

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO. 455/2001

Friday, this the 31st day of January, 2003.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.N.Sreedeviamma,  
Postal Assistant in-Charge SBCO,  
Kottarakkara Head Post Office,  
Kottarakkara.P.O.

- Applicant

By Advocate Mr P.C.Sebastian

Vs

1. The Senior Superintendent of Post Offices,  
Kollam Division,  
Kollam-691 001.

2. The Postmaster,  
Kottarakkara Head Post Office,  
Kottarakkara.

3. The Chief Postmaster General,  
Kerala Circle,  
Thiruvananthapuram.

4. The Union of India  
represented by Secretary,  
Ministry of Communications,  
Department of Posts,  
Dak Bhavan, New Delhi. - Respondents

By Advocate Mrs A.Rajeswari, ACGSC

The application having been heard on 31.1.2003 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced service as a Postal Assistant on 24.12.69, was later promoted as Upper Division Clerk in the Savings Bank Control Organisation(SBCO for short)

on being successful in a Departmental Competitive Examination in the year 1975. To better the service conditions of the employees of the Postal Department, Time Bound One Promotion(TBOP for short) scheme was introduced in the year 1983 and a further scheme of Biennial Cadre Review(BCR for short) was introduced in the year 1991. This benefit of TBOP was extended to the SBCO by order dated 26.7.91 and the benefit of BCR was made available to the SBCO by order dated 22.7.93. In terms of the TBOP, applicant along with some others were promoted by A-2 order dated 2.3.92 into LSG cadre in the scale Rs.1400-2300(pre-revised) with effect from 1.8.91. In accordance with the provisions contained in A-2 order, the applicant exercised her option to have her pay refixed with effect from 1.12.91 as the date of next increment. Her pay was therefore fixed at the stage of Rs.1640/- with effect from 1.12.91. Thereafter, in accordance with the provisions of the BCR scheme, by order dated 24.6.96(A-3), the applicant and others were promoted to HSG-II in the scale Rs.1600-2660 with effect from 1.10.91. As provided for in A-3 order, the applicant exercised her option for refixation with the next date of increment, viz, 1.12.92. Accordingly, accepting her option, her pay was fixed at Rs.1750/- with effect from 1.12.92. On revision of pay and on acceptance of the report of the Vth Central Pay Commission, in the pay scale of Rs.5000-150-8000 the applicant was drawing a basic pay of Rs. 6800/- as on 1.12.2000. The present grievance of the applicant is that all of a sudden, without issuing any notice, her pay was reduced to Rs.6650/- with effect from 1.1.2001 retrospectively and a sum of

Rs.10,237/has been directed to be recovered from her pay and allowances by the impugned order dated 21.5.2001 A-1. Coming to know that A-1 was issued on the basis of A-4 letter of clarification issued by the DG, Posts which provide that when 2 promotions under the TBOP and BCR are made within a period of one year, the benefit of option under FR-22(I)(a)(1) should made available only on the 2nd promotion, aggrieved by the impugned orders, the applicant has filed this application seeking to set aside A-1 and A-4 orders and for a declaration that the action on the part of the respondents to reduce the applicant's pay from Rs.6800/- to Rs.6500/- and ordering recovery of Rs.10,237/- is illegal and for a direction to the respondents to restore applicant's pay to the stage of Rs.6800/- as on 1.12.2000 and not to make any recovery on the basis of A-1 order with consequential benefits. It has been alleged in the application that the applicant having exercised option on promotion as provided for in the orders by which the applicant was promoted under FR-22(I)(a)(1) and as the option has been accepted and acted upon the action on the part of the respondents to reduce the pay of the applicant to make recovery without even issuing a notice and affording an opportunity to show cause against such action is arbitrary, violative of principles of natural justice, irrational and unconstitutional.

2. The respondents have filed a reply statement seeking to justify the impugned action on the ground that the DG in A-4 communication clarified that in a case where promotion

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under TBOP and BCR takeplace before accrual of the next increment in the case of an incumbent the option for fixation under FR-22(I)(a)(1) should be made available only on the 2nd promotion.

3. We have heard the learned counsel on either side and have perused the entire material placed on record.

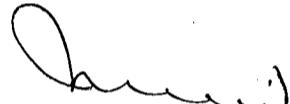
4. The impugned orders undoubtedly are one which would visit the applicant with an adverse civil consequence. It has been held in a plethora of rulings by the Apex Court that orders visiting the recipient thereof with adverse civil consequence should not be made without affording that person an opportunity of being heard. For non-observance of principles of natural justice alone, the impugned orders are liable to be set aside. Further, in this case, the orders A-2 and A-3 by which the applicant was promoted to LSG as also HSG made in the year 1992 and 1996 specifically provide for option for fixation of pay under FR-22(I)(a)(1). These options have been exercised by the applicant in respect of the orders and the same was accepted by the competent authority and her pay was fixed accordingly. A-2 and A-3 or any part of it have not been recalled by any order of the competent authority. The option for refixation of pay with effect the date on accrual of the next increment is provided for in the statutory provisions contained in FR-22(I)(a)(1). The clarification contained in A-4 is contrary and is in derogation of the benefit conferred by the statutory provision of FR-22(I)(a)(1). Such a clarification of a statutory instruction which is repugnant to the statutory provision

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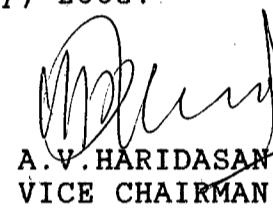
itself is unenforceable in law. Therefore, the action on the part of the respondents on the basis of A-4 to reduce applicant's pay with retrospective effect is unsustainable and is required to be set aside. The clarification contained in A-4 being opposed to the statutory provisions is also liable to be struck down.

5. In the light of what is stated above, we allow this application and set aside the impugned orders with all consequential benefits to the applicant. There is no order as to costs.

Dated, the 31st January, 2003.



T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

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