

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

Original Application No. 21/722/2015

Date of Order: 21.10.2019

Between:

S. Hanumanthu, S/o. late S. Rangaiah,
Aged about 65 years,
Retired Postmaster, Stn Jadcherla HO,
R/o. h. No. 506, Vikas Elite, Huda Colony,
Chanda Nagar, Hyderabad – 500 050.

... Applicant

And

1. Union of India, Represented by
The Secretary to the Government of India,
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, Dak Sadan,
Abids, Hyderabad – 500 001.
3. The Director of Postal Services,
O/o. The Postmaster General,
Hyderabad Region, Hyderabad – 500001.
4. The Superintendent of Post Offices,
Wanaparthi Division,
Wanaparthi– 509103.
5. The Director of Accounts (Postal),
Andhra Circle, Hyderabad – 500 001.

... Respondents

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

Counsel for the Respondents ... Mrs. L. Pranathi Reddy, 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 for direction to grant HSG I pay w.e.f. 4.1.2007 when he was promoted to the said cadre on adhoc basis and was allowed to continue as such till 7.8.2007 when he retired on voluntary retirement and consequently fix his pension on the basis of pay admissible to HSG I and also to refund an amount of Rs.4,787/- recovered from him.

3. Brief facts of the case are that the applicant was appointed as Postal Assistant on 04.01.1971 and was granted TBOP and BCR on completion of 16 & 26 years in PA cadre. He was granted norm based regular promotion to the cadre of Lower Selection Grade (LSG) on notional basis. Thereafter, he was promoted to the cadre of HSG II and subsequently to the cadre of HSG I on 4.1.2007 on adhoc basis. While working as Postmaster, Jadcherla HO, applicant made an application for voluntary retirement w.e.f. 7.8.2007 and the same was accepted and orders were issued vide Memo. dated 09.07.2007. Accordingly, applicant retired voluntarily w.e.f. 7.8.2007. He has been issued PPO No. 18934/LPR.

While so, the 5th respondent issued the Impugned Order dated 06.01.2015 directing the Chief Postmaster, Hyderabad GPO to refix the pension as per letter dated 04.07.2009 and to recover the excess amount from the pension. On receipt of the said order, applicant submitted a representation to the 5th respondent on 12.01.2015 to refix his pension in the pay admissible to HSG I w.e.f. 04.01.2007 when he was promoted to

the said cadre on adhoc basis and allowed to work as such till 07.08.2007 and to refund the amount recovered from the commuted value of the pension. But, the same has not been disposed of.

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 on 4.1.2007 and he assumed charge of HSG I Postmaster Jadcherla HO on 10.01.2007 and continued as such till he retired voluntarily on 07.08.2007 FN. Since his promotion was purely on adhoc basis, the option for fixation based on the date of his next increment is not admissible. As such, his pay in the higher grade should be fixed on the date of promotion itself as per FR 22 (1)(a)(1) and accordingly, his pay was fixed and consequent on his voluntary retirement w.e.f. 07.08.2007, his pension was fixed basing on the said pay. They further contend that, as per FR 22(I)(a)(1), in cases where an

ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/ promotion, to be exercised within one month from the date of such regular appointment. But, in the present case, applicant was promoted on ad hoc basis to HSG I post with effect from 10.01.2007 and he retired voluntarily w.e.f. 07.08.2007 FN before getting the regular promotion. As such, the impugned recovery of excess paid commutation of pension is in order and correct.

6. Heard both sides counsel and 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.

II. 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 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. Thus, this Tribunal 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 amount recovered has to be refunded to the applicant because he worked for the pay he is entitled.

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 Rs. 4,787 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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