

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application Nos.21/849/2013

Date of Order: 21.10.2019

Between:

K. Venkataiah, S/o. late Parthivulu,
Aged 61 years, Occ: Retired Postmaster,
Mahabub Nagar HO,
R/o. H. No. 1-6-67/4/A,
Subash Nagar,
Mahabub Nagar – 509 001.

... Applicant

And

1. Union of India, Represented by
its Secretary to the GOI,
Ministry of Communications and IT,
Director General of Posts India,
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Postmaster General,
A.P. Circle, Abids,
Hyderabad – 500 001.
3. The Postmaster General,
Hyderabad Region, Hyderabad – 500001.
4. The Superintendent of Post Offices,
Mahabubnagar Division,
Mahabubnagar – 509001.

... Respondents

Counsel for the Applicant ... Mr. M. Venkanna

Counsel for the Respondents ... Mr. K. Venkateswarlu, Addl. CGSC

CORAM:

Hon'ble Ms. Manjula Das, Judicial Member

Hon'ble Mr. B.V. Sudhakar, Administrative Member

ORAL ORDER
{As per B.V. Sudhakar, Administrative Member}

2. OA has been filed for seeking direction to grant HSG I pay w.e.f. 6.3.2007 when applicant was promoted to the said cadre and consequently fix his pension in the said scale on his superannuation and also to refund an amount of Rs.38,682/- recovered from him.

3. Brief facts of the case are that the applicant was granted norm based regular promotion to the cadre of Lower Selection Grade (LSG) w.e.f. 1.6.2004 by the respondent organization. Thereafter, he was promoted to the cadre of HSG II in January 2007 and to the cadre of HSG I on 6.3.2007 on adhoc basis. The promotion to HSG I cadre was regularised on 25.4.2011. Applicant's promotion to HSG I on adhoc was periodically extended till the promotion was regularized. After regularizing the applicant on 25.4.2011 in the cadre of HSG I, respondents vide letter dt. 21.2.2012 cancelled HSG I promotion given to the applicant in view of pending revision of recruitment rules. However, he was directed to continue to work in HSG I cadre, which he held before the cancellation of HSG I promotion, by issuing Memo dt. 21.2.2012 continuing the applicant in the said cadre on adhoc basis. Thereafter, applicant retired on 30.4.2012 in HSG I cadre while working as Postmaster, Mahabubnagar HO. Applicant represented on 28.05.2012 to protect his pay w.e.f. 01.09.2008 when he got MACP III and regulate his pay in HSG I promotion. Instead of doing so, respondents have recovered an amount Rs.38,682/- on 8.5.2012 towards excess pay and allowances drawn from 1.9.2008 till 30.04 2012. Consequent to this

recovery, last pay drawn by the applicant was reduced and accordingly, pension / pensionary benefits were proportionately axed.

4. Contentions of the applicant are that the respondents after having extracted the work of HSG I Postmaster from the applicant, they cannot deny pay and allowances to the post held by him. Applicant claims that in a catena of judgments courts have observed that the employees have to be paid pay and allowances associated with the post in which the employees have worked. Adhoc promotion to HSG-I cadre was granted to the applicant by virtue of seniority and against a regular vacancy. For having shouldered higher responsibilities and duties associated with higher post, it is unfair for the respondents in not protecting his pay. Pay of the applicant is protected by Rules laid down in Fundamental Rules.

5. Respondents in their reply statement contested the contentions of the applicant by stating that the applicant was granted adhoc promotion in the cadre of HSG-I w.e.f. 6.3.07 and the same was extended at the rate of 6 months / one year till 24.4.2011. Applicant was granted regular promotion w.e.f. 25.4.2011. In the meanwhile, applicant was granted 3rd financial upgradation under MACP w.e.f. 1.9.2008 vide Memo dt 25.3.2010. Thereupon, respondents cancelled regular promotion w.e.f. 21.2.2012 and ordered adhoc arrangement of the applicant till retirement in the HSG I cadre. As per DOPT OM dated 1.11.2010, in regard to financial upgradation under MACP, it is stated that an official drawing pay in the same pay band and grade pay will not be eligible for any pay benefit and pay fixation and the same was intimated to the applicant vide

Memo dt. 25.3.2010. Being the Head of the Office and Drawing and Disbursing Officer, applicant allowed for himself the benefit of pay fixation. Later, when the audit party objected to such pay fixation, the applicant voluntarily credited the excess amount drawn.

6. Heard learned counsel for the applicant. None for the respondents.

We have perused the pleadings and the material on record.

7(I) The main prayer of the applicant is to grant him pension based on the pay fixed in HSG I cadre. **Pay** is defined under FR 9 (21)

(a) (i) as under:

*“(a) **Pay** means the amount drawn monthly by a Government servant as –*

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre:..

(emphasis applied)

As can be seen from the definition, “pay” means the amount drawn monthly by employee even in an officiating capacity. In the instant case, applicant officiated in HSG I cadre and therefore, his pay has to be that of the HSG I cadre. Having defined Pay, now we will have a look at Rule 49(2) of CCS (Pension) Rules, 1972, which explains the amount of pension to be granted to a pensioner as under:

“49. Amount of Pension.

(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a

minimum of three thousand and five hundred rupees per mensem and a maximum of forty-five thousand rupees per mensem.”

“**Emoluments**” is defined under Rule 33 of CCS (Pension) Rules, 1972 as under:

“The expression ‘emoluments’ means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice.”

Therefore, based on the Rules cited supra, the applicant will be eligible to draw pension equivalent to 50% of the pay drawn by him as officiating HSG-I. Further, when an employee is made to work in a higher post, he has to be necessarily paid the pay and allowances associated with the said post. In the instant case, the applicant was regularised in HSG I cadre on 25.04.2011. However, the respondents later cancelled the promotion on 21.02.2012, but made the applicant to work in the said post on officiating basis till he retired. Hence, he is eligible for higher pay prescribed for the HSG I cadre.

II. It is not out of place to observe that the respondents have made the applicant to work in the higher post of HSG-I for long period of duration and later, he retired on superannuation in the said post, though not on a regular basis, but on officiating basis. Applicant having discharged higher responsibilities, his pay in HSG I has to be protected. Not doing so is against rules cited. Therefore, the claim of the applicant to protect his pay in HSG I cadre and thereby fix his pension is fair and genuine. It needs to be allowed as the same is supported by the

observations of the Hon'ble Supreme Court in ***Bhadei Rai Vs. Union of India & Others*** (AIR 2005 SC 2404) as under:

“Constitution of India, Art.16 – Adhoc Promotion – Long service on promoted post – Benefit of – Employee who was given ad hoc promotion worked on said post for 20 years – Reverted to original post – he is entitled to benefit of salary he was drawing at time of reversion from promotional post – Cannot claim regularization on promotional post.”

Similarly, in ***Badri Prasad & Others vs. Union of India & Others*** (AIR 2005 SC 2531), the Hon'ble Supreme Court has held as under:

“Constitution of India, Art. 16 – Ad hoc promotion for long years – Subsequent order of reversion – They cannot be regularized on promotional post – However, benefit of pay protection, age relaxation and advantage of experience for consideration for promotion granted to them as their legitimate claim.”

The respondents state that the HSG I pay and the pay fixed consequent to MACP being one and the same in regard to pay band and grade pay, there shall not be further pay fixation as per DOPT OM dt.1.11.2010.

III. The important aspect in this dispute is as to whether applicant has to be paid higher pay for the higher responsibilities shouldered by him in the higher post of HSG I. The Tribunal is of the view that the pay that has been prescribed to HSG I post has to be necessarily paid to the applicant. MACP is in regard to financial upgradation which is granted when there is any stagnation and when the employees are not granted promotion in a span of 10/20/30 years. Neither the applicant nor the respondents have furnished the details about the pay of the applicant consequent to grant of III financial upgradation under MACP and when promoted on officiating basis. Thus, this

Tribunal, in the absence of such information, has to necessarily direct the respondents to fix the pension of the applicant based on the principle of fixing pension @ 50% of the last pay drawn by him for having officiated in HSG Grade I. The applicant has also drawn the difference of pay in regard to the pay he obtained consequent to grant of III MACP and his pay to be paid for officiating in HSG I. The amount recovered has to be refunded to the applicant because he worked for the pay he is entitled. In compliance to an audit objection, applicant has voluntarily credited the amount. However, it does not mean that the applicant is not entitled for higher pay he deserves to be paid in HSG I cadre since Rules and law cited are in favour of the applicant.

This Tribunal granted similar relief in OA Nos. 1243 and 1282 of 2012, vide order dt. 09.07.2013 following the law laid down by the Hon'ble Supreme Court cited supra. Further, this Tribunal has also dealt with similar case in OA 548 of 2015, vide order dt. 16.07.2015, wherein it was observed as under:

“5.....This stand of the respondents is untenable as the respondents, based on the various orders of this Tribunal as well as the orders of the Hon'ble High Court of A.P. in W.P. No. 38974/2012, have issued modified instructions vide Serial Circular No. 80/2011, conveying the Railway Board's decision that the basic pay drawn by an employee on ad hoc promotion in the Construction Organization should be reckoned as pay for the purpose of reckoning emoluments in terms of Rule 49 of the Railway Servants (Pension) Rules.”

Hence, the principle of fixing pension based on the last pay drawn even on officiating basis is well settled.

IV. Therefore, in view of the aforesaid, the OA succeeds.

Consequently, the respondents are directed as under:

- i) to fix the pay of the applicant keeping in view Rule 9 of Fundamental Rules and CCS (Pension) Rules, 1972 cited supra, by reckoning the last pay drawn by the applicant while discharging his duties in HSG Grade I and take a decision in regard to the refund of the amount of Rs.38,682 already recovered from the applicant;
- ii) Time granted to implement this order is three months from the date of receipt of the order.
- iii) The OA is thus allowed with the above directions, with no order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

Dated, the 21st day of October, 2019

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