

(2022) 11 CAT CK 0004

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00303 Of 2017

Ganesh Mohapatra

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 39

Citation : (2022) 11 CAT CK 0004

Hon'ble Judges : Swarup Kumar Mishra, Member (Judl)

Bench : Single Bench

Advocate : T. Rath, Rajlaxmi Biswal

Final Decision : Dismissed

Judgement

Swarup Kumar Mishra, Member (JUDL)

1. As it reveals from the record, upon promotion to LSG Supervising cadre, vide order No. B/3-7/2007 dated 3rd August, 2011 (Annexure-A/2) in official arrangement, the Applicant was posted as HSA Bhubaneswar, RMS/I without any extra remuneration and, resultantly, spare of applicant was directed vide order at Annexure-A/3 dated 11.6.2013. Thereafter, vide order No. B/3-12/2007 dated 29.10.2013 (Annexure-A/4) the posting of the Applicant, as ordered under Annexure-A/2, was modified giving him the posting as HSA, CRC, Bhubaneswar, RMS/2 till regular posting of HSG II official at CRC, Bhubaneswar, RMS/2 with specific condition that he would not be allowed any extra remuneration for such posting. Thereafter, by making representation he has prayed for granting him higher pay and allowance as he was working in a higher post. Alleging non-consideration of his grievance, he approached this Tribunal in OA No. 260/00970/2017 and, in compliance of the order of this Tribunal disposing of the OA on 6th January, 2017, Respondents considered the grievance of applicant, outcome of which was intimated to the Applicant vide Annexure-A/9 dated 17.04.2017. Hence, challenging and impugning the order under Annexure-A/9 dated 17.04.2017 and the order under Annexure-A/2, Annexure-3 and

Annexure-4 directing that he shall not be entitled to any extra remuneration for such posting, the Applicant has filed the instant OA with the following prayers:

"(a) to quash Annexure-4-A/9 and the part of the order under annexure-A/2, A/3 and A/4 so far as it denies to the applicant any extra remuneration for the officiating period against higher post.

OR

(b) Direct the respondents to grant higher pay and allowances to the applicant for the period he officiated/worked in the higher posts by following the ratio of the judgment in the case of Selvaraj Vs. Lt. Governor of Islands, Port Blair dated 16th March, 1998 (AIR 1999 SC 838) and Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma And Ors. [1998 SCC(L&S) 1273].

(c) And pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with cost."

2. Respondents have filed their counter in which it has been stated that on 17.08.1997, Applicant was appointed as Sorting Assistant in RMS 'N' Division, Cuttack. He was promoted, on regular basis, to LSG cadre and he was posted as Head Sorting Assistant of Bhubaneswar RMS/1 on local arrangement, with specific condition that he will not be entitled to any extra remuneration; where he joined on 27.6.2011. After posting of regular incumbent in HSG I cadre in Bhubaneswar RMS 1, the applicant was locally arranged/ordered to work in the vacancy of HSA (HSG II) Bhubaneswar RMS 2 vide order dated 11.06.2013 with specific condition that he will not be entitled to any extra remuneration. Thus, according to the Respondents the applicant had worked in the higher post from 13.06.2011 to 17.10.2013. Thereafter, applicant worked as HSA, CRC, Bhubaneswar RMS/2 (HSG II) on local arrangement for a period from 1.11.2013 to 30.06.2015 with the same terms and conditions that he will not be entitled to any extra remuneration. Thereafter, with effect from 01.07.2015, he was regularly promoted to HSG II cadre vide Memo dated 04.06.2015. Applicant submitted representation dated 5.5.2014 to CPMG, Odisha Circle, BBSR and dated 17.08.2016 to DGP&T, New Delhi praying for pay and allowance of the higher posts of HSG II and HSG I. It has been submitted that the representation of applicant was duly considered but the same was rejected as in terms of DG P&T Letter No. 137-64/2010-SPR II dated 28.07.2011, such an official who fulfills the criteria laid down in the Recruitment Rules prescribed for such post and is thus eligible to be appointed to higher post is posted to officiate against the norm based supervisory post in LSG, HSG-II and HSG-I cadre on a whole time basis should be remunerated by allowing the pay and allowances in the pay scale/pay band + Grade pay attached to the higher posts, for the period the official continues to officiate in it. According to the Respondents, though the applicant was senior most official in LSG cadre but was not eligible to be promoted to HSG II & I at the relevant point of time and posting in HSG II and I cadre posts was made on local arrangement basis with specific condition that he will not be

entitled to any extra remuneration, his representation was rejected and communicated to the applicant in a well reasoned order. Accordingly, it has been submitted that in this OA the prayer of the applicant is to quash part of the order under Annexure-A/2, A/3 & A/4 which was passed long back. This OA also suffers from delay and laches. Hence Respondents have prayed for dismissal of this OA both on the ground of limitation so also merit.

3. Applicant has filed rejoinder in which it has been stated that while he was working in LSG cadre, he was detailed to work in higher posts of HSG I cadre w.e.f. 28.06.2011 to 12.06.2013 and HSG II cadre w.e.f. 13.06.2013 to 17.10.2013 and 01.11.2013 to 30.06.2015. Thus, he having fulfilled the conditions stipulated in paragraph 9 of the Postal Directorate letter dated 28.07.2011, he was entitled to pay and allowances in higher grades but the respondents rejected the representation without paying adequate attention to provision enumerated in paragraph 9 of the letter dated 28.07.2011. Paragraph 9 of the letter provides that in case a Postal Assistant (PA) or sorting Assistant (SA) as the case may be (who was not granted financial upgradation under TBOP or BCR Scheme) was appointed to officiate/hold full charge of a norm based supervisory Lower grade Selection Grade (LSG) post in accordance with the Rule 27 or 50, he/she may be allowed the pay and allowances attached to the higher post subject to the satisfaction of all other relevant conditions. Similarly, in case of an official holding LSG or HSG-II norm based post on regular basis was appointed to officiate/hold full charge of a norm based higher/supervisory Higher Selection Grade -II (HSG-II) or Higher Selection Grade-I (HSG-I) post, respectively, in accordance with Rule 27 or 50, he/she may also be allowed the pay and allowances attached to higher post. Hence, the Applicant has prayed for the relief claimed in the OA.

4. Learned Counsel for the applicant has submitted that denial of higher pay and allowance to the applicant amounts to acting contrary to law so also constitutional mandate of 'equal pay for equal work' enshrined in Article 39 of the Constitution of India. The Respondents rejected the representation without taking note of the conditions stipulated in paragraph 9 of DGP&T letter dated 28.07.2011 so also law laid down by the Hon'ble Apex Court in the case of Selvaraj Vs Lt Governor of Islands, Port Blair, AIR 1999 SC 838, Secretary Cum Chief Engineer, Chandigarh v Hari Om Sharma and Ors, 1998 SCC (L&S) 1273, Madras Bench of the Tribunal in OA No. 1293 of 2011 disposed of on 22nd November, 2012 and of this Bench in OA No. 69 of 2018 disposed of on 19.05.2022 (Asutosh Rout vs. Union of India and Others). Thus, according to the applicant denial of the higher pay and allowance attached to HSG II & I posts when he admittedly performed his duty in the higher posts by the order of the competent authority is highly illegal and arbitrary and, therefore the order of rejection is liable to be quashed.

On the other hand, learned counsel for the Respondents has submitted that after having accepted in the open eye the conditions stipulated in the orders under

Annexure-A/2, A/3 & A/4 that on his posting on official arrangement to HSG II & I, he will not be entitled to any extra remuneration, the Applicant joined and discharged his duties and, thus, under law he is estopped to challenge the same subsequently. It has been argued that Annexure-A/2 is dated 03.08.2011, Annexure-A/3 is dated 11.06.2013 and Annexure-A/4 is dated 29.10.2013. At no point of time nor even in the representation stated to have been submitted before the CPMG, BBSR or DGP&T, New Delhi, he has made any grievance against the conditions put in the aforesaid orders that in the event of such posting he will not be entitled to any extra remuneration and after his grievance was rejected vide order under Annexure-A/9 he has filed this OA in the year 2017 seeking to quash the portion of the order prohibiting for any extra remuneration. Hence, according to the Respondents, this OA is liable to be dismissed for delay and laches. In so far as merit of the matter is concerned, it has been submitted that the applicant had never been posted on officiating promotion to higher posts. Taking into consideration the public interest, the applicant was posted to discharge the duty in supervising cadre and, thus, as per the order of the DGP&T, the applicant was not entitled to the claim which was rightly rejected. In so far as decisions relied on by the Applicant, it has been submitted that the facts of those cases being different and distinct to the present case, the same are not applicable to the present cadre and, therefore, this OA is liable to be dismissed.

5. Having considered the rival submissions of the respective parties perused the records, documents placed in support thereof and the decisions relied on by the Applicant.

6. The stand of the Respondents that the applicant was not eligible to be promoted to HSG II or HSG I at the relevant point of time is not disputed. It is seen from record that the Applicant was posted to HAS Bhubaneswar RMS/1, RMS/2 not on officiating or ad hoc promotion basis but on local arrangement upon his promotion to LSG Supervising Cadre with specific condition that 'without any extra remuneration'. It is also not in dispute that the applicant had discharged duties in HSG II & I cadre but did not raise any objection at any point of time to the conditions stipulated that such posting will not be entitled to him any extra remuneration rather, he having accepted such condition joined and discharged the duties. In this connection, the need for a greater degree of circumspection of the present matter, which is necessary to consider whether the applicant was precluded from raising this point by applying the doctrine of waiver or acquiescence? The waiver of right can either be expressed or implied. It is important to understand the doctrine of waiver at this juncture. Express waiver is done in writing or giving a statement of waiver and implied waiver is judged based on the conduct or act of a person. Further, in the simplest sense, doctrine of stoppage precludes a person to negate anything to the contrary of what has been constituted as truth either by his own actions, by his deeds or by his representation or by the acts. By the very act of the applicant by accepting the condition after which any effort to pay remuneration when it had already taken

effect at this distance place and time, is a matter writ large and, thus, does not sound to appeal in judicial conscience so as to quash the said part of the orders at this belated stage that too without making any effort to redress the same on this point before the authority concerned.

7. In so far as conditions stipulated in DGP&T Letter No. 137-64/2010-SPR II dated 28.07.2011 is concerned, this Tribunal does not find force on the submission of the learned counsel for the Applicant that as per the stipulation made in paragraph 9 of the said letter, the applicant was entitled to pay and allowance attached to the HSG II and HSG I cadre because those conditions are applicable where the posting is given on officiating basis whereas in the instant case there was no such stipulation in the orders under Annexure-A/2, A/3 & A/4 rather in the order it was made clear that for such official arrangement, the applicant shall not be entitled to any extra remuneration. Thus, rejection of the claim of Applicant cannot be faulted with.

8. In so far the stand of the applicant that his case is covered and governed by the decision of Madras Bench in OA No. 1293 of 2011 (T.Subramanian vs UOI & Ors) and, therefore, he is entitled to the relief claimed in this OA is concerned, on perusal of the said order it is seen that the said order has no application to the present case because in the said case, the applicant while working as Assistant Postmaster (Lower Selection Grade-LSG) he was ordered to officiate in higher Grade (HSG I) by the competent authority and, therefore, by applying the similar order earlier passed by the Madras Bench, benefit of higher pay and allowance was directed to be paid to the said applicant which is not the facts of the present case as the posting of the present applicant was on local arrangement and not on officiating basis in higher post. Hence the said case, on facts, is not applicable to the case in hand.

9. Perused the decision of this Bench in OA No. 69 of 2018 in the case of Asutosh Rout vs UOI and others. This was a case where the Respondents recovered the amount drawn by the applicant during his ad hoc promotion to the post of Inspector of posts from 24.02.2017 to 31.05.2017 which is not the present case and, thus, the said case has no application to the case in hand.

10. In so far as the decision of the Hon'ble Supreme Court in the case of Secretary Cum Chief Engineer, Chandigarh v Hari Om Sharma and Ors, 1998 SCC (L&S) 1273, is concerned, it is seen that in the said case Hari Om Sharma and others were promoted to Junior Engineer-I and continued in the said promotional post without being paid salary for that post or without being promoted on regular basis. it was in this situation they had approached the Tribunal and the Tribunal, allowed the claim with the direction that the applicants shall be paid salary for the post of Junior Engineer-I and shall also be considered for promotion on regular basis on the basis of quota fixed for non-diploma holders with 10 years of service which is not the case of the present applicant. Thus, on facts, the aforesaid decision of the Hon'ble Apex Court is of no help to the Applicant.

11. Similarly it is that in the case of Selvaraj v Lt Governor of Islands, Port Blair, AIR 1999 SC 838 the competent authority had specifically ordered to look after the duties of in higher post and for this purpose he will be entitled to the pay and allowance attached to higher post. Whereas, in the present case the situation is just reverse and, thus, the same case has no applicability in the present case.

12. It is seen that the Hon'ble Apex Court in the case of Ramakant Shripad Sinai Advalpalkar v Union of India, 1991 (Suppl.2) SCC 733 has held that where a fortuitous officiating promotion is given to an employee working in lower cadre on account of administrative exigency resulting in a vacancy of a higher post he would not earn higher pay scale because it is a fortuitous circumstances unless he is senior enough to stake his claim for regular promotion and admittedly the applicant was not eligible and entitled to be promoted to HSG II or HSG I at the relevant point of time.

13. In view of the facts and law discussed above, this Tribunal do not find any justification to quash the part of the orders under Annexure-A/2, A/3 & A/4 at this stage and also any flaw on the decision making process of order under Annexure-A/9 so as to make judicial interference on the same and, therefore, this OA stands dismissed by leaving the parties to bear their own costs.