

**HIGH COURT OF ANDHRA PRADESH**

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**WRIT PETITION No. 11435 of 2009**

Between:

The Supdt.of Post Offices, Srikakulam Division,  
Srikakulam and 4 others

.....PETITIONERS

AND

Sri K. Narayana Murthy

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **12.12.2024**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
&  
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

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|-------------------------------------------------------------------------------|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment?          | Yes/No |

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**RAVI NATH TILHARI, J**

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**NYAPATHY VIJAY, J**

**\* THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
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Sri K. Narayana Murthy

.....RESPONDENT

! Counsel for the Petitioners : Sri Josyula Bhaskara Rao  
SC for Central Government

Counsel for the Respondent : --

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> Head Note:

- 1) WP No.19718 of 2012, APHC,  
Decided on 12.09.2024
- 2) (1998) 5 SCC 87
- 3) AIR 1991 SC 1145
- 4) WP No.15512 of 2013 decided on 13.08.2014
- 5) (1995) 6 SCC 162
- 6) (1998) 4 SCC 291
- 7) WP No.4443 of 2013 & batch  
APHC, decided on 04.10.2024

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
&  
THE HON'BL SRI JUSTICE NYAPATHY VIJAY**

**WRIT PETITION No. 11435 of 2009**

**JUDGMENT:** (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Josyula Bhaskara Rao, learned standing counsel for the Central Government, for the petitioners.

2. None appeared for the respondent. Perused the material on record.

3. This writ petition under Article 226 of the Constitution of India is filed by the Superintendent of Post Offices, Srikakulam Division, Srikakulam and others, including the Union of India, challenging the judgment and order dated 19.11.2008 passed by the Central Administrative Tribunal, Hyderabad Bench, at Hyderabad (in short 'the Tribunal') in O.A.No.186 of 2007.

4. The respondent, Sri K. Narayanamurthy, was initially appointed as Postal Assistant on 27.03.1966. After passing the Post Office and Railway Mail Service Accountants Examination in the year 1982, he was posted as Accountant, Srikakulam Head Office on 20.04.1983. He was given financial upgradation under Time Bound One Promotion (TBOP) Scheme with effect from 20.04.1986. Accordingly, his pay was fixed under FR 22 (c), now FR 22 (1) (a) (i) at the stage of Rs.1480/- in the pay scale of Rs.1400-40-1800-EB-50-2300. He was promoted as Assistant Post Master (Accounts), Kakinada Head Office on 21.08.1990., which is a Lower Selection Grade (in short 'LSG') post.

5. The petitioners' case is that the respondent was not entitled for refixation of pay again as he was already drawing pay in the identical scale.

But his pay was fixed at the stage of Rs.1850/- in the same scale of pay erroneously by the Drawing and Disbursing Officer, i.e., Postmaster, Kakinada Head Office, though the scales of pay of TBOP and LSG are identical and one and the same scale. On the objection of the audit party, the pay of the respondent was regularized with effect from 21.08.1990 and the excess paid amount on account of irregular pay fixation was recovered from the respondent.

6. Being aggrieved by the aforesaid action, the respondent filed O.A.No.11 of 1996 before the Tribunal for payment of the excess recovered amount on the plea that he was eligible for refixation of pay on his promotion to Assistant Post Master (Accounts). The Tribunal, vide judgment dated 09.08.1996, held that the respondent was eligible for fixation of pay under FR 22 (1)(a)(1) from 21.08.1990 and accordingly, the arrears from 21.08.1990 to the tune of Rs.2373/- was paid to the respondent.

7. The respondent was subsequently given financial upgradation under Biennial Cadre Review (in short 'BCR') Scheme with effect from 01.07.1992 after completion of 26 years of service in the basic cadre and pay was fixed under FR 22 (1) (a) (1) with effect from 01.04.1993. He was promoted to LSG cadre on regular basis with effect from 01.10.1991 and posted as Assistant Post Master (Accounts), Srikakulam Head Office on regular basis. Then, he was promoted to Higher Selection Grade-II (in short 'HSG-II') with effect from 30.03.2001 notionally and posted as HSG-II Assistant Post Master (Savings Bank), Srikakulam Head Office with effect from 30.03.2001. Further, the

respondent was promoted to HSG-I cadre on *ad hoc* basis with effect from 25.02.2004 and on regular basis on 20.05.2005.

8. The respondent retired from service on 30.06.2006. While processing his pension case, the Director of Accounts (Postal), Hyderabad raised the objection dated 17.05.2006 that the benefit of FR 22 (1)(a)(1) was not applicable to respondent, as he was TBOP official and posted against norm based post in LSG. His pay had to be regularized from 21.08.1990 and recovered the excess drawn pay and allowances had to be recovered. The objection was also raised that the respondent was promoted to HSG-I cadre on *ad hoc* basis with effect from 25.02.2004, whereas he was promoted to HSG-II (Postal) on notional basis with effect from 30.03.2001. As per the existing recruitment rules, the officials who had completed 3 years service in HSG-II grade were eligible for HSG-I promotion. The respondent had completed 3 years service in HSG-II as on 29.03.2004. Hence, he was eligible for consideration for HSG-I scale with effect from 30.03.2004 only. He was paid pay and allowances in excess due to allowing of HSG-I scale from 25.02.2004 to 29.03.2004. The objection was for recovery of the amount drawn by the respondent. Pursuant to the directions of the Director of Accounts (Postal), Hyderabad, the Postmaster, Srikakulam Head Office calculated and recovered the excess paid pay and allowances to a tune of Rs.26,221/- towards second time irregular pay fixation in LSG cadre, again from 21.08.1990 and an amount to a tune of Rs.10,418/- towards irregular HSG-I promotion before completion of 3 years service in HSG-II cadre from 25.02.2004.

9. Being aggrieved from the aforesaid action, the respondent filed O.A.No.186 of 2007 before the Tribunal for restoration of his pay fixed earlier in pursuance of the Orders of the Tribunal in O.A.No.11 of 1996, dated 09.08.1996 and also to restore the pay paid to him in the cadre of HSG-I from the date of officiating irrespective of completion or otherwise of three years period in HSG-II cadre.

10. The Tribunal allowed the O.A.No.186 of 2007 by Order dated 19.11.2008.

11. The Tribunal observed that the respondent was entitled for restoration of the benefits extended to him in pursuance of the Orders passed by the Tribunal in the previous O.A.No.11 of 1996 and consequential benefits. The Tribunal observed that the applicant (respondent herein) was entitled for pay of HSG-I postmaster while he was officiating in the said post before completion of 3 years period in the cadre of HSG-II i.e. from 25.02.2004 in pursuance of the Orders issued by the present petitioners, and merely because the respondent had not completed three years of service in HSG-II, it could not be said that he was not entitled for HSG-I postmaster salary for the period of officiation. The present petitioners could not deny the salary attached to the said post and 3 years rule was applicable only for giving regular promotion and did not come in the way of payment of salary attached to the post for which he was asked to officiate. Consequently, the Tribunal concluded that the present petitioners were not entitled to recover the alleged excess amount paid to the respondent during the officiating period of HSG-I. It also directed that if any

amount was recovered on that count from the respondent, the same shall be refunded to the respondent herein.

12. The operative part of the Order of the Tribunal passed in O.A.No.186 of 2007 dated 19.11.2008 is reproduced as under:

“4. In the result, OA is allowed directing the respondents to restore the applicant’s pay fixed earlier in pursuance of the orders of this Tribunal in O.A.No.11/1996 dated 09.08.1996 and also to restore the pay paid to the applicant in the cadre of HSG-I from the date of his officiating as HSG-I Postmaster irrespective of the completion or otherwise of the 3 years period in the grade of HSG-II. The applicant is entitled for all consequential benefits viz., fixation of pension and all retiral benefits shall be calculated accordingly. The amount already recovered shall be refunded to the applicant. This order shall be complied with within 4 months from the date of receipt of this order. There shall be no order as to costs.”

13. Challenging the aforesaid Order, dated 13.11.2008. the present writ petition has been filed.

14. In the writ petition, vide interim order dated 12.06.2009, this Court declined to suspend the operation of the impugned Order of the Tribunal, but it provided that there shall be stay of refund of the amount already recovered from the respondent by the petitioners’ department.

15. Learned counsel for the petitioners submitted that the recovery of excess payment of amount on wrong fixation could be recovered and therefore, the Tribunal was not justified in passing the impugned order.

16. On our specific query, with respect to the Order dated 09.08.1996 of the Tribunal in the previous O.A.No.11 of 1996, the learned Central Government Counsel submitted that the said order attained finality. The

Tribunal in the previous judgment dated 09.08.1996, found the case of the respondent covered by the judgment of the Tribunal in O.A.No.1434 of 1993, decided on 05.05.1995 and passed the order that the pay of the respondent should be fixed as per Rule 22 (c) {FR 22 (a)(i)} right from the day he resumed charge as Assistant Postmaster (Accounts) and continued to be paid on that basis. Excess amount, if any, already recovered in view of the impugned Order dated 25.04.1991, had to be returned back to him within a specified period. So, so far as the pay re-fixation with effect from 21.08.1990 is concerned, the matter stands concluded by the judgment of the Tribunal dated 09.08.1996 in O.A.No.11 of 1996, which attained finality and consequently, the same point could not be re-agitated by the petitioners in O.A.No.186 of 2007, which the Tribunal has rightly decided in favour of the respondent.

17. So far as the payment of the pay for the officiating post is concerned, the Tribunal has rightly taken the view that the respondent officiated in the post on the orders of the authorities and for the period of officiation, he was entitled for pay in the cadre of HSG-I from the date of his officiating as HSG-I.

18. In ***Superintendent of Railway, Vijayawada v. A. Mrutyumjaya Rao***<sup>1</sup> a Coordinate Bench of this Court in W.P.No.19718 of 2012, decided on 12.09.2024, after considering the judgment of the Hon'ble Apex Court in the case of ***Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma***<sup>2</sup>,

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<sup>1</sup> WP No.19718 of 2012, APHC,  
Decided on 12.09.2024

<sup>2</sup> (1998) 5 SCC 87

***Ramakant Shripad Sinai Advalpalkar v. Union of India***<sup>3</sup>, ***R. Kuppuswamy v. The Registrar, Central Administrative Tribunal***<sup>4</sup>, ***K. Kandaswamy v. Union of India***<sup>5</sup> and ***Selvaraj v. Lt. Governor of Island, Portblair***<sup>6</sup> observed that if a person is put to officiate on a higher post with greater responsibility, he is normally entitled to salary of that post. Placing reliance thereon, the Coordinate Bench directed that the respondent of that writ petition would be entitled only for the difference of salary for the period of officiation of the post of HSG-I for the period he officiated.

19. In ***A. Mrutyumjaya Rao*** (supra) the Coordinate Bench also held that, however, based on such officiation, the pensionary benefits or retiral benefits could not be fixed.

20. In ***Superintendent of Post Offices v. K. Gandhi***<sup>7</sup> also the Coordinate Bench of this Court has taken the same view, and provided that the petitioners therein were entitled to difference of salary for the period of officiation for the post of HSG-I only. That was also a case of postal assistant in the same department, as is the present one.

21. In the aforesaid cases, i.e., ***A. Mrutyumjaya Rao*** (supra) and ***K. Gandhi*** (supra), the applicants therein had officiated in the cadre of HSG-I Grade from 04.10.2004 to 03.12.2004 and subsequently till their retirement. The Orders of the Tribunal were set aside, to certain extent and the writ

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<sup>3</sup> AIR 1991 SC 1145

<sup>4</sup> WP.No.15512 of 2013 decided on 13.08.2014

<sup>5</sup> (1995) 6 SCC 162

<sup>6</sup> (1998) 4 SCC 291

<sup>7</sup> WP No.4443 of 2013 & batch  
APHC, decided on 04.10.2024

petitions were allowed holding that the applicant(s)/employee(s) could not seek for re-fixation of pensionary benefits on the basis of temporary/*ad hoc* officiation in the cadre of HSG-I. The Paragraphs 37, 38 and 39 of the Order, dated 19.09.2024 in **A. Mrutyumjaya Rao** (supra) are extracted below:-

“37. In the present case, therefore, **applying Selvaraj (supra) and Hari Om Sharma (supra), the respondent at the most may be entitled to the salary of that post (HSG-I), only for the period he officiated in that post.** But, based on such officiation, his pensionary benefits or retiral benefits cannot be fixed.

38. We find that the order of the Tribunal is contrary to the settled legal position and deserves to be set aside.

39. We set aside the impugned order of the Tribunal and allow this writ petition in part, providing however that the respondent would be entitled only for the difference of salary, for the period of his officiation on the post of HSG-1, but only for the period he officiated. The difference paid to the respondent as mentioned, for which recovery order was passed, shall not be enforced against the respondent and if the amount has already been recovered, the same shall be refunded to the respondent.”

22. In the present case, the Tribunal under the impugned Order dated 19.11.2008, has also held the respondent herein to be entitled for all consequential benefits, viz., fixation of pension and retiral benefits, to be calculated accordingly. So, as far as the direction to this effect is concerned, we do not find any illegality inasmuch as the present respondent was promoted to HSG-I on regular basis on 20.05.2005. He did not retire working as HSG-I on officiating basis. In **A. Mrutyumjaya Rao** (supra) and **K. Gandhi** (supra), the applicants therein were not promoted on regular basis.

23. We do not find any illegality in the Order of the Tribunal.

24. The Writ Petition is devoid of merits and is dismissed.

25. The petitioners shall comply the Order of the Tribunal, within a period of 4 (four) weeks from today.

26. On the amount now to be paid towards refund or such other amount pursuant to the Order of the Tribunal, which has not been paid, the respondent shall be entitled to the interest @18% per annum from the date of the judgment of the Tribunal till the payment/refund.

27. Let compliance report be sent to this Court through Registrar General of this Court which the Registrar General shall place on the record of this writ petition.

28. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

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**RAVI NATH TILHARI, J**

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**NYAPATHY VIJAY, J**

Date: 12.12.2024  
Dsr

Note:  
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