

A

JUDHISTIR MOHANTY

v.

STATE OF ORISSA AND ORS.

SEPTEMBER 13, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

C

*Scale of pay—Entitlement of higher scale of pay—Employee working as jail Superintendent in leave reserve—Making representation for transfer to a particular place—Grant of the request—Though he was holding a Class II post he was adjusted against a Class-I post—Claim for higher scale of pay—Held not justified since it was a request transfer and he was accommodated in a higher post, he is not entitled to higher scale of pay than the scale of pay attached to his post.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12858 of 1996.

E

From the Judgment and Order dated 26.4.88 of the Orissa Administrative Tribunal in M.P. No. 281/1988 in T.A. No. 29/87 (OJC No. 2540 of 1984.

Mr. Y.P. Rao for the Appellant.

Mr. P.N. Misra for the Respondents.

F

The following Order of the Court was delivered :

Delay condoned.

Leave granted.

G

We have heard learned counsel on both sides.

H

This appeal by special leave arises from the two orders dated April 26, 1988 of the Administrative Tribunal at Bhubaneswar made in T.A. No. 29/87 (OJC No..2540/84) transferred from the High Court and M.P. No. 281/88.

The admitted position is that the appellant, while working as Superintendent of Jail in leave reserve in the Head Officer of I.G. (prisons) made a representation on February 5, 1978 to the Chief Minister stating that he had no house of his own and had recently secured a site at Behrampur. He wanted to settle down at Behrampur. He had served the Department for more than 37 years. His children were prosecuting studies near Behrampur. if he is transferred to Behrampur or near about Behrampur, he would be able to construct the house and settle him down after retirement at Behrampur. Taking that representation into consideration, the Government granted sanction on January 27, 1978 directing that he was transferred and posted as Superintendent of Jail at Circle Jail at Behrampur. By proceedings dated January 27, 1978, the Government have sanctioned two posts of Superintendent of Jail for Circle Jail at Behrampur in the pay scale of Rs: 850-1450 with D.A. In one of the above sanctioned posted, the appellant came to be adjusted by proceedings dated March 28, 1978 and it is not in dispute that he worked during the period from April 1, 1978 to October 31, 1978 the date on which he attained superannuation and retired from service. The writ petition filed in the High Court was subsequently transferred to the Tribunal. Though there is no mention as regards his entitlement to the payment of the salary in the post of Superintendent referred to hereinbefore, the same was not paid to him for the reason that he was transferred and posted to the said post at his request. It is the contention of Shri Y. Prabhakara Rao, learned counsel for the appellant, that since he was asked to discharge that duty for the said period, he is entitled to the payment of the salary. *Prima facie*, we are impressed with the arguments addressed by Shri Y.P. Rao, but it is pointed by Shri Misra, learned counsel appearing for the State, that the Superintendent leave reserve is only Class II post whereas the Superintendent of the Circle is Class I post. Since the appellant made a request for adjustment of him at Behrampur and since there was no other post equivalent to Class II available, he came to be adjusted in that post at request. Therefore, he was not eligible to the scale of pay attached to the post. We are in agreement with Shri Misra, learned counsel for the State. It is a settled position that if the Government, for want of candidate, directs an officer in the lower cadre to perform the duties of the post in the higher cadre, during that period, necessary incumbent would be entitled to the payment of salary attached to the post if the incumbent performed the duties in that post. Similarly where concerned officer is on promotion from lower cadre to the

- A higher cadre, though on *ad hoc* or even temporary basis, the incumbent would be entitled to the payment of the salary attached to the post for the period of his discharging the duty in that post. In this case, neither would be applicable. At request, he was transferred and thought order does not speak of, but the fact remains and is not disputed that the order came to be passed pursuant to a representation made by the appellant to the Chief Minister. It was obviously on that basis that direction was issued by the Chief Minister's Office and the transfer order came to be made to accommodate him, before his retirement, at Behrampur where he had proposed to construct the house. Since there was no equivalent post of Grade II category, necessarily he was accommodated in that post. Consequently he is not entitled to the higher scale of pay than to which he was entitled as Superintendent Leave Reserve on which post he would otherwise have retired.

- The appeal is accordingly dismissed, but in the circumstances, without costs.

G.N.

Appeal dismissed.