

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**

**JABALPUR**

Original Application No.694 of 2013

Jabalpur, this Tuesday, the 19th day of May, 2015

SHRI G.P. SINGHAL, ADMINISTRATIVE MEMBER

K.L. Phoolmali, s/o late Umarao Phoolmali,

DOB 07.1.1952, R/o JM-70, Kishore Nagar,

Meera Kishan Kunj, District Khandwa 450001 (MP)

**-Applicant**

(By Advocate Shri Vijay Tripathi)

**V e r s u s**

1. Union of India through its Secretary,  
Ministry of Communication & IT, Department of Posts,  
Dak Bhawan, Sansad Marg, New Delhi 110001.

2. Chief Post Master General, Madhya Pradesh Circle,  
Hoshangabad Road, Bhopal 462012 (M.P.).

3. Director, Postal Accounts, 4th Floor, Dak Bhawan,  
Hoshangabad Road, Bhopal (M.P.) 462027.

4. Senior Superintendent of Post Offices,  
Khandwa Division, Khandwa (M.P.) 450001

**- Respondents**

(By Advocate Shri Amjad Ahmed, proxy counsel of Shri A.T. Faridee)

(Date of reserving order : 14.05.2015)

**O R D E R**

The applicant has preferred this Original Application for the following reliefs:

8(i) Summon the entire relevant record from the possession of respondents for its kind perusal;

8(ii) Upon holding that reducing the basic pay of the applicant as Rs.19,960/- is bad in law, command the respondents to calculate all retiral dues and pension of the applicant on the basis of the last basic of Rs.20,410/-

8(iii) Direct the respondents to revise the pension, DCRG, leave encashment, commuted value of pension and pay arrears of the aforesaid amount with 18% interest p.a.;

8(iv) Direct the respondents to repay the amount of DCRG of Rs.43,790/- to the applicant with 18% interest;

8(v) Any other order/orders, direction/directions may also be passed.

8(vi) Award cost of the litigation to the applicant.

8(vii) Set aside the order dated 30.10.2012 (Annexure A/1), order dated 6.8.2012 (Annexure A/2) and order dated 4.4.2012 (Annexure R/7) with all consequential benefits.

2.The learned counsel for applicant submitted that at the time of retirement, applicant was holding the post of Deputy Post Master, Khandwa Head Office in the Pay Band of Rs.9300-34800/- + Grade Pay of Rs.4600/- and his basic pay was Rs.20,410/-. However, while paying him retiral dues, the basic pay has been reduced from 20,410/- to 19,960/-. Further, Rs.43,790/-/- has been deducted from his DCRG, without assigning any reason. The applicant was inducted in the cadre of HSG (II) in the pay scale of Rs.5000-8000 and posted as Deputy Post Master at Itarsi Head Office. Thereafter, vide the order dated 12.1.2005, the applicant was sent on deputation to work as Sub Post Master, Harda in the cadre of HSG (I) and he was given the pay scale of Rs.6500-10500/-. Appointment of applicant in the cadre of HSG (I) was approved by the Departmental Promotion Committee (DPC) and orders were issued on 18.8.2005 (Annexure A-3). Thus, there is no justification for reduction of pay of the applicant for retiral benefits and deduction of Rs.43,790/- from DCRG.

3.The respondents, in their reply, have submitted that the applicant was promoted to HSG (I) grade vide the order dated 18.8.2005. Before that, vide the order dated 12.1.2005, he was posted on HSG (I) grade post of Sub Post Master, Harda Head Post Office by Senior Superintendent of Post Offices, Hoshangabad. Since the applicant was working at that time with the office of Sr. Superintendent Post Offices, Hoshangabad, there was no ground for posting him on deputation basis in one of its offices. Thus, applicant was not entitled to the pay of HSG (I) grade on this posting at Harda as he was still in HSG (II) grade. In any case, applicant was promoted to HSG (II) grade on 29.10.2004 and had qualifying service of only two months as on 1.1.2005 in that grade, he could not have been promoted to HSG (I) grade so early as the qualifying service of three years was required for such promotion. Therefore, when his pension case was prepared, there was objection in regard to his pay fixation on 17.1.2005 in HSG (I) grade when he joined at Harda in compliance of order dated 12.1.2005 of SSPO Hoshangabad. Therefore, applicant's pay was accordingly refixed and he was granted HSG (I) grade w.e.f. 23.08.2005 when he was actually promoted to that grade. Thus, due to correction of his pay fixation w.e.f. 17.1.2005, his basic pay at the time of retirement was changed and applicant has been paid retiral benefits accordingly. Further, excess salary paid to him during this period has been recovered from the DCRG. Thus, the O.A, being without any merit, deserves to be dismissed.

4. Heard the learned counsel for the parties and perused the pleadings of the respective parties and documents annexed therewith. I have also gone through the written arguments filed by learned counsel for the respondents.

5. It is undisputed that the applicant was promoted to HSG (I) grade vide the order dated 18.8.2005 (Annexure A-3). Before that, he claims to be posted on deputation basis on a post of HSG (I) grade. However, the order dated 12.1.2005 (Annexure R-1) by which he was posted as Sub Post Master, Harda was issued by Sr. Superintendent of Post Offices, Hoshangabad and since the applicant was already working in his jurisdiction, this posting could not be considered as on deputation. In fact, this is simply a posting order on vacant post of Sub Post Master, Harda on which the applicant was posted on his own cost for which he may have requested at that time. Thus, applicant was not entitled to get the pay scale of HSG (I) grade w.e.f. 17.1.2005 on the basis of order dated 12.01.2005 (Annexure R-1). Therefore, respondents are not at fault in re-fixing his pay, by treating him promoted to HSG (I) grade w.e.f. 23.8.2005. In view of this correction, basic pay of applicant has been revised and applicant has been paid all the retiral benefits based on this pay. Thus, the respondents cannot be faulted in granting retiral benefits to the applicant based on his revised basic pay of Rs.19,960/- in place of Rs.20,410/-, and no interference with the orders of respondents in this matter, is justified. Therefore, the prayer of the applicant in this regard is rejected.

6. So far as deduction of Rs.43,790/- from the DCRG of the applicant is concerned, this amount has been deducted without issuance of any show-cause notice to the applicant. Relying on the judgment of Hon'ble Supreme Court in the matters of State of Punjab and others etc. v. Rafiq Masih (White Washer) etc., Civil Appeal No.11527 of 2014, learned counsel for the applicant submitted that in view of the law laid down by the Hon'ble Supreme Court in that order, no recovery of excess payment can be made from retired employees or employee who are due to retire within one year of the order of recovery. Since recovery of excess salary has been done after retirement of applicant, such recovery is not in accordance with law. Therefore, the respondents are directed to refund Rs.43,790/- deducted from DCRG of the applicant, within a period of 60 days from the date of communication of this order. However, no interest shall be payable on that amount.

7. Thus, the O.A is partly allowed. No order on costs.

(G.P. Singhal)

Administrative Member

OA No.694/2013