

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

**Original Application No. 20/717/2013**

**Date of Order: 21.10.2019**

Between:

Y.S.S.V. Prasad, S/o. Ganapathi Rao,  
Aged about 59 years,  
Working as Head Postmaster (HSG-I),  
Amalapuram – 533 201.

... Applicant

And

1. Union of India, Rep. by its Secretary,  
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 Postmaster General,  
Visakhapatnam Region,  
Visakhapatnam– 530013.
4. The Superintendent of Post Offices,  
Amalapuram Division,  
Amalapuram– 533201.

... Respondents

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

Counsel for the Respondents ... Mr. B. Laxman, Advocate for  
Mrs.K. Rajitha, Sr. 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 fix his pay in HSG I cadre w.e.f. 24.08.2005 when he was promoted to the said cadre, with all consequential benefits.

3. Brief facts of the case are that the applicant was appointed as Postal Assisnat on 02.02.1972. He was given promotions under TBOP and BCR. He was further granted norm based regular promotion to the cadre of Lower Selection Grade (LSG) w.e.f. 27.10.2004 by the respondent organization. While working as SPM, Ambajipet SO (LSG Cadre), he was posted as Postmaster, Razole HO in the cadre of HSG-I on adhoc basis on 20.08.2005. While working as such continuously, he was promoted to the cadre of HSG II on regular basis on 12.09.2008 and his lien was shown as APM (SB), Razole HO and continued to work as Officiating Postmaster (HSG-I), Razole HO. Applicant's promotion to HSG I on adhoc basis was periodically extended from time to time. But, his pay and allowances have not been fixed in HSG I cadre though he has been shouldering higher responsibilities in HSG I Postmaster on adhoc basis w.e.f. 24.08.2005.

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 for 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 responsibility 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 contested the OA by filing a reply statement. The facts averred by the applicant in regard to the events till his promotion as HSG Gr. I on adhoc basis from 24.08.2005 and extension of the same from time to time till 22.05.2013 are not disputed. Respondents state that applicant got HSG I promotion vide order dt. 21.05.2013 and took charge on 23.05.2013 and retired on 31.05.2013 on superannuation. Respondents further state that applicant had requested the competent authority for grant of officiating pay and allowances for the period of officiating as HSG II and HSG I and he was replied that the same could not be granted as conditions prescribed in Directorate letter dt. 28.07.2011 are not fulfilled. Hence, he filed the present OA.

Respondents in their reply clearly state that the applicant possesses the required minimum 3 years of service in LSG and HSG II while he was holding the HSG II & HSG I posts for drawl of officiating pay and allowances as per Directorate letter dt. 28.7.2011. Applicant was ordered to look after the duties of HSG I post, which was a local arrangement and local arrangement if any made by the Divisional Office/ Regional office in HSG I cadre are only on temporary basis with no extra remuneration as per CPMG, AP Circle, Hyderabad letter dated 22.07.2009. They further submit that, an Audit objection was raised during 6/2006 on

Razole HO on officiating pay as drawn in similar cases earlier to the applicant and therefore, ordered recovery of excess pay and allowances. Keeping in view the said audit objections, no higher pay is drawn to the official for officiating as HSG I Postmaster.

6. Heard both the 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. In the instant case, the applicant was posted to work as HSG I on adhoc basis on 24.08.2005 and he was continued as such till he was regularly promoted as HSG Gr. I on 21.05.2013. He took charge on 23.05.2013 and retired on 31.05.2013 on superannuation. Hence, he is eligible for higher pay prescribed for the HSG I cadre during the period he was posted as HSG I.

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 till he was regularly promoted. 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 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.

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.

III. Therefore, in view of the aforesaid, the OA succeeds. Consequently, the respondents are directed as under:

- i) to fix the pay of the applicant in HSG Grade-I w.e.f. 24.08.2005 in the applicable pay scales, keeping in view Rule 9 of Fundamental Rules and CCS (Pension) Rules, 1972 cited supra, and consequently revise the pension and pensionary benefits of 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 21<sup>st</sup> day of October, 2019

evr