

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 937 of 2014

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

Balaram Jena, aged about 64 years, S/o Late Madhusudan Jena,
R/o Vill./PO – Dola Sahi, PS – Tihidi, Dist. – Bhadrak, Odisha –
756127.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist. – Khurda, Odisha – 751001.
3. The General Manager (Postal Accounts & Finance), Kolkata – 12, Pin – 700012.
4. The Director Accounts (Postal), Mahanadi Vihar, Cuttack – 753004.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel

For the respondents : Mr.S.Bhera, Sr. Panel Counsel

Heard & reserved on: 13.5.2019 Date of Order : 3.7.2019

O R D E R

PER MR. GOKUL CHANDRA PATI, MEMBER(A) :-

The applicant has filed this OA with the prayer for following reliefs:-

"In view of the facts and grounds stated above, it is therefore most humbly prayed that the Hon'ble Tribunal may graciously be pleased to quash the orders vide Order No.11-14/2014-SPG dated 21.7.2014 and Order No. GE-PF/BJ/III/Central/949 dated 6.10.,2004 and direct the respondent(s), to restore the reduced increment of the applicant accepting the pay fixation of the DA(P), Cuttack in Pay Slip Nol. Admn.II/GEPF/BJ/127 dated 18.8.2003 along with DNI from 1st March extending all consequential financial benefits.

And any other order as the Hon'ble Court deem just and proper in the interest of justice."

2. The applicant was appointed in Group-B post of the Superintendent of Post Offices (in short SPO) posted as SPO, Bolangir under the CPMG, Odisha (respondent no.2) on ad-hoc basis vide order dated 10.10.2001. The applicant joined as SPO, Bolangir on 6.12.2001 (Annexure-A/2), Then he was promoted

as SPO on regular basis vide order dated 17.6.2003 and he was posted as SPO, Bolangir on regular basis w.e.f. 17.6.2003. The officiating period of working as SPO from 6.12.2001 to 30.4.2002 and from 1.5.2002 to 30.6.2002 was approved by the DG Posts vide orders at Annexure-A/5 and A/6. No formal approval of the competent authority for ad-hoc posting of the applicant from 1.7.2002 to 16.6.2003 was communicated. The applicant's pay was fixed under the FR 22(1)(a)(1) vide order dated 18.8.2003 (Annexure-A/8) with the date of next increment (in short DNI) in March. The applicant was posted as SPO in West Bengal vide order dated 8.7.2003 and he joined there on 4.8.2003 (Annexure-A/7).

3. Vide order dated 22.1.2004 (Annexure-A/9), the applicant's pay was re-fixed by reducing one increment and changing the DNI to 1st August in place pf 1st March and his pay was fixed at Rs. 9000/- w.e.f. 1.8.2004 with DNI on 1.8.2004 in place of the pay of Rs. 9250/- with DNI on 1.3.2004 (Annexure-A/10). The applicant submitted a representation dated 24.8.2004 to which the respondent no.2 informed the applicant in letter dated 2.9.2004 (Annexure-A/11) that the proposal for approval of his ad-hoc period of promotion from 1.7.2002 onwards has been sent to the DG Posts. The applicant was then repatriated to Odisha Circle and he joined as SPO, Bhadrak on 7.7.2008. He submitted repeated representations to the DG Posts, but no decision was forthcoming. He submitted the representation dated 10.2.2014 (Annexure-A/13) in the light of the Ministry of Finance OM dated 19.3.2012 (Annexure-A/14) and when no decision was communicated, the applicant filed the OA No. 323/2014 which was disposed of with a direction to the respondents to dispose of the said representation. Accordingly, the DG Posts (respondent no.1) considered the ,matter and rejected the case of the applicant vide the order dated 21.7.2014 (Annexure-A/15), which is impugned in this OA.

4. Following grounds have been advanced in the OA in favour of the applicant's claim:-

- (i) The applicant is entitled for the fixation of pay under the FR 22(1)(a)(1) and the plea of the respondents that one increment was reduced due to non-receipt of the approval of the ad-hoc promotion period in view of the FR22(1)(a)(1) since his period of ad-hoc posting was in continuation with the regular period.
- (ii) Other officers of the applicant's batch have been allowed the increments for the ad-hoc period without insisting for formal approval of the ad-hoc period and denial of similar benefit to the applicant would be a violation of the Article 14 of the Constitution of India.

(iii) The batch mates of the applicant are getting additional 2 increments compared to the applicant who is getting less pension due to such action of the respondents.

(iv) The applicant was asked to exercise option under FR 22(1)(a)(1), which was duly exercised by him vide letter at Annexure-A/4).

(v) In case of another officer Sri SK Bej who was similarly situated as the applicant, the respondents approved the ad-hoc promotion period of 3 years, but similar benefit was not allowed to the applicant, which is discrimination.

5. The respondents have filed their Counter to the OA stating that the ad-hoc promotion period of the applicant from 1.7.2002 to 16.6.2003 was not approved by the Directorate of Posts and the his pay was inadvertently fixed by the Directorate of Accounts, Cuttack under the FR 22(1)(a)(1) treating it as regular promotion. Thereafter, the increment allowed on 1.3.2003 was disallowed by the Directorate at Kolkata. The averments made in the OA have been broadly denied in the Counter mainly on the ground of non-regularization of the ad-hoc promotion period from 1.7.2002 to 16.6.2003.

6. The applicant has filed Rejoinder stating that the applicant was working as SPO, Bolangir against the Group-B post as on 17.6.2003, for which his regular promotion should be treated from 17.6.2003 although he was relieved on 28.7.2003 for his joining against the regular post in West Bengal. It is further stated that he had rightly exercised the option for pay fixation w.e.f. 1.3.2002 under FR 22(1)(a)(1) and hence, the averments made in the Counter to the contrary are not correct. The respondent no.3 had wrongly disallowed the pay fixation of the Odisha circle on the plea that the ad-hoc promotion period from 1.7.2002 to 28.7.2003 was not approved by the competent authority. The averment is contested by the applicant on the ground that his ad-hoc appointment in Group-B cadre as SPO was in continuation to the regular appointment without any break. It was the responsibility of the respondents to obtain approval of the ad-hoc period from the competent authority. He also reiterated the averments made in the OA.

7. We have heard the learned counsels for both the parties and carefully perused the pleadings of the parties on record. The undisputed facts are that the applicant had officiated against the Group-B post of SPO on ad-hoc basis till he was relieved on 28.7.2003 to join in a Group-B post on regular basis without any break and that the competent authority has not approved the ad-hoc promotion period of the applicant for the period from 1.7.2002 to 28.7.2003 as stated in the order dated 10.8.2004 (Annexure-A/10), fixing the applicant's pay on promotion. The order dated 6.10.2002 (Annexure-A/12) was

issued to carry out the modified pay fixed after reducing the pay of the applicant by one increment and changing the DNI from March to August.

8. It is noticed from the facts of the case that the applicant in the OA has impugned the order dated 6.10.2004 (A/12), but the order dated 10.8.2004 (A/10) has not been challenged. It is stated in the order dated 6.10.2004 that the DNI and the pay of the applicant will be re-fixed after receipt of the approval of the ad-hoc period from 1.7.2002 to 28.7.2003.

9. The speaking order dated 21.7.2014 (Annexure-A/15) was passed by the respondent no.1 rejecting the case of the applicant for re-fixation of his pay. In the said order, the following facts and reasons have been mentioned for rejecting the claim of the applicant:-

"3. The representation dated 10.2.2014 and earlier representation on the same issue of Shri Jena has been considered by the Competent Authority, i.e. Director General (Posts)/Secretary (Posts) in compliance to the Hon'ble CAT, Cuttack Bench order dated 8.5.2014 in aforesaid OA. It has been observed from the available facts on record that :

- a) Shri Jena was promoted on **ad hoc basis** in PS Group 'B' cadre by Odisha Circle and joined as SPOs Bolangir Division on 6.12.2001. he was promoted to regular PS Group 'B' cadre vide Directorate Order No.9-8/2003-SPG dated 17.6.2003 and allotted to West Bengal Circle. The officer was relieved from Odisha Circle on 28.7.2003 and joined West Bengal Circle on 4.8.2003.
- b) Postal Directorate approved (post facto) the ad hoc period of Shri Jena from 6.12.2001 to 30.6.2002 in two spells (6.12.2001 to 30.4.2002 and 1.5.2002 to 30.6.2002). however, the ad hoc arrangement for the period from 1.7.2002 to 16.6.2003 has not been approved by the Directorate.
- c) Shri Jena was promoted to regular PS Group 'B' cadre vide Postal Directorate Order No. 9-8/2003-SPG dated 17.6.2003 and allotted to West Bengal Circle (from Orissa Circle). Accordingly, Orissa Circle further issued the regular promotion order vide Memo dated 4.7.2003 conveying the regular promotion was to be effective with effect from the date of assumption of charge, which is in the case of the officer that his regular promotion would be effective from the date of his joining in West Bengal Circle.
- d) Shri Jena exercised his option for fixation of pay under FR-22(1)(a)(i) on regular promotion w.e.f. 1.3.2002 in Orissa Circle. Accordingly, DA(P), Cuttack fixed his pay in PS Group 'B' cadre from the date of next increment on 1st March. Although, such exercise of option was to be entertained by the West Bengal Circle, if applicable. The Odisha Circle acted upon it wrongly. On regular promotion, the officer joined West Bengal Circle on 4.8.2003 and his pay was fixed in Kolkata Circle in PS Group 'B' cadre.
- e) As the aforesaid period of ad hoc arrangement from 1.7.2002 to 16.6.2003 was not regularized by the Dte, GM(PA & F), Kolkata in course of fixation of pay on regular promotion to PS Group 'B' cadre did not allow increment due on 1.3.2003. Accordingly, the pay of Shri Jena was fixed in Kolkata Circle disallowing one increment given by Odisha Circle on 1.3.2003 with DNI on 1st August instead of 1st March.

4. The Competent Authority has considered the representation dated 10.2.2014 and other representation as referred to in the aforesaid OA in the light of facts mentioned above and has observed that the officer was allowed to serve on ad hoc arrangement in violation of Directorate's Order No. 4-3/1988-SPG dated 14.8.1989 and in the absence of regularization of ad hoc service, the

fixation of pay on regular promotion cannot be termed as in continuation of ad hoc service and accordingly, the officer was not entitled to exercise option for fixation of pay from a date falling within the ad hoc service period. Odisha Circle wrongfully entertained the option exercised and fixed the officer's pay taking the ad hoc service as regularized. West Bengal Circle has rightfully disallowed the increment on 1.3.2002 and correctly fixed his pay on DNI i.e. 1.8.2003."

10. It is seen from above that the ground for which the claim of the applicant was not accepted was due to non-approval of the period of ad-hoc appointment of the applicant for the period from 1.7.2002 to 16.6.2003, although the period was mentioned as from 1.7.2002 to 28.7.2003 in the order dated 10.8.2004 (A/10) and dated 6.10.2004 (A/12). It is noticed that the order at A/15 is silent about the reason for non-approval of the authority of the ad-hoc period although the applicant had admittedly officiated against the Group-B cadre and had discharged duty as SPO, Bolangir. It is noticed that no reason for not approving this period of ad-hoc promotion although the period from 6.12.2001 to 30.4.2002 and from 1.5.2002 to 30.6.2002 was duly approved by the competent authority vide order dated 26.12.2002 (Annexure-A/5) and dated 25.9.2003 (Annexure-A/6) respectively after the applicant was regularly promoted vide order dated 17.6.2003 as stated in the order dated 4.7.2003 (Annexure-A/3) and the applicant was allowed to continue to work on ad-hoc basis from 6.12.2001 till 16.6.2003 without approval of the competent authority. No reason for non-approval has been mentioned in the Counter also. The applicant had also not taken any steps the matter from 2004 till 2014 (except for submitting representations as stated in the OA) without taking any measure as per law to get his grievance redressed.

11. In view of the reasons discussed above, we dispose of this OA with the following directions to the respondents, which are to be complied within four months from the date of receipt of a copy of this order:-

(i) Since the order dated 21.7.2014 (A/15) of the competent authority states that the applicant's ad-hoc promotion period not regularized was from 1.7.2002 to 16.6.2003, it implies that the regular promotion of the applicant as SPO in Group-B service was treated from 17.6.2003 instead of the date assumed by the respondent no. 3 in order dated 6.10.2004 (A/12). The applicant's pay is, therefore, required to be fixed on regular promotion from 17.6.2003 and his DNI is to be from 17.6.2003 and the applicant is to be extended the benefit as per the OM dated 19.3.2012 (Annexure-A/14), if it is not allowed already.

(ii) The respondent no. 1 is directed to re-consider approval of the ad-hoc promotion period of the applicant from 1.7.2002 till 16.6.2003 as per law and pass a fresh speaking order and if the competent authority decides not to

approve the aforesaid period, then the reasons for non-approval are required to be mentioned in the fresh speaking order.

(iii) In case the applicant is found entitled for any additional pay, then no arrear salary till his retirement will be admissible on account of delay in approaching the Tribunal from the initial date when the cause of action arose and he will be entitled for re-fixation of pay on notional basis and will be allowed the arrear revised pension and retirement benefits as per law.

12. The OA is disposed of as above. No cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath