

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 25th DAY OF JUNE, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER (J)

&

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/00614/2014

T.G. Bheemaraj,
S/o T.M. Govindasamy,
No. 28, Tumbalavar Street
Karunguli - 603 303.

... Applicant

By Advocate M/s R. Malaichamy

Vs

1. Union of India
Rep. By the Chief Postmaster General
Tamil Nadu Circle
Anna Salai, Chennai 600 002.

2. The Postmaster General
Chennai City Region (TN)
Chennai - 600 002.

3. The Superintendent of Post Offices
Chengalpattu Division
Chengalpattu - 603 001.

... Respondents

By Advocate Mr. C. Kulanthaivel

ORDER

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

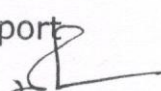
This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

(i) To call for the records of the 2nd Respondent pertaining to his order which is made in No.STB/6-15/TGP/2012/CCR dated 17.09.2013 and set aside the same, consequent to

(ii) Direct the Respondents to grant duty pay in the revised scale to the Applicant for the period he had officiated in HSG-I cadre from 01.01.2006 to 17.04.2007 and to pay the difference of arrears of duty pay and also to grant one advance increment as on 01.01.2006 to the Applicant and thereby to revise and re-fix service benefits including pension of the Applicant and to pay the arrears of difference of retirement service benefits and pension to the Applicant."

2. The brief facts of the case, according to the applicant, are that the applicant is a retired HSG-II official. He retired from service on 31.05.2008. While in service, he was asked to officiate in HSG I cadre from 24.3.2003 to 31.05.2008. However, for the officiating period 1.1.2006 to 17.04.2007 he was not paid duty pay in the revised scale on account of VI CPC recommendation. He was also not granted one increment as on 01.01.2006 as recommended by VI CPC. The applicant made several representations seeking the above claim but the same was rejected by the second respondent by an order dated 17.9.2013. Hence the applicant has filed this OA seeking the above reliefs.

3. It is submitted by the applicant that since HSG-II official was not available at Chengalpattu HO the applicant was asked to officiate in the Higher Cadre, i.e. HSG-I cadre. Hence for the period from 01.01.2006 to 17.04.2007 he was entitled to grant of revised duty pay as per 6th CPC recommendation. Hence denial of such benefit to the applicant is arbitrary and illegal. In support



of his case, the applicant has relied upon the Judgement of the Hon'ble High Court of Madras in the case of Union of India & Ors., vs. M. Bhagyalakshmi & Another reported in CDJ 2014 MHC 4334, the Judgements of the Hon'ble Apex Court in the case of Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma reported in CDJ 1998 SC 908, the case of Selva Raj vs. Lt. Governor of Island, Port Blair reported in CDJ 1998 SC 142 and the order of this Tribunal in OA.55/2015 dated 5.7.2016 in the case of V.S. Thirumalai vs. Union of India and others.

4. The respondents have filed a detailed reply statement stating that the applicant was initially appointed as Postal Assistant w.e.f., 04.03.1967 in Vellore Postal Division. He was granted financial upgradation under TBOP and BCR on 30.11.1983 and 01.07.1993 respectively on completion of 16 and 26 years of service. He was granted promotion to the cadre of LSG on 15.11.1996 and allotted to Chengalpattu Division. As per P&T (Selection Grade Posts Recruitment Rules, 1976, regularly promoted HSG II officials with 3 years of service only are eligible for posting in HSG I posts. The applicant who was in LSG cadre but not promoted to HSG II cadre on regular basis was asked to discharge the duties of Deputy Post Master (HSG-I) and Post Master, Chengalpattu HO on different spells by the third respondent for functional necessity. Meanwhile the applicant was promoted as Assistant Post Master (Accounts) (HSG-II), Chengalpattu HO on regular basis on 17.04.2007. Again the applicant was granted adhoc promotion as Post Master, Chengalpattu on 22.5.2007 by relaxing the service conditions. He retired on superannuation on 31.5.2008. Initially his pay was fixed in HSG-II scale but however, revised the



same on implementation of VI CPC recommendation and refixed his pension with reference to HSG-I scale of pay. During the period from 1.1.2006 to 16.4.2007, the applicant was only in LSG cadre and he was engaged in HSG-I on functional necessity. As per instructions issued by Chief PMG vide letter dated 24.4.2007, even an HSG-II official be posted to work in HSG-I post without any extra remuneration. His pension and other benefits were settled taking into account his HSG-I pay which was last drawn by the applicant on the date of retirement. Hence the respondents pray for dismissal of the OA.

5. In support of their case, the respondents have relied upon the Judgements of the Hon'ble Supreme Court in the case of Union of India vs. Karthick Chandra Mandal dated 15.1.2010, Judgement dated 30.1.1990 in C.A.No.701(N) of 1975 in the case of Ramakant Shripad Sinai Advalpalkar vs. UOI, Judgement of the Hon'ble High Court of Madras in W.P.No.15512/2013 dated 13.8.2014 and the orders passed by the Central Administrative Tribunal in OA.878/2011 dated 13.7.2012, OA.128/PB/2011 dated 16.7.2011 and OA.1215/2012 dated 2.6.2015. of the three Member Bench.

6. Heard the learned counsel for respective parties and perused the pleadings and documents on record.

7. The point for consideration in this OA is whether the applicant is entitled for the duty pay in the revised scale for the period he had officiated in HSG-I cadre from 1.1.2006 to 17.4.2007 and consequent revision of pension thereof.

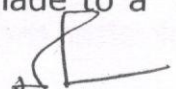
8. There is no dispute from either parties with regard to the service of the applicant under the respondents. Admittedly during the periods from 22.11.2005 to 21.3.2006, 23.3.2006 to 20.7.2006, 22.7.2006 to 18.11.2006,



21.11.2006 to 18.3.2007 and from 21.3.2007 to 16.4.2007, the applicant was in LSG cadre but was not promoted to HSG-II cadre on regular basis. He was asked to discharge the duties of Deputy Postmaster (HSG-I) and as Postmaster, Chengalpattu HO by the third respondent for functional necessity. The applicant was promoted to HSG-II on regular basis and was posted as Assistant Postmaster (Accounts) Chengalpattu HO w.e.f. 17.4.2007. Thereafter, adhoc promotion to HSG-I was granted to the applicant by the first respondent relaxing the service conditions vide Memo no.STA/2-79/2006 dated 11.5.2007 and he was posted as Post Master at Chengalpattu HO. As per P&T (Selection Grade Posts) Recruitment Rules, 1976, regularly promoted HSG II officials with three of years service only are eligible for posting in HSG-I posts. As per the instructions issued by Chief Post Master General in letter No.STA/40-2/2006 dated 24.4.2007, even an HSG II official can be posted to work in HSG I post, but it should be without any extra remuneration. As per guidelines issued by the Directorate in letter No.137-64/2010-SPB II dated 28.7.2011, if an official holding the HSG II norm based post on regular basis was appointed to officiate/hold full charge of a norm based HSG-I post in accordance with Rule 27 or 50 of Postal Manual Volume IV, the incumbent may be allowed the pay and allowances attached to the higher post. In the instant case, the applicant was not even holding HSG-II post to work in HSG-I post. The applicant was in LSG cadre and his engagement was only on local arrangement and no recruitment formalities were followed. The applicant was not ordered to officiate on the higher post either regularly or on adhoc basis but only asked to look after the functions of the higher post. Hence the applicant is not entitled

to claim pay and allowances as HSG-I during the period from 1.1.2006 to 16.4.2007. The grant of higher pay to the applicant while his seniors draw a lower pay would be hugely unjust and amount to a mockery of the relevant recruitment rules. Further since the arrangement in the post was only a local arrangement and not observing any recruitment procedure the drawal of increment does not arise. As per DOP&T OM No.38/37/OS-P & PW(A) dated 11.12.2008, based the VI CPC recommendation, the pay last drawn or average emoluments received during the last 10 months whichever is beneficial to the employee can be taken into account for calculation of pension. Though the applicant's pension was fixed in the pre-revised scale applicable to HSG-II at the time of retirement, while revising the same on implementation of the VI CPC recommendation, the pension was fixed with reference to HSG-I scale of pay by the General Manager (PA&F). The question of further more revision of pension and other benefits as the pension and other benefits were already settled taking into account of his HSG-I pay which was last drawn by the applicant on the date of retirement does not arise.

9. This Tribunal in OA No. 878/2011 had dismissed the claim of the applicant therein vide order dated 13.7.2012 observing that the applicant was not ordered to work in HSG I post on temporary or on adhoc basis but had only asked to attend the duties in HSG I post by local arrangement and that such arrangement was not ordered by the competent authority. The said order was upheld by the Hon'ble High Court in its order dated 26.7.2013 in WP.26803/2012. The Hon'ble High Court of Madras in a recent Judgement dated 13.8.2014 in WP.15512/2013 has held that a mere payment made to a



higher post to which an officer is not entitled to on merit cannot give him any right and when such arrangement is only a stop gap arrangement made by the authorities in favour of the officer who was also not eligible to the said post on a permanent basis, then resultantly, he is not entitled for pay fixation in the higher category and it is merely based on necessity and not on either seniority or merit and therefore, no equity or expectation could be built upon in. The facts of the cases cited by applicant are distinguishable from the facts of the present case.

10. In the conspectus of the above facts and circumstances of the case and in view of the Judgements referred to supra, we do not find any merit in the claim of the applicant for grant of the reliefs as prayed for by the applicant in this OA.

11. In the result, the OA is liable to be dismissed and is accordingly dismissed as devoid of merit, however, with no order as to costs.