
(2014) 01 JH CK 0006
In the Jharkhand High Court
Case No : W.P. (S) No. 1562 of 2013

Amar Nath Mishra

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Citation : (2014) 7 AJR 207 : (2014) 1 JLJR 449

Hon'ble Judges : R. Banumathi, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Dilip Kumar Prasad, Advocate for the Appellant; Mokhtar Khan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioner as well as learned counsel appearing on behalf of Respondent-Union of India. The Original Application No. 203/2012 preferred by the writ petitioner before the Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) was dismissed by the impugned order dated 15th February, 2003, whereunder the learned Tribunal held that the petitioner having not remained in four years regular service in PSS Group-B is not entitled for the grade pay of Rs. 5,400/- in view of the circular dated 18th January, 2010 issued by the Government of India, Ministry of Communications & IT, Department of Posts.

2. The petitioner has challenged the said order in the present writ application and also sought a direction upon the respondents to grant him the grade pay of Rs. 5,400/-. According to the petitioner, he had joined as a Postal Assistant on 8th May, 1973 under the respondents at Head Post Office, Jamshedpur. Thereafter, he was promoted to the cadre of Inspector of Post Offices with effect from 1st November, 1983. Again, he was promoted to the cadre of Assistant Superintendent of Post Offices with effect from 14th March, 1997. By office order dated 12th January, 2005, the petitioner was promoted in PSS Group-B Cadre and ordered to work as a Senior Postmaster, Jamshedpur Head Post Office on the

leave vacancy. However, the said Memo did not materialize. Vide Annexure-5 dated 30th March, 2005, the petitioner was promoted and posted as Superintendent, R.M.S., Ranchi purely on temporary and ad-hoc basis which was to take effect from the date of assumption of charge. He assumed the charge of the said post on 5th April, 2005. According to the petitioner, since then, he continuously worked on the PSS Group-B Post without any interruption or break in different assignments in the same cadre. The petitioner has relied upon Annexure-6 series being pay slips issued from time to time as per which, he continued in the grade pay of Rs. 4,800/- from 1st January, 2006 till his date of retirement i.e. 31st August, 2010.

3. It is the case of the petitioner that having remained continuously for more than four years in the grade pay of Rs. 4,800/- PSS Group-B, he was entitled for the next higher grade pay of Rs. 5,400/- in terms of the relevant circular dated 7th October, 2010 as also circular dated 18th January, 2010. However, the same has been denied by the respondents inter-alia on the ground that the petitioner had not completed four years in regular service in the grade pay of Rs. 4,800/- in the pay band PB-2.

4. Counsel for the petitioner has submitted that Annexure-7 dated 16th December, 2009 would reveal that he was appointed on regular basis in Postal Services in Group-B grade in Pay Band-2 in the scale of Rs. 9,300-34,000/- with grade pay Rs. 4,800/- with effect from the date of assumption of charge. In the said order of promotion, the petitioner's name is at serial No. 12. However, it is submitted that immediately one day after i.e. on 17th December, 2009, by another office order issued by the respondent Assistant Director, Postal Services, it was indicated that the promotion given to the petitioner alongwith five other persons earlier was limited for a period of one year only and he was reverted to the substantive cadre from the date, shown against his name. In the list of five such persons, petitioner's name appears at serial No. 2. Respective dates of promotion and due dates of termination between the year 2005 to 2010 have been indicated therein. It is submitted that in spite of having remained in grade pay of Rs. 4,800/- with effect from 1st January, 2006, he is not being granted the next higher grade pay of Rs. 5,400/- by the respondents. The Tribunals has also failed to appreciate the aforesaid facts and dismissed the original application being guided by the circular dated 18th January, 2010. Learned counsel for the petitioner has relied upon the Circular dated 7th October, 2009 according to which, eligibility to get the higher grade was dependent upon four years of service effective from 1st January, 2006 which the petitioner had completed.

5. Learned counsel for the respondent-Union of India have straightaway drawn the attention of this Court to the representation of the petitioner at Annexure-11 series to point out that it is the petitioner's own admission that he was granted grade pay of Rs. 4,800/- from 1st January, 2006 till 31st December, 2009 and by that, he could not have completed four years of regular service in PSS Group-B. Learned counsel for the respondents has also invited attention of this Court to

Circular dated 18th January, 2010 issued by the respondent Department of Posts, Ministry of Communications & IT, Government of India whereby it has clarified that vide letter dated 7th January, 2010 issued by the Ministry of Finance (Department of Expenditure), Group-B Officers of Department of Posts may be allowed to exercise its option to get their pay fixed under FR-22(1)(a)(1) at the time of grant of higher grade pay of Rs. 5,400/- to them on nonfunctional basis after four years of regular service in the grade pay of Rs. 4,800/- in the pay band PB-2. Learned counsel for the Union of India submits that the Tribunal found that the petitioner had not remained in four years of regular service as he was appointed on regular basis vide Annexure-7 issued on 16th December, 2009 and therefore, the petitioner is not entitled to the benefit of higher grade pay in view of Circular dated 18th January, 2010. Therefore, the entitlement of the petitioner to the next higher grade pay is dependent upon completion of four years of regular service which the petitioner have failed to qualify. The impugned judgment therefore does not suffer from any infirmity and the writ petition deserves to be dismissed.

6. We have heard learned counsel for the parties and perused the relevant materials on record. The case of the petitioner for higher grade pay of Rs. 5,400/- is dependent upon four years of regular service in the grade pay of Rs. 4,800/- in the pay band PB-2 as per Circular dated 18th January, 2010 which clarifies the earlier circular dated 7th January, 2009 issued by the Department of Finance.

7. It is not in dispute that the petitioner has been granted regular promotion vide Annexure-7 dated 16th December, 2009 in the postal services in Group-B grade in the pay band PB-2 in the scale of Rs. 9,300-34,000/- in the grade pay of Rs. 4,800/- with effect from the date of assumption of charge. The petitioner was granted temporary and ad-hoc promotion from time to time which were terminated on completion of one year from 5th April, 2005 onwards, but admittedly, he was granted regular "promotion in the postal services Group-B only by the order dated 16th December, 2009. Though, it is the contention of the petitioner that he had received grade pay of Rs. 4,800/- with effect from 1st January, 2006 pursuant to his temporary and ad-hoc promotion granted from time to time and limited to one year only, but entitlement of higher grade pay of Rs. 5,400/- was dependent upon the completion of four years of regular service in the grade pay of Rs. 4,800/-. A conjoined reading of Circular dated 7th October, 2009 with Circular dated 18th January, 2010 would show that the placement in higher grade pay after four years was admissible to the eligible officers completing four years of regular service in the grade pay of Rs. 4,800/-. The petitioner having failed to fulfill the essential criteria for the admissibility of grade pay of Rs. 5,400/-, the respondent have rightly denied the same. The Tribunal having considered the Circular dated 18th January, 2010 in its true perspective and in the facts and circumstances of the case, has rightly dismissed the original application. We therefore do not find any infirmity in the impugned judgment. Therefore, no case has been made for interference in the writ petition,

which is accordingly dismissed.