

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 396 of 2010 & O.A. NO. 418 of 2010

Friday, this the 24th day of February, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A. NO. 396 OF 2010 :

1. M.D. Nair.
Social Security Assistant.
Employees Provident Fund Organization, Pattom,
Trivandrum.
2. N.B. Asokan.
Social Security Assistant.
Employees Provident Fund Sub Regional Office
Kochi.
3. S. Shaji
Social Security Assistant.
Employees Provident Fund Sub Regional Office
Kollam.
4. K. Sreeraj.
Social Security Assistant.
Employees Provident Fund Sub Regional Office
Kochi.
5. K. Subhash Chandra Das.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kollam
6. M.S. Praveena.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kollam
7. N. Ashok Kumar.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kollam
8. N.P. Dilip.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kollam

9. S.Santhosh.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kollam

10. M.M.Thomas.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kottayam

11. M.Ambika Devadas.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kochi. Applicants

(By Advocate Mr. Vellayani Sundara Raju)

versus

1. Union of India represented by Secretary to Government
Ministry of Labour
New Delhi

2. The Central Provident Fund Commissioner
Bhavishya Nidhi Bhavan, 14, Bikhaji Cama Place
New Delhi.

3. The Regional Provident Fund Commissioner (1)
Kerala Region, Bhavishya Nidhi Bhavan
Pattom, Thiruvananthapuram

4. Assistant Provident Fund Commissioner-cum-Officer in Charge
Employees Provident Fund Sub Regional Office
Kollam

5. Assistant Provident Fund Commissioner-cum-Officer in Charge
Employees Provident Fund Sub Regional Office
Kolttayam

6. Assistant Provident Fund Commissioner-cum-Officer in Charge
Employees Provident Fund Sub Regional Office
Kochi Respondents

(By Advocate Mr.N.N.Sugunapalan, Senior
Advocate Mr.S.Sujin (R2-6))

2. O.A.No.418/2010:

1. Santhosh K.
Social Security Assistant.
Employees Provident Fund Sub Regional Office,
Kannur

2. S.M.Muraleedharan Nair
Social Security Assistant.
Employees Provident Fund Sub Regional Office,
Kollam

3. N.P.Ajithkuamr
Social Security Assistant.
Employees Provident Fund Sub Regional Office, Kochi
4. Bindu Mohan
Social Security Assistant.
Employees Provident Fund Sub Regional Office,
Thiruvananthapuram
5. K.Pradeep Kumar
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kannur
6. Chandra Bhanu V.V.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kannur
7. Presanna G Pillai
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kottayam
8. Antu A.D.
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kottayam
9. P.K.Narayanan Nair
Social Security Assistant.
Employees Provident Fund Sub Regional Office, SRO
Kochi

Applicants

(By Advocate Mr. Vellayani Sundara Raju)

versus

1. Union of India represented by Secretary to Government
Ministry of Labour
New Delhi
2. The Central Provident Fund Commissioner
Bhavishya Nidhi Bhavan, 14, Bikhaji Cama Place
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3. The Regional Provident Fund Commissioner (1)
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4. Assistant Provident Fund Commissioner-cum-Officer in Charge
Employees Provident Fund Sub Regional Office
Kollam

5. Assistant Provident Fund Commissioner-cum-Officer in Charge
Employees Provident Fund Sub Regional Office
Kolttayam

6. Assistant Provident Fund Commissioner-cum-Officer in Charge
Employees Provident Fund Sub Regional Office
Kochi

7. Assistant Provident Fund Commissioner-cum-Officer in Charge
Employees Provident Fund Sub Regional Office
Kannur ... Respondents

(By Advocate Mr.N.N.Sugunapalan, Senior
Advocate Mr.S.Sujin)

These applications having been heard on 08.02.2012, the Tribunal
on 24.02.12, delivered the following:

O R D E R

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The above O.As being identical, they were heard together and are
disposed of by this common order.

2. The applicants who were Senior Social Security Assistants (Sr.
SSA) in the Employees Provident Fund Organization (EPFO) got inter regional
transfer to Kerala in the year 2008 on the following terms and conditions:

- (i) They will be accommodated as a junior most SSA in the transferred Region with effect from the date of joining;
- (ii) Their pay will be fixed in the cadre of SSA as per relevant rules;
- (iii) The transfer being allowed at their own request, they will not be entitled to any TA/DA and joining time.

3. As Sr. SSA, the applicants were in the pay scale of Rs. 9300-34800 plus Grade Pay of Rs. 4200/- before their transfer. Initially, their pay was protected fully as per the Pay Band on transfer. Subsequently, applying 15(a),

their pay scale and the Grade Pay were reduced. Aggrieved, these O.As have been filed by the applicants for quashing the impugned orders and for a declaration that they are eligible and entitled to get pay scale in the Pay Band of Rs. 9300-34800 plus Rs. 4200/- Grade Pay instead of the reduced pay scale fixation and for a declaration to the respondents to refix the pay scale of the applicant in accordance with the Pay Band fixed to them by their respective regional offices prior to their transfer to Kerala Region and disburse the arrears to them and to issue other appropriate orders.

4. The applicants contended that the pre-revised scale of Rs. 4500-7000 and Rs. 5000-8000 are separate upgraded scales made available to the persons who have completed the required minimum period of service and also coming within a per centage of the total sanctioned strength in the grade of SSA. These scales are not promotional scales of SSA regulated by any separate Recruitment Rules and also not vacancy based. The upgraded scale cannot be treated as promotion to the next higher grade. Therefore, F.R.15(a) is totally inapplicable in fixing the pay of the applicants by the respondents. The lower cadre of SSA is Lower Division Clerk (LDC) and promotional post of SSA is Section Supervisor. The applicants have been transferred and posted to the same cadre as SSAs and they were granted the same pay scale in the Pay Band on joining duty in the Kerala Region as the pay scales fixed prior to their transfer from parent regions. The respondents have acted on an erroneous presumption that the applicants were transferred to a lower post and on that wrong footing, they applied F.R.15(a) and reduced the Grade Pay of Rs. 4200/- to that of Rs. 2400/- and further granted personal pay, that too, to be absorbed in future increments. The applicants are entitled to draw the same emoluments as they were drawing in the parent regions and

their pay shall not be reduced on the basis of F.R.15(a), as evident from the clarification of Annexure A-5. Till the personal pay is absorbed, no increment will be available to the applicants

5. The respondents contested the O.A. In their reply, they submitted that the transfer of the applicants is from a higher post/scale to a lower post/scale, i.e Sr. SSA to SSA. Their pay is fixed in terms of O.M. No. F.No.16-6/2001-Estt Pay-I dated 14.02.2006 (Annexure R-3). There was no mention of pay protection in the terms and conditions of the transfer of the applicants. The applicants have left behind whatever promotions they earned from the previous regions on their inter regional transfer to Kerala. The applicants are not treated as transferred to lower cadre of LDC. The transfer accepted by the applicants is to a lower post of SSA from a higher post of Sr. SSA/Sr. SSA(TBP) which they held in the previous regions. Hence, F.R. 15 (a) is applicable in their case. Upon accepting the transfer on the terms and conditions, the applicant joined as junior most SSAs. The applicants were drawing pay in PB-2 of Rs. 9300-34800 plus Grade Pay of Rs. 4200/- prior to joining the Kerala Region. Hence their pay was fixed as per F.R. 22(I)(a)(3) in terms of Government of India, Department of Personnel and Training O.M. No. F.No. 16/6/2001-Estt. Pay-I dated 14.02.2006. The pay scale for SSA is Rs. 5200-20200 plus Grade Pay of Rs. 2400/-. The difference in pay due to refixing was allowed to them as personal pay. The Department of Personnel and Training O.M. No. F.No. 13/9/2009-Estt(Pay-I) dated 21.10.2009 (Annexure A-8) clearly stipulates that no protection of Grade Pay is allowed consequent upon transfer to lower post/scale and the official will be allowed Grade Pay applicable to the lower post/scale. Hence, the difference in Grade Pay as personal pay was disallowed. The clarification offered at point No. 2

of Annexure A-5 is for applicability of reservation in granting Sr. SSA. As such it cannot be treated as a clarification for the present case.

6. In the rejoinder statement, the applicant submitted that SSA is a single cadre consisting of persons having different basic pay. The Sr. SSA is not a promotion post, but a placement in higher pay scale and the nature of duty is one and the same. They were transferred to Kerala Region as junior most persons. Their transfer is not to a lower post. On transfer, the applicants will loose only their seniority in the cadre of SSA but not their total number of years of service and the pay scale drawn by them prior to their transfer since their transfer is made in the same cadre. The direction in Annexure A-8 will come to play only if the applicants are transferred to Kerala as LDC. The then Regional P.F. Commissioner-II, Sub Region, Kollam, wrote a letter dated 17.03.2010 (Annexure A-10) to the 3rd respondent explaining the actual position of law on the fixation of pay of the applicants. Annexure R-3 clarification dated 14.02.2006 is applicable only when the transfer is from a higher post to lower post. There is no higher post and lower post existing in the cadre of SSA. All persons in the cadre of SSA irrespective of the salary drawn are placed in a single seniority list without even mentioning their status (Annexure A-11 refers). In the transfer order, there is no mention that the pay of the applicants would be reduced and that they would be given a lower pay scale.

7. In the additional reply statement, the respondents submitted that the SSA cadre has 3 different pay scales. The applicants have not joined as junior most Sr. SSAs to claim the higher pay scale. The recommendation of the Regional P.F. Commissioner-II, Sub Region, Kollam, was not in line with

the guidelines contained in Annexure R-2 letter. It is clearly provided in the transfer orders that the pay of the applicants will be fixed in the SSA cadre as per relevant rules and the rules provide for grant of Grade Pay in the lower scale only. As the Sr. SSA carries higher pay scale, it is a higher post within the SSA cadre and hence, F.R. 15(a) is liable to be applied in the case of the applicants. To get the Senior SSA post and the pay scale in Kerala Region, they will have to wait for their turn to come within the first 60% of SSA based on their seniority position in Kerala Region as per Annexure R-2.

8. We have heard Mr. Vellayani Sundara Raju, learned counsel for the applicants and Mr. N.N. Sugunapalan (Senior) with Mr. S. Sujin, learned counsel appearing for the respondents and perused the records.

9. Whether the applicants upon their inter regional transfer to Kerala are entitled to retain the pay scale in the Pay Band of Rs. 9300-34800 plus Grade Pay of Rs. 4200/- is to be determined on the basis of the terms and conditions of their transfer.

10. The first condition that they will be accommodated as junior most SSA in the transferred region with effect from the date of joining shows that they will lose seniority in the cadre of SSA and nothing more. There is no whiff of a reversion or monetary loss. There is no contention either way for consideration, as to this condition. The third condition is that their transfer being allowed on request, they will not be entitled to any TA/DA and joining time. Their transfer being not in public interest, the respondents are not required to bear any expenditure on their transfer. There is no argument about this condition either.

11. The second condition which is the point of contention, is that their pay in the cadre of SSA will be fixed as per relevant rules. The applicants contend that F.R.15(a) is not applicable in their case in fixation of pay as they have been transferred to the same cadre as SSAs and not to a lower post. The stand of the respondents is just the contrary. Rule 15(a) of Fundamental Rules is extracted as under:

"F.R.15 (a) : The President may transfer a Government servant from one post to another provided that except -

- (1)on account of inefficiency or misbehaviour, or
- (2)on his written request,

a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

First of all in the terms and conditions, there is no clear and specific provision to apply F.R. 15(a) to the applicants. In order to apply it, there should be a request transfer from a post carrying higher pay to a post carrying less pay. It is not the case of the respondents that the applicants had sought a transfer from a post carrying the higher pay scale of Sr. SSA to the lower pay scale of SSA.

12. The respondents contend that as the Sr. SSA carries higher pay scale, it is a higher post within the SSA and F.R. 15(a) is liable to be applied to their case. A higher post will necessarily have higher duties and responsibilities, besides higher pay scale. Mere granting of financial upgradation under MACP Scheme to an employee does not make his post

any higher; he continues to perform the same duties as before. So also, granting of the pay scale of Rs. 5200-20200 plus Grade Pay of Rs. 2800/- and later the pay scale of RS. 9300-34800 plus Grade Pay of RS. 4200/- will not make the post of SSA any higher than before. The Sr. SSAs continue to be in the seniority list of SSAs for promotion to the post of Section Supervisors. Further, their job in the transerrer region and the transferee region is the same i.e., SSA only. The respondents cannot be heard to say that the clarification that "the upgraded scales available in the cadre of Social Security Assistants cannot be termed as promotion to the next higher grade" (Annexure A-5) made in the context of reservation will not apply elsewhere. Therefore, we hold that in the instant case, there is no transfer from a higher post to a lower post. We also hold that there is no lower post or higher post existing in the cadre of SSA. True, the applicants have joined as junior most SSAs in the transferee region but there is nothing in the terms and conditions that warrants a reduction in their pay applying F.R. 15(a).

13. Again, the contention of the respondents that the applicants have left behind whatever promotions they have earned in the previous region on their inter regional transfer to Kerala is not based on the agreed terms and conditions of the transfer.

14. O.M. dated 14.02.2006 at Annexure R-3 and O.M. dated 21.10.2009 at Annexure A-8 pertain to fixation of pay of employees who seek transfer to a lower post under F.R. 15(a). They will not apply to the applicants as their transfer is not under F.R. 15(a), with the specific condition that they are transferred to a post with less pay. In para 3 of both the O.Ms referred to, it is stated that "Where transfer to a lower post is made subject to certain terms

and conditions then the pay may be fixed according to such terms and conditions". In the instant cases, the transfer cannot be said to be to a post with less pay as per the terms and conditions of transfer, but to the same cadre post of SSA with loss of seniority only. Therefore, it is only fair that the specific terms and conditions of transfer only should apply in the instant cases. In the facts and circumstances of these O.As, the condition of fixation of pay as per relevant rules is not relevant in as much as there is no scope for its application. It was open to the respondents to specify that they are being transferred to a lower pay scale. Not having done so, the respondents have no legally tenable ground to fix their pay in a lower pay scale, upon their transfer to Kerala. Hence the O.As succeed.

15. Before parting with this order, we would make two observations. Loss of seniority on inter divisional transfer is necessary to protect the promotion prospects of employees in the transferee region; non-payment of TA/DA on transfer which is not in public interest, is also reasonable, but the reduction in the pay cannot be justified; it is illegal gain for the Government. For doing the same job in the transferee region as in the transferor region, it is Shylockian exploitation to effect a cut in the pay of the applicants who hold posts carrying transfer liability anywhere in India. If they are not transferred out of a political state as a matter of policy, on administrative grounds, well and good. Even then an inter regional transfer should not penalise an employee by way of depriving him of his legitimate salary in full. It ill behoves an enlightened Government to make profit out of the misery of its employees. Granting of inter regional transfer should not be an excuse to cut the pay of the applicants.

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16. Terms and conditions of inter regional transfer are mutually agreed upon by the Government and the employees who seek it. For proper understanding of the terms and conditions by both the parties, they should be clear and specific. There should be no room in the terms and conditions for misinterpretation or misunderstanding so that litigation can be avoided.

17. The O.As are allowed as under. The impugned orders are set aside. The applicants are entitled to get pay scale in the Pay Band of Rs. 9300-34800 plus Grade Pay of Rs. 4200/- instead of the reduced pay scale fixed by the respondents applying F.R. 15(a). The 3rd respondent is directed to issue consequential orders and disburse arrears to the applicants within a period of two months from the date of receipt of a copy of this order.

18. No order as to costs.

(Dated, the 24th February, 2012)

**K GEORGE JOSEPH
ADMINISTRATIVE MEMBER**

**JUSTICE P.R.RAMAN
JUDICIAL MEMBER**

cvr.