

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 884 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member(J)**

Purna Chandra Behera, aged about 58 years, S/O-Late Hadibandhu Behera, presently working as PA, SBCO, Khurda Post Office, At/PO/Dist-Khurda.

.....Applicant

-Versus-

1. Secretary, Department of Post, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda.
3. Director of Postal Services, Bhubaneswar Region, Bhubaneswar, Khurda.
4. Senior Superintendent of Post Office, Puri Division, Puri, Dist-Puri.

.....Respondents

For the Applicant : Mr. S. Mohanty

For the Respondents: Mr. D. K. Mallick

Heard & reserved on: 05.08.2019

Order on: 27.08.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The O.A. No. 884/2014 has been filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

Therefore, it is prayed that this Hon'ble Court kindly be pleased to admit the case and issue notice to the respondents to file their show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed and pass necessary order to quash Annexure-A/17 and further direction be given to the respondents to grant arrear dues of promotional benefit and the arrear dues under TBOP/BCR Scheme of the applicant within a stipulated period.

And/or pass necessary order(s) which deems fit and proper for adjudication of the case.

And for this act of kindness, the applicant shall be ever prayed.

2. The facts of the case in brief are that the applicant initially appointed directly as UDC on 30.05.1983, was not allowed the benefit of promotion under TBOP/BCR Scheme on the ground that his seniority was modified because of the fact that he could not qualify the test for confirmation in the post of UDC. Due to failure in the test, he was reverted from one UDC to LDC vide order dated 29.06.1991. Applicant had challenged the order of reversion before the Tribunal in OA No. 150/1992. When the aforesaid case was pending for disposal, the applicant was declared to have been successful in the test for

UDC confirmation, vide order dated 27.12.1996(Annexure-A/1) of the respondents, after taking into account the relaxed norms for qualifying the test for SC/ST category of employees. Thereafter, the reversion order dated 26.06.1991 was cancelled by the Respondent No.2 vide order dated 27.03.1997, the applicant was reinstated/posted with effect from the date of reversion to UDC cadre with condition that his seniority in the UDC was fixed below one Shri U. K. Nanda. The applicant made a representation to the Respondent No.2 stating that the name of the applicant be placed below Sri N. P. Panda who was a direct recruit UDC of same batch as the applicant(i.e.1983) and not under U.K. Nanda who was initially appointed as LDC, since the applicant was a direct recruit of UDC in 1983.

3. The representation of the applicant was not accepted and stating that the seniority has been fixed correctly from the year of passing the qualifying test. This was challenged by the applicant by filing the OA in the Tribunal and the said OA was dismissed by the Tribunal vide order dated 20.08.2004(Annexure-A/9). The applicant challenged this order before Hon'ble High Court in a Writ Petition and vide order dated 02.03. 2009(Annexure-A/10), Hon'ble High Court, after consideration on merit, set aside the order of the Tribunal directing the respondents to review the seniority of the applicant from his date of his initial appointment as UDC and extend the consequential benefits to the applicant.

4. Thereafter, the respondents have taken steps to fix seniority of employees, allowing all consequential benefits. His seniority was fixed above Sri R. K. Satpathy and below Sri N. P. Panda. However, the applicant was aggrieved because he felt that he was not allowed all consequential benefits as per the orders of Hon'ble High Court. Hence, he had filed C.P No. 93/2010 before the Hon'ble High Court. The show cause reply was filed by the respondents, after which the C.P. No. 93/2010 was disposed of with liberty to the applicant to approach the Tribunal in an appropriate forum if his grievance is not addressed. Thereafter, this OA has been filed by the applicant.

5. Grounds advanced in the OA are that the consequential benefits which was allowed by the Hon'ble High Court vide order dated 02.03.2009(Annexure-A/10) entitled the applicant to all benefits which other similarly placed employees were allowed. The applicant claims that he was entitled to the salary which Shri N. P. Panda and D. Panda and other junior officers were getting, but the respondents have not allowed the same benefit, taking the plea that stepping up of pay of senior officials on par with their juniors will not be permissible in case of the pay anomaly arising out placement as per the TBOP/BCR Scheme. It is stated by applicant that the letter of DG in this

regard referred to by respondents have no relevance in the case of the applicant. It is stated that the impugned order dated 14.11.2014 (Annexure-A/17) passed by the respondents is illegal and without application of the mind and it is also violation of the order of the Hon'ble High Court.

6. Counter has been filed by the respondents stating that the order of the Hon'ble High Court has been fully complied for which the C.P No. 93/2010 alleging non-implementation of order was dropped by Hon'ble High Court after being satisfied with the reply of the respondents. It is stated that the OA No. 1009/12 was also filed by the applicant which has been disposed of by the Tribunal giving an opportunity to the applicant to make a fresh representation regarding his grievance which is to be disposed of by the respondents. Accordingly, the applicant submitted a fresh representation dated 12.09.2014(Annexure-A/16) which was considered and disposed of by a speaking order dated 14.11.2014(Annexure-A/17) of the respondents No. 4 rejecting the said representation. The rejection is on the ground that stepping up of pay of senior officials on par with their junior is not permissible in case of pay anomaly arising out of the placement to TBOP/BCR schemes. It is stated that as per the guidelines dated 17.05.2000 of the Government (Annexure-R/6 in the counter), it has been stated that the TBOP/BCR are based on the length of service of the officials concerned and it is not on the criterion of seniority. It is, therefore, stated that the senior employee cannot claim higher pay at par with their juniors if their juniors have such higher pay by virtue of their completion of the specified period of service.

7. The applicant filed Rejoinder to the counter, reiterating his contentions in the O.A. It is stated that once the consequential benefits have been allowed by the Hon'ble High Court, he was entitled to the benefits at par with the juniors, even if the disparities arose out of the placement of TBOP and BCR Scheme. It is stated that the Junior employees are getting higher salary than the applicant and that although the Hon'ble High Court closed the C.P granting liberty to the applicant to approach the appropriate forum for his grievance. It is stated that the applicant is getting of Rs. 18,730/-, Sri N.C. Panda, appointed at the same time along with the applicant and who is placed just above the applicant in gradation list, was getting Rs.19, 310/-. Further, similarly employees below him in the gradation list and his juniors were getting more pay than the applicant, which is revealed from the letter at Annexure-R/2 of the counter.

8. Heard Learned Counsels for the applicant and respondents. It is submitted by Ld. Counsel for the applicant that claim of the applicant relates to stepping up of pay at par with his juniors, who are getting more pay after

their placement in the TBOP/BCR promotion Scheme. He further submitted that the respondents have stated that the order of Hon'ble High Court has been implemented, for which the C.P was dropped. It is stated that this averment is not acceptable because the applicant was given to liberty to approach an appropriate forum.

9. Learned Counsel for the respondents, on the other hand, has reiterated the stand taken in the counter and submitted that the order of the Hon'ble High Court dated 02.03.2009 has been fully complied with and implemented by the respondents.

10. We have considered the matter with reference to the submission by learned counsels for both the parties and the pleadings available on record. The applicant has taken the stand that the respondents, by deciding not to allow stepping up of the applicant's pay at par with juniors, have not implemented the order dated 02.03.2009 of Hon'ble High Court(Annexure-A/10) in full, since all consequential benefits of the restoration of the seniority have not been granted by the respondents. The respondents have argued that the said order of the Hon'ble High Court has been fully implemented and all consequential benefits have been given to the applicant, for which the C.P initiated by the applicant against the authorities before the Hon'ble High Court, was dropped.

11. The question to be decided in the case is whether the claim of the applicant in the OA for stepping up of pay at par with his juniors can be treated as one of the consequential benefit on account of the order dated 02.03.2009 of Hon'ble High Court, by which, the applicant's original seniority as UDC was restored. It is seen that vide order the order of the Hon'ble High Court dated 10.02.2012 passed in the C.P No. 93/2010 enclosed at Annexure-A/13 of the O.A, the C.P was closed with observation that if the petitioner has any grievance, it is open to him to approach the appropriate forum. Clearly, Hon'ble High Court considered the decision of the respondents to be not a violation of order dated 02.03.2009 of Hon'ble High Court. Hence, the claim for stepping up of pay of the applicant at par with his juniors cannot be treated as a part of consequential benefits on account of restoration of his seniority as UDC in pursuance to the order dated 02.03.2009 and the said claim is to be adjudicated as a fresh grievance of the applicant.

12. Respondent No.4 while passing the impugned order dated 14.11.2014 (Annexure-A/17), has stated as under:-

"In this connection the respondent no.2 i.e. the CPMG., Odisha Circle who is the competent authority to consider the stepping up of pay and anomaly arising out of placement to

TBOP/BCR case of the applicant, has already disposed of the representation dated 11.12.2009 of the applicant on the same issue in accordance with the instruction contained in Directorate letter No.1-3/2007-PAP dated 06.10.2009 which reads 'stepping up of pay of senior officials on par with their juniors is not admissible in cases of anomaly arising out on placement to TBOP/BCR Scheme, which is communicated to the applicant by CO vide letter no. ST/96-229/83 dated 30.12.2009. "

The instructions of the DG letter dated 06.10.2009(Annexure-R/4 of the counter), stated as under:-

"Attention is invited to Directorate's letter no. 22-6/2000-PE-I dated 23.09.2002 on the subject mentioned above. Some Circle Offices are seeking clarification regarding stepping up of pay of senior officials on par with their juniors in cases of anomaly arising out in fixation of pay under FR 22 (I) (a) (I) on placement to the next higher pay scale under TBOP/BCR scheme after completing 16 years and 26 years of service respectively.

2. The matter has been examined in consultation with Department of Personnel and Training. It is clarified that the placements under TBOP/BCR Scheme are based on the length of service of the officials concerned and not on the criterion of seniority. Therefore, stepping up of pay of senior officials on par with their juniors is not admissible in cases of anomaly arising out on placement to TBOP/BCR Scheme."

13. The circular dated 06.10.2009 of the DG Post was relied on by the authorities to reject the representation of the applicant and the applicant has not challenged this circular in this OA. The said circular clearly states that the placement under TBOP/BCR scheme is based on the length of service of the officials concerned and is not connected with the seniority of the employees. It is therefore possible for a junior employee to have his pay fixed under TBOP/BCR at a level which is higher than the pay of a senior employee with less number of years of service than the junior employee. Nothing has been produced by the applicant to show that such provisions in the said circular are not in accordance with the provisions of law.

14. It is also stated in the impugned order at Annexure-A/17 that the Chief Post Master General had earlier rejected similar representation of the applicant vide his order dated 30.12.2009, which was duly communicated to the applicant. Such averment has not been contradicted by the applicant in his pleadings. The aforesaid order dated 30.12.2009 has not been challenged in this OA.

15. In view of the reasons as mentioned above, we are of the considered view that there is no merit in this OA. Accordingly, the OA is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

