

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO. 060/01040/2018 &
M.A. NO. 060/1319/2018**

Chandigarh, this the 18th day of February, 2019

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Hari Chand Sharma son of Sh. Banarsi Dass, aged 65 years, retired as Postmaster (H.S.G.I.), Shahabad-M, M.D.G. Shahabad-M (Kurukshestra), resident of H. NO. 2072, Gali No. 9, Near Jat School Gate, Shanti Nagar, Kurukshestra 136119 (Group-C).

....APPLICANT

(By Advocate: Shri Rohit Sharma)

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Communications & Information Technology, Department of Posts, Dak Bhawan, New Delhi 110001.
2. Chief Post Master General, Department of Posts, Haryana Circle, Ambala 133001.

....RESPONDENTS

(By Advocate: Shri Ram Lal Gupta)

ORDER (oral)

SANJEEV KAUSHIK, MEMBER (J)

The present Original Application has been filed by the applicant seeking the following relief:-

- (a) Quash the orders dated 16.8.2016 (Annexure A-9) & 7.6.2016 (Annexure A-7) vide which the claim of the applicant for grant of HSG-I grade pay for discharging duties and responsibilities of that post w.e.f. 23.8.2007 to 31.5.2013 has been rejected without any logic and reason.

(b) Issue direction to the respondents to grant the applicant pay and allowances of HSG-I grade for discharging duties and responsibilities of that post w.e.f. 23.8.2007 to 31.5.2013 with arrears and revised retiral dues on that basis with arrears and interest thereon @ 18%per annum from the date the amount became due to the actual date of payment.

2. Alongwith the O.A. the applicant has also moved an M.A. NO. 1319/2018 under Section 21 (3) of the Administrative Tribunals Act, 1985 for condonation of delay of 380 days in filing the O.A.

3. After exchange of pleadings the matter came up for hearing today.

4. We have heard the learned counsel appearing for the parties and gone through the pleadings available on record.

5. Mr. Rohit Sharma, learned counsel for the applicant vehemently argued that the claim of the applicant has been rejected without application of mind as the applicant is not claiming benefit of MACP from 23.8.2007, which has already been granted to him w.e.f. 1.9.2008. The prayer of the applicant, as projected before this Tribunal and before the respondents in his representation Annexure A-6 is for grant of wages on the higher post of HSG-I when he was deputed to discharge the duties and responsibilities of higher post vide order dated 21.8.2007 (Annexure A-1) in the pay scale of Rs. 9300-34800+ GP Rs. 4600. He submitted that since the applicant was asked to discharge the duties of higher post of HSG-I, therefore, he was entitled for grant of higher wages from 1.9.2007 to 31.5.2013. He further submitted that he has moved the M.A. for condonation of delay as his claim has not been considered by the respondents in right perspective

and or deemed to be rejected under mistaken belief that he has been granted 3rd MACP w.e.f. 1.9.2008, so he is not entitled to any benefit. He submitted that since in challenge to the impugned orders Annexures A-7 & A-9, there is no delay in filing the present O.A., so it be condoned.

6. Counsel representing the respondents submitted that the claim of the applicant was firstly rejected way back in the year 2007 and thereafter several representations were filed which have already been turned down. Since, the applicant has retired on 31.5.2017, this O.A. deserves to be dismissed on the ground of delay and laches. However, he was not able to rebut the argument of learned counsel for applicant that the applicant has indeed discharged the duties of higher post, therefore, he was entitled for grant of benefit of said post from 1.9.2008 till his date of retirement on 31.5.2017.

7. We have given our thoughtful consideration to the matter and are of the considered view that this O.A. is liable to the accepted for the simple reason that it is settled law once a person discharges the duties of higher post in a substantive capacity, then he becomes entitled for wages of that post. Reference in this regard can be made to judgment of Hon'ble Supreme Court in the case of **Secretary-cum-Chief Engineer vs. Hari Om Sharma**, reported in AIR 1998 SC 2909, **Bhagwan Dass and Ors. vs. State of Haryana** reported in 1987 (3) SLJ 93, **Dwarka Prasad Tiwari vs. M.P. State Transport and Anr.** reported in 2001 (2) SC SLJ 519 and **Jaswant Singh vs Punjab Poultry Field Staff Association and**

others reported in 2002 (1) SCC 261. With regard to the objection raised by the learned counsel for respondents qua delay, we refer to order passed in the year 2007 which suggests that the case of the applicant was left open. Subsequently, the applicant filed representations which have not been decided by the respondents in the right perspective and they have denied benefit on the ground that the applicant has already been granted the benefit of MACP from 1.9.2008 whereas his representation Annexure A-6 clearly suggests that he was making prayer for grant of higher wages for the period he has worked on the higher post of HSG-I from 23.8.2007 till his retirement. In short the applicant is already drawing grade pay of higher post w.e.f. 1.9.2008 and his claim is only for the period from 23.8.2007 to 31.8.2008.

8. In view of the above, this Court is of the view that there is no delay in approaching this Court in filing the O.A. Therefore, the O.A. is allowed and respondents are directed to grant the wages to the applicant of the post he has discharged higher duties and responsibilities, for the indicated period forthwith. No costs.

(P.GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 18.02.2019
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