

(2009) 11 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (C.) No. 6659 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Sher Singh

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0246

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; Sant Lal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners, Union of India and Ors. have assailed the order dated 2nd March, 2007 passed in O.A No. 1024/2006, Sh. Sher Singh v. Union of India and Ors. granting officiating allowance on the post of Sub Post Master in the grade HSG-I to the respondent and setting aside the orders dated 14th September, 2005 and 30th March, 2006 passed by the petitioners denying him the officiating allowance.

2. The respondent joined the petitioners service as a Postman with effect from 15th July, 1966. He was promoted to the post of Postal Assistant after he qualified the departmental examination with effect from 14th July, 1973. The respondent was also placed in higher pay scale of LSG (Lower Selection Grade) with effect from 14th July, 1989 under the time bound one promotion scheme and he was promoted to the norms based LSG post with effect from 25th January, 1994.

3. According to the respondent he was placed in the next higher pay scale of HSG-II with effect from 1st January, 1995 vide memo dated 12th May, 1995 under the BCR Scheme.

4. The respondent was then directed to officiate as Sub Post Master (SPM) in

HSG-I in Hauz Khas Post Office, New Delhi during 6th November, 2002 to 29th November, 2002; 1st December, 2002 to 1st February, 2003; 1st November, 2003 to 20th December, 2003 and 23rd May, 2004 to 30th June, 2005.

5. The petitioners contended that the orders for the respondent to officiate as SPM, Hauz Khas were passed by the Senior Superintendent of Post Office on 14th May, 2004 whereby, besides directing the respondent to officiate at the post of HSG-I, Sh. R.N. Manjhi, 59 other POs were also transferred. Though the petitioners have relied on the order dated 14th May, 2004, however, they have not produced the earlier orders under which the respondent was directed to officiate on the post of HSG-I for the period 6th November, 2002 to 29th November, 2002; 1st December, 2002 to 1st February, 2003; 1st November, 2003 to 20th December, 2003 and 23rd May, 2004 to 30th June, 2005.

6. The respondent contended that he had been sanctioned rent free accommodation/additional HRA for the above noted periods applicable to HSG-I. However, he has not been granted officiating pay during the said period. He further contended that there was no senior qualified official for the local arrangements and since he was shouldering the higher responsibilities and also discharging the function of the particular higher post, therefore, he be granted officiating pay during abovesaid period in the light of para 3 of Rule 50 of P&T Manual Volume IV, Chapter 11 and Postal Manual Volume III Schedule 2 of Schedule of Administration of Powers of Head of Circle.

7. The request of the respondent for granting the officiating pay/emoluments was declined by the petitioners by order dated 14th September, 2005 and 30th March, 2006 holding that since the respondent was not approved as HSG-II, therefore, the respondent being LSG is not entitled for officiating allowance of HSG-I post on adhoc/local arrangement.

8. The respondent had impugned the orders of the petitioners declining the officiating allowances on the post of HSG-I in O.A No. 1024/2006, Sh. Sher Singh v. Union of India and Ors. which was allowed by order dated 2nd March, 2007. It is this order of the Tribunal which is impugned in this writ petition.

9. The learned Counsel for the petitioners has contended that the respondent was LSG and, therefore, for officiating as HSG-I, he is not entitled for officiating allowances. The learned Counsel has also contended that the decision of the tribunal in A.P. Nandwani's case i.e. Shri A.P. Nandwani v. UOI and Anr. O.A No. 1432/2005 decided on 21.3.2006 case is not distinguishable from the case of the petitioner and, therefore, the Central Administrative Tribunal could not have differed from the same and in case the bench of the tribunal had to differ with the said case, the only course open to the Tribunal was to refer it to the larger bench. The emphasis has also been laid by the learned Counsel on behalf of petitioners that the respondent was not even an officer of HSG-II but an officer of LSG on notional basis and, therefore, he could not be eligible for officiating allowance of the post of HSG-I. The Counsel for the petitioners has also

challenged the impugned order on the ground that the respondent was not ordered by a competent officer to officiate as HSG-I and therefore, he cannot be granted pay and allowance of post of HSG-I.

10. We have heard the learned Counsel for the parties. It cannot be disputed that in the case of *Sh. A.P. Nandwani v. Union of India* and Ors. O.A. No. 1432/2005 decided on 21st March, 2006 the employee was working in HSG-II and he was transferred and posted to the post of Deputy Post Master. The post on which A.P. Nandwani was working was in the scale of HSG-II. However, the post was upgraded to HSG-I with effect from 9th October, 2001 to 30th June, 2002 when A.P. Nandwani voluntarily retired. The said employee claimed allowances for working on the post of HSG-I which was declined by the tribunal holding that HSG-I post are to be filled up by holding the DPC of the eligible candidate from HSG-II but the said employee was neither promoted nor he was officiating even on ad-hoc basis as no order was passed directing him to officiate on the said post or on regular basis to HSG-I. The Tribunal in the case relied on by the petitioners categorically recorded a finding that the up-gradation in the case of Mr. Nandwani did not involve shouldering of higher responsibilities or discharging more onerous functions and duties by the incumbent who was holding that post and consequently it was held that he was not entitled for the pay of the officiating post.

11. The case of the respondent is distinguishable as in case of the respondent, the post was not upgraded and the officiating work on the post of HSG-I did involve shouldering higher responsibilities. The respondent was shouldering higher responsibilities and discharging onerous functions while officiating on the post of HSG-I and, therefore, on the basis of the ratio of *A.P. Nandwani (Supra)* the claim of the respondent cannot be denied and the observations and the finding of the Central Administrative Tribunal cannot be faulted.

12. The petitioners cannot carve out an exception in case of respondent to the principle of equal pay for equal work and contend that respondent is not entitled for pay during the period he worked on higher post pursuant to categorical order passed by the petitioners. In *Sh. Bhagwan Dass and Ors. v. State of Haryana and Ors.* 1987 (3) SC (SLJ) 93 it was observed by the Supreme Court that whether the appointment was for temporary period or the scheme was temporary in nature is not relevant and what is to be seen is that once it is established that the nature of duties and functions discharged and the work done is similar, the doctrine of equal pay for equal work would be attracted. The respondent had been posted to officiate as Sub Post Master in HSG-I at Post Office Hauz Khas and he shouldered the higher responsibilities of the department and, therefore, he became entitled for emoluments of the post of HSG-I for those periods and he could not be denied those emoluments.

13. The Tribunal has also relied on Rule 50(1) of P& T Manual Volume IV, Chapter II, which allows officiating arrangement confined to the officials at the Station wherever the vacancies occur and that the orders were passed by the petitioners

and the respondent was put to officiate on higher post and he could not be denied officiating allowances of higher posts. The learned Counsel for the petitioner has not been able to refute this plea. The contention raised by the Counsel for the petitioners that the orders directing respondent to officiate were not passed by the competent officers cannot be accepted. This plea was not taken by the petitioners before the tribunal and has also not been taken in the writ petition. The petitioners have not produced all the orders by which the respondent was directed to officiate except one of the orders dated 14th May, 2004 which was passed by Senior Superintendent of Post Office. They have not produced any rules or any other regulations to demonstrate that by said order the respondent could not be directed to officiate as SPM Hauz Khas PO till further orders. This order was not confined to the direction to the respondent to officiate as SPM Hauz Khas but it also directed transfer of about 60 POs to different post offices. The petitioners have not been able to show as to how the senior Supt. of Post Office who was competent to transfer about 60 PO was not competent to direct the respondent to officiate. In the circumstances the petitioners cannot succeed on this plea to deny pay to the respondent of the post of HSG-I for the periods he officiated pursuant to orders passed by the petitioners. The respondent had been discharging the functions of the higher post and he cannot be deprived of officiating allowance i.e the difference of the salary attached to the higher post on the cardinal principle of "equal pay for equal work".

14. The Supreme Court in *Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd., Jhabua (M.P.) and Another*, had held that if an employee has worked on the higher post though temporarily and in an officiating capacity pursuant to orders passed by the authorities, he would be entitled for salary of that post and payment of salary of higher post on account that officiation is not the promotion to the said post. The Supreme Court while dealing with the cases of employees appointed under a temporary scheme and the posts which were sanctioned from year to year basis in *Bhagwan Dass and Others Vs. State of Haryana and Others*, had held as under:

13. Lastly we have to deal with the contention that the scheme is a temporary scheme and the posts are sanctioned on an year to year basis having regard to the temporary nature of the scheme. We are unable to comprehend how this factor can be invoked for violating "equal pay for equal work" doctrine. Whether appointments are for temporary periods and the schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of "equal pay for equal work" is attracted. As regards the effect of the breaks given at the end of every six months, we will deal with this aspect shortly hereafter. That however is no ground for refusing to respect the "equal pay for equal work" doctrine.

15. In the circumstances the decision of the Tribunal setting aside the orders of the petitioners declining officiating allowances to the respondent for the post of HSG-I on which he worked for different periods pursuant to orders passed by the

petitioners and directing them to make payments of pay and allowances on officiation of the higher post of sub postmaster by the respondent cannot be faulted. The writ petition, in the facts and circumstances is without any merit and is therefore, dismissed for the foregoing reasons. In the facts and circumstances the petitioners shall also be liable to pay the cost of Rs. 10,000/-to the respondent.