, officials of HSG-II, having 3 years of regular and satisfactory service can be considered for promotion to HSG-I on selection basis. Thus, we are of the considered view that since the applicant was not holding the HSG-II post which is the feeder grade for HSG-I, he was rightly held to be not

entitled for promotion and consequential benefits of higher pay of HSG-I cadre.

15. In the result, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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